

(2010) 03 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 5853 of 1996; 5856 of 1996 and 2387 of 1997

Rajasthan State Warehousing Corporation

APPELLANT

Vs

Industrial Tribunal, Jaipur and another

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2010) 03 RAJ CK 0009

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Kamlakar Sharma, for the Appellant; Suresh Kashyap, for the Respondent

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—All these writ petitions have been filed by Rajasthan State Warehousing Corporation assailing similar awards passed by the Labour Court dated 9.4.1996 in respect of its employees.

An industrial dispute came to be referred to the Industrial Tribunal, Jaipur by appropriate government by its notification dated 4.3.1990. The question that was referred to the Industrial Tribunal for adjudication was whether action of the petitioner-management in not granting seniority to the respondent-workman from 17.7.1971 was legal and valid and if not what relief, is he entitled to. The Industrial Tribunal held that such action of the petitioner-management was not justified and, therefore, directed that respondent-workmen shall be granted seniority on the post of Godown Keeper with effect from 17.7.1971 and accordingly held that they shall also be entitled to promotion and other fixation ext.

2. In order to facilitate the decision of all these matters, facts of Writ petition No. 5853/96 are being taken as the basis.

3. Shri Asa Ram, the respondent-workman was appointed as Godown Keeper by

order dated 6.7.1971 on temporary basis at the consolidated salary of Rs. 75/- Per month for the Period of three months in the first instance. In the same manner, other workmen were also appointed by order dated 25.11.1972. Term of appointment of those workers was extended upto 31.12.1972.

4. An order was passed by the petitioner on 25.11.1972 proposing to retrench services of all such Godown Keepers, who were engaged on temporary basis for fixed term. It was given out therein that it should be taken as a notice of retrenchment and workmen would be entitled to compensation which they shall be paid prior to 31.12.1972. However, in that very order, an option was given to the workmen that if any one of them was willing to work with the petitioner Corporation on the post of Class-IV employee, he should submit his option to the Corporation upto 25.11.1972. Accordingly, the respondent workmen submitted their option. The letter of option given by respondent-workman Asa Ram is on record at Annexure-5. It was thereafter that the petitioner appointed Shri Asa Ram and other workers who exercised such option by order dated 22.12.1972 on the post of Class-IV employed again for a period of three months. The said appointment carried the pay of Rs. 61/- per month, which was lesser than the pay which they were otherwise receiving as Godown Keeper.

5. It was thereafter that the petitioner by subsequent order dated 21.3.1973 promoted certain Class IV employees to the post of Godown Keeper on temporary basis. In that order, it was clearly spelt out that their seniority in the cadre of Godown Keeper would be in the order in which their names have appeared in the said order. It appears that for the benefit of respondents, the Union of India namely Rajasthan State Warehousing Corporation Karamchari Sangh agitated a demand which led to the reference to such dispute to the Industrial Tribunal by notification dated 4.3.1990. The Industrial Tribunal accepted the claim of the respondent-workmen and directed the petitioner-management to grant them appointment from the date of their initial appointment as Godown Keeper and on that basis, further grant them promotion and benefit of pay fixation etc. by the award which is impugned in the present writ petitions.

6. I have heard Shri Kamlakar Sharma, learned Counsel for the petitioner and Shri Suresh Kashyap, learned Counsel for the respondent.

7. Shri Kamlakar Sharma, learned Counsel for the petitioner has argued that the learned Labour Court ought not to have entertained the claim filed by the respondents because the respondents knowing fully well the implication of the notice of termination dated 25.11.1972 accepted the alternate employment on the post of Class-IV employee. There was no compulsion for the respondents to accept such appointment on a lower post. They voluntarily exercised such option and submitted an application for their appointment as Class IV employee. The subsequent order dated 22.12.1972 by which they were appointed as Class IV employee was a fresh order of appointment. Sometime later however they were promoted as Godown Keeper. But so far as question of their fresh appointment

as Class IV is concerned, that has been concluded by reason of the fact that respondents themselves volunteered to serve the petitioner on the post of Class-IV. They never questioned the correctness of the notice of their retrenchment on the ground of seniority or otherwise. Once the respondent accepted such fresh appointment, they acquiesced in the correctness of the action and, therefore, by their conduct, they were now estopped from questioning the same. Learned Counsel submitted that delay in raising the industrial dispute in a matter of seniority is quite vital because in the meantime certain promotions on the basis of earlier seniority were also made. Learned Counsel citing from para 11 of the statement of claim submitted that the respondents were claiming promotion with effect from the date one Sadhu Ram Bunkar was promoted as Junior Assistant on 24.1.1978 and this Sadhu Ram Bunkar was further promoted on the post of Senior Assistant on 29.6.1987. He was also promoted as Junior Engineer on 18.7.1988. Learned Counsel submitted that notwithstanding the reference of the industrial dispute to the Labour Court, the Labour Court was free to return the same with a finding that their did not exist any dispute after lapse of as long as 17 years. Learned Counsel in support of his argument relied on the judgement of this Court in *Indian Iron & Steel Company Ltd. v. Prahlad Singh*. 2001 (1) SCC 424.

