
(2015) 08 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : CWP No. 3011 of 2015

State of Himachal Pradesh and Others	APPELLANT
Vs	
Mahinder Singh	RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Income Tax Act, 1961 — Section 10, 10(1), 10(1)(c), 10(4)
Industrial Disputes Act, 1947 — Section 25F

Citation : (2015) 08 SHI CK 0001

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Virender Kumar Verma, Meenakshi Sharma and Rupinder Singh, Additional Advocate Generals, for the Appellant; Rahul Mahajan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J—This writ petition at the instance of the State is directed against the award passed by the Labour Court whereby the artificial breaks being given to the respondent-workman were held to be wrong and illegal and he was held entitled to seniority and continuity in service from the date of his initial engagement except back wages. The State was further directed to consider the case of the workman for regularization of his services as per the policy framed by it from time to time. It was also clarified that in case the juniors to the workman have already been regularized, in that event, he shall be entitled to regularization from the date/month of the regularization of the services of his juniors.

2. Exception to the award has been taken mainly on two scores:--

"i) Delay on behalf of the workman in approaching the authorities.

ii) Reference made by the appropriate government for adjudication to the Labour Court on the basis of such belated demand."

I have heard Shri Virender Kumar Verma alongwith Ms. Meenakshi Sharma and Shri Rupinder Singh, Additional Advocate Generals, for the petitioners and Shri Rahul Mahajan, Advocate, for the respondent.

3. Both the issues in the instant case are interconnected and inter-related and are otherwise no longer res integra in view of the settled law of the Hon"ble Supreme Court.

4. The Hon"ble Supreme Court in Karan Singh Vs. Executive Engineer Haryana State Marketing Board, (2008) 116 FLR 237 : (2007) 12 JT 141 : (2008) 1 LLJ 289 : (2007) 11 SCALE 577 : (2007) 10 SCR 425 has held that the Labour Court is bound to decide the reference made by the State Government and the same is required to be adjudicated upon merits without touching the aspect of delay and laches. It was held as under:--

"10. In the appeal the main issue which arises for determination is as follows:

"Whether the reference of the Petitioner/workman could be rejected on the sole ground of delay when Government itself made reference for adjudication of the issue/dispute?"

11. In The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, AIR 1963 SC 569 : (1962) 5 FLR 205 : (1962) 2 LLJ 227 : (1963) 3 SCR 540 it has been held that the jurisdiction of the Tribunal in dealing with industrial disputes is limited to the points mentioned in Section 10(4).

12. In National Engineering Industries Ltd. Vs. State of Rajasthan and Others, AIR 2000 SC 469 : (2000) 84 FLR 162 : (1999) 9 JT 377 : (2000) 1 LLJ 247 : (1999) 7 SCALE 322 : (2000) 1 SCC 371 : (1999) 5 SCR 87 Supp : (2000) 1 SLJ 194 : (2000) 1 UJ 685 : (1999) AIRSCW 4626 : (1999) 10 Supreme 344 it has been held vide para 24 that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute which could be the subject-matter of reference for adjudication to the Industrial Tribunal under Section 10. This is because existence of the industrial dispute is a jurisdictional fact. Absence of such jurisdictional fact results in the invalidation of the reference. For example, even under the Income Tax Act, 1961 as it stood earlier, the Income Tax Officer must have reason to believe escapement of income. This "reason to believe" is a jurisdictional fact, therefore, writ petitions were maintainable in cases where the High found absence of basic facts for reopening the assessment. The industrial Tribunal under Section 10 gets its jurisdiction to decide an industrial dispute only upon a reference by the appropriate government. The Industrial Tribunal cannot invalidate the reference on the ground of delay. If the employer says that the workman has made a stale claim then the employer must challenge the reference by way of Writ petition and say that since the claim is belated, there was no industrial dispute. The Industrial Tribunal cannot strike down the reference on this ground.

13. In the present case, the Industrial Tribunal has held that the employer has violated Section 25F. If so, the order of termination is bad in law. It has to be struck down. In the present case, it has been struck down. However, the Tribunal had refused to grant any relief on the ground of delay. The Tribunal has no authority to invalidate the reference, particularly when it has found that the order of termination violates Section 25F of the Industrial Disputes Act, 1947.

