IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (L) No. 6254 of 2018

M/s. Janta Mazdoor Sangh, a Trade Union registered under Trade Union Act represented through Sri K.N. Singh, son of Late Suraj Deo Pd. Singh, Vice Presdident of Trade Union having its office at Vihar Building, Jharia, P.O. and P.S. – Jharia, District – Dhanbad.

… … **Petitioner**

V E R S U S

1. The Union of India represented through the Secretary, Ministry of Labour/ Shram Mantralaya, having its office at New Delhi, P.O. and P.S. – Shram Mantralaya, New Delhi.
2. Sri M.K. Singh, Section Officer, Ministry of Labour, having its office at P.O. and P.S. – Shram Shakti Bhawan, New Delhi.
3. M/s. Bharat Coking Coal Ltd. through its General Manager, having its office at Koyla Bhawan, Koyla Nagar, P.O. and P.S. – Saraidhela, District – Dhanbad.

… ... **Respondent**

CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK

For the Petitioner :Dr. M.K. Laik, Sr. Advocate.
For the Respondent : Mr. Indrajit Sinha, Advocate
Mr. Vipul Poddar, Advocate

C.A.V. ON 07.12.2020 **PRONOUNCED ON 18.12.2020**

Dr. S.N. Pathak, J. In view of outbreak of COVID-19 pandemic, case was taken up through Video Conferencing and heard at length on various dates, lastly on 07.12.2020 and Judgment was reserved and the same is being pronounced today. Concerned lawyers have no objection with regard to the proceeding which has been held through Video Conferencing and there is no complaint in respect to audio and video clarity and quality and after hearing at length, the matter is being disposed of finally.

PRAYER

2. Petitioner has approached this Court with a prayer for quashing the order passed by the respondents and communicated vide letter dated 31.10.2018, whereby and whereunder respondents have refused to refer the dispute raised by the petitioner for adjudication on the grounds mentioned therein.

CASE OF THE PETITIONER

3. The factual exposition as has been stated in the writ petition is that workman – Ram Pravesh Nonia, who was employed in the respondent – Management as a Badli M. Loader, was served with Chargesheet no. AR 111/05/ 828, dated 03.10.2015 for absenting himself from duties from 26.02.2005 and was subsequently dismissed from the service pursuant to the letter 21/23-1-06, order no. AR 111/50/ 2006/88.

4. Since the order of dismissal was an ex-parte order, the same was challenged and Industrial Dispute was raised by filing application dated 13.07.2015 before the A.L.C. Dhanbad. After issuance of notice to the Management, reply was filed on 20.12.2017 contradicting the statements made by the workman. When the dispute could not be reconciled, the conciliation officer sent the matter with failure report to the Central Government for necessary action. However, it was communicated to the petitioner vide letter dated 31.10.2018 mentioning therein that the dispute could not be sent before the Labour Court for adjudication. Being aggrieved by the said order, petitioner has knocked door of this Court.

ARGUMENTS ON BEHALF OF THE PETITIONER

5. Dr. M.K. Laik, learned Sr. Counsel appearing on behalf of the petitioner vehemently argued that the order impugned is wholly illegal and without jurisdiction. There was no delay on part of the workman. In spite of representation filed by the workman, the same was not disposed of by the Management which resulted into the delay, if any and as such, the question of delay on part of the workman is not sustainable and matter is fit to be referred for adjudication before the Labour Court. Learned counsel further argued that the concerned respondent has wrongly fixed year of cause of action since the representation was pending and the matter was under consideration. The Conciliation Officer also failed to reconcile the dispute. The workman has been denied to place evidences and materials on record before the Labour Court and as such there is violation of principles of natural justice. The Management should not have deprived the workman from getting the benefits.

To buttress his arguments, learned Counsel has heavily placed reliance on the decision passed in the case of

(i) ***Sapan Kumar Pandit Vs. U.P. State Electricity Board & Ors.*** Reported in ***(2001) 6 SCC 222.***

(i) ***Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar*** reported in ***(2014) 10 SCC 301;***

ARGUMENTS ON BEHALF OF THE RESPONDENT-MANAGEMENT

6. Mr. Indrajit Sinha, learned Counsel appearing on behalf of the respondent assisted by Mr. Vipul Poddar argued that it is a belated claim on part of the workman and the appropriate Government has rightly decided not to refer the same before the Labour Court for adjudication. Learned counsel further argued that since no industrial dispute existed, the same has rightly not been referred for adjudication. Learned counsel argued that the dispute having been raised after more than 09 years from the date of cause of action arisen, does not survive and is hopelessly stale and thus the same is not maintainable. Learned counsel has further brought notice to the findings of the Ministry of Labour dated 31.10.2018 whereby the prayer of the workman has been denied and submitted that in the circumstances, the instant writ petition is fit to be dismissed. Learned counsel further argued that after such delay, no industrial dispute survives which has been held in a catena of decisions. Learned counsel relies upon the Judgment reported in ***(2015) 15 SCC 1 [Prabhakar Vs. Joint Director, Sericulture Department and Another]*** and submits that right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. The Doctrine of laches is in fact an application of maxim of equity '***delay defeats equities'.***

