

\* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 20<sup>th</sup> January, 2011

+ **LPA No. 143/2010**

ALL INDIA INSTITUTE OF MEDICAL  
SCIENCES

.... Appellant

Through: Mr.Rajat Katyal and Mr.Anchit  
Sharma, Advocates

versus

SANJAY KUMAR & ANR.

..... Respondents

Through: Mr.Amiet Andlay, Adv for R-2

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

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

**DIPAK MISRA, CJ**

In this intra-court appeal, the pregnability of the order dated 9<sup>th</sup> December, 2009 passed by the learned Single Judge in WP(C) No.9640/2007 is called in question.

2. The facts which are requisite to be stated for adjudication of this appeal are that the reference made under Section 10(1) of the Industrial Disputes Act, 1947 (for brevity 'the Act') on 4<sup>th</sup> January, 2007 by the

Government of NCT of Delhi, the respondent No.2 herein, was totally unwarranted being hit by the doctrine of delay and laches and further on the foundation that on the date of reference no industrial dispute as such was in existence. On a perusal of the order passed by the learned Single Judge, it transpires that the respondent No.1, who was a daily wager in AIIMS, claimed to have faced an order of termination by the management on 1<sup>st</sup> March, 1996. He filed an application for conciliation before the District Labour Officer on 26<sup>th</sup> May, 2005. As no re-conciliation took place, the failure report was submitted to the respondent No.2 and keeping the same in view, the respondent No.2 made the reference to the labour court for adjudication.

3. Be it noted, the terms of the reference made by the respondent No.2 reads as follows:

“Whether Sh.Sanjay Kumar S/o Sh.Kalicharan has abandoned his job of his own or his services have been terminated by the management illegally and/or unjustifiably and if so, to what sum of money as monetary relief along with other consequential benefits in terms of existing Law/Govt. notifications and to what other relief is he entitled and what directions are necessary in this respect?”

Challenging the said reference, it was contended before the

learned Single Judge that the claim put forth by the workman was absolutely stale and by no stretch of imagination it can be held that an industrial dispute did exist to make a reference for adjudication. The learned Single Judge expressed the view that the objection relating to delay and laches in raising the dispute by the workman can be taken up by the management in its written statement to be filed before the Labour Court and further as the management has already entered appearance before the Labour Court, the writ petition was sans substance. Being of this view, the learned Single Judge dismissed the writ petition.

4. Mr.Rajat Katyal, learned counsel appearing for the appellants, submitted that the learned Single Judge has fallen into error by expressing the view that the management could raise the issue of delay and laches before the Labour Court and was not entitled to challenge the reference. It is urged by him that if the factual matrix is appreciated with studied scrutiny, it would be quite vivid that the respondent No.2 has failed to appreciate that the industrial dispute as understood in law did not exist at the time of reference and the law does not countenance making stale claims alive unless there has been a continuous cause of action to keep the dispute alive. To buttress his submission, he has commended us to the decisions in *Nedungadi Bank Ltd. v. K.P.*

***Madhavankutty & others***, 2000 (2) SCC 455 and ***Dharappa v. Bijapur Coop. Milk Produces Societies Union Ltd.***, (2007) 9 SCC 109.

5. Despite service of the notice, the workman has remained absent.
6. Mr. Amiet Andlay, learned counsel appearing for the GNCTD, submitted that the State Government had correctly made the reference as it was obliged in law to do so. It is put forth by him that the State Government has no authority to adjudicate the issue of limitation as it is not within the domain of the executive but within the sphere of adjudication by the labour court/industrial adjudicator. The learned counsel has placed reliance on ***Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Ltd.***, (1997) 6 SCC 82, ***Sapan Kumar Pandit v. U.P. State Electricity Board & Ors.***, 2001 (4) SCALE 467 and ***Sharad Kumar v. Govt. of NCT of Delhi***, (2002) 4 SCC 490.

7. At the very outset, we may note with profit that there is no dispute with regard to the factual matrix of the case at hand. We are inclined to think so. On a perusal of the material brought on record, it is clear as day that the workman had alleged that he had been removed by the management w.e.f. 1<sup>st</sup> March, 1996. He raised the industrial dispute

before the competent authority on 14<sup>th</sup> January, 2005. As the government file would show, the management did not appear and, accordingly, the district labour officer referred the matter to the State Government which, in turn, referred the matter for adjudication to the labour court by drawing a schedule and terms of reference which we have reproduced herein above. The question that emerges for consideration is whether in a case of this nature the State Government was obliged in law to make a reference.

8. In this context, we may profitably refer to the decision in ***K.P. Madhavankutty and Others*** (supra) wherein the Apex Court was dealing with a case whereby the Central Government had made a reference order under Section 10 of the Act in respect of a workman who was dismissed on 1<sup>st</sup> January, 1983 and a reference was made whether the dismissal of the employee w.e.f. 11<sup>th</sup> August, 1972 was justified. The employee had filed an application on 24<sup>th</sup> May, 1979. While dealing with the factum of delay and laches as well as the issue of stale claims, their Lordships have held as follows:-

“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 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.”

9. After so stating, it has been further expressed as follows:-

“7. 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. The Central Government lacked power to make reference both on the ground of delay in invoking the power under Section 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 defeats the very object and purposes of the Act. The Bank was justified in thus moving the High Court seeking an order to quash the reference in question.”

10. Be it noted, their Lordships also made a reference to the decision in *National Engg. Industries Ltd. v. State of Rajasthan*, (2001) SCC 371 wherein it has been held thus:-

“24. It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be the subject-matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the Industrial Tribunal (*sic* dispute) which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended the appropriate Government lacks power to make any reference.”

11. In view of the aforesaid enunciation of law, it is the duty of the appropriate government to see whether the industrial dispute exists at the time of reference.

12. In *Dharappa* (supra), a two-Judge Bench of the Apex Court have opined that though the Act does not provide for limitation, yet if on account of delay, a dispute has become stale or ceases to exist, the reference should be rejected. The delay becomes fatal on such an occasion. Be it noted, a contention was canvassed that the court has to keep in view the provision of Section 10(1)(c) and (d) of the Act but the said submission was repelled by stating that the said provision does not revive stale claims.

13. In the case at hand, the workman, the respondent No.1 herein, chose to maintain silence from 1996 till 2005 for a period of almost more than nine years and two months. Thereafter, he woke up from slumber and raised a dispute. In our considered opinion, the workman could not have risen like a phoenix or awake like Rip Van Winkle as if the time was arrested. We are disposed to think so as the workman had not taken any steps whatsoever for a span of nine years and that makes the dispute extinct by efflux of time. It tantamounts to acceptance of the

order by the workman. Thus, he cannot be allowed to remain idle for a long span of time and thereafter file an application and revive a cause of action unless a cause of action has accrued at a belated stage or there is a continuous cause of action. Therefore, we are of the considered view that the reference made by the respondent No.2 is totally unsustainable and, accordingly, the same is quashed.

14. Resultantly, the appeal is allowed and the order passed by the learned Single Judge is set aside and as we have quashed the reference, the proceedings before the labour court shall be deemed to have become extinct. There shall be no order as to costs.

**CHIEF JUSTICE**

**SANJIV KHANNA, J**

JANUARY 20, 2011

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