
(2008) 12 AHC CK 0421
In the Allahabad High Court

Ram Chandra Dixit

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : (2009) 120 FLR 848 : (2009) 3 LLJ 509 : (2009) 1 UPLBEC 881

Hon'ble Judges : Ashok Bhushan, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan and Arun Tandon, JJ.—This intra-Court appeal has been filed against the judgment and order of Hon"ble single Judge dated October 15, 2008 whereby the writ petition filed by the present appellant being Writ Petition No. 43719/2008 has been dismissed.

2. Facts relevant for deciding the present special appeal are:

The present appellant claims to have been employed as casual labour in Railways. His engagement as such was put to an end on July 9, 1987. Such disengagement is stated to have been effected in violation of the provisions of the Industrial Disputes Act, 1947. The appellant made an application for re-engagement before the Management after 12 years, i.e., in the year 1999, which was not considered. He thereafter made an application for conciliation u/s 10 of the Industrial Disputes Act, 1947, The conciliation between the appellant and the employer failed. The Conciliation Officer forwarded the papers to the Central Government for appropriate reference if any. The Central Government by means of the order dated July 28, 2000 refused to make the reference after recording as follows:

The dispute has been raised after 13 years without any valid reasons and the workman has also failed to prove that he worked for more than 240 days in the

Railway.

3. This order of the Ministry of Labour, Government of India was subjected to challenge by means of the aforesaid writ petition. The writ Court has dismissed the writ petition after being satisfied that in facts of the case the refusal to make reference cannot be said to be illegal in any manner. The order of the Hon''ble single Judge has been subjected to challenge by means of this appeal.

4. Sri B.N. Singh, learned Counsel for the appellant with reference to the judgment of the Hon''ble Supreme Court in the case of Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, contends that no limitation is prescribed under the Industrial Disputes Act, 1947 for making a reference and, therefore, it is not within the competence of the Central Government to refuse to make the reference. He further submits that the power to refuse to examine a dispute on the ground of delay is only with the Labour Court and that too when the employer is able to satisfy that some prejudice has been caused to him due to inordinate delay in raising of the dispute. Since in the present case the dispute was never referred, there was no occasion of any such plea being raised before the Labour Court.

5. We have heard learned Counsel for the parties and gone through the record.

At the very outset, we may record that the competence of the Central Government to make the reference flows from Section 10 of the Industrial Disputes Act, 1947. A bare reading of the said Section would demonstrate that Central Government has to consider as to whether any dispute exists or is apprehended before making reference. If the Central Government is of the opinion that no dispute exists or is apprehended, it has every right to refuse to make the reference. A dispute may die because of raising of same with inordinate delay as well as for other reasons. It is no doubt true that no limitation is provided for raising a dispute, however, from the language of Section 10 of the Industrial Disputes Act, 1947, it is apparently clear that only if an industrial dispute exists or is apprehended, that reference is to be made. Therefore, existence of a dispute or apprehension thereof is a condition precedent for any reference being made. In the facts of the present case, the Central Government for the reasons recorded in the order namely that the appellant was a casual worker and has raised the dispute qua his oral termination/disengagement after more than 13 years has rightly refused to make reference. Such an action of the Central Government cannot be said to be illegal, which may warrant interference under Article 226 of the Constitution of India.

6. The Hon''ble Supreme Court in the case of Ajaib Singh v. Sirhind Co-operative Marketing-cum-Processing Service Society Limited and Anr. (supra), relied upon by the learned Counsel for the appellant was considering a case where the High Court while exercising its jurisdiction under Article 226 of the Constitution of India upset an award of the Labour Court on the ground that there was inordinate delay in making of the reference qua the dispute. It is in this

background that the Hon"ble Supreme Court has held that since no limitation is provided for making a reference and, in facts of the case reference was made, it is only for the Labour Court to mould the relief if there was any delay in raising of the dispute. It has been held that the High Court ought not to have interfered with the award made by the Labour Court on the ground of delay in reference. We are, therefore, of the opinion that the judgment relied upon by the learned Counsel for the appellant has no application to the facts of the present case.

7. In view of the above, we find no reason to interfere with the judgment and Order of the Hon"ble single Judge.

The special appeal is dismissed.