

(1995) 03 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1150/93

Salal Workers Union and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-03-1995

Acts Referred:

Citation : (1995) JKLR 504 : (1995) SriLJ 269

Hon'ble Judges : V.K.Gupta, J

Bench : Single Bench

Advocate : J.P.Singh , H.L.Choudhary , Advocates appearing for the Parties

Judgement

1. On 19 Sept. 1991 an office memorandum was issued by the Ministry of Labour under the signatures of Desk Officer Whereby the industrial

disputes projected by petitioner No. 2 Ram Kishore were reflected. In this memorandum, it was stated that the petitioner No. 2 had assailed the

action of the management of Salal Hydro Electric Project with regard to denial of promotional benefit to him. According to the recital contained in

this memorandum, the second petitioner Ram Kishore had felt aggrieved of the promotion given to Balak Ram and Thakur Dass and had

contended that, on parity with them, he was also entitled to same treatment. The office memorandum had called upon the management of Salal

Hydro Electric Project to either settle the disputes amicably between itself and the workman or else to agree for reference thereafter for

adjudication by a forum under the Industrial Disputes Act.

It appears that in response to this communication, respondent No. 4 and 5 decided to propose reference by raising a number of pleas to which I

need not advert for fear of prejudicing the final outcome in the competent

authority. Suffice it for me to say that, on receiving the response from the respondents No. 4 and 5, the Ministry of Labour vide impugned order dated 22.12.1992 rejected the petitioner's prayer for reference of disputes

in terms of the Industrial Disputes Act on the ground mentioned below:

The case has been raised belatedly i.e. after a lapse of six years of the cause of action without explaining the reasons justifying the delay.

2. Mr. Singh learned counsel appearing for the respondents submits that the action of the government in not making the reference was justified since

the petitioners could not explain the delay in approaching the government for making the reference. Even while making the submission, Mr. Singh

admits that under law no period of limitation as such is prescribed and that even though the claims might be considered to be suffering from laches,

yet they are not time barred.

3. After hearing the learned counsel for the parties and perusing the record, I find that the Govt. has denied justice to the petitioners by refusing to

refer the industrial disputes to the competent court for adjudication/settlement. If the claim of the petitioners was not time barred, because of there

being no prescribed period of limitation therefor, it was for the Industrial Tribunal/ Labour Court to decide the merits of the claims on all permissible

grounds including those related to delay and laches. It was not strictly within the domain of the government to refuse to refer the industrial disputes

only because one of the parties had stated that it was belated. This was within the domain and purview of the court under the Act. After all, the

court alone was the final Judge of all disputed questions and it should have been best left to the court to decide as to whether, on a given setup

circumstances and facts, the petitioners could have been denied the relief because their claims, if found to be legitimate were delayed.

4. I feel that reference ought to have been made in this case. The refusal to make reference is neither justified nor correct. The impugned order is

quashed. Respondent No. 1 to 3 are directed by issuance of writ of mandamus to make reference of disputes forming the subject matter of office

memorandum dated 19.9.1991 (Supra) to the competent authority under the Industrial Disputes Act in accordance with the rules and regulations.

The needful shall be done within three months from today. The petitioners are at liberty to represent to respondents No. 1 to 3 for getting the

needful done by serving them with a copy of this order. The petition is allowed.
No order as to costs.