

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6630/2019

- PETITIONERS :**
- 1) Chief Administrative Officer
(Construction) South Eastern Railway,
Off : 11 Garden Reach Road, Kolkata 43.
 - 2) Senior Divisional Personnel Officer,
South East Central Railway, Kingsway, Nagpur.

...VERSUS...

- RESPONDENTS :**
- 1) Shri Pawan Singh Thakur,
R/o Panjabi Line, Near Jain Building,
Borkar Chawl, Bezon Bagh, Nagpur.
 - 2) The General Secretary, Parcel Porter
Sanghatan, New Mankapur, Plot No.37,
Near MHADA Colony, Nagpur – 440 030.

Shri Prafulla S. Khubalkar, Advocate for petitioner
Shri R.D.Dhande, Advocate for respondents

CORAM : AVINASH G. GHAROTE, J.

Date of reserving the judgment : 28/09/2021

Date of pronouncing the judgment : 15/11/2021

J U D G M E N T

1] Rule. Rule made returnable forthwith. Heard
Shri Khubalkar, learned Counsel for the petitioner, who raises a

challenge to the award by the learned Central Government Administrative Tribunal (CGIT) Nagpur, dated 27/5/2019, whereby reference made by the Central Government regarding the existence of an industrial dispute under Section 10 (1) (d) and 10 (2A) of the Industrial Disputes Act, 1947, has been decided by the learned CGIT, holding that the termination notice dated 8/10/2001 issued to respondent No.1, was not just, fair and legal and further holding that respondent No.1 was entitled to reinstatement with 50% back wages from the date of his termination, which was to be complied within one month, failing which interest at the rate of 6% p.a. would be chargeable.

2] Shri Khubalkar, learned Counsel for the petitioner submits that respondent no.1 was appointed by the order dated 15/9/2000, as a substitute bungalow peon, and attached to Virendra Kumar, Deputy Chief Engineer (Con.), Bilaspur against an existing vacancy, which engagement was purely on temporary basis as a substitute and was not to confer any title or claim for further appointment at any time. He submits that the appointment was under a scheme for substitute bungalow peon, which was applicable

at that point of time, which is indicated by the communication dated 29/8/2000 placed on record. It is submitted, that the aforesaid scheme permitted absorption of the substitute peon, only upon completion of three years, provided his services were satisfactory. The communication dated 8/10/2001 placed on record indicates that on being declared unfit to perform his duty as bungalow peon, a notice was served of a period of 14 days for terminating the services on respondent no.1, in view of which, the services of the respondent no.1 stood terminated as a consequence of the notice dated 8/10/2001.

3] Nothing was done thereafter for more than 10 years. It is only on 25/1/2012 that a complaint was made by the General Secretary, Parcel Portal Sanghatan, Nagpur/respondent No.2, on the behest of respondent No.1 to the Central Government through Assistant Labour Commissioner (C) Nagpur, raising a claim, against the Management of South-Eastern Railway, Bilaspur, regarding the so-called illegal termination of respondent No.1. It is submitted that on receipt of the aforesaid complaint, the Management/petitioner had submitted its comments on 12/12/2012 and since the

conciliation entered into a failure on 10/8/2013, by communication dated 2nd January, 2014, the above reference was made.

4] It is submitted that by an order dated 25/3/2014, the Central Government being of the opinion that an industrial dispute existed, in view of the powers under Section 10 (1) (d) and 10 (2A) of the Industrial Disputes Act, referred the same to CGIT-cum-Labour Court, Nagpur.

5] The learned CGIT by the impugned award dated 27/5/2019, has directed reinstatement of respondent with 50% back-wages from the date of his termination, as indicated above.

6] Shri Khubalkar, learned Counsel for the petitioners submits that the reference as well as the impugned award dated 27/5/2019 is incorrect inasmuch as there was no live dispute, considering the time gap between the termination notice which was dated 8/10/2001 and the complaint dated 25/1/2012. He therefore submits that in absence of a live dispute, neither the reference could have been made nor the award could have been passed. In support

of his submission, he places reliance upon *Prabhakar Vs. Joint Director of Sericulture Department and another, 2015 (15) SCC 1*.

