

(1992) 11 BOM CK 0070
In the Bombay High Court
Case No : Writ Petition No. 364 of 1989

R. Ganeshan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-11-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (1993) 1 BomCR 346 : (1994) 2 LLJ 851

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : R.J. Kochar, for the Appellant; L.S. Vyas, H.V. Mehta, M.D. Siodia and Vijay Barboza, instructed by Bhasin and Co., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Agarwal, J.—An order, passed on the January 11, 1989, by the Presiding Officer of the National Industrial Tribunal, Bombay u/s 10 (1)(c) read with Section 12(5) of the Industrial Disputes Act (hereinafter, for the sake of brevity, referred to as "the Act") refusing to make a reference, is impugned in the present petition.

2. The petitioner joined the service of Air India, the third respondent herein, with effect from March 10, 1978 as an Assistant Flight Purser. An incident took place on January 5, 1980 while the petitioner was on duty on a flight proceeding from Bombay to London via Kuwait. It is alleged that the petitioner molested a minor girl Miss. Jain, a passenger on the flight. On the February 5, 1980 a chargesheet was submitted against the petitioner. On October 8, 1980 an order of dismissal from service was passed against the petitioner. On the very day the third respondent filed an application u/s 33(2)(b) of the Act for grant of approval to the order of dismissal. On May 24, 1984 the approval was granted. In the meantime the petitioner filed a departmental appeal which also was dismissed on January 3, 1981.

3. On November 12, 1987 the petitioner raised a dispute u/s 10 read with Section 12 of the Act. On December 30, 1988 the Assistant Labour Commissioner (Central) Bombay, being the Conciliation Officer, submitted his failure report. A copy of the proceeding in conciliation is annexed at Exhibit-B and a copy of the failure report is annexed at Exhibit-C to the petition. Thereafter, the Government of India, Ministry of Labour, by an order dated January 11, 1989 declined to make a reference for adjudication of the dispute on the ground that the dispute is highly belated inasmuch as it has been raised after lapse of a period of seven years and no justification has been given for the delay. The copy of the order is annexed at Exhibit-D to the petition. Taking exception to the said order, the petitioner, on February 3, 1989 has preferred the present writ petition.

4. Mr. Kochar, the learned counsel appearing on behalf the petitioner, has strenuously urged that the Government has erred in declining to make a reference. He submitted that the Government is factually in error while refusing to make a reference on the ground that the dispute has been raised after a lapse of seven years. He pointed out that the approval application filed by the third respondent was pending for the period between October 8, 1980 and May 24, 1984. Hence, till such time that the approval was granted the order of dismissal cannot be said to have been confirmed. It is only after the approval was granted on May 24, 1984 that the petitioner can be expected to raise a dispute. Mr. Kochar pointed out that the petitioner was ill-advised and he, therefore, continued making representations to the higher authorities which included the Minister for Aviation, the Prime Minister as also the President of India. After the petitioner realised that no justice was done despite the representations, he, on November 12, 1987, raised the present dispute.

5. Mr. Kochar further submitted that there was no period of limitation prescribed for raising an industrial dispute. All that the Government was required to find out is whether an industrial dispute exists. Once this issue is answered in the affirmative the Government is ordinarily expected to make a reference. Since there is no limitation prescribed the reference cannot be declined on the ground of delay as has been done in the present case. Reliance is placed on the case of *Balubhai J. Panchal v. State of Maharashtra* 1983 (46) F.L.R. 207 wherein it is observed:

"Industrial Disputes Act, 1947, Sections 12(2), (5), 10(1) - Conciliation Officer making failure report - Appropriate Government not making reference u/s 12(2) on ground that demand is barred by limitation-Appropriate Government was not justified in not making reference on ground of limitation - Only question before Respondent No. 2 was to see whether industrial dispute exists or is apprehended."

Mr. Kochar submitted that this a proper case where an appropriate direction should be issued calling upon the Government to make a reference.

