

* **THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Writ Petition (Civil) No.9608/2007**
% Date of Decision : April 28 , 2008

Shri N.S. Bhatnagar Petitioner
Through : Mr.. Kumar Saurabh,
Advocate
Versus
M/s. India Tourism Development
Corporation Respondent
Through : Mr.. Ajay Kapur &
Mr.. Rajeev Kumar Singh,
Advocates

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

SUDERSHAN KUMAR MISRA, J :

1. The workman, Mr. N.S. Bhatnagar, was initially employed by the India Tourism Development Corporation (ITDC) in the year 1972 as a Store Helper at a consolidated salary of Rs.200/- per month. In the same year, he came to be promoted as an Assistant Storekeeper.
2. In August 1976, he was suspended on charges of fraud and

dishonesty. He was charged with misappropriating Rs.12,146.85. A chargesheet was issued to him in 1977 by his employer. At the same time, a criminal complaint was also lodged against him at the local police station.

3. A domestic inquiry was also commenced by the respondent. There, the Enquiry Officer submitted his report in 1981. Consequent upon this, Mr. Bhatnagar was issued a show cause notice. He duly replied to the same. Ultimately, on 1/6/1981, Mr. Bhatnagar was dismissed from service.

4. Mr. Bhatnagar claims that he approached the Labour Authority against his dismissal, but was advised to wait for the conclusion of the criminal trial that was pending as a result of the aforesaid criminal complaint lodged by his employers on the same allegations.

5. On 4/12/2002, Mr. Bhatnagar was acquitted by the Criminal Court on the ground that there was no evidence against him. Armed with this acquittal, he sent a demand notice to his employer on 3/2/2003. Having received no reply to this notice, he initiated conciliation proceedings. However, these proceedings came to naught and the matter was referred by the Government to the Labour Court.

6. This case is unique. The dispute came to be referred by the Government to the Labour Court nearly 27 years after Mr. Bhatnagar was initially suspended by his employer, ITDC, i.e.,

the respondent herein. The Labour Court has thrown out the reference because, according to it, the reference is stale and, in view of the facts and circumstances surrounding the matter, no dispute can be said to have existed on the date of the reference. It has also examined some authorities on this point.

7. At the relevant time, Mr. Bhatnagar was employed at the Akbar Hotel by the respondent. That hotel was shut down long ago. Before the Labour Court, while the respondent pleaded that the enquiry conducted by it in the year 1981 was legally sound, it failed to produce any evidence in support of that plea since, according to it, the enquiry report was not traceable. Furthermore, at the trial conducted by the Labour Court, the respondent led no evidence to prove Mr. Bhatnagar's misconduct. The Labour Court therefore concluded that it had no option but to hold that the workman has proved illegal termination of his service by the management. However, despite this conclusion, the Labour Court declined any relief to Mr. Bhatnagar. This was because it felt that even if Mr. Bhatnagar's case is taken at its highest, and he is taken to have sent a legal notice to his employer on 1.5.1981, demanding reinstatement; he admittedly slept over the matter for the next 22 years since the next notice was admittedly sent by Mr. Bhatnagar only on 3/2/2003. Furthermore, the Labour Court found that even this notice fails to raise any dispute with regard to his termination from service, nor does it demand reinstatement. It merely asks

for the supply of some documents. It was under these circumstances that the Labour Court concluded that no industrial dispute subsisted when the reference was made.

8. Before me, counsel for Mr. Bhatnagar, the petitioner herein, has urged two main grounds. First, that soon after his dismissal in June 1981, his client had approached the concerned Labour Authority, but was advised to wait for the outcome of the criminal trial that he was facing on the same charge, and to come back after the conclusion of the said trial. He states that it was for this reason that he had waited all these years for the conclusion of his trial before raising the industrial dispute by approaching the Government in the year 2003 after nearly 22 years.

9. His second ground of challenge is that one Mr. Bhagwan Das, who was his co-accused in the criminal trial, was also similarly acquitted and, in view of the fact that the other Presiding Officer at the Labour Court who heard that matter has thereafter granted him compensation; his client, who happened to be in the same boat, was equally deserving of compensation. He states that even if the presiding officers happen to be different in the two cases, in view of the fact that the two cases are identical in all material aspects, different outcomes in the two cases cannot be countenanced for the reason that the law should be uniformly applied in every case. Therefore, if Mr. Bhagwan Das was granted compensation by one tribunal, his

client too should have been granted similar compensation by the other tribunal who happened to sit on his case.

