

**(1997) 01 KAR CK 0006**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 35460 of 1993**

The K.S.R.T.C. Central Officer and Another  
Vs

APPELLANT

Govinda Setty and Another

RESPONDENT

**Date of Decision :** 06-01-1997

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10 (4-A), 12

**Citation :** (1997) ILR (Kar) 983

**Hon'ble Judges :** V.P. Mohan Kumar, J

**Bench :** Single Bench

**Advocate :** V. Mukunda Menon, for the Appellant; Subramania Bhat, for K. Subba Rao, for R-1, for the Respondent

## Judgement

V.P. Mohan Kumar, J

1. The question raised in this Writ Petition is whether an application u/s 10(4-A) of the I.D. Act made before the Labour Court by the dismissed worker beyond the stipulated period prescribed under the said section should be rejected as time barred.

2. The worker in question was appointed as a conductor on 13.4.1970. It is alleged that he was stopped from duty by the employer with effect from October, 1971. He approached the Labour Court u/s 10(4-A) of the I.D. Act on 16.10.1988 seeking to set aside the action of the employer and for consequential relief. The Management contended inter alia that the application having been made beyond six months prescribed under the statute is time barred and should be rejected on that ground alone. The Labour Court entertained the application and held that the denial of the employment to the worker is illegal. It further called upon the employer to reinstatement the worker with back wages from the date of Section 10(4-A) application and continuity of service. The employer challenges the award contending mainly that the application is barred by limitation and hence ought to have been rejected on that ground itself.

3. I have heard Mr. V. Mukunda Menon, Learned Counsel for the employer and Mr. Subramania Bhat on behalf of the worker.

4. Section 10(4-A) of the I.D. Act, 1947 reads as, follows:

"10(4-A) Notwithstanding anything contained in Section 9-C and in this section, in the case of a dispute within the scope of Section 2-A, the individual workman concerned may, within six months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or the date of commencement of the Industrial Dispute (Karnataka Amendment) Act, 1987, whichever is later, apply in the prescribed manner, to the Labour Court for adjudication of the dispute and the Labour Court shall dispose of such application in the same manner as a dispute referred under Sub-section (1)."

This section was introduced by Amending Act 5 of 1988, on 7.4.1988. A reading of the section shows that a dispute coming within the ambit of Section 2-A of the I.D. Act can be raised by the individual worker concerned, before the Labour Court within six months on the date of communication of the order putting an end to his service or within six months from the date of commencement of the Amending Act. It is agreed that the Act commenced on 7.4.1988 and the period stipulated expired with 6.10.1988. The application in this case was made on 16.10.1988. Obviously this is beyond the period provided under the Act. Should the application be rejected mainly on the ground of delay?

5. Now as can be seen from Section 12 of the I.D. Act when an industrial dispute either as defined in Section 2(k) or are coming u/s 2A of the Act is apprehended, the conciliation Officer may commence a conciliation proceeding. Sub-section (6) provides the time frame of fourteen days for submission of the report after the commencement of the conciliation proceeding. The proviso thereto provides that with consent of the parties this period of 14 days can be extended. Now, on receipt of the report after the conciliation, in case of failure of conciliation the appropriate Government is entitled to consider the same and in case it feels so, it may refer the dispute to the appropriate adjudicatory body indicated in Sub-section (5) to adjudicate the dispute. This power is u/s 10 of the I.D. Act. We may now turn to Section 10. That Section is the substantive power contemplated u/s 12(5) of the Act. It empowers the appropriate Government to refer the industrial dispute to the adjudicatory body "at any time". It means, there is no period of limitation contemplated for making the reference. It means, the industrial dispute need not be proximate to the time of reference. The law of limitation which otherwise bars the jurisdiction of the Civil Court cannot be applied by the appropriate Government while exercising its power u/s 10. (vide *INDER SINGH AND SON v. THEIR WORKMAN* 1961 II LLJ 89 It is also held in the selfsame decision that, as to what is the reasonable time within which the dispute has to be referred, whether the dispute has become stale will all depend on facts of each case. A reference need not be declined for the mere reason of delay and the Tribunal need not grant relief merely because it is referred. The Tribunal/Labour Court has wide power to take note of the inordinate delay as well

while moulding the relief.

