

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1509 OF 2020

WITH

WRIT PETITION NO. 1490 OF 2020

Sindhudurg Zilla Mazdoor Sangh.

Bhartiya Mazdoor Sangh

....Petitioner

V/s.

Dy. Engineer (Works), Zilla Parishad

Sub-Divi. Malavan and Ors.

....Respondents

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Mr. Prashant P. Chavan i/by. Mr. Ravindra R. Chik, for the
Petitioner.

Mr. Rohit Sakhadeo, for Respondents No.1 to 3.

CORAM : SANDEEP V. MARNE, J.

Dated : 22 August 2023.

P.C. :

1. Heard learned Counsel for the parties.

2. In these petitions, Petitioners challenge two separate Awards dated 27 August 2018 passed by the Industrial Tribunal-1, Kolhapur answering the References relating to termination of workmen, in negative. The References have been rejected on the ground of delay in raising the dispute by the concerned workmen.

3. I have gone through the Awards, as well as Statement of Claims filed on behalf of the workmen. Alongwith the Statement of Claims, list of workmen involved in the dispute was appended giving details of the services rendered by each of them. The said Statement would show that the concerned workmen were terminated during various years ranging between 1990 to 1998. For the first time, dispute was sought to be raised by the Union about their termination by making a demand on 13 September 2005. On the basis of dispute so raised, the appropriate Government ordered a Reference on 24 April 2009, *albeit* in the name of a wrong Union. Upon application for rectification made on 13 June 2009, the reference order was rectified on 25 April 2011. In that view of the matter, Petitioners cannot be blamed in respect of the delay that occurred after 13 September 2005.

4. However there appears to be a gross and inordinate delay in raising the dispute in the year 2005. After going through the details of workmen appended to the Statement of Claims in Writ Petition No.1490/2020, it appears that the employees were terminated from services during the years 1990 to 1998. To highlight few cases, Shri. Ashok Laxman Gothankar was engaged as Mile Collie on 21 June 1989 and was terminated a year later on 1 November 1990. Thus, in respect of that workmen, there was inordinate delay of 15 long years. Similar are the cases of Shri. Suresh Gangaram Varak and Shri. Prakash Laxman Jadhav, who

were also terminated in the year 1990. The details would also indicate that most of the workmen have put in just one or three years of service before they were terminated. This is not case where the concerned workmen had put in long period of service and were terminated without following due process of law.

5. Mr. Chawan, the learned Counsel appearing for Petitioner would place reliance on the judgment of the Apex Court in **Prabhakar Versus. Joint Director, Sericulture Department and Another**, (2015) 15 SCC 1. The Apex Court in that judgment has discussed the issue of delay in raising industrial disputes. It is well settled law that there is no period of limitation prescribed for raising industrial disputes. However, Courts have time and again held that the delay can be taken into consideration either for moulding the relief or for rejecting the Reference. The exact course of action to be adopted depends on the facts and circumstances of each case. It would be apposite to refer to some of the findings recorded by the Apex Court in **Prabhakar** (supra), wherein it is held in para-20, 21, 28, 28.1 to 28.4, 29, 38, 42.3, 43 and 44 as under :

“20. At this stage, it may be pointed out that admittedly the law of limitation does not apply to industrial disputes. Limitation Act does not apply to the proceedings under the Industrial Disputes Act and under the Industrial Disputes Act no period of limitation is prescribed. This is now well settled by series of judgments of this Court.

21. On the reading of these judgments, which are discussed hereinafter, it can be discerned that in some decisions where the reference was made after a lapse of considerable period, the Court did not set aside the reference but moulded the relief by either granting reinstatement but denying back wages, fully or partially, or else granted compensation, denying reinstatement. On the other hand, in some of the decisions, the Court held that even when there was no time prescribed to exercise power under Section 10 of the Act, such a power could not be exercised at any point of time to revive matters which had since been settled or had to become stale. We would like to refer to these judgments at this juncture.

28) The aforesaid case law depicts the following:

28.1 The 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.

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".

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 seized 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.

43. We 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. 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 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 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. Mr. Chawan, has placed reliance on the findings recorded by the Apex Court in para-42.3 and 43 of the judgment and has urged before me that the Industrial Court could have

moulded the relief instead of rejecting the Reference. However as observed above, the concerned workmen had put in hardly one to three years of service before their termination. Though they were terminated during various years beginning from the year 1990, they waited for a long period of time to raise a dispute relating to their termination. In such a case, the Tribunal has rightly not moulded the reliefs by ignoring the aspect of delay. No error can be found in the impugned Awards passed by the Industrial Tribunal. Writ Petitions being devoid of merits are **dismissed** with no order as to costs.

SANDEEP V. MARNE, J.