14. In *Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others*, AIR 2001 SC 2562 : (2001) 90 FLR 754 : (2001) 5 JT 592 : (2001) LabIC 2814 : (2001) 2 LLJ 788 : (2001) 4 SCALE 467 : (2001) 6 SCC 222 : (2001) SCC(L&S) 946 : (2001) 3 SCR 1081 : (2001) 3 SCT 806 : (2001) AIRSCW 2685 : (2001) 5 Supreme 235, it has been held, vide para 15, as follows: (SCC p. 228)

"15. There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval, it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons, it does not cause the dispute to wane into total eclipse. In this case, when the Government have chosen to refer the dispute for adjudication under Section 4-K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination."

15. "10. So far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.

11. However, certain observations made by this Court need to be noted. In *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, AIR 2000 SC 839 : (2000) 84 FLR 673 : (2000) 1 JT 388 : (2000) 1 LLJ 561 : (2000) 1 SCALE 306 : (2000) 2 SCC 455 : (2000) SCC(L&S) 283 : (2000) 1 SCR 459 : (2000) 3 SLJ 22 : (2000) AIRSCW 397 : (2000) AIRSCW 1592 : (2000) 3 Supreme 729 : (2000) 1 Supreme 359 it was noted at paragraph 6 as follows: (SCC pp. 459-60)

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 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 a lapse of about seven years of the 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 the subject-matter of reference under Section

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 under Section 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 an industrial dispute was ex-facie bad and incompetent."

12. In *S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka*, AIR 2003 SC 3553 : (2003) 97 FLR 608 : (2003) 3 JT 436 : (2003) 2 LLJ 359 : (2003) 3 SCALE 533 : (2003) 4 SCC 27 : (2003) SCC(L&S) 380 : (2003) 3 SCR 156 : (2003) AIRSCW 2196 : (2003) 3 Supreme 53 the position was reiterated as follows: (SCC pp. 39-40 para 17)

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in *Shalimar Works Limited Vs. Their Workmen*, AIR 1959 SC 1217 : (1959) 2 LLJ 26 : (1960) 1 SCR 150 , that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even reemployment of the most of the old workmen was held to be fatal in *Shalimar Works Limited Vs. Their Workmen*, AIR 1959 SC 1217 : (1959) 2 LLJ 26 : (1960) 1 SCR 150 , in *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, AIR 2000 SC 839 : (2000) 84 FLR 673 : (2000) 1 JT 388 : (2000) 1 LLJ 561 : (2000) 1 SCALE 306 : (2000) 2 SCC 455 : (2000) SCC(L&S) 283 : (2000) 1 SCR 459 : (2000) 3 SLJ 22 : (2000) AIRSCW 397 : (2000) AIRSCW 1592 : (2000) 3 Supreme 729 : (2000) 1 Supreme 359 , a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In *Ratan Chandra Sammanta and others Vs. Union of India and others*, AIR 1993 SC 2276 : (1993) 3 JT 418 : (1993) LabIC 1672 : (1993) 2 LLJ 676 : (1993) 2 SCALE 974 : (1993) 4 SCC 67 Supp : (1993) 3 SCR 751 , it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the

High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, AIR 1987 SC 2342 : (1987) 4 JT 164 : (1988) LabIC 37 : (1988) 1 LLJ 370 : (1987) 2 SCALE 844 : (1988) 1 SCC 122 : (1988) 1 SCR 598 : (1988) 2 SLJ 31 , the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal cum-Labour Court. We do not think that the appellants deserve to be non suited on the ground of delay."

The above position was highlighted recently in Employers in relation to the Management of Sudamdih Colliery of Bharat Coking Coal Ltd. Vs. Their workmen represented by Rashtriya Colliery Mazdoor Sangh, AIR 2006 SC 946 : (2006) 1 JT 411 : (2006) 1 LLJ 820 : (2006) 1 SCALE 284 : (2006) 2 SCC 329 : (2006) SCC(L&S) 306 : (2006) 1 SCR 391 : (2006) 3 SLJ 428 : (2006) AIRSCW 378 : (2006) AIRSCW 912 : (2006) 1 Supreme 282 : (2006) 2 Supreme 92 and Chief Engineer, Ranjit Sagar Dam and Another Vs. Sham Lal, AIR 2006 SC 2682 : (2006) 110 FLR 552 : (2006) 6 JT 50 : (2006) 3 LLJ 326 : (2006) 6 SCALE 388 : (2006) 9 SCC 124 : (2006) SCC(L&S) 1617 : (2006) 3 SCR 80 Supp : (2006) AIRSCW 3574 : (2006) 5 Supreme 142 ."

