

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 230 of 2016**

Mahmood Khan S/o Ahmad Khan, Aged About 44 Years R/o Pipermar (Basti) Dharamjaigarh, P.S. & Post Dharamjaigarh, Distt. Raigarh, (Chhattisgarh)

---- **Petitioner**

Versus

1. State of Chhattisgarh Through Secretary, Labour Department, Naya Raipur, Mantralaya, Raipur, (Chhattisgarh)
2. Chief Executive Officer, Jila Panchayat Raigarh, Distt. Raigarh, (Chhattisgarh)
3. Chief Executive Officer, Janpad Panchayat Dharmajaigarh, Distt. Raigarh, (Chhattisgarh)
4. Deputy Labour Commissioner, Office of Labour Commissioner, 2nd Floor, Block No.3, Indravati Bhawan, Naya Raipur, Distt. Raipur, (Chhattisgarh).
5. Assistant Labour Commissioner, Raigarh, (Chhattisgarh).

---- **Respondents**

For petitioner
For respondent/State

Shri KPS Gandhi, Advocate.
Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/12/2016

1. The petitioner has filed this petition under Article 226 of the Constitution of India with a limited prayer that the respondents No.4 & 5 be directed to consider the industrial disputes which has been raised by the petitioner vide Ex. P/1 and to pass an appropriate order by making a reference to the Labour Court for adjudication on the dispute raised by the petitioner.
2. Counsel for the petitioner submits that it is a case where the present petitioner was discharging his duties as Driver with the respondent No.3

on daily wage. The petitioner has discharged his duties from 04.08.1997 to 24.09.1999. It is submitted that in the year, 2013 he had raised a dispute with the respondent authorities, in respect of his alleged illegal termination, however, no action was taken by the respondents. Thereafter, vide Ex. P/1 he had raised another dispute before the respondent No.4 on 26.02.2014 for making a reference to the Labour Court for proper adjudication, however till date no action has been taken by the respondents on the said application also.

3. According to counsel for the petitioner, it is a case where the petitioner has been illegally terminated from service w.e.f. 24.09.1999 onwards and that he has moved appropriate application for making a reference before the Labour Court, who in turn, may adjudicate whether the termination of the petitioner was proper, legal or justified. If not, what relief the petition can be entitled for ?. Though the dispute was raised in the year, 2014, till date, in spite of fact that more than two and ½ years having passed, the respondents have not passed any order on the said application for making reference. This, according to the petitioner, is illegal on the part of the respondents inasmuch as, the respondents are duty bound either to make a reference or to refuse to make reference.
4. Counsel for the petitioner submits that no notice or salary in lieu of prior termination or for that matter any sort of compensation for retrenchment has also not been paid to the petitioner and therefore, termination of services of the petitioner becomes bad in law. The respondent authorities ought to have made a reference before the Labour Court for proper adjudication of the said dispute whether it is illegal termination or

not.

5. It was next submitted that even if for any reason the authorities are of the view that the dispute raised by the petitioner is not a valid dispute, even then it is the duty of the respondents to pass an order which they have not done so which is in contravention of the provisions of the Industrial Disputes Act.
6. State counsel however opposes the petition and submits that since the petitioner is alleged to have been terminated from service w.e.f. 24.09.1999, the dispute for the first time has been raised on 26.02.2014 i.e. almost after 14-15 years, and therefore the same does not survive at all and there is no illegality on the part of the respondents in not passing any orders of the said application. Therefore, this petition deserves to be dismissed.
7. Having heard the rival contentions put forth on either side and on perusal of records what clearly culls out from the pleadings is the fact that undoubtedly the petitioner was working with the respondent No.3 as daily wage Driver from 04.08.1997 to 24.09.1999 i.e. for about 24-25 months. It is alleged that services of the petitioner was illegally terminated by the respondents without there being any justified or cogent reasons. It is also alleged that before terminating the petitioner from service, the respondent authorities have not complied with any of the statutory provisions enumerated under Chapter-V of the Industrial Disputes Act.
8. True it is that the provisions of Industrial Disputes Act does not

prescribe any period of limitation and that the petitioner could raise a dispute at any point of time from the date of alleged illegal action said to have been committed by the employer. What is all the more important is the fact that Section 10 of the Industrial Disputes Act deals with the disputes to be referred to the Boards, Courts or Tribunal. For ready reference, relevant portion of Section 10 of Industrial Disputes Act is reproduced as under :

“10. Reference of disputes to Boards, courts or Tribunals-

(1) [Where the appropriate government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a court for inquiry; or

[(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labor Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:”

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9. Explicitly, there is no period of limitation prescribed for the parties to raise a dispute, however, all that the said Section enumerates is the fact whether in the opinion of the appropriate government, any industrial dispute exists or is apprehended, then it may at any time, by order in writing refer the dispute to the Board, Court or Tribunal.
10. What cannot be brushed aside is the words mentioned in the said Section that of, *“in the opinion of the appropriate government”*, and *“any industrial dispute exists or is apprehended”*, and also, *“it may at any time”*. These terminology have been given wide interpretations by the Supreme Court in catena of decisions.

