
(2001) 11 MP CK 0032
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1400/98

Wadson Masiha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-11-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2002) 2 MPHT 208 : (2002) 2 MPLJ 291

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : H.R. Bharti, for the Appellant; S.P. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

The only question which arises for consideration in the writ petition is whether refusal to refer the dispute to the Labour Court by the appropriate Government on the ground that the dispute has been raised belatedly without justifiable reasons, was justified.

The petitioner was appointed as casual labourer on monthly basis. He worked from 9-5-82 till 13-3-89. Petitioner submits that he acquired temporary status and was terminated arbitrarily w.e.f. 14-3-89. The petitioner approached the respondents but no heed was paid to his representations. Thereafter conciliation was tried by Assistant Labour Commissioner, Jabal-pur. Application was filed on 26-11-96. Condonation application was filed. On failure of conciliation the matter was referred to Labour Ministry, Order was not passed by the Ministry of Labour. Petitioner filed Writ Petition No. 4937/97 which was decided on 5-12-97. The writ petition was disposed of with a direction to respondents to consider the failure report dated 20-3-97 and communicate decision on the same to the petitioner in the matter of referring industrial dispute of his discontinuance in service within an outer limit of three months from the date of order. Thereafter, order was

passed on 8-1-98 Annexure P-8 refusing to make the reference on the ground that "dispute has been raised belatedly without justifiable reasons".

Respondents in the return submit that the Casual Labour Card No. 54970 appears not to be a genuine document. In para 2 of the return details have been given that the petitioner worked from 17-6-86 to 31-10-86. On the face of this entry, the entry on card that he worked from 25-11-84 to 23-12-87 continuously appears to be false. Stand taken is that casual labour service card contains various entries which are contradictory and false on its face. Petitioner had not completed 120 days of continuous services.

The only question for consideration is whether there could be refusal to refer the dispute on the ground of delay which has occasioned in the instant case. The Supreme Court in *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, considered fact situation where the services of the workman were terminated on 16th July, 1974, he raised the dispute after seven years on 8-12-1981. This was referred to the Tribunal by the appropriate Government on 19-3-1982. Labour Court passed its award on 16-4-1986 and ordered reinstatement of the workman with full backwages. Supreme Court held that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Industrial Disputes Act, 1947 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 backwages 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 backwages instead of full backwages. The order of the High Court setting aside the order passed by the Labour Court on the plea of delay was set aside. The Supreme Court in Paragraphs 10 and 11 of the report held as under:--

"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 backwages 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 the backwages

instead of full backwages.

In the instant case, the respondent-management is 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 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."

The counsel for the respondents has placed reliance on a decision of the Supreme Court in *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, . It has been held by their Lordships that even though law does not prescribe any time limit for the appropriate Government to exercise its powers 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. A dispute which is stale could not be the 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. The delay and staleness has to be seen in each and every case. The Supreme Court held in Paragraphs 6 and 7 as under :--

"6. Law does not prescribe any time limit for the appropriate Government to exercise its powers 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 the subject-

matter of reference u/s 10 of the Act. As to when a dispute can be said to be stale would depend upon 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.

In the present appeal it is not the case of the respondent that the disciplinary proceedings, which resulted in his dismissal, were in any way illegal or there was even any irregularity. He availed his remedy of appeal under the rules governing his conditions of service. It could not be said that in the circumstances industrial dispute did arise or was even apprehended after lapse of about seven years of the dismissal of the respondent. Whenever a workman raises some dispute it does not become industrial dispute and appropriate Government cannot in a mechanical fashion make the reference of the alleged dispute terming as industrial dispute. Central Government lacked power to make reference both on the ground of delay in invoking the power u/s 10 of the Act and there being no industrial dispute existing or even apprehended. The purpose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace and defects the very object and purposes of the Act. Bank was justified in thus moving the High Court seeking an order to quash the reference in question."

Reliance is placed by learned counsel on the decision of the Supreme Court in *Moolchand Kharati Ram Hospital K. Union v. Labour Commissioner and Ors.* (2000 Lab.IC 2147). Submission of the counsel for the petitioner is that the order is of administrative nature while making a reference. A Division Bench of this Court in L.P.A. No. 8 of 2000 *Anand Kumar Dubey v. The Union of India and 2 Ors.*, decided on 2-8-2000, relying on *Ajaib Singh*'s case (*supra*), where the reference was refused only on the ground of delay, came to the conclusion that the workman has undoubtedly justifiable reasons for raising dispute in view of his removal from service in domestic enquiry and explaining the delay quite satisfactorily. In a Single Bench decision in W.P. No. 2753/98, *Raj Kapoor Sahu v. The Divisional Railway Manager, Central Railway, Jabalpur and Anr.*, decided on 26-8-98, the matter was directed to be referred which was refused to be referred only on the ground of delay.

What emerges from consideration of Supreme Court decisions in *Ajaib Singh*'s (*supra*) and *Nedungadi Bank Ltd.* (*supra*) is that generally matter should not be refused to be referred only on ground of delay by the appropriate Government. In each case it may be seen whether delay was culpable and unjustified.

In the instant case, petitioner worked for a considerable period for seven years.

He filed the representation before the respondents and in condonation application filed before Labour Commissioner, he mentioned that he was assured by the respondents that he will be reinstated but the same remained a hope. In 1995 he contacted the counsel who advised him that he could approach the Assistant Labour Commissioner. Thereafter, when the matter was not considered by the Ministry of Labour on reporting the failure of conciliation proceedings on 20 March, 1997 the petitioner had filed a writ petition, W.P. No. 4937/97, in which a direction was given to consider the failure report submitted on 20-3-97. Thereafter, order Annexure P-8 was passed refusing to refer the dispute on the ground of delay. It is clear that the petitioner has given just explanation for the delay as such the matter could not be refused to be referred on the ground of delay taken in the order Annexure P-8. The Central Government is directed to consider the matter and make a reference of dispute in four months from today.

The writ petition is accordingly allowed. Costs on parties.