To buttress his arguments, learned counsel has heavily placed reliance on the decision of a Two-Judge Bench of the Hon'ble Supreme Court in the case of ***Nedungadi Bank Ltd. Vs. K.P. Madhavankutty*** reported in ***(2000) 2 SCC 455*** and submits that *a dispute which is stale cannot be the subject matter of reference under Section 10 of the Industrial Disputes Act.*

Learned Sr. Counsel has further relied upon the following Judgments:

(i) ***Reserve Bank of India Vs. Gopinath Sharma and Another*** reported in ***(2006) 6 SCC 221;***

(ii) ***Brahmanand Tiwari Vs. Presiding Officer, Labour Court, Jamshedpur*** reported in ***2007 (2) JCR 5 : 2007 (2) LLJ 935.***

FINDINGS OF THE COURT

7. Be that as it may, having considered rival submission of the parties across the bar and after examination of documents brought on record, this Court is of the view that admittedly there was unreasonable delay which was unexplained. The dispute was raised after nine years from the date of cause of action. So far as delay in seeking reference under Section 10 of the Industrial Disputes Act is concerned, no formula of universal application can be laid down. It would depend on the facts and circumstances of each individual case. In the instant case, explanation for unreasonable delay has not been given by the workman. Nothing has been placed on record to show that the industrial dispute was raised within a reasonable time or the workman was not responsible for the delay.

8. The issue fell for consideration before the Hon'ble Apex court in the case of ***U.P. SRTC v. Babu Ram*** reported in **(2006) 5 SCC 433** and in paragraph-10 of the said Judgment, it has been held as under:

> ***"10.*** *It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that he had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision, if any, in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalised for delay in finalising the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."*

9. The reliance of the workman upon the Judgment passed in the case of ***Raghubir Singh v. Haryana Roadways (Supra)*** does not come to his rescue. Said case is distinguished on the ground that assurances were given in the said case to the concerned workman whereas instant case is totally on different footing. The case of ***Raghubir Singh (Supra)*** or the case of

Sapan Kumar Pandit Vs. U.P. State Electricity Board & Ors. reported in ***(2001) 6 SCC 222*** are distinguished from the facts and circumstances of the present case. Further, in the case of ***Raghubir Singh (Supra),*** there was no proceeding and it was only after conviction, an assurance was given by the Management. The dispute has to be raised on preponderance of probabilities. Admittedly no straight jacket formula can be available for rejecting the case on the ground of stale claim. In the instant case, while reference was made, the State was aware that it is a stale claim and as such reference has been rightly turned down by the appropriate government.

10. The Judgment rendered by the Hon'ble Apex Court in the case of ***Prabhakar v. Sericulture Deptt.*** reported in **(2015) 15 SCC 1** is relevant wherein the Judgment passed in the case of ***Nedungadi Bank Ltd. v. K.P. Madhavankutty*** reported in ***(2000) 2 SCC 455*** has also been discussed. Para-25 of the said Judgment reads as under wherein paragraphs-6 to 8 of the Judgment passed in the case of ***Nedungadi Bank Ltd. (Supra)*** has also been discussed:

> ***"25.*** *In Nedungadi Bank Ltd. v. K.P. Madhavankutty [Nedungadi Bank Ltd. v. K.P. Madhavankutty, (2000) 2 SCC 455 : 2000 SCC (L&S) 283] the Court cautioned that power of reference should be exercised reasonably and in a rational manner and not in a mechanical fashion. It was specifically observed that power to make reference cannot be exercised to revive settled matters or to refer stale disputes in spite of absence of statutory limitation period. The Court not only reiterated that the courts had power of judicial review, though to limited extent, but also made the following pertinent observations on delay: (SCC pp. 460-61, paras 6-8)*
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> > *"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 the 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 an industrial dispute was ex facie bad and incompetent.

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 an industrial dispute did arise or was even apprehended after a lapse of about seven years of the dismissal of the respondent. Whenever a workman raises some dispute it does not become an industrial dispute and the appropriate Government cannot in a mechanical fashion make the reference of the alleged dispute terming it as an 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 purpose of the Act. The Bank was justified in thus moving the High Court seeking an order to quash the reference in question.