11. What is paramount on the part of the State government is that whenever an aggrieved person raises a dispute, it is incumbent upon the concerned authority to ensure and verify the said documents and reach to a conclusion as to whether, in its opinion, there exist any industrial disputes or not, or whether industrial dispute is apprehended or not. These are the two essential factors which has to be looked upon by the appropriate government on receipt of application. Once the authority forms an opinion whether industrial dispute exists or not, and whether industrial dispute is apprehended or not, authority i.e. the State Government has to pass an appropriate order in this regard i.e. either to make a reference or to refuse to make a reference for the reasons so assigned.
12. In the light of said provisions of law, if we look into the facts of the present case, undisputedly an application was moved by the present petitioner before the respondent No.4 for making a reference. Upon receipt of such application, it was necessary for the respondent No.4 to form an opinion whether any industrial dispute exists or not and whether any industrial dispute is apprehended or not. In either of the cases, he had to pass an order holding that, if according to his opinion industrial dispute exists, it ought to have ordered for reference, and if not, it ought to have refused permission making a reference. In such circumstances also, the petitioner would have been entitled for an intimation in this regard which has not been done in the present case.
13. At this juncture, it would be trite to refer to recent decision of Supreme Court in case of **Kuldeep Singh Vs. General Manager, Instrument**

Design Development and Facilities Centre and Another, reported in 2010 (14) SCC 176 wherein in paragraph 30 of its judgment, the Supreme Court has held as under :

“30. In view of the above, law can be summarized that there is no prescribed time limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is more so in view of the language used, namely, if any industrial dispute exists or is apprehended, the appropriate government "at any time" refer the dispute to a Board or Court for enquiry. The reference sought for by the workman cannot be said to be delayed or suffering from a lapse when law does not prescribe any period of limitation for raising a dispute under Section 10 of the Act. The real test for making a reference is whether at the time of the reference dispute exists or not and when it is made it is presumed that the State Government is satisfied with the ingredients of the provision, hence the Labour Court cannot go behind the reference.”

Further, in paragraph 32 again the Supreme Court has held as under :

“32. Even though, there is no limitation prescribed for reference of dispute to the Labour Court/Industrial Tribunal, even so, it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly, when disputes relate to discharge of workman. If sufficient materials are not put forth for the enormous delay, it would certainly be fatal. However, in view of the explanation offered by the workman, in the case on hand, as stated and discussed by us in the earlier paragraphs, we do not think that the delay in the case on hand has been so culpable as to disentitle him any relief. We are also satisfied that in view of the details furnished and the explanation offered, the workman cannot be blamed for the delay and he was all along hoping that one day his grievance would be considered by the Management or by the State Government.”

14. What cannot be brushed aside is the observations of the Supreme Court in paragraph 32 of above judgment which says “If sufficient materials are not put forth for the enormous delay, it would certainly be fatal”. Thus, from the aforesaid legal authoritative pronouncement, this court has no hesitation in reaching to the conclusion that the act on the

part of the respondents in not passing any order on the application made by the petitioner vide Ex. P/1 is not sustainable in law and appears to be totally arbitrary. It is incumbent upon the respondent No.4 to take appropriate decision in accordance with provisions of law as is enunciated under Section 10 of the Industrial Disputes Act.

15. For the foregoing reasons, this court is of the opinion that ends of justice would meet if the concerned authorities i.e. Respondents No.4 & 5 is directed to take appropriate decision on the application filed by the petitioner vide Ex. P/1 which is pending consideration in the office of Respondents No.4&5 and reach to a conclusion whether any dispute exists or is apprehended and pass appropriate order.
16. It is ordered accordingly and the respondents No.4&5 shall decide the application of the petitioner as early as possible preferably within a period of three months from the date of receipt of the certified copy of this order.
17. Petition is accordingly allowed.

Sd/-
(P. Sam Koshy)
Judge