

(2002) 05 RAJ CK 0118
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6028 of 1997

Satyanarain Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-05-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2003) 4 RLW 2368 : (2003) 1 WLC 357

Hon'ble Judges : Gyan Sudha Mishra, J

Bench : Single Bench

Advocate : Neeraj Bhatt, for the Appellant; A.K. Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

Misra, J.—The petitioner was in the service of the respondent No. 2-Hindustan Copper Limited where the remained absent form duty for a period of three years. Consequently, the order terminating his service was passed by the respondent on 5th August, 1988. Prior to the termination a charge sheet regarding willful absence from duty was also issued on 11.5.1988 which was served on the petitioner but the petitioner did not respond to this charge sheet and finally the order of termination was passed on 5th August, 1988 as already stated hereinbefore. The petitioner appears to have acquiesced with this situation and suddenly one fine morning in the year 1992 approached the Conciliation Officer raising a dispute about his termination. According to the respondents the petitioner did not approach the Conciliation Officer even in 1992, but it was for the first time in the year 1996 that the approached the Conciliation Officer. However, even if the year 1992 is taken to be the correct year in which the petitioner approached the Conciliation Officer for referring the dispute, it is apparent that he woke up from his slumber after more than 4 years for referring the dispute before the Industrial Tribunal regarding his termination. The Union of India, therefore, rejected the reference of the dispute on 8.8.1997 on the ground of delay.

2. The petitioner feeling aggrieved with the aforesaid order of rejection of dispute filed this writ petition in the year 1997 essentially on the ground that there is no prescribed period of limitation under the Industrial Disputes Act for referring the dispute to the Labour Court or the Industrial Tribunal and hence the Union of India, Ministry of Labour was not justified in rejecting the dispute on the ground of delay. In support of this submission, the counsel for the petitioner relied upon the judgment & Order of the Supreme Court delivered in the matter of Sapan Kumar Pandit v. U.P. State Electricity Board (1), and submitted that rejection of reference of dispute by Government cannot be quashed on the ground of long delay.

3. The respondents' advocate countered the aforesaid submission and explained that the petitioner wilfully absented from duty and had failed to respond to the charge sheet which was issued to him prior to his termination. It was further submitted that the rejection of the reference of a dispute before the industrial Tribunal in appropriate circumstance would be justified as it was held in the case of Nedundadi Bank Ltd. v. K.P. Madhvankutty and Ors. (2), wherein it was held that although law does not prescribe any time limit for the appropriate Government to exercise its power u/s 10 of the Industrial Disputes Act, 1947, it is not that this power can be exercised at any point of time so as to revive the matters which had become stale. The learned Judge has held that this power has to be exercised reasonably and in a rational manner and if there is no rational basis for the Government to refer the dispute after long delay which in that case was 7 years, the Government would be justified in rejecting the reference of the dispute.

4. The case relied upon by the petitioner's advocate and the case relied upon by the respondents' advocate thus indicate two different situations where reference can be rejected on the ground of delay and where reference cannot be rejected even on ground of delay. The case relied upon by the petitioner's advocate indicates that the petitioner after his termination was diligently watching the reference of other similarly situated workmen whose services have been terminated and under bonafide belief he gathered an impression that whatever would be result of the workmen of similarly situated would govern the case of that petitioner also. It was in that circumstance that the long delay in referring the dispute was ignored more so because the petitioner had already approached the Conciliation Officer soon after his termination and thus the matter referring the dispute was alive before the Government and the delay caused on the part of the Government was not attributed to the petitioner meaning thereby that if a workman is diligently pursuing his case and has approached the Conciliation Officer within a reasonable period, rejection of the dispute on the ground of delay would not be justified.

5. Taking into consideration all these aspects of the matter, it will have to be examined whether the petitioner in the instant case was in fact prompt and diligent in pursuing his case or not. It is obvious that it is not so, as the petitioner

prior to his termination had remained absent from duty for more than 3 years and thereafter 4 years, he approached the Conciliation Officer for referring the dispute to the Industrial Tribunal and there is no material on record whatsoever indicating why the petitioner's long absence from duty as also from approaching the Conciliation Officer be condoned. However, on the last date, the counsel for the petitioner tried to impress upon this Court that the petitioner had been taken ill for a long time and that is why he remained absent from duty for such a long time and also approached the Conciliation Officer after long delay for which a liberal view should be adopted by the Court. The petitioner's counsel therefore, was granted opportunity to produce either the medical bills or some prescription of his doctor for that period to indicate that in fact the petitioner's plea is correct and whether he failed to discharge his duties for justifiable reason and that he had sufficient cause for the petitioner in spite of this opportunity, failed to produce any document in support of his plea of illness and therefore, it will have to be inferred that the petitioner's plea of illness is merely a ruse to get over the delay which he has failed to explain. The benefit of the ratio of the judgment therefore, delivered in the case of Sapan Kumar Pandit (supra) cannot be read to the advantage of the petitioner as it is apparent that the facts of that case were entirely different. As already stated in Sapan Kumar Pandit's case (supra) the petitioner was duly and diligently pursuing his case and the delay was caused by the Government/Management which is not the situation in case of the petitioner. Thus, the petitioner's case would be governed by the ratio of the decision delivered in the matter of Nedungadi Bank Ltd. (supra) wherein it has been held that reference cannot be mindlessly initiated and it has to be done rationally and with due diligence.

6. It is sufficiently clear that the petitioner's case would be governed by the later decision of the Apex Court delivered in Nedungadi Bank Ltd.'s case (supra). The petitioner, therefore, cannot be allowed to raise grievance against rejection of the reference. Hence, this writ petition stands dismissed.