



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9551 OF 2017

Chief Executive Officer
Zilla Parishad, Ahmednagar .. Petitioner

versus

Uttam Devra Avchar .. Respondent

Mr. Pratik P. Kothari along with Ms. Nandini Chittal, Advocates for
the Petitioner.

Mr. P. V. Barde, Advocate for the Respondent.

WITH
WRIT PETITION NO. 12520 OF 2024

Uttam Deoram Avchar .. Petitioner

versus

Zilla Parishad, Ahmednagar .. Respondent

Mr. P. V. Barde, Advocate for the Petitioner.

Mr. Pratik P. Kothari along with Ms. Nandini Chittal, Advocates for
the Petitioner.

CORAM : R. M. JOSHI, J.

DATE : 18th NOVEMBER, 2024.

ORDER :

1. At the request of learned counsel for the Petitioner, Writ
Petition No. 12520/2024 is taken on board.

2. Essentially, Petitioner-Zilla Parishad In Writ Petition No. 9551/2017 takes exception to the impugned award passed in reference IDA No. 29/2005 passed by Labour Court, Ahmednagar, on the ground that the Labour Court has entertained a stale claim raised by second party workman. Petitioner, therefore, seeks setting aside of award dated 11.08.2016 passed therein, whereby the Petitioner was directed to pay compensation of Rs. 2,00,000/- in lieu of reinstatement and backwages.

3. The parties are referred to as Zilla Parishad and Workman for the sake of brevity.

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

It is the case of the workman that he was working with Zilla Parishad as an unskilled labour with last drawn wages of Rs. 10/- per day. He rendered continuous service with Zilla Parishad from 1982 to 1987. It is alleged by the workman that in order to deprive him from benefit of permanency, he was given break in service. He claims to have been terminated orally and without conducting any enquiry and in utter disregard of the mandatory

provisions of the Industrial Disputes Act, 1947 (for short "ID Act") with effect from 01.02.1988. Thus, with these pleadings, a declaration was sought that order dated 01.02.1988 terminating his services being illegal, is liable to be quashed and set aside. He also sought reinstatement in service with continuity and full backwages.

5. Though the services of the workman were said to have been terminated with effect from 01.02.1988, in the year 2004 he raised dispute with regard to said termination. Conciliation proceedings took place before the Deputy Commissioner of Labour, Nasik, who, under Section 10(1)(c) of ID Act referred the said dispute for adjudication to Labour Court, Ahmednagar.

6. In response to the statement of claim filed by the workman before the Labour Court, Petitioner/Zilla Parishad filed written statement vide Exhibit C-7. It is the case of the Zilla Parishad that the workman has raised present dispute after 18 years and it has become a stale claim. It is denied that the workman had rendered continuous service as claimed or that his services are illegally terminated. It is also denied that employees junior to the workman have been retained. It is a specific case of the Zilla

Parishad that the workman had worked for about 18 days in October 1987, 18 days in November 1976 and 14 days in June 1988. Thus, in short, according to Zilla Parishad that the workman had not performed duties or had not rendered continuous service of 240 days in one calendar year. With these submissions, the reference is sought to be dismissed.

7. 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 Zilla Parishad orally with effect from 01.02.1988. Workman, in support of his claim, examined himself at Exhibit U-13 as well as examined one witness Appa Bedre at Exhibit U-25. Zilla Parishad did not adduce any evidence. The learned Labour Court, after hearing arguments of learned counsel for the workman, had passed the impugned award whereby instead of reinstating the workman in service, compensation of Rs. 2,00,000/- was directed to be paid in lieu of re-instatement and backwages.

