
(2014) 02 RAJ CK 0048

In the Rajasthan High Court

Case No : Civil Writ Petition No. 13274 of 2010

Satya Narain Mantri Mahajan

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-02-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Industrial Disputes Act, 1947 — Section 10(1), 12(5), 25-F, 25-G

Citation : (2014) 02 RAJ CK 0048

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : Anil Sharma, Advocates for the Appellant; Hemant Mathur, Dy. Govt. Counsel, Advocates for the Respondent

Judgement

Veerender Singh Siradhana, J.—In the instant writ application, the petitioner is aggrieved of the order dated 28th January, 2010 whereby the appropriate Government has declined to make reference for its satisfaction that there is no case for reference to the Labour Court and this fact has been communicated to the petitioner/workman. The petitioner has approached this Court claiming the following relief(s):--

"It is, therefore, most respectfully prayed that this writ petition may kindly be admit and allowed and by an appropriate writ, or order or direction the entire record relating to this case may kindly be called for, and,

(a) by an appropriate writ, order or direction the order dated 21.1.2010 (annexure-2) passed by Non-petitioner No. 2 may kindly be quashed and set aside,

(b) by further issue an appropriate writ, order or direction thereby directing the non-petitioners No. 1 and 2 to refer the statement of claim to the Labour Court concerned for passing the award as per law.

Any other relief to which the Hon"ble High Court deemed fit and proper in favour

of the petitioner may also be granted.

The cost of the writ petition may be awarded in favour of the petitioner."

2. Briefly, the essential material facts necessary for adjudication of the controversy raised are: That the petitioner, who was engaged as "Beldar" on daily wages basis with effect from 1st January, 1980, was retrenched on 1st March, 1983, along with many others, without any reason as well as in violation of the mandate of Section 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947", for short). It is pleaded case of the petitioner that for the first time, he raised an industrial dispute before the Conciliation Officer on 28th August, 2008, which resulted into a failure report by the Conciliation Officer to the Government on 16th November, 2009. The appropriate Government having considered the report referred to, recorded its satisfaction concluding that there is no case for reference to the Labour Court. The reason(s) recorded, while arriving at the satisfaction for not making a reference, has/have been communicated to the petitioner/workman vide impugned order dated 28th January, 2010; being a stale claim and for delay of 25 years from the alleged date of termination.

3. The learned counsel for the petitioner reiterating the pleaded facts of the writ application, submitted that the petitioner/workman worked for more than 240 days, in a calender year, under the establishment of non-petitioner number 3 and 4 at several places with effect from 1st January, 1980 to 28th February, 1983, and was retrenched in violation of the mandatory provisions of Section 25-F and 25-G of the Act of 1947. An industrial dispute was raised through Majdoor Union on 28th August, 2008, which ultimately resulted into a failure report by the Conciliation Officer on 16th November, 2009.

4. The learned counsel would further urge that since the provisions of limitation are not attracted to the proceedings under the Act of 1947, therefore, denial of the respondent-State to make a reference on the ground of delay is wholly illegal and calls for judicial intervention by this Court. Moreover, since the appropriate Government is not a Court of law, therefore, the satisfaction arrived at for the alleged inordinate delay is illegal, unreasonable and unconstitutional. Furthermore, once the competent authority arrived at the finding of an existence of an industrial dispute, it was incumbent upon the respondent/Government to refer the matter for adjudication. The learned counsel has also alleged violation of Article 14 and 16 of the Constitution citing an illustration of one Jamaluddin's case wherein the industrial dispute was raised after a lapse of 21 years of termination.

5. Per contra, the learned counsel for the respondents-State supporting the impugned order dated 28th January, 2010 and reiterating the contents of the counter-affidavit to the writ application, argued that the petitioner/workman furnished no explanation, worth the name, for an inordinate, unexplained and undue delay of 25 years, in raising the industrial dispute. The learned counsel

would further submit that the impugned order dated 28th January, 2010, suffers with no illegality in view of the text of Section 12(5) of the Act of 1947, for the reason that the Government, while recording its satisfaction for not making a reference, has specifically spelled out the reason i.e. an inordinate, undue and unexplained delay of 25 years, as is evident from the impugned order itself, which reflected the fact that the petitioner/workman lost interest in the short-term engagement and woke up after a deep slumber of 25 years, to raise an industrial dispute. The learned counsel for the respondents-State referring to the opinion of the Hon''ble Supreme Court in the case of Shalimar Works Limited Vs. Their Workmen, ; further submitted that merely because the Act of 1947, does not provide limitation for raising the dispute, it does not mean that the dispute can be raised at any time and that too without having any regard to the long delay and without furnishing reasons thereof. Their Lordships further held that the disputes should be referred, as soon as possible, after they have arisen and after conciliation proceedings having been failed, he further added.

6. I have heard the learned counsel for the parties and with their assistance, perused the materials available on record.