6. Now, by introduction of Section 10(4-A) the Legislature made a departure in the procedure of raising individual disputes. It conferred independent power on the aggrieved worker himself to approach the Labour Court without undergoing the procedure contemplated u/s 12 etc., He could directly bring to the notice of the Tribunal/Labour Court the existence of a dispute defined u/s 2-A of the Act. Thus the right u/s 10(4-A) of the Act, a special right conferred on the worker, is a supplementary right available to the aggrieved workman in addition to his right under the other provisions of the Act.

7. An aggrieved workman who claims a dispute contemplated u/s 2-A of the I.D. Act exists can also initiate proceedings for conciliation. The Conciliation Officer may conciliate and submits his report if there be a failure and then the appropriate Government may in their turn exercise the power conferred on them u/s 10 of the I.D. Act. That right of the workman still subsists even after the introduction of Section 10(4-A) of the Act. In other words an individual worker is not obliged to invoke Section 10(4-A) alone and approach directly to the Labour Court for relief. He has the option to choose the remedy. It is to be noted that it is also dear that Section 10(4-A) will not bar the proceeding u/s 12 of the Act initiated by an individual worker. Both proceedings have identical jurisdiction as is stated in Section 10(4-A) itself. It also adjudicates the propriety or otherwise of the order of discharge, dismissal, retrenchment or termination of the individual workman. Section 10(4-A) also makes it clear that an application made thereunder shall be disposed of in the same manner as a dispute referred to the Labour Court u/s 10(1) of the Act. If that be so, should the additional and supplementary right conferred u/s 10(4-A) of the Act be refused to be exercised on the ground of limitation?

8. It cannot be disputed that even if the application u/s 10(4-A) of the Act is not entertained on the ground of delay, the right to invoke the jurisdiction of the adjudicatory authority is no way jeopardized u/s 10. If so, the rejection of the application u/s 10(4-A) of the Act on the ground of delay does not serve any purpose except exposing the workman to another round of litigation. It is ruled that the appropriate Government may make a reference "at any time" untrammelled by rule of limitation. It may be noticed that if the Labour Court rejects the application filed u/s 10(4-A) as belated, it is not doing so, after adjudicating the question that the claim is stale but only because it was made beyond six months; as such there was no adjudication of the claim of the workman on merit. Therefore, the plea of res judicata even if available cannot be set up to defend the second application. A reference u/s 10(1) of the Act will have to be tried to full length.

9. We may here notice Section 3 of the Limitation Act, 1963. It reads thus:

"3. (1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed

period shall be dismissed although limitation has not been set up as a defence.

(2) For the purposes of this Act, -

(a) a suit is instituted, -

(i) in an ordinary case, when the plaint is presented to the proper office;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted -

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in Court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that Court."

In short it means that on the expiry of the prescribed period the right of the plaintiff to seek relief through Court with respect to the cause of action stands extinguished. He may have the right but he cannot have the aid of the court to enforce the said right. There is no similar provision in the I.D. Act. Even if we hold that Section 10(4-A) is not available to the workman, still his right to seek relief is not extinguished. He can approach the Labour Court invoking the aid of Section 12 and 10 of the Act. In other words, by holding that the application would stand barred by efflux of six months, the result would be incorporating the effect of Section 3 of the Limitation Act. When the whole scheme of the I.D. Act intends to make a departure from the law of limitation, we will not be justified in introducing the same by this interpretation.

10. Now, we may notice certain provisions in the I.D. Act, 1947 which prescribe the period of limitation to perform the duties contemplated in the Act. To notice only a few, Section 10(2-A) provides that the Court shall inquire into the matter referred to it within the period stipulated in the order of reference. There is further clarifications by Section 14 which provides period of six months to complete the inquiry after it is commenced. But the fourth proviso to Section 10(2-A) saves the proceeding even if it is not completed within the specified period. Though the second proviso to Section 10(2-A) prescribing a period of three months for completing the dispute and is in the form of an injunction, even its rigour is lost by the fourth proviso thereto. Likewise Section 17(1) stipulates 30 days time to publish the award. This has also been interpreted to mean as a directory provision. As noticed earlier Section 12(6) prescribing period of 14 days

for submission of the report after conciliation, the same can also be extended by agreement of parties. All these provisions indicate that though the statute has prescribed stipulated period to perform the duty nevertheless the period of limitation is never treated as a mandatory requirement. If that be so, a reasonable interpretation would be that the period of six months mentioned in Section 10(4-A) of the I.D. Act be treated as only a directory provision.