8. Learned counsel for Zilla Parishad raised initial objection with regard to the entertainment of reference by the Labour Court in respect of belated and stale claim. It is his submission that though

under Section 10(1) of ID Act, there is no limitation prescribed for raising a dispute before Labour Court/Industrial Tribunal, in view of the settled position of law by the Hon'ble Supreme Court in various judgments, entertainment of such stale claim is not permissible in law. In support of his submission, he placed reliance on following judgments :-

- (i) Prabhakar vs. Joint Director Sericulture Department and others
AIR 2016 SC 2984
- (ii) The Divisional Controller, M.S.R.T.C. Central Bus Depot, Kolhapur vs. Subhash Mahadev Desai
2024(2) BomCR 809
- (iii) Kuldeep Singh vs. G. M. Instrument Design Development and Facilities Centre and others
AIR 2011SC 455
- (iv) Khambete Kothari Cans and Allied Products Pvt. Ltd. Vs State of Maharashtra & others
MANU/MH/3369/2022

9. The sum and substance of learned counsel for Zilla Parishad is 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, it was obligatory on the part of the Labour Court to reject the reference on this count alone. On the point of explanation for not raising the dispute in time, it is his contention that though it is claimed by the

workman in his statement of claim that after termination of his service he approached the Zilla Parishad and the officers from time to time had assured him of relief and for this reason delay is caused in referring the dispute. He drew attention of the Court to the cross-examination of the workman wherein he has candidly admitted that the application dated 23.09.2004 was the first approach by him to Zilla Parishad. On the basis of this admission, it is submitted that the workman has failed to explain the delay caused in raising reference and as such the reference deserves to be rejected. It is his further grievance that the workman was having knowledge about the relevant documents in the office of Zilla Parishad having destroyed, and as such reference has been raised belated so that Zilla Parishad would not be in a position to substantiate its contention for availability of relevant documents. Amongst other contentions, it is argued that initial burden is on workman to prove that he had worked for 240 days in an year and that there is termination of his services without due process of law. Referring to evidence of workman it is submitted that he failed to discharge initial burden to prove his case and hence non examination of any witness by Zilla Parishad has no consequence. To support his argument he relied

upon judgment on Hon'ble Supreme Court in case of Chief Engineer, Ranjit Sagar Dam and others vs. Sham Lal, **AIR 2006 SC 2682**.

10. On the other hand, learned counsel for the workman supported the impugned award by contending that the workman has specifically pleaded in the statement of claim about he approaching to Zilla Parishad and the officers from time to time after termination of his services. With regard to the admission in cross-examination about he approaching Zilla Parishad for first time in 2004, as pointed out by learned counsel for Zilla Parishad, it is his submission that the said admission is not in respect of he approaching to Zilla Parishad, but it is in respect of the contention raised in the application dated 23.09.2004. He placed reliance on judgment of the coordinate Bench of this Court in case of Mahanagar Telephone Nigam Ltd. vs. Deepak Sadashiv Shrikande and others, **2010(6) Bom.C.R. 152** wherein it is held that the Tribunal or the Labour Court cannot strike down a reference on the ground of delay. It is his submission that the employer makes a grievance that the workman has made a stale claim then the employer can challenge the reference by way of writ petition and contend that since the claim is belated, there was no industrial dispute. In response to the said submission,

learned counsel for Zilla Parishad has drawn attention of the Court to paragraph No. 40 of the judgment of the Hon'ble Supreme Court in case of Prabhakar (supra).

11. Learned counsel for workman on the point of burden of proof has submitted that the burden on the workman to prove his case is much lighter than the burden on the employer as all the documents are with the employer. It is his submission that the workman, by examining himself and also leading evidence of one witness, has proved that he has continuously worked with Zilla Parishad since 1982 till his illegal termination from service. It is submitted that once the workman has proved his case, the onus shifts on the employer to prove contrary. As in this case, the employer has not adduced any evidence, there is no reason for causing interference in the impugned award. He also placed reliance on judgment of Hon'ble Supreme Court in case of Sapan Kumar Pandit vs. U. P. State Electricity Board, **2001 AIR(SC) 2562** and Karan Singh vs. M/s Executive Engineer Haryana State Marketing Board, **2007 AIR SCW 6293**.

12. Before dealing with the factual matrix, it would be relevant to take note of the judgment of Hon'ble Supreme Court on the point of Section 10(1) of ID Act and stale claim. It would be apposite to refer to observations made by Hon'ble Supreme Court in case of Prabhakar (supra) which read 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 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 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 Management 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.

Similarly, in other judgments cited supra, the Hon'ble Supreme Court has clearly taken a view 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 precondition for entertaining any belatedly raised dispute is that if the workman is able to give satisfactory explanation for these laches and delay and demonstrates that the dispute is still alive, delay would not come in the way for the reason that the law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive as it is treated dead, then it would be non-existing dispute which cannot be referred.