10. He has also urged one more point to the effect that looking to his age when his case was referred to the Labour Court by the Government, Mr. Bhatnagar still had five years of service left before reaching the age of retirement; and therefore it would have been appropriate for the Labour Court to have granted either reinstatement or compensation equal to his salary for that period.

11. The petitioner has also relied upon a decision of the Supreme Court in the case of **Sapan Kumar Pandit Vs. U. P. State Electricity Board & Ors.** reported as **AIR 2001 SC 2562**. This was a case where the services of Mr. Pandit were terminated by the U. P. State Electricity Board in the year 1975. He raised an industrial dispute claiming that this termination was illegal and, ultimately the dispute came to be referred to the Labour Court for adjudication on 29.3.1993. This reference was impeached by the respondent-Board before the Allahabad High Court on the ground that the delay by the State Government in referring the matter was so inordinate that the dispute has ceased to exist by afflux of time, and, therefore, no reference should have been made. The High Court quashed the reference because in its view, there was an undue, inordinate as well as unexplained delay leading to the presumption that on the facts and circumstances of that case, no dispute existed at

the time when the matter came to be referred by the State Government for adjudication. It concluded that the workman, Mr. Sapan Kumar Pandit, had kept silent for more than 15 years and he woke up only after the petition of other workmen was allowed. He had made no efforts to get his dispute referred to the Industrial Tribunal or the Labour Court, and hence, he could not be allowed to raise such a dispute after the lapse of such a long time. However, the Supreme Court overturned this decision of the High Court. That Court found that as a matter of fact, the dispute regarding Mr. Pandit, as also of his co-workmen, had been duly raised in the year 1976 itself after the termination of their service in the year 1975. The State Government had thereupon referred the matter to the Industrial Tribunal, Kanpur. Consequent upon this, the respondent-Board gave an assurance to Mr. Pandit that in the event any of the claims of his co-workmen, who were 10 in number, succeed, the same benefit would be extended to the appellant. That litigation ultimately came to be concluded in favour of the workmen before the Supreme Court only in the year 1989. The workman then took up the matter with the respondent Board, and after he realised that the Board had no intention of honouring its commitments, he moved the Labour Authorities. The Supreme Court held that in the circumstances, it could not be said that the reference was stale or that no dispute existed at the time when the reference was made.

12. In essence, the grievance of Mr. Pandit in that case was that the Electricity Board had failed to treat him at par with the workmen whose dispute was espoused by the union, and in whose favour the industrial award was pronounced, in violation of the assurances given by the Board to him. It was in these circumstances that the Supreme Court went into the scope and meaning of the expression “at any time” used in Section 4-K of the U. P. Industrial Disputes Act. As regards the points in issue in that case as well as in the case at hand, Section 4-K of the U. P. Industrial Disputes Act and Section 10 of the Industrial Disputes Act, 1947 are in pari materia. The view of the Supreme Court was as follows :-

“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 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.

9. 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

the 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 a dispute.”

13. Although, while considering the factual position in that case, the Supreme Court concluded that so long as on the date of reference, the conciliation proceedings were not concluded, it cannot be said that the dispute does not exist on that date; however, at the same time, it also noticed its earlier decision in ***Nedungadi Bank Ltd. Vs. K. P. Madhavankutty*** reported as ***AIR 2000 SC 839*** and quoted the following observation from that case :-

“A dispute which is stale could not be the subject-matter of reference under S. 10 of the I.D. Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case.”

14. The Supreme Court then referred to its own Full Bench decision in ***M/s. Western India Watch Co. Ltd. Vs. Western India Watch Co. Workers Union*** reported as ***AIR 1970 SC 1205*** on the same subject and quoted, inter alia, the following observations from the said judgment :-

“As already stated, the expression 'at any time' in the context in which it is used postulates that a reference can only be made if an industrial dispute exists or is apprehended. No reference is contemplated by the

section when the dispute is not an industrial dispute, or even if it is so, it no longer exists or is not apprehended, for instance, where it is already adjourned or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in existence.”

Thereafter, the Supreme Court in paragraph 15 of its decision in ***Sapan Kumar Pandit*** (supra) concluded as follows:-

“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 galvanised by the workmen or the Union on account of other justified reasons it does not cause the dispute to wane into total eclipse.”

And that :-

“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.”