He further submits that the nomenclature of the substitute bungalow peon has since been changed to TADK (Telephone Attendant-cum-Dak Khalasi) and any appointment of fresh face substitutes as per the direction of the Railway Board have been directed not to be processed or made for which he invites my attention to the communication dated 6/8/2020 issued by the Executive Director, Estt. (N) of the Railway Board. He therefore submits that there is no scope as of now for the reinstatement of respondent No.1. He therefore submits that the petition needs to be allowed on this count also. He also submits that the impugned order (on merits) is without prejudice. He further submits that there is no pleading that during the intervening period the respondent No.1 was not gainfully employed and therefore the order of 50% back wages is unwarranted and unsustainable.

7] Shri Dhande, learned Counsel for the respondent Nos.1 and 2 submits that the dispute was live inasmuch as there were several oral representations made to the petitioners during the

intervening period between 8/10/2001 and 25/1/2012, for which he invites my attention to the cross-examination of respondent No.1 and further submits that there were oral assurances made by the petitioners in this regard. He further submits, by inviting my attention to para 21 of the impugned award, that the petitioners had agreed that they would not challenge the reference order dated 25/2/2014, or the corrigendum dated 12/11/2018, which would indicate that the petitioners had forgone the right to challenge the validity of the reference. He further submits that once having done this, it was not permissible for the petitioners, to have filed the present petition as they would be estopped from the statement as recorded by the learned CGIT. It is further submitted by him that the dispute was live when the reference is sought to be made, which was in the year 2014 and therefore, the question of any limitation would not arise at all, for which reliance is placed upon ***Sapan Kumar Pandit Vs. U.P State Electricity Board and others, AIR 2001 SC 2562.*** He further places reliance upon ***M/s. Western India Watch Co. Ltd Vs. The Western India Watch Co. Workers Union and others, AIR 1970 SC 1205*** to contend that the reference could be made anytime and there is no limitation prescribed. Further reliance is also placed

upon *Kuldeep Singh Vs. G.M. Instrument Design Development and Facilities Centre and another, AIR 2011 SC 455*, which again goes to hold that though no limitation is prescribed, however, the reference have to be made, if dispute exists at the time of making reference. No other arguments were advanced.

8] Shri Khubalkar, learned Counsel for petitioners in rebuttal submits that no statement was made before the learned CGIT about giving up the right to challenge the reference and there was no such communication placed on record by the petitioners.

9] In *Kuldeep Singh* (supra) it has been held that dispute has to be made if dispute exists at the time of making reference in the following manner :-

“21. 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. It is not open to the Government to go into the merit of the dispute concerned and once it is found that an industrial dispute exists then it is incumbent on the part of the Government to make reference. It cannot itself decide the merit of the dispute and it is for the appropriate Court or Forum to decide the same. The satisfaction of the appropriate authority in the matter of making reference under Section 10 (1) of the Act is a subjective satisfaction. Normally, the Government cannot decline to make reference for laches committed by the workman. If adequate reasons are shown, the Government is bound to refer the dispute to the appropriate Court or Forum for adjudication. 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.”

10] The position which can be culled out from the above is that for making a reference there must exist an industrial dispute and it must be made within a reasonable time. What would be reasonable time, would be a matter to be determined based upon the facts of each case.

11] The view taken in *M/s. Western India Watch Co.* and *Sapan Kumar Pandit* (supra), was considered by the Hon'ble Apex Court in *Prabhakar* (supra), in which considering that the Industrial Disputes Act did not provide any limitation for making reference under Section 10 (1) nor the Limitation Act, 1963 was applicable, it was held as under :-

“13. The adequacy or the sufficiency of the material on which the opinion was formed is beyond the pale of

judicial scrutiny. If the action of the Government in making the reference is impugned by a party, it would be open to such a party to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction to make the award. But if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters.

14. When the 'Appropriate Government' makes a reference of an industrial dispute for adjudication, it does not decide any question of fact or law. The only condition, which the exercise of that power should satisfy, is that there should be the existence or apprehension of an industrial dispute. When once the Government is satisfied about this question, it acquires jurisdiction to refer the dispute for adjudication. However, the condition precedent to the formation of such opinion, that there should be an existing or apprehended 'industrial dispute', is imperative and the recitals of the existence or apprehension of the industrial dispute cannot preclude the Court to exercise its power of judicial review and to determine whether, in fact, there was any material before the 'appropriate

Government' and if there was; whether the Government applied its mind in coming to the conclusion that an industrial dispute was in existence or was apprehended and it was expedient to make the reference. Therefore, an order of reference is open to judicial review if it is shown that the appropriate Government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration.

