

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

WRIT PETITION NO.1602 OF 2021

1. Rashtriya Koyala Khadan Mazdoor Sangh (INTUC), through its Vice President WCL, Coal Estate, Seminary Hills, Nagpur.
2. Pandurang Jangluji Karemore,
Aged about 60 years,
Occupation: Ex-Timberman, Walni Mines,
Walni Hospital Sub-Area,
Tahsil and District : Nagpur. **PETITIONERS**

...VERSUS...

1. The Assistant Labour Commissioner (Central), C.G.O. Complex, Seminary Hills, Nagpur.
2. The Government of India, Ministry of Labour, through its Secretary, New Delhi.
3. Western Coalfields Ltd.,
a subsidiary of Coal India Ltd.,
Office of Sub-Area Manager,
Sillewara Sub-Area, Post : Sillewara Project,
Tahsil : Saoner, District : Nagpur. **RESPONDENTS**

 Mr. Mihir R. Puranik, Advocate for Petitioner 2.
 Mrs. Mugdha R. Chandurkar, Advocate for Respondents 1 and 2.
 Mr. A. M. Ghare, Advocate for Respondent 3.

CORAM: **ROHIT B. DEO AND ANIL L. PANSARE, JJ.**
DATE: **22nd AUGUST, 2022.**

ORAL JUDGMENT: **(PER ROHIT B. DEO, J.)**

Issues notice to the respondents.

The learned counsel Mrs. Mugdha R. Chandurkar waives service for respondents 1 and 2, and Mr. A. M. Ghare, the learned counsel waives service for respondent 3.

2. Heard. Rule. Rule made returnable forthwith by consent of the learned counsels for the parties.

3. Exception is taken to the decision dated 31.07.2020 (Annexure-A) whereby the petitioners are informed that the appropriate government is not inclined to refer the dispute to adjudication in exercise of power under Section 10 read with 12 (5) of the Industrial Disputes Act, 1947 (Act).

4. The petitioner 1 – Union espoused the cause of petitioner 2 according to whom contrary to the official record, his date of birth is wrongly recorded as 03.07.1956 instead of 03.07.1960 and he is superannuated on the said premise, which superannuation constitutes wrongful “otherwise termination”.

5. The only reason given by the appropriate government is that the petitioner 2 superannuated in July 2016 and the dispute is espoused by the Union on 12.12.2018.

6. We note from record that even before the superannuation petitioner 2 did make a grievance that he is being superannuated on the basis of incorrect birth date.

7. We further note that the dispute clearly pertains to “otherwise termination” and could have been agitated by the petitioner 2 under Section 2A of the Act.

8. Be that as it may, we do not approve of the reasons recorded by the appropriate government for declining the reference.

9. It is well settled that the reference of a dispute can be made at any time and stage. The only rider is that the dispute ought not to be stale. The jurisprudential logic is that if the dispute is stale, the inference is that there is no live dispute at all and therefore, while the law of limitation as such is not attracted, the judicial opinion appears to be that in such situation, the appropriate government could be well within its rights to decline reference. (See: *Prabhakar v. Joint Director, Sericulture Department and another (2015) 15 SCC 1.*)

10. We have found that such is not the case in the factual

matrix. We are satisfied that the dispute is not stale.

11. We, therefore, quash the order dated 31.07.2020 (Annexure-A) and direct the appropriate government to refer the dispute espoused by petitioner 1 to the Tribunal for adjudication, within the next sixty days.

12. The petition is allowed in the aforestated terms.

(ANIL L. PANSARE, J.)

(ROHIT B. DEO, J.)

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