5. Similar issue came up before the Hon"ble Supreme Court in Raghubir Singh Vs. General Manager,Haryana Roadways, (2014) AIRSCW 5515 : (2014) 10 SCALE 135 , wherein the Hon"ble Supreme Court has categorically held that the Limitation Act has no applicability to the reference made by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute. It was held:--

"10. The learned Additional Advocate General for the State of Haryana, Mr. Narender Hooda has vehemently contended that the Labour Court was right in rejecting the reference of the industrial dispute being on the ground that it was barred by limitation by answering the additional issue No. 2 by placing reliance upon the decision of this Court in the case of Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal, (2013) 139 FLR 125 : (2013) 11 JT 343 : (2013) LabIC 4081 : (2013) 4 LLJ 105 : (2013) LLR 1009 : (2013) 10 SCALE 431 : (2013) 14 SCC 543 : (2013) 4 SCT 460 : (2013) AIRSCW 4877 wherein this Court has held as under:-- (SCC p. 551, para 19)

"19. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the Industrial Disputes Act, 1947, but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Asst. Engineer, Rajasthan Dev. Corporation

and Another Vs. Gitam Singh, (2013) 2 AD 553 : (2013) 136 FLR 908 : (2013) 2 JT 231 : (2013) 2 LLJ 141 : (2013) 1 LLN 318 : (2013) LLR 225 : (2013) 2 SCALE 126 : (2013) 5 SCC 136 : (2013) 2 SCC(L&S) 369 : (2013) 2 SCT 30 that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

11. In our view of the facts and circumstances of the case on hand, the reference was made by the State Government to the Labour Court for adjudication of the existing industrial dispute; it has erroneously held it to be barred by limitation. This award was further erroneously affirmed by the High Court, which is bad in law and therefore the same is liable to be set aside. According to Section 10(1) of the Act, the appropriate government "at any time" may refer an industrial dispute for adjudication, if it is of the opinion that such an industrial dispute between the workman & the employer exists or is apprehended. Section 10(1) reads as follows:

"10. Reference of disputes to Boards, Courts or Tribunals:---(1) Where the appropriate government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing-

- (a) refer the dispute to a Board for promoting a settlement thereof; or
- (b) refer any matter appearing to be connected with or relevant to the dispute to a court for inquiry; or
- (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
- (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication."

(emphasis supplied)

Thus, it is necessary for us to carefully observe the phrase "at any time" used in this section. Therefore, there arises an issue whether the question of limitation is applicable to the reference of the existing industrial dispute that would be made by the State Government either to the Labour Court or Industrial Tribunal for adjudication at the instance of the appellant.

12. This Court in Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, AIR 1979 SC 170 : (1978) 37 FLR 363 : (1979) LabIC 1 : (1979) 1 LLJ 1 : (1979) 1 SCC 1 : (1979) 2 SCR 45 , after interpreting the phrases "at any time" rendered in Section 10(1) of the Act, held thus:-- (SCC p. 7, para 7)

"7.....Section 10(1) enables the appropriate Government to make reference of an industrial dispute which exists or is apprehended at any time to one of the authorities mentioned in the section. How and in what manner or through what machinery the Government is apprised of the dispute is hardly relevant.....The only requirement for taking action under Section 10(1) is that there must be some material before the Government which will enable the appropriate Government to form an opinion that an industrial dispute exists or is apprehended. This is an administrative function of the Government as the expression is understood in contradistinction to judicial or quasi-judicial function."

Therefore, it is implicit from the above case that in case of delay in raising the industrial dispute, the appropriate government under Section 10(1) of the Act has the power, to make reference to either Labour Court or Industrial Tribunal, if it is of the opinion that any industrial dispute exists or is apprehended at any time, between the workman and the employer.

13. Further, in *Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others*, AIR 2001 SC 2562 : (2001) 90 FLR 754 : (2001) 5 JT 592 : (2001) LabIC 2814 : (2001) 2 LLJ 788 : (2001) 4 SCALE 467 : (2001) 6 SCC 222 : (2001) SCC(L&S) 946 : (2001) 3 SCR 1081 : (2001) 3 SCT 806 : (2001) AIRSCW 2685 : (2001) 5 Supreme 235 , it is held by this Court as under: (SCC p. 228, para 15)

"15. There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons it does not cause the dispute to wane into total eclipse. In this case when the Government have chosen to refer the dispute for adjudication under Section 4-K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination."

