

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

WRIT PETITION NO. 1163 OF 2019

PETITIONERS :-

1. Brij Bihari Singh s/o Shri Bacchan Singh, aged 55 years, occu.-Service, R/o Qtr. No.V/16, Majri Khadan, Shivaji Nagar, Bhadravati, District-Chandrapur 442 503.
2. Lal Zenda Coal Mines Mazdoor Union, through its Secretary Shri. P. B. Waghmare, having office at CWS Tadali, Urja Gram Tadali, District Chandrapur.

...VERSUS...

RESPONDENTS :-

1. Western Coalfields Limited, Coal Estate, Civil Lines, Nagpur 440 001 through the Chairman cum Managing Director.
2. The Chief General Manager, Western Coalfields Limited, Majri Area District Chandrapur 442 503.
3. The Assistant Labour Commissioner, (Central)1st floor, Kamal Complex, Ramnagar, Chandrapur.

B.Lahiri, counsel for the petitioners.
Mr.S.S.Ghate, counsel for respondent Nos.1 and 2.
Mr.C.J.Dhumane, counsel for respondent No.3.

**CORAM : SUNIL B.SHUKRE &
ANIL L.PANSARE, JJ.**

DATE : 22.11.2021.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the parties.

3. The petitioner had once knocked at the doors of this Court by filing the petition which was Writ Petition No.6582 of 2013. In that petition, he had sought a direction to the respondents to correct his father's name from Ram Bacchan to Bacchan and also to correct his date of birth from 28/11/1954 to 01/08/1963 in service record.

4. By the judgment passed on 18/06/2014, this Court dismissed the aforesaid petition. It was held that the reliefs sought by the petitioner could not be granted in exercise of the writ jurisdiction. It was observed that this Court was not in a

position to adjudicate upon the issue regarding correct date of birth of the petitioner and correct name of his father.

5. It appears that after dismissal of the petition, the petitioner did not approach the Assistant Labour Commissioner under section 10(1) of the Industrial Disputes Act, 1947 within a reasonable period of time. On behalf of the petitioner No.1, on 2nd July, 2018 secretary of petitioner No.2-Union, for the first time, filed an application before the Assistant Labour Commissioner seeking reference of the industrial dispute to an Industrial Tribunal. This application, termed as representation/complaint dated 2nd July, 2018, by the impugned order passed by the Assistant Labour Commissioner, Chandrapur was rejected. Learned Assistant Labour Commissioner found that the Union was not authorized to raise the issue, with the petitioner No.1 having retired from service on 30th November, 2014 was no more a workman and that the employer/employee relationship had ceased to exist and thus the representation/application for reference under section 10(1) of the Industrial Disputes Act, was rejected. Learned Assistant Labour Commissioner also found that

there was great delay in filing the application which dissuaded him from entertaining the application.

6. Learned counsel for the petitioners submits that the reasons so stated in the impugned order are not tenable at law as there is no bar in law for raising of an industrial dispute and all that is required that industrial dispute must exist. He also submits that even after retirement, the employee/employer relationship continues to exist for limited purpose of determination of the actual date of superannuation of an employee. He also submits that there is no limitation prescribed for filing of an application under section 10(1) of the Industrial Labour Act and therefore it cannot be said that the application was moved belatedly.

7. Insofar as concerned the first two contentions of the learned counsel for the petitioners with which Shri. Ghate learned counsel appearing for respondent Nos.1 and 2 as well as Shri. Dhumane learned counsel for respondent No .3 have disagreed, we are of the view that they are well answered in the case of *Sharad Kumar Vs, Govt. Of NCT of Delhi and ors.* reported in

2002 Supreme Court Cases (L and S) 533 and another case of Philips Employees Union, Mumbai Vs. P. T. Jagtap and ors. reported in 2005 II CLR 182.