8. It was submitted by the respondent that once a reference has been made under Section 10 of the Act a Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court. That is not a correct proposition to state. An administrative order which does not take into consideration statutory requirements or travels outside that is certainly subject to judicial review, limited though it might be. The High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. In National Engg. Industries Ltd. v. State of Rajasthan [National Engg. Industries Ltd. v. State of Rajasthan, (2000) 1 SCC 371 : (2007) 2 SCC (L&S) 264] this Court observed: (SCC p. 393, para 24)

> *'24. It will be thus seen that the 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. It is further relevant to quote paragraphs 27 of the Judgment passed in the case of ***Prabhakar v. Sericulture Deptt. (Supra)*** which reads as under:

> ***"27.*** *In Raghubir Singh v. Haryana Roadways [Raghubir Singh v. Haryana Roadways, (2014) 10 SCC 301 : (2015) 1 SCC (L&S) 23] , this Court scanned through most of the available case law on the subject and emphasised that the words "at any time" occurring in Section 10 of the Act would imply that law of limitation did not apply. On facts, the Court held that the State Government had rightly exercised its power and referred the dispute to the Labour Court within reasonable time considering the circumstances in which the appellant therein was placed. In fact, the Court accepted the explanation for delay given by the workman in raising the dispute. In that case, it was found that there was a criminal case pending against the workman and further the Management had assured him that he would be reinstated on his acquittal. It was also noticed that even despite delay, there was no loss or unavailability of evidence due to the said delay."*
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> In **paragraph-29** of the said Judgment, it has been held **as under:**
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> ***"29.*** *If one examines the judgments in the aforesaid perspective, it would be easy to reconcile all the judgments. At the same time, in some cases the Court did not hold the reference to be bad in law and the delay on the part of the workman in raising the dispute became the cause for moulding the relief only. On the other hand, in some other decisions, this Court specifically held that if the matter raised is belated or stale that would be a relevant consideration on which the reference should be refused. Which parameters are to be kept in mind while taking one or the other approach needs to be discussed with some elaboration, which would include discussion on certain aspects that would be kept in mind by the courts for taking a particular view. We, thus, intend to embark on the said discussion keeping in mind the central aspect which should be the forefront, namely, whether the dispute existed at the time when the appropriate Government had to decide whether to make a reference or not or the Labour Court/Industrial Tribunal to decide the same issue coming before it."*

12. It is now a well-recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited to the litigants who approached the Court belatedly without any justifiable explanation for bringing the

action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity "delay defeats equities. Thus, in those cases where period of limitation is prescribed within which the action is to be brought before the court, if the action is not brought within that prescribed period the aggrieved party loses remedy and cannot enforce his legal right after the period of limitation is over. Likewise, in other cases even where no limitation is prescribed, but for a long period the aggrieved party does not approach the machinery provided under the law for redressal of his grievance, it can be presumed that relief can be denied on the ground of unexplained delay and laches and/or on the presumption that such person has waived his right or acquiesced into the act of other. As mentioned above, these principles as part of equity are based on principles related to sound public policy that if a person does not exercise his right for a long time then such a right is non-existent.

13. In paragraph-42.1, 42.2, 42.3 and 42.6 of the Judgment passed in the case of ***Prabhakar v. Sericulture Deptt.*** **(Supra)** it has been held 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 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 dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute.*
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> ***42.2.*** *Dispute or difference arises when one 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.*

42.6. *In contrast, 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"*

14. This Court may hasten to clarify that in those cases where the court finds that dispute still existed, though raised belatedly, it is always permissible for the court to 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. This Court is of the opinion that the law on this issue has to be applied in the aforesaid perspective in such matters. 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 is likely to have on the employers' financial arrangement and to avoid dislocation of an industry.

15. On the application of the aforesaid principle to the facts of the present case, this Court is of the view that the reference at such a belated stage without any justifiable explanation for delay, the appropriate Government had no jurisdiction or power to make reference of a non-existing dispute and as such the same has rightly been turned down. The workman has no case and writ petition has no merits.

16. As a result of the aforesaid rules, guidelines, judicial pronouncements and discussions made hereinabove, it can comfortably be inferred that admittedly the reference sought at a belated stage was bad in law and as such the same has rightly been turned down. Although there was no limitation prescribed under the Act for making reference under Section 10(1) of the Industrial Disputes Act, the policy of industrial disputes clarifies that very stale claims should not be generally encouraged or allowed unless there is satisfactory explanations for the delay. Since no plausible reason has been given or explained or brought on record, this Court is fully satisfied that the prayer for reference has rightly been turned down.

17. In view of facts and circumstances discussed hereinabove and for the reasons expressed above, it is held that the dispute is hopelessly stale and not maintainable and valid in law and as such, this writ petition stands dismissed.

(**Dr. S.N. Pathak, J.**)

High Court of Jharkhand at Ranchi
Dated - December 18, 2020
RC/AFR