

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 2195 of 2009**

State of Chhattisgarh, Through: Executive Engineer, Hasdeo Canal Water Management Division, Janjgir, District Janjgir-Champa (C.G.)

----Petitioner.

Versus

1. Surya Kumar Tiwari, S/o- Shri Harprasad Tiwari, R/o-Village Amora (Mahant), District – Janjgir-Champa (C.G.)
2. The President Officer, Labour Court, Bilaspur (C.G.)

---- Respondents

For Petitioner : Mr. Ratan Pusty, Govt. Advocate.
For Respondent No.1 : Mr. Vinod Deshmukh, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

31/07/2018

1. The services of respondent No. 1- Surya Kumar Tiwari was disengaged in the year 1995 whereas he claimed to have worked as Amin Helper in the establishment of Executive Engineer, Hasdeo Canal Water Management Division, Janjgir, Distt. Janjgir – Champa. He raised an industrial dispute and consequently, a reference was made by the appropriate Government to the Labour Court to adjudicate the said dispute on 3.10.2007, which was ultimately allowed on 1.10.2008 directing re-instatement with 50% backwages, against which instant writ petition has been filed questioning the same.

2. Shri Ratan Pusty, learned Govt. Advocate for the State/petitioner relying upon the decision rendered by the Supreme Court in the matter of **Prabhakar Vs. Joint Director, Sericulture Department and another**¹ would submit that since there is delay of 12 years in raising the industrial dispute, the award of backwages to the extent of 50% was unjustified and, therefore, the order impugned to that extent is liable to be set aside.

3. Per contra, counsel for respondent No.1 would support the impugned order.

4. I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

¹ (2015) 15 SCC 1

5. The Supreme Court in the matter of **Prabhakar** (supra) has held as under:

“42. On the basis of the aforesaid discussion, we summarise the legal position as under:-

42.1. An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2-A of the act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that “any industrial dispute exists or is apprehended”. The words “industrial dispute exists” are of paramount importance, unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute.

42.2 Dispute or difference arises when only party makes a demand and the other party rejects the same. It is held by this Court in a number of cases that before raising the industrial Dispute making of demand is a necessary precondition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same

after considerable lapse of period, whether it can be said that industrial dispute still exists.

42.3 Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists ? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute cease to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances disclose that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as “dead”, then it would be non-existent dispute which cannot be referred.

42.4 Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching Labour Authorities seeking reference or did not invoke the remedy under Section 2-A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for a number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection.

42.5 Take another example. A workman approaches the civil court by filing a suit against his termination which was pending for a number of years and was ultimately dismissed on the ground that the civil court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that the dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum.

42.6 In contract, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an “existing dispute”. In such circumstances, the appropriate government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no “industrial dispute” within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted.

43. We may hasten to clarify that in those cases where the court finds that dispute still existed, though raised belatedly, it is always possible for the court take the aspect of delay into consideration and mould the relief. In such cases, it is still open for the court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement. We are of the opinion that the law on this issue has to be applied in the aforesaid perspective in such matters.

44. To summarise, although there is no limitation prescribed under the Act for making a reference under Section 10(1) of the ID Act, yet it is for the “appropriate Government” to consider whether it is expedient or not to make the reference. The words “at any time” used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the ID Act. However, the policy of industrial adjudication is that very stale

claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers' financial arrangement and to avoid dislocation of an industry."

6. It is correct to say that there is delay of 12 years in raising the industrial dispute by the respondent No.1. The Labour Court has not considered the effect of delay in awarding the backwages to the extent of 50%. In the considered opinion of this court that there is delay of 12 years in raising the industrial dispute on the part of the respondent No.1/employee; the matter has been referred by the Appropriate Government to the Labour Court as late as on 3.10.2007; and in view of the judgment rendered by the Supreme Court in the matter of **Prabhakar (supra)**, particularly in paragraph 43 of the said judgment, the petitioner is only entitled for reinstatement in service and not the backwages.

7. For the forgoing reasons, the writ petition is allowed in part. Part of the order by which the 50% backwages has been granted to the respondent No.1 is set aside. Remaining part of the order directing reinstatement is not being disturbed.

8. However, it is made clear that the backwages, if already paid to the respondent No.1/employee, shall not be recovered from him.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-