



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10729 OF 2021

Shankar Popat Nimbalkar

VERSUS

Chief Engineer Tapi Irrigation Development Corporation
And Others

- Ms. Mrunal Andhare h/f Mr. A. B. Kale, Advocate for the Petitioner
- Mrs. K. R. Jamdhade, AGP for the Respondents/State
- Ms. A. J. Pawar h/f Mr. Y. M. Patil, Advocate for Respondent No. 3

CORAM : R.M. JOSHI, J

DATE : NOVEMBER 25, 2024

PER COURT :

1. This Petition takes exception to the judgment and award dated 09.04.2010 passed by the learned Labour Court, Jalgaon in Reference IDA No. 06/2006.

2. The parties are referred to as "workman" and "employer" for the sake of brevity.

3. Facts, which led to the filing of this Petition, can be narrated in brief as under:-

It is the case of the workman that he was employed as a 'majoor' with effect from 01.12.1982 at Suki Dam at Khiroda and initially he was getting Rs.

14.10 per day. He claims that he was appointed on vacant post and has served continuously and uninterruptedly for three years and completed more than 240 days in each year. He claims that employer orally terminated him from service with effect from 01.10.1985 without considering his service tenure. According to him, after his termination he personally met to the employer and requested for reinstatement in service but except giving oral assurances, employer has not reinstated him. Hence, on 06.09.2004 he raised disputed by giving demand notice to employer, but was not reinstated. The said termination is claimed to be done orally and without conducting any enquiry and in utter disregard of the mandatory provisions of the Industrial Disputes Act, 1947 (for short 'ID Act'). It is his further claim that since he has completed continuous service of 240 days, it was obligatory on the part of the employer to issue notice before terminating his services.

4. Though the services of the workman were said to have been terminated with effect from 01.10.1985, in the year 2004 he raised dispute with regard to the said

termination. Conciliation proceedings took place before the Deputy Commissioner of Labour, Nashik, who, under Section 10(1) of the ID Act referred the said dispute for adjudication to the Labour Court, Jalgaon.

5. In response to the statement of claim filed by the workman before the Labour Court, Employer filed written statement vide Exhibit C-6 and denied the contentions of workman in his statement of claim. It is the case of the Employer that workman had never worked with them and has not worked continuously and completed 240 days in every year. It is denied that the workman has worked for five years. Employer further denied that they have terminated workman from service with effect from 01.10.1985, as alleged. It is specifically denied by Employer that as the workman was never in their employment, the question of terminating workman does not arise.

6. Learned Labour Court framed issues vide Exhibit O-6 and the burden was placed on the workman to prove that his services have been illegally terminated by Employer orally with effect from 01.10.1985. Workman, in support of his claim, adduced his evidence

by filing affidavit at Exh.U-5 as well as relied upon documents at Exh.U-6. Employer, in support of their case, cross-examined workman. The learned Labour Court, after hearing arguments of both sides, rejected the reference.

7. Learned Counsel for the Workman submits that the workman has worked with the employer since 1982 till 1985. She further submits that workman has specifically pleaded in the statement of claim about he approaching the employer and the officers from time to time after termination of his services. It is her submission that learned Labour Court has erred in not considering these facts so also evidence led by the workman and has drawn erroneous findings about workman failed to prove he has completed more than 240 days in every year. She further submits that learned Labour Court also failed to consider the certificate at Exh. U-6 issued by Employer in respect of work done by workman from 01.12.1982 to 30.09.1985.

8. Learned AGP and learned Counsel for Respondents/Employer supported the impugned judgment. It is their submission that though there is no specific

provision creating period of limitation for the purpose of raising industrial dispute, such dispute after lapse of certain time becomes *non est* and, therefore, learned Labour Court has rightly rejected the reference.

9. Since it is the case of the workman that he terminated orally and illegally with effect from 01.10.1985, the initial burden is on him to prove the same. It is only after the workman succeeds in discharging initial burden on him, the onus would shift upon the employer to prove otherwise.

10. In this regard if evidence on record is considered, the same shows that the workman though claims to have terminated with effect from 01.10.1985, there is no communication for a long period for about 18 years in this regard. It is only after this period is over, workman sent notice to the employer. Now, question arises as to whether there existed any 'industrial dispute' at that time to make reference thereof to the Labour Court.

11. In this regard, a reference can be made to the judgment of the Hon'ble Supreme Court in case of

Prabhakar vs. Joint Director Sericulture Department and others, AIR 2016 SC 2984 wherein it is held thus:

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 ha 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 discloses 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 amicable. 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 the workman accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending for number of years and was ultimately dismissed on the ground that Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of

termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted.

12. The above judgment as well as other judgments of the Hon'ble Supreme Court clearly indicate that though there is no specific period of limitation prescribed for raising an industrial dispute, such dispute must exist at the time of reference and it should be raised in reasonable time. It is held that where a dispute is stale, it does not remain a dispute between the parties in order to refer the same to the Labour Court/Industrial Tribunal. The pre-condition for entertaining any belatedly raised dispute is that if the workman is able to give satisfactory explanation for this delay and also demonstrates that the industrial dispute is still alive.

13. In the instant case, there is a dispute raised after a lapse of period of over 18 years. The workman was not able to satisfactory explain the delay caused

in raising the dispute. By lapse of enormously long period of time, the dispute between the workman and employer did not exist. In such circumstances, this Court finds no reason to cause interference in the impugned order. In the result, Petition stands dismissed.

(R.M. JOSHI, J.)