15. To my mind, ***Sapan Kumar Pandit's case*** (supra) is different from the case at hand on a number of vital points. In that case, the Supreme Court had concluded on the facts that it was not as if the appellant woke up at the end of 15 years like *rip van winkle* and raised an industrial dispute. In fact, the Board had given an assurance to the appellant that in the event of any of the claims of the 10 other workmen being upheld by the Labour Court, the appellant would get the same benefit, regardless of the fact that he did not press his claim in any legal

forum. It was on the basis of this assurance, and under the expectation that the Board will extend the same benefits to him which might be found due to the other workmen at the culmination of the legal process initiated by those workmen, that Mr. Sapan Kumar Pandit did not move the Conciliation Officer soon after the termination of his services on 17.7.1975. The legal process in respect of the other workmen ultimately culminated in the year 1989. He, thereafter, called upon the Electricity Board to honour its promises by carrying out the assurance held out to him in the year 1975-76 as aforesaid. It was only when he found that the Board had no intention of doing so that he approached the conciliation officer. It is, therefore, obvious that, in that case, the dispute regarding his termination in the year 1975 remained alive, but was not galvanized by the workman for good reason. The reason being, the assurances held out by the U. P. State Electricity Board to the workman at the time of the termination of his service that it would give him the same reliefs which the other workmen were found entitled at the culmination of the legal process initiated by those workmen. The Supreme Court found this to be a justified reason for the workman not having initiated proceedings soon after the termination of his services. It, therefore, could not be said that the dispute with regard to the workman's termination in the year 1975 had vaned and been eclipsed by the time he approached the Conciliation Officer appointed by the State Government after the culmination of the legal proceedings of those other workmen

in the year 1989.

16. The facts in that case can be looked at in another way also. Mr. Pandit claimed that he had forbore from instituting proceedings in the year 1975, because the management promised him the same relief that might be obtained by other workmen who had taken out proceedings. This promise was obviously contingent upon proceedings culminating in favour of those workmen. He claims that after those proceedings ultimately concluded in the year 1989, and the workmen succeeded there, the management reneged on its promise. To my mind, under the circumstances, the dispute with the management must necessarily include the issue whether or not any such promise was made and if so, whether the management was bound by the same. The other equally important issue that would arise would be, whether the management had reneged on the said promise after the year 1989 when the said promise had fructified and became enforceable. Looking to the latter issue, it cannot be said that the cause of action to enforce the promise, that the workman claims was made to him, could have arisen at any time before 1989. The further question, whether the workman was entitled to press his original claim of 1975 against illegal termination in case the management is found to have reneged on its promise after it fructified, would necessarily have to be examined while determining the relief to be granted to him. Consequently, for this reason also, the reference made by

the State Government soon after the date when the promise is said to have become enforceable, cannot be said to be stale.

17. The other authority relied upon by the learned counsel for the petitioner is a decision of the Supreme Court in ***Dharappa Sangappa Nandyal Vs. Bijapur Cooperative Milk Producers Societies Union Ltd.*** [Civil Appeal No.2175 of 2007, arising out of SLP (C) No.3796/2006, decided on 26.4.1007]. I do not think this case is of much assistance to the petitioner. In that case, the question was whether the amendment to Section 10 of the Industrial Disputes Act, 1947 introduced by sub-section (4A) with effect from 7.4.1988 in Karnataka by the Industrial Disputes (Karnataka Amendment) Act, 1987 would have the effect of reviving stale or non-existing claims because the said amendment enabled the concerned workmen to apply to the Labour Court for adjudication of the dispute within six months, inter alia, from the date of commencement of the said amendment which had come into effect from 7.4.1988. It was in that context that the Supreme Court concluded as follows :-

“28. The object of Section 10(4A) is to enable workmen to apply directly to the Labour Court for adjudication of disputes relating to termination, without going through the laborious process of seeking a reference under section 10(1) of ID Act. The Legislative intent was not to revive stale or non-existing claims.”

18. Interestingly, even in ***Dharappa's case*** (supra), in the context of stale or dead claims, the Supreme Court noted with

approval some of its earlier decisions which, to my mind, can only support the claim of the respondent before me. In this context, the Supreme Court held as follows:-

“27. This Court while dealing with Section 10(1)(c) and (d) of the ID Act, has repeatedly held that though the Act does not provide a period of limitation for raising a dispute under Section 10(1)(c) or (d), if on account of delay, a dispute has become stale or ceases to exist, the reference should be rejected. It has also held that lapse of time results in losing the remedy and the right as well. The delay would be fatal if it has resulted in material evidence relevant to adjudication being lost or rendered unavailable [vide - Nedungadi Bank Ltd vs. K. P. Madhavan kutty [2000(2) SCC 455]; Balbir Singh vs. Punjab Roadways [2001 (1) SCC 133]; Asst. Executive Engineer vs Shivalinga [2002 (1) LLJ 457]; and S.M. Nilajkar vs. Telecom DT. Manager [2003 (4) SCC 27]]. When belated claims are considered as stale and non-existing for the purpose of refusing or rejecting a reference under Section 10(1)(c) or (d), in spite of no period of limitation being prescribed, it will be illogical to hold that the amendment to the Act inserting section 10(4A) prescribing a time limit of six months, should be interpreted as reviving all stale and dead claims.”

