

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6232/2014

(W.C.L., DURGAPUR **VERSUS** UNION OF INDIA & ANOTHER)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri A.S. Mehadia, counsel for the petitioner.
 Shri Rohit Deo, A.S.G.I. for the R-1.

CORAM : SMT.VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : JUNE 24, 2016.

By this writ petition, the petitioner-Western Coalfields Limited challenges the notification issued by the Government of India, Ministry of Labour, dated 16.01.2013 making a reference of the question in regard to the correctness of the order of dismissal of Pocham Rajam Pairkawar under Section 10 of the Industrial Disputes Act, 1947.

Shri Pocham Rajam Pairkawar was appointed as a General Mazdoor by the petitioner-Western Coalfields Limited on 24.04.1986. Since Shri Pocham Rajam Pairkawar remained absent from duty without leave, a departmental enquiry was conducted against him and his services were terminated by the petitioner on 15.07.1991. No steps were taken by either Pocham Rajam Pairkawar, who is now deceased, till 2012 when he, for the first time, approached the conciliation officer under the provisions of the Industrial Disputes Act, 1947. As the conciliation proceedings failed, the Government of India, by the impugned notification made a reference of the dispute in regard to the dismissal of Pocham Rajam Pairkawar by the impugned notification dated 16.01.2013 to the Central Government Industrial Tribunal. The respondent no.2, the General Secretary of the Rashtriya Colliary Mazdoor Congress, of which Pocham

Rajam Pairkawar was a member, filed the statement of claim after about a year from the date of issuance of the notification dated 16.01.2013. By the instant petition, the petitioner has challenged the order of reference of the dispute to the Central Government Industrial Tribunal, Nagpur as the notification is issued after a lapse of more than twenty years from the date of dismissal of Pocham Rajam Pairkawar, on 15.07.1991.

Shri Mehadia, the learned counsel for the petitioner, submitted that the matter could not have been referred by the Government of India, i.e. the appropriate authority, to the Central Government Industrial Tribunal after a period of more than twenty years from the dismissal of Pocham Rajam Pairkawar. It is stated that Pocham Rajam Pairkawar was dismissed from service on 15.07.1991 and he approached the conciliation officer for the first time in 2012. It is stated that the dispute was not in existence on the date of making of the reference. It is stated that in the circumstances of the case, the impugned notification is liable to be set aside.

Shri Deo, the learned Assistant Solicitor General of India appearing on behalf of the respondent no.1, has supported the impugned notification. It is stated by referring to the judgments reported in **(2001) 6 SCC 222** (*Sapan Kumar Pandit Versus U.P. State Electricity Board & Others*) and **(2007) 5 SCC 727** (*Director, Food and Supplies, Punjab & Another Versus Gurmit Singh*) that the delay in making the adjudication could be considered by the adjudicating authority while moulding the relief. It is stated that it is of no consequence that the conciliation proceedings are commenced after a long period and in every case of delay, it would not be proper to axe down the order of reference, made by the government, for adjudication. It is stated that in the circumstances of the case, the petition is liable to be dismissed.

The respondent no.2 is not represented by a counsel in the Court though duly served.

On hearing the learned counsel for the parties and on a perusal of the decisions rendered by the Hon'ble Supreme Court, as referred to hereinabove, we find that the Central Government was not entitled to make a reference of the dispute pertaining to the dismissal of the services of Pocham Rajam Pairkawar after a period of more than twenty years from his dismissal. The Hon'ble Supreme Court has held in the aforesaid reported decisions that the real test would be whether the industrial dispute is in existence on the date of reference, for adjudication. In the instant case, Pocham Rajam Pairkawar was dismissed from service on 15.07.1991. Pocham Rajam Pairkawar had approached the conciliation officer after a lapse of twenty years, in the year 2012. There is no explanation whatsoever for the inordinate delay. It is held by the Hon'ble Supreme Court in the judgment reported in **(2000) 2 SCC 455** (*Nedungadi Bank Limited Versus K.P. Madhavankutty*) that though law does not prescribe any time limit for the appropriate government to exercise its powers under Section 10 of the Industrial Disputes Act, the power cannot be exercised at any point of time for reviving the matters that have already been settled. It is held that the power is required to be exercised reasonably and in a rational manner. The Hon'ble Supreme Court held that the Central Government could not have exercised the powers under Section 10 of the Act of 1947 after a lapse of about seven years from the order of dismissal of the employee from service. The Hon'ble Supreme Court held that the ground advanced by the employee therein that two other employees that were dismissed from service were reinstated and, hence, he had approached the conciliation officer for raising the industrial dispute was *ex-facie* bad and incompetent

as the circumstances in which they were dismissed and subsequently reinstated were nowhere mentioned. In the present case, there is no reason put forth on behalf of the respondent no.2 as to why Pocham Rajam Pairkawar approached the conciliation officer after a lapse of more than twenty years from the date of his dismissal from service. It is held by the Hon'ble Supreme Court in the judgment reported in **(2007) 5 SCC 727** (*Director, Food and Supplies, Punjab & Another Versus Gurmit Singh*) that if an employer makes a grievance that the workman has made a stale claim, then the employer can challenge the reference by filing a writ petition and contend that since the claim is belated, there was no industrial dispute. We find on a reading of the aforesaid judgments of the Hon'ble Supreme Court that it would be necessary to consider whether the industrial dispute is in existence on the date of making of the reference for adjudication and in the instant case, due to the inordinate delay of more than twenty years in approaching the conciliation officer, the industrial dispute in regard to the dismissal of Pocham Rajam Pairkawar was not in existence and the Central Government was not justified in issuing the impugned notification dated 16.01.2013.

Hence, for the reasons aforesaid, we quash and set aside the impugned notification dated 16.01.2013 as also the proceedings in case No.CGIT/NGP/35/2012-13 pending on the file of Central Government Industrial Tribunal, Nagpur.

Order accordingly. No order as to costs.

JUDGE

JUDGE