

(2001) 06 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 8537 of 1997

Sri Ajit Narayan Bhanja Deo

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 22-06-2001

Acts Referred:

Constitution of India, 1950 — Article 226 , 227
Industrial Disputes Act, 1947 — Section 10, 12, 12(5)
Limitation Act, 1963 — Article 137

Citation : (2001) 92 CLT 258

Hon'ble Judges : P.K. Mohanty, J

Bench : Single Bench

Advocate : M/s Dr. V. Prithvi Raj, B.K. Nayak and S.K. Nayak, for the Appellant;
M/s U.K. Samal, A.S.C. (Central), M/s S.B. Nanda, S.K. Mishra, P.K. Misra, D.P.
Nanda, U.N. Nayak and J.K. Nanda, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—The petitioner has approached this Court with the following prayer :

"Therefore, it is humbly prayed that this Hon"ble Court may be graciously pleased, in the interest of justice and for the ends of justice to allow this writ petition after hearing the petition (parties ?) and to direct the opp. party No. 1 to refer the Industrial Dispute u/s 12 of Industrial Disputes Act before the appropriate forum for speedy disposal.

Further it is humbly prayed that the opp. party Nos. 2 and 3 may be called upon to appoint the humble petitioner in any available post which they think that he is fit and suitable in the interest of justice giving him service benefits w. e. f. 9-5-1984.

And further it is prayed that appropriate order(s)/ direction(s)/writ(s) may be issued as and when this Hon"ble Court finds fit and proper."

Even though there is no specific prayer in the aforesaid prayer portion, in paragraph-1.02 of the writ petition, he has prayed for quashing the order passed by the opp. party No. 1 in Annexure-4 refusing to make a reference to the Labour Court for adjudication.

2. The short facts of the petitioner's case is that he was appointed as a "budli", substitute sub-staff in the office of the Branch Manager, National Insurance Company Ltd. (opp. party No. 2} at Baripada on 13-8-1978 and continued till 19-5-1984 when he was illegally denied and prevented from doing his assigned work. According to the petitioner he was neither dismissed nor terminated from service, but illegally prevented from doing work. His representation and personal approach to the authorities yielded no result. However, with the hope of getting re-employment he waited and at last" opp. party No. 2 issued letter No. 153000/PRS/DJ dated 16-10-1990 in a certificate form a copy of which is Annexure-1. It is averred that when he was appointed in 1978 he was not issued with any letter of appointment nor any letter was issued when he was prevented to discharge his duties on and from 10-9-1990 and; therefore, only when he obtained a written letter (Annexure-1) he raised an Industrial Dispute. A Conciliation proceeding was stated before the Assistant Labour Commissioner (Central), Rourkela which was completed on 29-4-1992. As the petitioner had not received a copy of the failure of conciliation report which was sent by the Conciliation Officer to the opp. party No. 1, the petitioner sent a letter on 3-8-1990 to the Conciliation Officer to issue a copy thereof pursuant to which the Conciliation Officer issued the letter dated 5-8-1992 (Annexure-3). The petitioner made representation to opp. party No. 1 to refer the matter for adjudication by the Labour Court/Tribunal u/s 12(5) of the Industrial Disputes Act, 1947. Nothing having happened the petitioner approach this Court in O. J. C No. 9538 of 1993 which was disposed of by order dated 3-3-1994 directing the opp. party No. 1 to take a decision on the failure report within two months from the date of receipt of the order. Subsequently Misc. Case and Contempt cases were filed, and ultimately in Original Criminal Misc. Case No. 348 of 1995 filed by the petitioner this Court found from the materials on record that the Ministry declined to refer the dispute for adjudication vide letter dated 3-7-1992 on the ground that the dispute had been raised belatedly. The order was communicated to the petitioner. This Court observed that in view of the fact that decision has already been taken on the failure report of the Conciliation Officer declining to make a reference for adjudication no further action was warranted. The petitioner has not filed the certified copies of the order passed in Original Criminal Misc. Case No. 348 of 1995, but has quoted some portions thereof. According to the petitioner he got the copy of the order dated 3-7-1992/11-8-1994 of opp. party No. 1 through the Senior Standing Counsel from which he could come to know that the opp. party No. 1 had declined to refer the matter for adjudication since the dispute had been raised belatedly. It is contended that since the petitioner received the aforesaid communication only on 20-6-1996 he has challenged the said order in the present writ application.

3. The opp. parties 1 and 2 have not filed any return, but opp. party No. 3 only has filed a return. It is the stand of this opp. party that the petitioner was never appointed, but he was intermittently engaged casually when regular sub-staff remained absent or there was a casual increase of work load in the Branch in which a sub-staff is required to attend to. Such casual engagements are dependant upon immediate availability of persons in the vicinity or conveniently whenever such contingency arises. No interview is made nor any requisition to the Employment Exchange is done for such types of appointments because of uncertainty of requirements. Sometimes more than one of such "budlis" or "substitutes" are engaged depending upon contingencies. The petitioner worked casually for two days during December, 1978 at the first instance and till 19-4-1984 he had worked intermittently for some days and the total number of days of such engagement of the petitioner since December, 1978 and not from 13-9-1978 as wrongly alleged to May, 1984 was for 126 days only. The allegation of the petitioner that he was refused to work has been stoutly denied in the aforesaid circumstance"s.

