
(2002) 06 MP CK 0030

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 454/99

Ramadhar Tiwari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-06-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)
Limitation Act, 1963 — Article 137

Citation : (2002) 95 FLR 926 : (2003) ILR (MP) 618 : (2003) 1 LLJ 412 : (2002) 4 MPHT 217 : (2003) 1 MPLJ 244

Hon'ble Judges : Bhawani Singh, C.J;S.L. Jain, J

Bench : Division Bench

Advocate : Sujoy Paul, for the Appellant; Indira Nair, for the Respondent

Judgement

Bhawani Singh, C.J.

Appellant is aggrieved by order of learned Single Judge dated 9-7-1999, agreeing with the decision of the respondents in declining to make reference to the Industrial Tribunal.

Appellant was sweeper in the Gun Carriage Factory, Jabalpur. He was appointed on compassionate ground after the death of his father. He was terminated from service on 23-8-1993. He raised industrial dispute under the provisions of Industrial Disputes Act, 1947. Conciliation proceedings met with failure and failure report submitted to the appropriate Government which by order dated 27-1-1999, declined to make reference to the Industrial Tribunal for adjudication for the following reasons:--

"The dispute has been raised after a lapse of more than 5 years without any justifiable reason for the long delay."

Appellant challenged this order stating that no limitation is prescribed for raising the dispute. Even otherwise, this question is to be decided by Court of competent jurisdiction. The Government did not afford opportunity to the appellant before

declining to make a reference. However, learned Single Judge rejected the petition and upheld the order of respondents in not making the reference:

Shri Sujoy Paul, learned Counsel for the appellant contends that learned Single Judge committed an error in deciding the petition without examining the question whether Government order declining to make reference was erroneous on the ground that claim for making reference was not barred by time and order was passed without proper application of mind to the facts of the case. Reliance is placed on the decision of this Court in case of Anand Kumar Dubey Vs. Union of India (UOI) and Others, (DB), which holds that no limitation is prescribed for raising demand by a workman for seeking reference and Article 137 of the Limitation Act, 1963 was not applicable and that the plea of delay by the employer is required to be proved as a matter of fact by showing real prejudice by the employer and not by way of hypothetical defence. Claim of the workman cannot be rejected being stale or opposed to the provisions of the Act or inconsistent with any agreement between the parties or patently frivolous. For taking this view, reliance was placed on Apex Court decision in Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Ltd. (1999) 4 SLR 109.

In Mahavir Singh Vs. U.P. State Electricity Board and Others, , the Apex Court held that reference of industrial dispute could not be held incompetent merely on the ground of delay which could be taken care of by Labour Court by curtailing the quantum of back wages. In this case, delay of 7 years was challenged.

In The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, , Apex Court held that power of reference should be exercised reasonably and in a rational manner and not in a mechanical fashion. There may be absence of statutory limitation period, but power of making reference cannot be exercised to revive settled matters or stale disputes. When a dispute becomes stale, it would depend on the facts and circumstances of each case.

The claim before the Court was raised after 71/2 years. Disciplinary proceedings were duly conducted against the appellant on charges of misappropriation of certain amount and falsification of reports. The proceedings ended in dismissal from service. The order was subsequently upheld by the appellate authority. The appellant got whatever benefits were due to him under the rules. Thus the matter stood settled; still he raised a dispute by serving notice on the bank demand reinstatement on the ground that few other employees of the bank under similar situation were reinstated. In the facts and circumstances of the case, it was held that after complete settlement of the claim, raising a dispute after 71/2 years was not competent. This decision lays down that there is no limitation for raising a dispute under any statute, but power of reference should not be exercised for reviving settled matters or stale disputes. Whether a dispute is stale or a settled matter depends on the facts and circumstances of each case.

The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others, , and

contends that act of making or not making reference to the Industrial Court is an administrative order which cannot be examined by the Court. Such a broad submission cannot be accepted, nor it can be understood from this judgment. State order has to be reasonable and rational; it must satisfy the requirement of fairness and due application of mind in the context of the legislation empowering the competent authority exercising the power. State cannot deal with the matter in manner it likes.

Appellant was sweeper with the respondents. He fell ill and was admitted in the hospital. On recovery, he reported for duty, but was told that he was no longer in service. This happened on 23-8-1993. He protested, but to no effect. Consequently, he raised the dispute on 9-12-1997. Conciliation proceedings met with failure. The termination did not cease to exist, therefore, dispute continued. At the most, it can be said that he raised it in about 4 years and 4 months. Therefore, rejection order that the dispute has been raised after lapse of more than 5 years is not justified. Appellant has been terminated from service; he is a workman; he has justification to challenge the termination and there is no delay in raising the same as found. In this case, petitioners raised disputes within 5 years, though in cases brought to our notice, delay has been for more than six years. Consequently, order of learned Single Judge dated 9-7-1999 is liable to be set aside.

Result of the aforesaid discussion is that order of respondents dated 27-1-1999 is set aside. Respondents are directed to make reference to the Industrial Tribunal within a period of two months.