13. Reverting back to the facts of the present case, there is no denial of the fact that the workman claims himself to have been terminated from service with effect from 01.02.1988. In the statement of claim, he has averred about he having approached the Zilla Parishad from time to time and was assured of re-instatement by authorities, but since he was not reinstated, on 23.09.2004 and 08.10.2004 he addressed written communication in this regard. Thus, it is a case of the workman that since false promises were given to him, delay has been caused in making reference. It is also sought to be claimed that some of the workmen who were junior to the

workman were taken into service and therefore, the industrial dispute exists.

14. Though it is so claimed in the statement of claim, the cross-examination of workman clearly indicates that he has given candid admission to the effect that the communication of September 2004 was first approach of him to Zilla Parishad. Now, by way of argument this admission is sought to be explained, but evidence on record does not indicate so. Once it is so admitted, the contention of the workman in the statement of claim cannot be said to have been proved. His admission also goes to show that the workman has approached to the Zilla Parishad in respect of re-instatement after a period of 18 years from his alleged termination. Similarly, his contention with regard to the re-instatement of the other junior workmen is also not supported by any evidence on record. In any case, his oral evidence does not prove the same. In this regard, it would be material to note that the witness examined by the workman does not have any knowledge in respect of any relevant facts of the case. Thus, it can be safely held that the workman has raised the dispute after a period of 18 years and in absence of any explanation for not raising the said dispute within reasonable time and also on

failure on the part of the workman to prove that junior to him were reinstated, it has to be held that there does not exist any dispute between the workman and the employer, at the time of its reference to the Labour Court.

15. Though the Coordinate Bench of this Court in case of Mahanagar Telephone Nigam (supra) has observed that a Tribunal or the Labour Court cannot strike down the reference on the ground that the claim is stale in nature, the Hon'ble Supreme Court, however, in case of Prabhakar (supra) has held that "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."

16. One more aspect which deserves consideration in the present case is the prejudice that is caused to the employer by belatedly raising of industrial dispute by the workman. The law on the point of burden of proof is fairly settled to say that the initial burden would be on workman to prove that his termination is illegal.

Reference can be made to judgment in case of Chief Employer (supra) wherein Hon'ble Supreme Court in paragraph No. 7 has held thus :-

"7. In R.M. Yellatti v. The Asst. Executive Engineer, MANU/SC/1607/2005 : (2006) ILLJ 442 SC, the decisions referred to above were noted and it was held as follows :-

Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment of termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the

claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon the fact of each case.

The above position was again reiterated in a recent judgment in ONGC Ltd. And Anr. v. Shyamal Chandra Bhowmik MANU/SC/2039/2005 : (2006) ILLJ 419 SC. So far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.

It is only when the said initial burden is discharged by workman, onus shifts upon the employer to prove otherwise. Here in this case, it is admitted by the workman in his cross-examination that he was aware about the record of Zilla Parishad being destroyed as burnt prior to raising of the dispute. In such circumstances, this

Court finds reason to accept the contention of learned counsel for the Zilla Parishad that only after knowing the fact that the documents are not available now, a reference is raised in order to deny Zilla Parishad its right to defence. Thus, in any case, prejudice would cause to the employer to prove otherwise for want of availability of documents, since the dispute is raised belatedly.

17. The sum and substance of the above discussion is that the workman has failed to give any explanation for not raising the industrial dispute within reasonable time and dispute raised for the first time after about 18 years of his alleged termination is undoubtedly a stale claim and it has to be held that no industrial dispute exists at said time. It was, therefore, for the Labour Court to hold that there exists no industrial dispute and the relief ought to have been denied to the workman.

18. Having regard to the above discussion, the petition deserves to be allowed and it is accordingly allowed in terms of prayer clause 'B'. Reference IDA No. 29/2005 stands dismissed. No order as to costs.

19. In view of reasons recorded in Writ Petition No. 9551/2017, Writ Petition No. 12520/2024 stands dismissed.

(R. M. JOSHI)
Judge

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