28. The aforesaid case law depicts the following:

28.1. Law of limitation does not apply to the proceedings under the Industrial Disputes Act, 1947.

28.2. The words 'at any time' used in Section 10 would support that there is no period of limitation in making an order of reference.

28.3. At the same time, the appropriate Government has to keep in mind as to whether the dispute is still existing or live dispute and has not become a stale claim and if that is so, the reference can be refused.

28.4. Whether dispute is alive or it has become stale/non-existent at the time when the workman approaches the appropriate Government is an aspect which would depend upon the facts and circumstances of each case and there cannot be any hard and fast rule regarding the time for making the order of reference.

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.

30. In this process, let us first examine as to what would constitute 'industrial dispute' because of the simple reason that the appropriate Government has power to refer what is known as an 'industrial dispute' and likewise the Labour Court/Industrial Tribunal has jurisdiction to decide if there is an industrial dispute. We are not going into the entire gamut of what constitutes 'industrial dispute' within the meaning of Section 2(k) of the Act. Our focus is only on the aspect that what can be referred should be the dispute which is existing and in praesenti when the reference is sought. To put it otherwise, if it no longer remains an industrial dispute

or industrial dispute 'does not exist' at that time, there would not be any question on making reference or adjudicating the matter as it is not an industrial dispute.

31. Section 2(k) of the IDA defines 'industrial dispute' and it reads as under:

“2. (k) 'Industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons;”

32. As per Section 2A dispute relating to discharge, dismissal, retrenchment or termination of an individual are also deemed as industrial dispute and, therefore, an individual is given right to raise these disputes.

33. The term 'industrial dispute' connotes a real and substantial difference having some element of persistency, and likely, if not adjusted, to endanger the industrial peace of the community. The expression 'dispute or difference' as used in the definition, therefore, means a controversy fairly definite and of real substance, connected with the employment or non-employment or with the terms of employment or the conditions of labour of any person, and is one in which the contesting parties are directly interested in

maintaining the respective contentions.

34. *To understand the meaning of the word 'dispute', it would be appropriate to start with the grammatical or dictionary meaning of the term:*

'Dispute': "to argue about, to contend for, to oppose by argument' to call in question - to argue or debate (with about or over), - a contest with words; an argument; a debate; a quarrel;

35. *Blacks law dictionary, 5th Edition, page 424 defines 'dispute' as under:*

' A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.'

36. *Thus, a dispute or difference arises when demand is made by one side (i.e. workmen) and rejected by the other side (i.e. the employer) and vice versa.* Hence an 'industrial dispute' cannot be said to exist until and unless the demand is made by the workmen and it has been rejected by the employer. How such demand should be raised and at what stage may also be relevant but we are not concerned with this aspect in the instant case. *Therefore, what would happen if no*

demand is made at all at the time when the cause of action arises? In other words, like in the instant case, what would be the consequence if after the termination of the services of petitioner on April 01, 1985, the petitioner does not dispute his termination as wrongful and does not make any demand for reinstatement for number of years? Can it still be said that there is a dispute? Or can it be said that workmen can make such demand after lapse of several years and on making such demand dispute would come into existence at that time. It can always be pleaded by the employer in such a case that after the termination of the services when the workmen did not raise any protest and did not demand his reinstatement, the employer presumed that the workmen has accepted his termination and, therefore, he did not raise any dispute about his termination. It can be said that workmen, in such a case, acquiesced into the act of the employer in terminating his services and, therefore, accepted his termination. He cannot after a lapse of several years make a demand and then convert it into a 'dispute' what had otherwise become a buried issue.

37. Let us examine the matter from another aspect, viz. laches and delays and acquiescence.

38. 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 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".