7. The challenge projected to the legality and validity of the order dated 28th January, 2010, whereby the appropriate Government has declined to make reference, on the ground that no limitation is provided for making an application for reference as well as for raising an industrial dispute under the law; the argument sounded attractive but, on a deep scrutiny, it appears to run contrary to the settled proposition of law where no limitation is provided, for the reason that the aggrieved party must avail of the remedy available under the law within a reasonable period. Where there is no time limit prescribed, it could not be conclusively inferred that the remedy may be availed of at the discretion and after a long lapsed of time. Time and again, the Hon''ble Supreme Court, while examining the philosophy of rules of limitation, observed that the primary function of the Court is to adjudicate the dispute between the parties and to advance substantial justice. Their Lordships further observed that the time limit fixed for approaching the Court, in different situation, is not for the reason that on the expiry of such time a bad cause would transform into a good cause. But, the law of limitation fixes a lifespan for such legal remedy for the redressal of the legal injury suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

8. The argument advanced on behalf of the learned counsel for the petitioner that the appropriate Government committed an error while applying its mind to the merits of the case and thereby arriving at a conclusion not to make a reference, is absolutely devoid of any substance for the reason that a bare perusal of the impugned order dated 28th January, 2010, would reveal that the appropriate Government has not examined the merits of the case on the issue as to whether the termination was bad in the eye of law or not, or whether the employer/management made any default in ensuring compliance of the provisions of the Act of 1947. Although the appropriate Government has observed that the grievance with reference to the termination of service, has been raised by the petitioner after an inordinate, undue and unexplained delay of 25 years and has not furnished any explanation, whatsoever for the delay of 25 years. Therefore, the claim being clearly belated and stale, the appropriate Government refused to make the reference.

9. Somewhat similar controversy came up before a Coordinate Bench of this Court for it's consideration in the case of Rajendra Singh Gehlot v. Union of India & Ors.: 2000 (1) WLC (Raj.) 423. This Court while examining the issue of refusal to make reference in the light of the law declared by the Hon"ble Supreme Court in the case of Bombay Union of Journalists and Others Vs. The State of Bombay and Another, ; held thus:--

"1. In Bombay Union of Journalists and Others Vs. The State of Bombay and Another, , the Hon"ble Supreme Court held that when the Appropriate Government considers the question as to whether a reference should be made under Section 12(5), it has to act under Section 10(1) of the Act, which confers discretion on the Government either to refer the dispute or not to refer it. Section 12(5) imposes an obligation on the Appropriate Government to record reasons for not making the reference. However, when the question involves raising a question of law, the Appropriate Government should not purport to reach a final decision on the same as it is a subject matter to be decided by the Industrial Tribunal. Similarly, on disputed question of fact, the Government cannot take the final conclusions as the same would also fall in the domain of the Tribunal, but it cannot be said that the Appropriate Government is precluded from considering even prima-facie the merit of the dispute when it decides the question as to whether its power to make a reference should be exercised under Section 10(1) read with Section 12(5) of the Act. The Court further observed as under-

"If the claim made is patently frivolous or is clearly belated, the Appropriate Government may refuse to make reference."

2. A Constitution Bench of the Hon"ble Supreme Court, in State of Bombay Vs. K.P. Krishnan and Others, , has held that "there is an obligation on the Appropriate Government under the Act, to refer the dispute unless, of course, it is satisfied that the notice is frivolous or vexatious or that consideration of expediency requires that a reference should not be made. However, while making

an order of refusing to make a reference, the extraneous or irrelevant or which are not germane, and while considering the expediency, the Appropriate Government is not excluded to consider whether or not, it should exercise its powers to make a reference. Even in dealing with the question as to whether it would be expedient or not to make a reference, the Government must not act in punitive spirit but must consider the question fairly and reasonable and take into account only the relevant facts and circumstances." Same view has been reiterated by the Apex Court in Mathew Areeparmatil and Others Vs. State of Bihar and Others, and V. Veerarajan and others Vs. Government of Tamil Nadu and others, .

3. In Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, , the Hon''ble Supreme Court held that while considering the notice for making a reference, the Appropriate Government has no competence to go into the question whether master and servant relationship existed, or enter into the merits of the dispute and if the Appropriate Government has entered into the merits of the case, the Writ Court is bound to interfere. Same view has been reiterated in Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, .

4. In Workman Versus I.I.T.I. Cycles of India Ltd. and others, 1995 Suppl. (2) SCC 733, the Supreme Court held that it is not obligatory on the part of the Appropriate Government to make a reference of a dispute in each and every case where the reference is sought as the Government has to weigh the facts keeping in mind the objective of industrial peace and smooth industrial relations between the parties and where the reasons given by the Government for not making the reference, are found to be relevant, the Courts cannot interfere."

10. From a survey of the law declared by the Hon''ble Apex Court of the land, it can safely be inferred that no doubt, the Government should be slow while making any attempt in order to examine the demand of a workman with a view to decline reference, though in exceptional cases, on a proper examination of the demand, the conclusion arrived at to the effect that the demand being stale and raised after an inordinate and unexplained delay and further, the workman having lost interest; may refuse to make reference. It has been held by the Hon''ble Supreme Court in unequivocal terms that it is not appropriate to make reference of dispute in each and every case as the Government has to weigh the facts keeping in mind the objective of industrial peace and smooth relation between the parties, and in such a situation for the reasons recorded are relevant, the courts cannot interfere.

11. For the reasons and discussions herein above, I have no hesitation in my mind that the reasons detailed out by the appropriate Government while recording its satisfaction to refuse to make reference since the claim being a belated and stale, cannot be construed to be irrelevant or unreasonable by any stretch of imagination.

12. In the result, the writ application preferred is devoid of any substance and calls for no interference by this Court in exercise of powers under Article 226 of the Constitution of India.

13. The writ petition is, therefore, dismissed.

14. However, in the facts and circumstances of the case, there shall be no order as to costs.