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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-2575-2023 (O&M)
Date of Decision: 04.05.2023**

BALDEV SINGH

.. Petitioner

Vs.

STATE OF PUNJAB AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Onkar Rai, Advocate for the petitioner.

...

Manoj Bajaj, J. (Oral)

Petitioner has filed this writ petition under Article 226 Constitution of India for issuance of a writ of Certiorari for quashing the impugned award dated 31.05.2022 (Annexure P-9) passed by Labour Court, whereby the respondent No.3 has decided the reference containing industrial dispute against him on delay and latches.

Learned counsel has submitted that the petitioner had joined Punjab Roadways on 15.10.1986 as driver and performed his duties sincerely. Learned counsel further submits that during the course of his employment, he was prosecuted for causing death by rash and negligent driving and in the said case, he was acquitted by JMIC Ludhiana vide judgment dated 01.07.2006 (Annexure P-1), however, the victim was awarded compensation of Rs.3,86,074/- under Motor Vehicles Act, 1988. Learned counsel has submitted that subsequently, the petitioner was subjected to the departmental enquiry, wherein the charge against him was proved and punishment of stoppage of four increments with cumulative effect was imposed upon him vide order dated 12.02.2008. Thereafter, one

more increment of the petitioner was stopped vide order dated 03.11.2008 by the management, as the checking staff found the petitioner in drunkard condition, when he was driving the bus off the road, and he was charge sheeted.

Aggrieved against this, the petitioner raised the industrial dispute, which has been answered against him. Hence, this writ petition.

Learned counsel for the petitioner has argued that the Labour Court has illegally declined the claim of the petitioner only on the ground of delay in approaching the Labour Court though the issue relating to the maintainability of the claim by petitioner was decided in his favour. He submits that the approach adopted by the Labour Court is erroneous in law, therefore, the impugned award warrants interference by this Court.

After hearing learned counsel, considering the averments and material on record, this Court finds that admittedly the punishment of stoppage of one and four increments with cumulative effect was inflicted upon the petitioner vide order dated 03.11.2008/11.11.2008 and 12.02.2008 and against this, he failed to avail any remedy of statutory appeal etc. and raised the industrial dispute after a period of ten years through reference bearing No.01 of 2018. The Labour Court has examined the facts, evidence and material on record carefully while answering the reference against him made following observations:-

“Adverting to the second moot point that the relief sought by the workman is barred by the provisions of delay and latches or not. Admitted version of the workman is that his one and four increments were stopped by the management vide order dated 3.11.2008/11.11.2008 and 12.2.2008. Present reference petition was filed on 16.2.2018 after serving the demand notice under Section 2k of the ID Act on the Secretary Transport Department on notice dated Nil. On the failure of the conciliation proceedings between the parties, reference was sent to this Tribunal. Though the workman himself stepped into

witness box and reiterated his version, but in his cross examination, he conceded that fact of stoppage of five increments by the respondents. Though he challenged the order dated 3.11.2008/11.11.2008 and 12.2.2008 before the competent authority, but said appeals did not find favour with Competent Authority and the same were dismissed. Surprisingly, he conceded that he could not tell any reason for filing the present reference after 10 years of the passing of impugned orders: WW-1 also admitted in no uncertain terms before passing the order dated 3.11.2008/11.11.2008 and 12.2.2008. regular enquiry Ex. M/1 and Ex.M/2 were conducted against him, but perusal of the demand notice, statement of claim and affidavit of workman reveals that not a single plea was taken and iota of evidence was adduced by him as to why it took him the period of about 10 years to challenge the impugned orders. It was incumbent on the workman to explain the long and inordinate delay of about 10 years for challenging the impugned order. However, no reason or explanation has come on the file or in the pleadings or evidence of the workman for the reasons best known to him. When the workman remained slumbering for about 10 years after passing of impugned orders, it was incumbent on the secretary Transport and Labour Commissioner, Punjab to ascertain whether the dispute regarding the stopping of four increments vide orders dated 3.11.2008/11.11.2008 and 12.2.2008 was existing between the parties or not on 15.2.2018 when the demand notice was served by the workman under Section 2k of the ID Act on Secretary Transport Department and Labour Commissioner, Punjab and referred to this court for adjudication of the matter in dispute.”

No doubt, the provisions of Section 10 of Industrial Disputes Act, 1947 do not contemplate any time frame for raising the dispute, but this aspect has already been examined by the Hon'ble Supreme Court in **“Prabhakar Vs. Joint Director Sericulture Department and another”**, wherein the belated industrial dispute raised by the workman was not entertained on the ground of laches and in this regard, the following observations were made:

36) 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".

40) On the basis of aforesaid discussion, we summarise the legal position as under:

*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 2A** 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. Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary pre-condition. 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 exist. 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. Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under Section 2A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection.”

In view of the above decision of Hon'ble Supreme Court, this Court finds that the workman has failed to give any sufficient explanation behind the inordinate delay in raising the industrial dispute, much less the existence of the dispute during all these ten years, when he raised the demand notice. Thus, this Court does not find any merit in the writ petition, as the impugned award passed by the Lower Court is based upon correct appreciation of facts and law on the subject.

Resultantly, this Court is not inclined to exercise the extraordinary writ jurisdiction under Article 226 Constitution of India.

Dismissed.

Pending applications, if any, be treated as disposed of.

04.05.2023
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No