39. This principle is applied in those cases where discretionary orders of the Court are claimed, such as specific performance, permanent or temporary injunction, appointment of receiver etc. These principles are also applied in the writ petitions filed under Articles 32 and 226 of Constitution of India. In such cases, Courts can still refuse relief where the delay on the petitioner's part has prejudiced the respondent even though the petitioner might have come to Court within the period prescribed by the Limitation Act.

40. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong.”

(emphasis supplied)

12] It would thus be material to state here that for the existence of a dispute what will have to be shown by the union/employee is that there were interactions in the matter going on in between the employee and the establishment, regarding the action complained of, during the period intervening between the action complained of and the matter being taken before the Government for determining that there existed an industrial dispute.

13] The position, in my considered opinion, would be governed by *Prabhakar* (supra), as it is later in point of time and so also it takes into consideration *Sapan Kumar Pandit* and *M/s. Western India Watch Co. Ltd* (supra) both of which have been considered in *Kuldeep Singh* (supra).

14] Since a submission was made by Shri Khubalkar, learned Counsel for the petitioners, that no statement was made before the learned CGIT about giving up the right to challenge the reference, as found in the impugned award, I, had asked a specific question to Shri Dhande, learned Counsel for the respondents to place some material in this regard on record, which would

substantiate the position recorded by the learned CGIT in the impugned award, however, no such communication/pursis/statement/ averment nor anything in this regard has been placed on record by the respondents, in spite of granting an opportunity in this regard, in view of which I, have no other choice than to assume that there is no basis to the statement as recorded by the learned CGIT, regarding the giving up of the right to challenge the reference and thus I have treated this issue as open for consideration. As held in ***Prabhakar*** (supra) an order of reference is open to judicial review, if it is shown that the appropriate Government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration.

15] Though Shri Dhande, learned Counsel for the respondents, contends that the issue of delay is no longer permissible to be considered, however, considering what has been held in ***Prabhakar*** (supra), that an order of reference is open to judicial review if it is shown that the appropriate Government had no material before it or it has not applied its mind to the material

before it or has not taken into consideration certain vital facts which it ought to have taken into consideration, the question whether a dispute was alive or a stale/dead/buried dispute, would be capable of being judicially reviewed to the above extent.

16] In the instant case there is a total silence since 8/10/2001 the date of termination till 25/1/2012, when for the first time a complaint was made, regarding the termination, which is admittedly a period of nearly more than 10 years, which would indicate that the respondent No.1, had acquiesced in his termination. This would indicate that the dispute sought to be raised on 25/1/2012, for the first time, was not a live one but was dead as admittedly from 8/10/2001 till 25/1/2012, i.e. for more than a period of 10 years, nothing was done by the respondent No.1, to challenge the order of termination.

17] Though Shri Dhande, learned Counsel for the respondents contends that there were several oral representations made and several oral assurances given by the petitioners, there is absolutely no mention of the same, either in the complaint or for

that matter in the affidavit in lieu of oral evidence, as filed by the respondent No.1 on record and therefore this submission, can clearly be said to be without any merits altogether.

18] Shri Dhande, learned Counsel for the respondents, places reliance upon the cross-examination of the respondent No.1, to contend that in his cross-examination, the respondent No.1, has stated to this effect, however, even the affidavit, upon which the cross-examination was taken, does not contain this statement, in view of which no credence can be placed thereupon.

19] Thus, for the above reasons, the reference, itself, will have to be held to be a stale one as the order of reference dated 25/2/2014, does not consider the above position. In fact, the order of reference does not consider the question of delay and latches at all and as such the question of considering any material before it or applying its mind, did not arise at all and therefore in view of what has been laid down in *Prabhakar* (supra), the order of reference itself stands vitiated, in view of which all other issues are rendered otiose.

20] The impugned award, thus clearly ignores this position, regarding the effect of delay and latches, as laid down in *Prabhakar* (supra). It also proceeds to record that neither party would challenge the reference order, without anything on record to indicate this. Once it is held that the dispute itself was stale, all other questions clearly become otiose. The impugned award therefore cannot be sustained and is hereby quashed and set aside, with the result that the reference is also dismissed as being stale and affected by delay and latches. The writ petition is allowed.

21] Rule is made absolute in the above terms. In the circumstances, there shall be no order as to costs.

(AVINASH G. GHAROTE, J.)

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