8. Shri Suresh Kashyap, learned Counsel for the respondents argued that question of delay has now been rendered meaningless once the reference was made to the Industrial Dispute by the appropriate government in terms of section 10(4) of the Act and when reference is made, the Tribunal had no option except to answer it on merits. The Tribunal clearly now on the basis of evidence led before it held that the petitioner themselves granted continuity of service to respondent when they made their pay fixation on the post of Class-IV initially by treating them to have been in service right from the date of their initial appointment as Godown Keeper. Learned Counsel submitted that there is no limitation prescribed for making a reference and, therefore, even if a reference is made after some delay, the Tribunal does not have the power to decline to pass an award on its merit and return the award of no dispute. Learned Counsel in support of this argument relied on the judgement of Supreme Court in *Sadhu Ram v. Delhi Transport Corporation* 1983 (47) FLR 326 (SC)., and Division Bench judgement of this Court in *Satish Sharma v. Union of India and others* 2002 (95) FLR 383 (Raj.). Learned Counsel argued that the respondent workmen were themselves not aware of the implications of their accepting fresh appointment as Class IV employee. They came to know about the effect of such an action now when some of their juniors who were retained as Godown Keeper and were later promoted in the year 1978 and 1989. Last such promotion was granted to one of the juniors Shri Brij Mohan Saini on 18.8.1989. Making a reference in the year 1990 cannot be, therefore, said to suffer from delay. Learned Counsel in this connection also relied on the judgement of Supreme Court in *Sapan Kumar Pandit v. U.P. State Electricity Board and others* 4 Learned Counsel submitted- that even if the reference is made with regard to seniority independently, such

question can be determined by the Labour Court as per the spirit of section 10(4).

9. Learned Counsel for the respondents argued that once the respondent-workmen was again appointed as Godown Keeper in 1973, such of the employees who were appointed as Godown Keeper and were junior to them were liable to be treated as his juniors. Delay in such a dispute would not be valid reasons to return the award of no dispute.

10. I have given my anxious consideration to the rival submissions and perused the material on record.

11. In Prahlad Singh, (supra) the Supreme Court held that whether or not the relief can be declined on the ground of delay, would depend upon in the circumstances of each case. In that case, the claim was made almost after 13 years without any reasonable or justifying ground. There was no evidence on record to explain the delay. It was held that respondent-workman did not make claim for 10 years without any justification and on merits also he had no case, the Tribunal did not rightly grant him relief. In Sapan Kumar Pandit, supra it was held that even though there is no period of limitation for making of reference as provided in section 4-K of U.P. Industrial Disputes Act (which is in pari materia with section 10 of the Industrial Disputes Act, 1947), yet such limitation has to be taken as co-extensive with the existence of the dispute. The opinion as to the existence of the dispute has to be formed by the Government alone and none else. Moreover, the government's decision to make a reference raises a presumption of the Government having formed such an opinion. On fact, it was held that the dispute remained alive. The Supreme Court in that case revisited its earlier decision in Shalimar Works Limited Vs. Their Workmen, , and held that even though there is no limitation prescribed for reference of disputes to an Industrial Tribunal; even so it is only reasonable that disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly so when disputes relate to discharge of workmen.