6. I have given my anxious consideration to the submissions advanced by Mr.

Kochar but I am unable to accede to the prayer advanced on behalf of the petitioner. The petitioner has been dismissed way back on October 8, 1980. As far as the petitioner is concerned the order of dismissal came into effect on October 8, 1980. Nothing prevented the petitioner from raising the dispute soon thereafter. It is true that an application u/s 33(2)(b) for approval was filed by the third respondent. That, however, in my view, is no bar for the petitioner to raise the dispute. The approval is a formality which is required to be undergone by the third respondent. That, however, would not be a just ground for the petitioner to wait for raising the dispute. The petitioner has filed a departmental appeal which appeal came to be dismissed on January 3, 1981. Even at this stage, the petitioner took no action of raising a dispute. In the circumstances, in my view, the Government is justified in holding that there has been a delay of seven years for which no justification is forthcoming. Even if one were to hold that the order of dismissal was finally confirmed when the approval was granted on May 24, 1984 there is no cogent and satisfactory explanation for the inaction for the period between May 24, 1984 to November 12, 1987. A reference to an additional argument advanced by Mr. Kochar may be made at this stage. According to Mr. Kochar, the ground of delay was not one of the grounds which was mentioned by the Conciliation Officer in his failure report. According to Mr. Kochar the Government cannot rely on a ground which does not find a place in the failure report while declining to make a reference. He placed reliance on the provisions of Sub-section (5) of Section 12 which reads as under-

Section 12(5) : "If, on a consideration of the report referred to in Sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board (Labour Court, Tribunal or National Tribunal), it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor."

By taking resort to the phrase "If on consideration of the report referred to in Sub-section (4)" which relates to failure report, Mr. Kochar submitted that the Government cannot travel beyond the reasons which are to be found in the failure report. Mr. Kochar has one more limb of argument. According to him, the petitioner has been taken by surprise. Had he been given notice that his prayer for making a reference is likely to be rejected on the ground of delay he would have placed material on record to explain the delay. The petitioner not having been given an opportunity has been denied justice without following the principles of natural justice.

7. In my view, none of the above submissions can be held to be justified in law. In my view, Sub-section (5) of Section 12 cannot be so read as to confine or limit the jurisdiction of the Government while exercising its function of making or refusing to make a reference. All that Sub-section (5) of Section 12 requires is that the Government will consider the failure report. Sub-section (5) of Section 12 cannot be so read as to limit the ambit and scope of the inquiry which has to be held by the Government under the said provision.

8. In regard to the ground that the petitioner was not given notice of the ground of delay I have myself heard Mr. Kochar in support of the petitioner's explanation for delay. I have perused the correspondence which the petitioner has carried on with the higher ups. In my view, the same can offer no legitimate or satisfactory explanation for the inaction, either from October 8, 1980 the date of order dismissal, January 3, 1981 the date when his departmental appeal was dismissed or May 24, 1984 when the approval u/s 33(2)(b) was granted. I am, there fore, constrained to hold that the petitioner has failed to explain the inordinate delay in raising the dispute in question.

9. It is true that the Act does not lay down a period of limitation. This, however, does not mean that a dispute can be raised at any time even after an inordinate delay and the Government is bound to make a reference. If there is an inordinate delay that can be a legitimate ground for holding that there does not exist in praesenti an industrial dispute. The facts in the case of Balubai (supra) are clearly distinguishable. In that case, an order of termination was passed on January 8, 1963. A suit challenging the dismissal was immediately filed being Suit No. 5215 of 1965 in the City Civil Court at Bombay. The suit was dismissed on February 28, 1978 on the ground that the Industrial Disputes Act was a complete Code and the jurisdiction of the Civil Court in such matters was ousted. The petitioner in that case immediately on March 28, 1978 which is well within one month from the date of dismissal of the suit, filed an application for conciliation. The facts in the present case are entirely different. As already pointed out the order of dismissal in the instant case is passed on October 8, 1980 and the departmental appeal filed by the petitioner was dismissed on January 3, 1981. Even if it were to be held that the petitioner may have been justified in waiting till the approval was granted on May 24, 1984, there is a complete inaction up to November 12, 1987 which is a period of about 3 1/2 years. The various representations which the petitioner has made to different authorities cannot given a satisfactory explanation for the inaction for the aforesaid period 3 1/2 years.

10. In the case of Bombay Union of Journalists and Others Vs. The State of Bombay and Another, the Supreme Court observed.(PP.354-355):

"But it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised u/s 10(1) read with Section 12(5) or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference."

In the case of Shaw Wallace and Co. Ltd. Vs. State of Tamil Nadu and Others, the Madras High Court has observed (at P-186):

"If the claim is patently frivolous or if the admitted facts are so glaringly against workmen not warranting trial or adjudication by Tribunal or Court, then the

Government would be justified in refusing to make a reference. If the claim is stale and belated it need not be referred for adjudication."

12. It would, thus, appear that when application for making a reference is made after an inordinate delay the same can be a just and proper ground for refusing to make a reference.

13. For the foregoing reasons, I find that the impugned order refusing to make a reference on the ground that the application has been made after inordinate delay is justified on the material on record. I, therefore, find the petition without merit and the same is dismissed. Rule discharged. No order as to costs.