19. It is noteworthy that in the instant case also, the Labour Court has noted that over this period of time, the very hotel where the petitioner was employed has been shut down long ago and also that the enquiry report of 1981 was not traceable when the matter came to be decided by the Tribunal in the year 2007.

20. On the other hand, counsel for the respondent has relied upon ***The Nedungadi Bank Ltd. Vs. KP Madhavankuty & Ors. AIR 2000 SC 839***. There, the Supreme Court went into the question of relief to be granted to a workman in a dispute that is raised after an inordinately long time. It held that

although the law does not prescribe any time limit for the exercise of power under Section 10 of the Act; however a stale dispute cannot be said to be the subject matter of a reference under Section 10. As to when the dispute can be said to be stale would depend on the facts and circumstances of each case. In that case, the workman had raised a dispute seven years after his dismissal on the ground that two other employees who were dismissed in similar situation were reinstated. In this context, the Supreme Court held as follows :-

“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 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 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 industrial dispute was ex facie bad and incompetent.”

This was again restated by that Court in ***Assistant Engineer, CAD Kota Vs. Dhan Kunwar*** reported as **2006**

LLR 1220.

21. Turning to the first ground raised by the petitioner whereby he has tried to explain the delay of nearly 22 years in approaching the conciliation officer on the fact that he was advised to await the outcome of the criminal trial. There appears to be no factual basis for this assertion and the record does not bear this out. Even in the letter admittedly sent by him on 3.2.2003 to his employer i.e., the respondent, the petitioner makes no reference to his having approached the Labour Authority in 1981. Even more significantly, in his cross-examination, Mr. Bhatnagar has categorically stated that, "it is correct that between 1981 to 2003, I never approached any Labour Court or conciliation officer for my reinstatement with the management". Even before this Court, material particulars to substantiate this allegation are missing. It is only a bald statement made by the petitioner in a statement of claim before the Labour Court in the year 2003. This leaves me in no doubt that the plea of having approached the Labour authorities contemporaneously soon after his dismissal, when he was allegedly advised to come back after the conclusion of the criminal trial, is a false plea that has been raised to suit the convenience of the petitioner. It has no merit and deserves rejection.

22. In view of the aforesaid conclusion that Mr. Bhatnagar's claim to the effect that he did not move the Conciliation Officer

soon after the termination of his service in 1981, because he was advised to await the outcome of the criminal trial, has no basis; there is nothing that could sufficiently explain why the petitioner forbore initiation of proceedings against the management for more than 22 years. In that view of the matter, in this case at least, it cannot be said that Mr. Bhatnagar has demonstrated any valid reasons for not approaching the Conciliation Officer with reasonable dispatch after the termination of his services in the year 1981.

23. As regards the second ground whereby, the petitioner has claimed parity with the treatment accorded to the case of Mr. Bhagwan Das because, according to him, both cases were identical in all material particulars; I am afraid, here also, the petitioner's case is not well founded. To my mind, there is, in fact, a very material difference in the two cases inasmuch as, after his dismissal in the year 1981, Bhagwan Das had filed a case before the conciliation officer on 18/5/1983 itself whereas the petitioner did no such thing. This puts the instant case on a different footing altogether. A decision of a court is rendered on the facts and circumstances that are pleaded by either party and which are established at trial. To that extent, each case is unique. Here, in one case, the workman clearly established the fact that he had approached the Labour Authority soon after his dismissal whereas in the instant case, the workman failed to do so. In addition, he also failed to give any convincing reason

for not approaching the Labour Authority with sufficient dispatch in order to convince the Court that the dispute was still alive. Consequently it is not surprising that the outcome in both cases was different. Here, since the explanation preferred by the petitioner has been disbelieved, the delay of around 22 years is inordinate and unexplained.

24. In addition, once the Tribunal concluded, and in my view rightly, that no dispute existed any more and that the reference was stale, there could be no question of granting either reinstatement or compensation in lieu thereof. In this view of the matter, the fact that the petitioner still had some more years to go before he attained the age of superannuation, is immaterial.

25. Consequently, looking to the circumstances of the instant case, and in view of the above discussion, the decision of the Labour Court to the effect that the dispute was stale, and that it could not be said that any dispute existed as on the date of the reference, cannot be interfered with. The petition is devoid of merit and is dismissed.

Sudershan Kumar Misra, J.

April 28 , 2008
mw/OPN