
(2019) 12 JH CK 0036
In the Jharkhand High Court
Case No : Writ Petition (L) No.1062 of 2019

Rashtriya Mazdoor Union

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

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

Citation : (2019) 12 JH CK 0036

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Ajay Kumar Singh, Indrajit Sinha

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed for quashing the letter dated 27th December, 2017 (Annexure-8) issued under the signature of the respondent no.2, whereby the Government of India, Ministry of Labour & Employment (appropriate government) has refused to refer the industrial dispute with regard to dismissal of the concerned workman-Ajit Bauri of Bera Colliery, Bastacolla Area of M/s. Bharat Coking Coal Limited for industrial adjudication.

2. Heard learned counsel for the parties and perused the materials available on record.

3. The present writ petition has been filed by the petitioner-Union to espouse the cause of concerned workman- Ajit Bauri, who was appointed as Miner Loader in Unit- Bera Colliery, Bastacolla Area of M/s. Bharat Coking Coal Limited, having Personnel No.M/L 03013992. A domestic enquiry was held against the concerned workman for his alleged misconduct i.e. for unauthorized absence from duty since 28th January, 2005 till initiation of the enquiry proceedings. After holding domestic enquiry, the petitioner was dismissed from service on 8th January, 2007. Thereafter, the petitioner-Union vide letter dated 11th December, 2015 (Annexure-6) raised industrial dispute before the Assistant Labour Commissioner

(Central), D-III, Dhanbad-respondent no.3. A conciliation proceeding was held thereafter and the failure report was sent to the appropriate government vide letter dated 5th August, 2016. Subsequently, vide impugned letter dated 27th December, 2017 issued under the signature of the respondent no.2, the appropriate government refused to refer the dispute for industrial adjudication.

4. Under the aforesaid factual context, the issue before this Court is as to whether the appropriate government committed an error in refusing to refer the dispute raised by the petitioner for industrial adjudication. On perusal of the impugned letter dated 27th December, 2017, it appears that the appropriate government refused to refer the dispute for industrial adjudication on following reasons:-

"Shri Ajit Bauri, Ex- Miner Loader was dismissed from the service w.e.f. 08.01.2007 by the management of M/s. BCCL due to his unauthorized absence from duty under 26.1.1 of Certified Standing order of company after conducting a proper inquiry against him as he was a habitual absentee, which confirms from his attendance register from 2002 to 2004. Moreover, the union failed to produce valid reason of inordinate delay. In this connection, the judgment of Hon'ble Supreme Court in the case of Nedungadi Bank Ltd. Vs. K. P. Madhavan Kutty (AIR 2000 SC(839) has ruled that a dispute should be raised within a reasonable time."

5. It would thus be evident that the appropriate government refused to refer the dispute for industrial adjudication while touching the merit of the dispute as well as on the ground of delay. So far as the jurisdiction of the appropriate government in relation to touching the merit of the dispute is concerned, the Hon'ble Supreme Court in the case of Telco Convoy Drivers Mazdoor Sangh & Anr. Vs. State of Bihar & Ors., reported in (1989)3 SCC 271, has held as under:

"13. Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power u/s 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act. See Ram Avtar Sharma and Others Vs. State of Haryana and Another;; M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another;; Shambhu Nath Goyal Vs. Bank of Baroda,."

6. It is, thus, well settled that the function of the appropriate government under Section 10(1) of the Industrial Disputes Act, 1947 in forming an opinion either to refer or not to refer a dispute for industrial adjudication is an administrative one and while doing so it is not authorized to inter into the merit of the dispute. Thus, the observation made in the impugned letter dated 27th December, 2017 to the extent of touching the merit of the dispute raised by the petitioner appears to be erroneous and contrary to law.

7. Irrespective of the said observation made in the impugned letter dated 27th December, 2017, it would further be evident that other part of the opinion formed by the appropriate government is in relation to inordinate delay committed by the petitioner in raising the dispute. The admitted fact of this case is that the concerned workman was dismissed from service on 8th January, 2007 and the industrial dispute was raised by the petitioner-Union on 11th December, 2015 i.e. after about nine years.

8. The petitioner has stated in paragraph no.12 of the writ petition that the concerned workman was suffering from Jaundice and was under treatment from 10th December, 2006 to 8th December, 2015. No prescription/medical certificate has been annexed by the petitioner in support of the said statement. Otherwise also it is quite difficult to accept the said statement made by the petitioner that the concerned workman who was suffering from Jaundice remained under treatment for about nine years.

9. The Hon'ble Supreme Court in the case of Prabhakar Vs. Joint Director, Sericulture Department & Anr., reported in (2015)15 SCC 1, has held as under:-

"38. It is now a well-recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity "delay defeats equities".

44. To summarise, although there is no limitation prescribed under the Act for making a reference under Section 10(1) of the ID Act, yet it is for the "appropriate Government" to consider whether it is expedient or not to make the reference. The words "at any time" used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the ID Act. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers' financial arrangement and to avoid dislocation of an industry."

10. It may thus safely be construed that though the Law of Limitation does not apply for making reference under Section 10(1) of the Industrial Disputes Act, 1947, yet the appropriate government has to keep in mind as to whether the dispute is still existing or is an alive dispute and has not become a stale claim and if that is so, the reference can be refused.

11. Coming to the facts of the present case, the concerned workman was dismissed from service on 8th January, 2007 by the respondent-management

after holding a domestic enquiry. The order of dismissal was duly issued to the concerned workman vide letter dated 8th January, 2007 itself. However, the industrial dispute was raised by the petitioner-Union as late as on 11th December, 2015 before the respondent no.3. The writ court, while making judicial review of the opinion formed by the appropriate government under Section 10(1) of the Industrial Disputes Act, 1947, is to see as to whether the appropriate government while exercising the said power has exceeded its jurisdiction or has erroneously refused to refer the dispute for industrial adjudication and in suitable cases the refusal to refer the dispute before the industrial adjudicator is to be interfered by the writ court depending upon the facts. However, in the present case, the petitioner has failed to satisfy this court regarding the huge delay of nine years committed in raising the dispute. The averment made in the present writ petition that the concerned workman remained under treatment for his ailment "Jaundice" from 10th December, 2006 to 8th December, 2015 that too without any medical certificate/prescriptions etc. cannot be accepted, as the same merely appears to be an afterthought to justify such a huge delay.

12. Hence, this Court is of the view that the appropriate government has though committed an error in entering into the merit of the dispute while forming an opinion under Section 10(1) of the Industrial Disputes Act, 1947, yet so far as the issue of delay is concerned, refusing to refer the dispute for adjudication on the said ground appears to be proper and justified. The petitioner has not been able to satisfy this Court regarding the huge delay of about nine years in raising the present dispute. Thus, I see no reason to interfere with the impugned letter dated 27th December, 2017.

13. This writ petition is, accordingly, dismissed.