4. With regard to the experience certificate in Annexure-1 issued by the Branch Manager the opp. party No. 3 has taken a stand that the petitioner made an application on 16-10-1990 i.e. after six years of his last engagement to secure a certificate since such a certificate according to the petitioner would help him to find out a suitable employment in some other organisation. A copy of the application of the petitioner pursuant to which Annexure-1 was issued has been filed as Annexure-A/3. According to this opp. party the certificate was issued by the Branch Manager Sri B. R. Pradhan who was not competent to issue such a certificate since he had not worked as Branch Manager of the Baripada Branch between 1978 and 1984, the period during which the petitioner worked. The Branch Manager had no occasion to issue such a certificate, but perhaps with the hope that such a certificate may ensure to the benefit of the petitioner it was issued. It is stated that the petitioner has misplaced the sympathy in trying to use the document against the opp. party No. 3. It is the case of this opp. party that the engagement of the petitioner on a pure casual basis as against a sub-staff during his absence for a total period of 126 days in a span of six years would speak for itself inasmuch as no right can accrue for appointment or regularisation. It is stated that question of preventing or disallowing him from duty need not arise and it is a falsehood.

5. The main thrust of argument of the learned counsel for the petitioner is that there being no limitation prescribed under the Industrial Disputes Act for raising an industrial dispute, the decision of the Central Government refusing to refer the dispute for adjudication by the industrial forum was illegal and liable to be quashed. The petitioner having made representations from time to time with the hope of getting re-employment the delay, if any, caused should have been ignored and the opp. party No. 1 should be directed to make a reference of the dispute for adjudication before the industrial forum. The learned counsel has pressed into service the decision in Ajaib Singh Vs. The Sirhind Co-Operative

Marketing Cum-Processing Service Society Limited and Another, in support of his contention. The facts of the case before the Apex Court was quite different inasmuch as the dispute regarding termination of service was referred to the Labour Court by the appropriate Government, for adjudication. The management justified their action, but the Labour Court directed reinstatement. The management approached the High Court mainly on the ground that the workman having approached for grant of relief after a prolong delay such application was belated and, therefore, the Labour Court ought to have rejected the claim on the ground of delay alone. A learned single Judge held that the workman was not entitled to any relief since he slept over the matter for seven years. The Division Bench upheld such decision of the learned Single Judge. The workman moved the Apex Court. The management who was a respondent before the Apex Court raised a contention that the principle incorporated under Article 137 of the Limitation Act though not specifically made applicable, yet would be deemed to be applicable in a case under the Industrial Disputes Act for the purpose of making a reference in terms of section 10 thereof. The Apex Court held that Article 137 of the schedule to the Limitation Act, 1963 are not applicable to the proceeding under the Industrial Disputes Act. It was observed that the plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. The Hon'ble Court observed that no reference to the Labour Court can be generally questioned on the ground of delay alone and even in a case where the delay is shown to be existing, the Tribunal, Labour Court or Board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchments, termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. In the case referred the appropriate Government made a reference, adjudication was made no plea of delay in approaching the Labour forum was raised before the Tribunal and in such circumstances the Apex Court found that in absence of any plea on behalf of the management and any evidence regarding delay the workman could not be deprived of the benefit under the Act merely on technicality of law. Paragraph-11 of the judgment of the Apex Court may be quoted hereunder for reference :--

"In the instant case, the respondent-management is if not shown to have taken any plea regarding delay as is evident from the issues framed by the Labour Court. The only plea raised in defence was that the Labour Court had no jurisdiction to adjudicate the reference and the termination of the services of the workman was justified. Had this plea been raised, the workman would have been in a position to show the circumstances preventing him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. The learned Judges of the High Court, therefore, were not justified in holding that the workman had not given any explanation as to why the demand notice had been issued after a

long period. The findings of facts returned by the High Court in writ proceedings, even without pleadings were therefore, unjustified. The High Court was also not justified in holding that the Courts were bound to render an even handed justice by keeping balance between the two different parties. Such an approach totally ignores the aims and object and the social object sought to be achieved by the Act. Even after noticing that "it is true that a fight between the workman and the management is not a just between equals," the Court was not justified to make them equals while returning the findings, which if allowed to prevail, would result in frustration of the purpose of the enactment. The workman appears to be justified in complaining that in the absence of any plea on behalf of the management and any evidence, regarding delay, he could not be deprived of the benefits under the Act merely on technicalities of law. The High Court appears to have substituted its opinion for the opinion of the Labour Court which was not permissible in proceedings under Articles 226/227 of the Constitution."

