

(2002) 08 AHC CK 0205
In the Allahabad High Court
Case No : C.M.W.P. No. 21960 of 1997

U.P. Pradeshik Co-operative, Dairy Federation and Another	APPELLANT
Vs	
Presiding Officer, Labour Court and Another	RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 4K

Citation : (2002) 5 AWC 3749

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Shesh Kumar, for the Appellant; Y.K. Sinha and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—By means of this writ petition, the Petitioners/ employers have challenged the award of the Labour Court, Meerut dated 25.10.1996 passed in Case No. 108 of 1991. The State Government in exercise of power u/s 4K of Industrial Disputes Act, 1947, made a reference to the Labour Court for adjudication of the matter in respect of service of the workman/Respondent No. 2. The employers/Petitioners have raised following objections :

(1) That the reference has been made at a belated stage and the workman/ Respondent No. 2 Tilak Ram who worked only for 238 days from 1.8.1981 to 30.6.1982, should not have been referred by the State Government.

(2) That in view of the matter since the workman was employed for occasional period and worked from 1.8.1981 to 30.6.1982, and has not demonstrated that he worked continuously and he has completed 240 days in previous calendar year therefore, he is not entitled for the same.

(3) That in view of the matter reference is highly belated and labour court has committed no error in reinstating the workman/ Respondent No. 2 with full back wages. So far as the belated reference is concerned, the Apex Court in recent

decision in the case of Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others, , has held thus :

"(a) The above section is almost in tune with Section 10 of the Industrial Disputes Act, 1947, and the difference between these two provisions does not relate to the points at issue in this case. Though no time limit is fixed for making the reference of a dispute for adjudication, could any State Government revive dispute which had submerged in stupor by long lapse of time and rekindled by making a reference of it to adjudication? The words "at any time" as used in the section are prima facie indicator to a period without boundary. But such an interpretation making the power unending would be pedantic. There is inherent evidence in this Sub-section itself to indicate that the time has some circumscription. The words "where the Government is of opinion that any Industrial dispute exists or is apprehended" have to be read in conjunction with the words "at any time". They are, in a way, complimentary to each other. The Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression "at any time" terminates with the eclipse of the industrial dispute. It, therefore, means that if the dispute existed on the day when the reference was made by the Government it is idle to ascertain the number of years which elapsed since the commencement of the dispute to determine whether the delay would have extinguished the power of the Government to make the reference.

(b) Hence, the real test is, was the industrial dispute in existence on the date of reference for adjudication? If the answer is in the negative then the Government's power to make a reference would have extinguished. On the other hand, if the answer is in positive terms and Government could have exercised the power whatever be the range of the period, which lapsed since the inception of the dispute. That apart, a decision of the Government in this regard cannot be listed on the possibility of what another party would think whether any dispute existed or not. The section indicates that if in the opinion of the Government the dispute existed then the Government could make the reference. The only authority, which can form such an opinion is the Government. If the Government decides to make the reference there is a presumption that in the opinion of the Government there existed such a dispute.

2. The aforesaid decision has been relied upon by me in the judgment in U.P. State Electricity Board v. Presiding Officer, Labour Court, Varanasi 2002 (1) LBESR 688 (All). In view of the aforesaid provision, it is clear that once a reference is made, it is presumed that the State Government is satisfied that the Industrial Dispute still subsists between the workman and employer and in the circumstance reference made. It is not open to Labour Court to return back the reference unanswered. In this view, the first argument taken by the employer has to be rejected. The further submission of employer that services were legally terminated on 1.7.1982, since the workman/Respondent No. 2 has not worked

for more than 240 days in the preceding 12 calendar months is to be considered along with next argument of Petitioners/ employers that Respondent No. 2/ workman was engaged on the basis of availability of work as helper on daily wage basis and the Respondent No. 2/workman has worked in the establishment from 1.9.1981 to 30.6.1982.

3. Suffice it to say that Respondent No. 2/workman has not completed continuous service for 240 days. Section 2(g) of the Industrial Disputes Act, 1947, clearly demonstrates that if any workman has worked in an industry for not less than two hundred and forty days, he shall be deemed to have completed one year of continuous service in the industry. Section 2(g) of U.P. Industrial Disputes Act, 1947, is quoted herein below : "Continuous service" means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.

4. The reliance has been placed by the learned Counsel for the Petitioners/ employers on the decision in the case of Ram Chandra Yadav Vs. State of Bihar and Others, , for the submission that the workman has approached the Court on highly belated stage, the reinstatement of workman with full back wages, granted by the labour court is illegal. In my opinion, this submission has no force. Once labour court has come to the conclusion that the workman has worked for 240 days he is entitled to full back wages because but for illegal termination the workman would have earned full wages. Thus, the labour court has committed no error in granting full back wages to the workman/ Respondent No. 2 with reinstatement and continuity of service.

5. In view of what has been stated above, this writ petition has no force and is liable to be dismissed and is hereby dismissed. The interim order, if any, stands vacated. However, there will be no order as to costs.