11. In this behalf, we may advert to the following passage from Maxwell on Interpretation of Statute (12th Edition):

"WHERE the language of a statute, in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence (See *Att-gen. v. Lockwood* (1842) 9 M W. 378 per Alderson B:). This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are dear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used (*Salmon v. Duncombe* (1886) 11 Comp. Cas. 627 sc) Lord Reid has said that he prefers to see a mistake on the part of the draftsman in doing his revision rather than a deliberate attempt to introduce an irrational rule: "the canons of construction are not so rigid as to prevent a realistic solution. (*Cramas Properties, Ltd. v. Connaught Fur Trimmings, Ltd.* (1965) 1 S.L.R. 892"

The following passage from Craies on Statute Law (7th Edition) is also relevant:

"We find it sometimes assumed that the real meaning of a statute may be arrived at by construing it according to its "grammatical" construction (Cf. *I.R.C. v. Hinchy* (1960) A.C. 748 and the article in the Law Quarterly Review referred to on p.94, post). Thus in *Att. Gen v. Lockwood* (1842) 9 M. & W.378 Alderson B. said: "The rule of law upon the construction of all statutes is to construe them according to the plain, literal, and grammatical meaning of the words." But besides the fact that "the language of statutes is not always that which a rigid grammarian would use, "(*Lyons v. Tucker* (1881) 6 Q.B.D. 660 it must be borne in mind that a statute consists of two parts, the letter and the sense. "It is not the words of the law," said Plowden, P.465, "but the internal sense of it that makes the law, and our law (like all other) consists of two parts - viz., of body and soul; the letter of the law is the body of the law, and the sense and reason of the law is the soul of the law - quia ratio logiest anima legis."Therefore, as Pollock C.B. pointed out in *Waugh v. Middleton* (1853) 8 Ex. 352 it is by no means clear that, "if it were laid down as a general rule that the grammatical construction of a clause shall prevail over its legal construction, a more certain

rule would be arrived at than if it were laid down that its legal meaning shall prevail over its grammatical construction. In my opinion" continued Pollock C.B., "grammatical and philological disputes (in fact, all that belongs to the history of language) are as obscure and lead to as many doubts, and contention as any question of law, and I do not, therefore, feel sure that the rule, much as it has been commenced, is on all occasion a sure and certain guide. It must however, be conceded that where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail, unless there be some strong and obvious reason to the contrary. But the rule adverted to is subject to this condition, that however plain the apparent grammatical construction of a sentence may be, if it be properly clear from the contents of the same document that the apparent grammatical construction cannot be the true one, then that which, upon the whole, is the true meaning shall prevail, in spite of the grammatical construction of a particular part of it." This rule was perhaps better stated by an Irish judge, Burton J., in *Warburton v. Loveland* (1828) 1 Hud. & Br. 632 in terms quoted with approval by Lord Fitzgerald in *Bradlaugh v. Clarke* (1883) 8 App. Cas. 354 vix, "I apprehend it is a rule in the construction of statutes that in the first instance the grammatical sense of the words is to be adhered to. If that is contrary to, or inconsistent with, any expressed intention or declared purpose of the statutes, or if it would involve any absurdity, repugnance, or inconsistency, the grammatical sense must then be modified, extended, or abridged, so far as to avoid such an inconvenience, but no further." And substantially the same opinion is thus expressed by Lord Selborne: "The mere literal construction of a statute ought not to prevail if it is opposed to the intentions of the legislature as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which that intention can be better effectuated." (*Caledonian Ry. v. North British Ry.* (1881) 6 App. Cas 114"

The Supreme Court had also indicated the principles to be applied in construction of such statute intended to achieve specific social objects. In *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*, . Their Lordships have stated thus:

"The Court has to interpret a statute and apply it to the facts. Hans Kelsen in his *Pure Theory of Law* (p.355) makes a distinction between interpretation by the science of law or jurisprudence on the one hand and interpretation by a law-applying organ (especially the court) on the other. Accordingly to him "jurisprudential interpretation is purely cognitive ascertainment of the meaning of legal norms. In contradistinction to the interpretation by legal organs, jurisprudential interpretation does not create law". "The purely cognitive interpretation by jurisprudence is therefore unable to fill alleged gaps in the law. The filling of a so-called gap in the law is a law creating function that can only be performed by a law-applying organ; and the function of creating law is not performed by jurisprudence interpreting law. Jurisprudential interpretation can do no more than exhibit all possible meanings of a legal norm. Jurisprudence as

cognition of law cannot decide between the possibilities exhibited by it, but must leave the decision to the legal organ who, according to the legal order, is authorised to apply the law." According to the author if law is to be applied by a legal organ, he must determine the meaning of the norms to be applied: he must "interpret" those norms (p.348). Interpretation therefore is an intellectual activity which accompanies the process of law application in its advance from a higher level to a lower level. According to him, the law to be applied is a frame. "There are cases of intended or unintended in definiteness at the lower level and several possibilities are open to the application of law". The traditional theory believes that the statute, applied to a concrete case, can always supply only one correct decision and that the possible-legal "correctness" of this decision is based on the statute itself. This theory describes the interpretive procedure as if it consisted merely in an intellectual act of clarifying or understanding; as if the law applying organ had to use only his reason but not his will, and as if by a purely intellectual activity, among the various existing possibilities only one correct choice could be made in accordance with positive law. According to the author: "The legal act applying a legal norm may be performed in such a way that it conforms (a) with the one or the other of the different meanings of the legal norm, (b) with the will of the norm creating authority that is to be determined somehow, (c) with the expression which the norm-creating authority has chosen, (d) with the one or the other of the contradictory norms; or (e) the concrete case to which the two contradictory norms refer may be decided under the assumption that the two contradictory norms annul each other. In all these cases, the law to be applied constitutes only a frame within which several applications are possible, whereby every act is legal that stays within the frame."

12. Thus the period of six months incorporated in Section 10(4-A) of the Act cannot be held to be mandatory and such an interpretation of the provision will not be in consonance with the other provisions of the Act and will not keep in line with the intention of the Legislature. It will destroy the beneficial intention of the legislature if a grammatical meaning is ascribed to the same. The period was so indicated in the section so as to enjoin the rule that the application be made within a reasonable time and also to enable the Labour Court to examine the claim more meticulously. Because, when a reference is made u/s 10(1) the same has already been wetted in a proceeding u/s 12 of the I.D. Act and by the appropriate Government at Section 10 stage, the possibility of settlement etc. are all explored and the point of dispute stands identified. But when it comes to a proceeding u/s 10(4-A) it is a beginning of an enquiry comprising of the Section 12 stage as also ante Section 10 stage and therefore the stipulation of the period of six months would indicate that the Labour Court is entitled to ascertain all matters besides the cause of delay and it can decide whether it should deal with the merit of the claim. It will also clothe the Labour Court with power to examine whether the claim is stale, whether sufficient cause exists in not having approached the Labour Court within the prescribed period, whether the Labour Court should commence the proceedings u/s 10(4-A) and as to what relief be

awarded. As seen supra, even if the application is declined to be entertained by the Labour Court on the ground of delay, the aggrieved workman can still have recourse to Section 10(1)(c) proceeding and as such it will be in the interest of all concerned, to entertain and dispose of the application filed beyond six months contemplated u/s 10(4-A) of the I.D. Act.

13. In the instant case, there is no explanation whatever offered by the workman for the delay in approaching the Labour Court u/s 10(4-A) of the Act. Nor has that been adverted to by the Labour Court in its award. It was necessary for the Labour Court to have adverted to this aspect of the matter and decided whether sufficient cause has been made out by the worker for the delay. A finding should have been entered in this behalf before it decided to examine the merits of the dispute. In this view of the matter, the proper course would have been to set aside the award and remit the same for fresh disposal. But, the dispute is of the year 1971. The workman approached the Labour Court in 1988. I am informed that in pursuance to the award he has been reinstatemented and that he is working. A further remand would only complicate the issues further. Hence taking into account all circumstances, I felt that proper order would be, affirmation of the relief of reinstatement awarded by the Labour Court. But, I do not see that there is any justification in awarding any portion of the backwages, to the worker. The alleged termination is in October, 1971. He approached the Labour Court only after the period stipulated u/s 10(4-A). He has not been obviously vigilant in prosecuting the remedy. Hence he can at best claim wages only from the date of the award. There is no justification in awarding any portion of the backwages. Hence the award passed by the Labour Court is affirmed in so far as it relates to reinstatement of the worker. The award of backwages from the date of application till the date of the award shall stand vacated, the Writ Petition is disposed of as above. No costs.