(emphasis supplied)

14. Therefore, in our considered view, the observations made by this Court in the *Rajasthan State Agriculture Marketing Board* case upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of

this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

15. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services and Sapan Kumar Pandit cases referred to supra.

16. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, AIR 2003 SC 3553 : (2003) 97 FLR 608 : (2003) 3 JT 436 : (2003) 2 LLJ 359 : (2003) 3 SCALE 533 : (2003) 4 SCC 27 : (2003) SCC(L&S) 380 : (2003) 3 SCR 156 : (2003) AIRSCW 2196 : (2003) 3 Supreme 53 , it was held by this Court as follows: (SCC pp. 39-40, para 17)

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India 1993 Supp (4) SCC 67, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief."

(emphasis supplied)

17. In view of the legal principles laid down by this Court in S.M. Nilajkar, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or

unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

18. In *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, AIR 1999 SC 1351 : (1999) 82 FLR 137 : (1999) 3 JT 38 : (1999) 1 LLJ 1260 : (1999) 2 SCALE 508 : (1999) 6 SCC 82 : (1999) SCC(L&S) 1054 : (1999) 2 SCR 505 : (1999) AIRSCW 1051 : (1999) 4 Supreme 51, this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that: (SCC p. 90, para 10)

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. 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. No reference to the labour court can be generally questioned on the ground of delay alone. 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 retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages."

(emphasis supplied)"

6. The issue in question was yet again subject matter of the recent decision of the Hon'ble Supreme Court in *Jasmer Singh Vs. State of Haryana* (2015) 2 AD 215 : (2015) 144 FLR 837 : (2015) 1 SCALE 360 : (2015) 4 SCC 458 : (2015) 2 SCJ 391 : (2015) 2 SCT 91 : (2015) 1 SLJ 389 and it was held as under:--

"14. On issue No. 3, after adverting to the case of *State of Punjab v. Kalidass* (1996) 7 SLR 446 wherein the High Court has observed that the workman cannot be allowed to approach the Labour Court after 3 years of termination of his services, upon which reliance placed by the respondent-employer with reference to the said plea the Labour Court has rightly placed reliance upon the judgment of this Court in *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, AIR 1999 SC 1351 : (1999) 82 FLR 137 : (1999) 3 JT 38 : (1999) 1 LLJ 1260 : (1999) 2 SCALE 508 : (1999) 6 SCC 82 : (1999) SCC(L&S) 1054 : (1999) 2 SCR 505 : (1999) AIRSCW 1051 : (1999) 4 Supreme 51 in which it is observed by this Court that there is no period of limitation to the proceedings in the Act.

15. Accordingly, Issue No. 3 is answered against the respondent-management. The relevant paragraph from *Ajaib Singh's* case (supra) are extracted herein below: (SCC p.90, para 10)

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. 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. No reference to the labour court can be generally questioned on the ground of delay alone. 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 retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages."

7. Further, in case the petitioners were really aggrieved by the reference made on the ground that it was belated and no dispute exists, then the remedy available to them was to challenge the order making reference and if they choose not to do so, it cannot be at this stage questioned the reference as being time barred. Similar issue came before a learned Division Bench of this Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another 2012 LLR 770 wherein it was held as follows:--

"4. If the employer is aggrieved by the reference being made on the ground that it is belated and no dispute exists then remedy available to the employer is to challenge the order making the reference and if it does not challenge the said order, it can not in reference proceedings claim that the petition should be dismissed on the ground of limitation, delay or laches."

8. In view of the settled proposition of law, no irregularity, illegality or perversity is found in the award passed by the Labour Court-cum-Industrial Tribunal as it has taken into consideration not only the factual aspects, but has also taken into consideration the law on the subject. Once, a reference had been made to it, the Labour Court-cum-Industrial Tribunal was bound to decide the reference so made and the same was required to be adjudicated upon merits without touching the aspect of delay and laches.

9. In view of the aforesaid discussion, there is no merit in this petition and the same is accordingly dismissed leaving the parties to bear their own costs. Pending application, if any, also stands disposed of.