8. In *Sharad Kumar Vs, Govt. Of NCT of Delhi and ors* (supra), the Hon'ble Supreme Court has held that while considering such application, the appropriate government is conferred with limited jurisdiction, and it is not the job of the appropriate government to examine the dispute on merits and all that it has to consider is as to whether or not there exists any industrial dispute and if it finds that the dispute does exist, there is no option for the appropriate government other than referring it to the appropriate authority as contemplated under Section 10 of the Industrial Dispute Act.

9. Following the above law, we find that learned Assistant Labour Commissioner ought to have made an effort to ascertain as to whether or not any industrial dispute existed instead of ascertaining as to who had raised the dispute and then recording a finding that Union had no authority to raise the

dispute. So, on this count the learned Assistant Labour Commissioner has gone wrong.

10. In the case of *Philips Employees Union, Mumbai Vs. P. T. Jagtap and ors.*(supra), the Co-ordinate Bench of this Court has found on facts of the case that even after the retirement, the employer/employee relationship continues to exist for the limited purpose of determining the enforceability of the terms of the VRS application, which was accepted by the employer.

11. Here, what is at dispute is an issue regarding the correct date of birth and correct name of the father of the petitioner No.1 and this issue having a bearing upon the date of superannuation of the petitioner No.1 would be an issue, which in our considered opinion, would be covered by the concept of obtaining of employee/employer relationship. If the contentions of the petitioner No.1 in this regard are accepted, it would have the effect of extending the date of superannuation of the petitioner No.1 and thus extending the tenure of the employer/ employee relationship. Learned Assistant Labour Commissioner has,

therefore, erred in holding that no employer-employee relationship existed.

12. The matter, however, does not end here. There is an important issue of inordinate delay involved in this case, and on this count, we are of the considered opinion that no fault could be found in the order of the Asstt. Labour Commissioner. It is not in dispute that the petitioner No.1 has stood retired on attaining age of superannuation on 30.11.2014 and it was after almost about more than three and half years i.e. on 02.07.2018 that for the first time, an Industrial dispute was sought to be raised by moving an application under Section 10(1) of the Industrial Disputes Act.

13. In the case of *Raghubir Singh Vs. General Manager Haryana Roadways, Hissar* reported in (2014) 10 SCC 301, relied upon by the learned counsel for the petitioners, the Apex Court has held that law of limitation does not apply to reference of an Industrial Dispute, but it also held that there is indeed a requirement that reference which is to be made happens within a reasonable period of time. Similarly, in the case of the

Nedungadi Bank Ltd. Vs. K. P. Madhavankutty and ors. JT reported in 2000(1)SC 388, which has been followed by learned Single Judge of this Court in the case of State of *Maharashtra and anr Vs. Anil Eknath Kharat* reported in 2008(4) Mh.L.J, the Honn'ble Apex Court has held that when there is an inordinate delay in seeking reference of Industrial dispute, it must be examined in the light of the industrial peace in an establishment and when there is an inordinate delay, such an application would not be justified. The relevant observations, as appearing in paragraph No.7 are reproduced as below:-

“Whenever a workman raises some dispute it does not become industrial dispute and appropriate government cannot in a mechanical fashion make the reference of the alleged dispute terming as industrial dispute. 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. Bank was justified in thus moving the High Court seeking an order to quash the reference in question.”

14. If the delay of about more than three and half years which has occurred here is overlooked and dispute is revived, it would, in our opinion, have the effect of stirring up industrial unrest rather than maintaining the industrial peace which is now prevailing and which has come about by settlement of dust due to long passage of time.

15. In view of above, we find that here is a case where, such industrial dispute as requires its resolution in the interest of maintenance of industrial peace has ceased to exist now by virtue of inordinate delay occurred in moving of an application under Section 10 of the Industrial Disputes Act by the Petitioner No.1. Therefore, on this sole ground we find that no interference with the impugned order can be made.

Rule is discharged. No costs.

(ANIL L.PANSARE,J)

(SUNIL B. SHUKRE,J)