12. Having noticed the observations in Shalimar Works Ltd., supra, the Supreme Court held that the real test was whether the industrial dispute was in existence. If the answer is in negative then the Government's power to make a reference would have extinguished. On the other hand, if the answer is in positive terms the Government could have exercised the power whatever be the range of the period which elapsed since the inception of the dispute. That apart, a decision of the Government in this regard cannot be listed on the possibility of what another party would think, whether any dispute existed or not. In Nedungadi Bank Ltd. v. K.P. Madhavankutty 2000 (84) FLR 673 (SC)., it was held that a dispute which is stale could not be the subject-matter of reference u/s 10 of the I.D. Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. In Western India Match Company Ltd. v. Workers Union 1970 (20) FLR 297 (SC)., a three-Judge Bench of the Supreme Court held that the expression "at any time" as given in section 10, though seemingly without any limits, governed by the context in which it appears. Ordinarily, the

question of making a reference would arise after conciliation proceedings have been gone through and the Conciliation Officer has made a failure report. But the Government need not wait until such a procedure has been completed. In an urgent case, it can "at any time", even when such proceedings have been begun or are still pending, decide to refer the dispute for adjudication. The expression "at any time" thus takes in such cases as where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed. It was observed that the expression "at any time" in the context in which it is used postulates that a reference can only be made if an industrial dispute exists or is apprehended. No reference is contemplated by the section when the dispute is not an industrial dispute, or even if it is so, it no longer exists or is not apprehended, for instance, where it is already adjourned or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in existence.

13. Sapan Kumar Pandit, *supra*, certain useful observations made in para 15 of the judgement may be of relevance for deciding the present cases. It was held that there may be cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval, if reasonably possible to conclude in a particular case that the dispute ceased exist after some time. When however the dispute remained alive though no galvanised by the workmen or the union on account of other justified reasons, does not cause the dispute to wane into total eclipse. In the present case, it evidently clear from the record that when the respondent-workmen were initially appointed as Godown Keeper, the respondent has served upon them a notice of one month for retrenchment of their services and offered to pay compensation. In that very notice, it was proposed to them that if they wanted to accept employment on lower post of Class-IV, they can do so. It is not disputed that the respondents on their own free will, submitted such option and accepted the appointment on the post of Class IV, which was a fresh appointment. The respondents were thereafter promoted again on the post of Godown Keeper vide order dated 21.3.1973. No explanation has been furnished by the respondents as to what steps were taken by them during the interregnum from 1973 till 1990 to keep the dispute alive. On the contrary it is borne out from the statement of claim filed by respondent-workmen themselves that first such promotion based on the earlier seniority was made by the petitioner-Corporation of one Sadhu Ram Bunkar on 24.1.1978. Now this Sadhu Ram was further again promoted to a still higher post on 29.6.1987. It cannot be accepted that the respondent-workman were aware of the fact of promotion granted to those persons whom they were seen as juniors at the time of their original appointment as Godown Keeper. Moreover, when they were promoted on the post of Godown Keeper subsequently by order dated 21.3.1973, it was clearly mentioned in that order that their seniority shall be taken in the order as was given in that order. The respondents workmen could at this stage agitate his grievance to question the correctness of the seniority. Delay in a case of, dispute where the question is about validity of

termination / removal may not be as vital as it is in the case of seniority and consequential promotion. While the former nature of cases, the relief can be moulded by withholding the back wages or a part thereof, but in the case where seniority between employees of a particular establishment has attained finality and continued to be acted upon by the employees and employers for more than one and half decade, it cannot be accepted that the dispute continued to exist all this time of 17 years. It is also not evident from the record that any steps in between were taken by the respondents to keep the dispute alive. As rightly observed by the Supreme Court in *Sapan Kumar Pandit*, supra that there may be cases in which lapse of time had caused fading or even eclipse of the dispute, if nobody had kept the dispute alive. In my considered view, present was one such case where the dispute faded and eclipsed by conduct of the respondent-workmen because they took no steps to keep the dispute alive. Knowing fully, the implications of the order appointing them as Class IV employee afresh, they accepted such appointment. They became alive to the necessity of raising the dispute when promotions were, made cannot be accepted as valid explanation to cover up the delay of enormous period of 17 years. I am, therefore, not inclined to uphold the argument that once the reference was made, the Labour Court does not have the power to decline to pass an award on its merit and return the award of no dispute. The Industrial Tribunal/the Labour Court is also entitled to take a view that no dispute existed between the parties by reason of such an enormous delay. In my considered view, the learned Industrial Tribunal, committed an error of law by brushing aside the objections of delay and entertaining the dispute on merits. Even if, there was no limitation for making of a reference, it is a well settled proposition of law that the action should be taken within reasonable time and what would be the reasonableness of the time would again depend upon the facts and situation of the each case. As discussed above, in the present case, it cannot be accepted that the industrial dispute in the present matter was raised by the respondents or referred by the Union within the reasonable time or that the dispute remained alive for all these 17 years.

14. In the result, all the writ petitions deserve to be succeed and are accordingly allowed. The impugned orders are quashed and set aside.