6. In *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, the Apex Court has laid down that even though law does not prescribe any time limit for the appropriate Government to exercise its power u/s 10 of the Act, it is not that this power can be exercised at any point of time and to revive matters which had since been settled. In paragraph-6 of the judgment the Apex Court has observed as follows : --

"Law does not prescribe any time limit for the appropriate Government to exercise its power u/s 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be subject-matter of reference u/s 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made u/s 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was *ex facie* bad and incompetent."

7. Yet in another decision in *The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others*, the Apex Court have held that prerequisites for making a reference u/s 10 of the Industrial Disputes Act are forming an opinion as to whether the employee concerned was a workman and considering as to whether an industrial dispute existed or was apprehended. Even though an order for

making a reference or not making a reference is an administrative order and the appropriate Government has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function, does not make it none the less administrative in character. The Court, cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination. An order made by the appropriate Government u/s 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or extraneous materials, the court may in a given case consider the case for a writ of mandamus.

8. In the present case in hand the petitioner was engaged as a Budli sub-staff/casual worker in the office of the opp. party No. 2 between 30-9-1978 and 19-5-1984 when allegedly he was not allowed to work. The petitioner, according to opp. party No. 3 had worked for a total number of 126 days within a span of about six years intermittantly in absence of a Budli sub-staff since he was readily available. He made an application on 6-10-1990 to the Divisional Manager (opp. party No. 3), a copy of which is Annexure-A/3 to the counter of opp. party No. 3, stating therein that he having worked as a Budli sub-staff from 1978 to 1984 he should be issued with an experience certificate, which would help him to avail opportunity for employment in other organisation pursuant to which the certificate in Annexure-1 was issued. The certificate (Annexure-1) itself shows that he was working as "Budli" or substitute sub-staff/casual worker at different times during 1978 to 1984 in the Branch office. The assertion of the opp. party No. 3 in its counter that he worked for a total number of 126 days during these years have not been disputed by the petitioner by filing any rejoinder. For the first time on 28-1-1991 the petitioner made a representation and raised the dispute before the Labour Commissioner, a copy of which is Annexure-2. But there has been no reference that the petitioner was approaching the departmental authority as against the disengagement and or reinstatement. Thus, from the date of disengagement i. e. 19-5-1984 till 28-1-1991 when he made a representation to the Labour Commissioner the petitioner slept over the matter except that he made an application to the Branch Manager vide Annexure-A/3 for an experience certificate to seek employment elsewhere. In that application also he did not make a grievance that he has been illegally denied engagement. The petitioner approached this Court in O. J. C. No. 9538 of 1993 on 10-12-1993. Admittedly on 20-6-1996 the counsel of opp. party No. 1 handed over a copy of the order dated 29-4-1992 of the Central Government refusing to make a reference and even then he approached this Court only on 25-6-1997 after a gap of one year. However, that is not the consideration before the Court. The only point that needs consideration is as to whether the order of the Central Government (Annexure-4) refusing to refer the dispute to the industrial forum is justified. In The Nedungadi Bank Ltd's. case (supra) a portion of which has been

quoted above, the Apex Court has taken the view that because no time limit is prescribed for exercise of the powers by the appropriate Government to make a reference does not mean that the power can be exercised at any point of time inasmuch as stale disputes can be referred. Undisputedly the petitioner slept over the matter for about seven years and raised the dispute thereafter and, therefore, if the appropriate Government i. e. the Central Government refused to make a reference on the ground of delay or that it was a stale claim, it cannot be faulted. Law is well settled that an order of the appropriate Government in making reference or refusing to make a reference as an administrative order. Judicial review thereof by the High Court is permissible only when while forming the opinion in that regard the appropriate Government takes into account any irrelevant or extraneous consideration. The Court cannot, therefore, scrutinise the order of reference closely to see if there was any material before the Government to support its conclusion, as if a judicial or quasi-judicial determination. If the appropriate Government has refused to make a reference of the dispute raised after a long lapse of seven years, the decision of the Government cannot be faulted. In that view of the matter it has to be held that even if no period of limitation has been provided for under the Statute during which, the appropriate Government can consider the matter for making a reference of any dispute for adjudication by the Industrial Tribunal or the Labour Court u/s 10 of the Industrial Disputes Act, inordinate delay or belated application in approaching the labour forum for reference of disputes for adjudication is a valid ground for refusing reference.

9. Viewed from another angle, even after obtaining the order of the Central Government allegedly through the learned Standing Counsel (Central) for the first time on 20-6-1996, the petitioner has approached this Court only on 25-6-1997 after a lapse of one year, but no explanation whatsoever is afforded.

10. In any view of the matter, I find no merit in this writ petition which is accordingly dismissed. But in the circumstances, there shall be no order as to cost.

11. Writ petition dismissed.