

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6241 OF 2017

M/s. Bhor Industries Ltd.

Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Vitthal Sahebrao Kumbhar
A.P. Vyaghali Aasale
Taluka – Wai, Dist. Satara.

2. State of Maharashtra.

3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005.

... Respondents.

**WITH
WRIT PETITION NO. 6237 OF 2017**

M/s. Bhor Industries Ltd.

Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Sachin Vilas Jadhav.
A.P. Parale, Karad
Dist: Satara.

2. State of Maharashtra.

3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005.

... Respondents.

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**WITH
WRIT PETITION NO. 7183 OF 2017**

M/s. Bhor Industries Ltd.

Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Shankar Raghunath Jadhav.
A.P. Vyaghali Aasale
Taluka – Wai, Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6243 OF 2017**

M/s. Bhor Industries Ltd.

Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Mansingh Sajjerao Nikam.
A.P. Apshinge, Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6248 OF 2017**

M/s. Bhor Industries Ltd.

Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Maruti Ramchandra Patil.
A.P. Ambi Khurd, Shirali,
Dist. Sangli.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6251 OF 2017**

M/s. Bhor Industries Ltd.

Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Deepak Dnyanu Kadam.
A.P. Pelani, Assangaon,
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6236 OF 2017**

M/s. Bhor Industries Ltd.

Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Ramchandra Raghunath Powar.
A.P. Aavali, Taluka, Panhala
Dist. Kolhapur.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6239 OF 2017**

M/s. Bhor Industries Ltd.

Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Mansur Aadam Mulla.
A.P. Fikirwadi, Shirala,
Dist. Sangli.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6245 OF 2017**

M/s. Bhor Industries Ltd.

Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Bhimrao Shyamrao Gayakwad.
A.P. Phupere, Taluka Shiral,
Dist. Sangli.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 5999 OF 2017**

M/s. Bhor Industries Ltd.

Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Bhauso Baburao Kadam.
A.P. Bhramhanwadi – Gojegao
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6238 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Rajaram Namdev Kale.
A.P. Aavali, Panhala,
Dist. Kolhapur
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6008 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Santosh Sadashiv Bhosale.
A.P. Parale, Taluka Karad,
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 7184 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Ravindra Dyneshwar Dhavale.
A.P. Pawarwadi,
Taluka – Javali, Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 5998 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Ravindra Yadu Javal.
A.P. Javalwadi, Taluka -Javali
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6007 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Jagdish Balu Mane.
A.P. Ambavade, Satara
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 7187 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Ramesh Yashwant Chavan.
A.P. Nivadi Rajewadi,
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6256 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Dilip Maruti Dhondwad,
A.P. Dhondewadi Tasgao,
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6253 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Vinayak Ramchandra Nikam.
A.P. Perle, Taluka – Karad,
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 7192 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Tukaram Genu Dhanawade.
A.P. Koparkhairane,
Dist. Navi Mumbai.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6250 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Nandakumar Kurje.
A.P. Yadogopal Peth,
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6244 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Nagnath Vasant Nikam.
A.P. Apshinge, Satara, Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 7182 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Ganesh Tukaram Ghone.
A.P.176, A Sadar Bazar,
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6247 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Netaji Ramchandra Jadhav.
A.P. Rajewadi, Talukar – Nigadi
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6257 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Sunil Bikku Kharade.
A.P. Saaygaon, Javli,
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 7190 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Pandurang Janardhan Chavan.
A.P. Aavali, Panhala,
Dist. Kolhapur.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 7191 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Vikas Pandurang Dhaije.
A.P. Visava Naka, Karad,
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 7188 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Naresh Pandurang Jadhav.
A.P. Pawarwadi, Saaygaon, Javali,
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 7186 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Vikas Gaurinath Sawant.
A.P.Chkhalwadi, Shirala,
Dist. Sangli.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 4676 OF 2018**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Chandrakant Shankar Gaikwad.
A.P.Fufere, Shirala, Dist. Sangli.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6249 OF 2017**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Rajendra Ankush Bhosale.
A.P. Parale, Karad,
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 6255 OF 2017**

M/s. Bhor Industries Ltd.

Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Namdev Jagannath Kenjale.
A.P.Kenjal-Moravale
Taluka – Javali, Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 4895 OF 2017**

M/s. Bhor Industries Ltd.

Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Rajendra Shivaji Badak.
A.P.Nere, Bhor, Dist. Pune.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 7194 OF 2017**

M/s. Bhor Industries Ltd.

Having its office at Plot No. J-14,

New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Machindra Dhanaji Jadhav.
A.P. Perle, Taluka – Karad,
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 7193 OF 2017**

M/s. Bhor Industries Ltd.

Having its office at Plot No. J-14,

New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Mohan Sampat Mane.
A.P. Bramhanwadi, Gojegaon,
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,

Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 4690 OF 2018**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Anand Chandrakant Shah.
A.P. Vyankatpura Peth,
Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 4689 OF 2018**

M/s. Bhor Industries Ltd.
Having its office at Plot No. J-14,
New MIDC, Kodlik, Satara. ... Petitioner

V/s.

1. Jitendra Nivruti Sutar.
A.P. Nagothane, Dist. Satara.
2. State of Maharashtra.
3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005. ... Respondents.

**WITH
WRIT PETITION NO. 4692 OF 2018**

M/s. Bhor Industries Ltd.

Having its office at Plot No. J-14,

New MIDC, Kodlik, Satara.

... Petitioner

V/s.

1. Narayan Dagadu Lohar(Salunkhe).
A.P. Pareshwar Nagar,
Taluka – Borgaon, Dist. Satara.

2. State of Maharashtra.

3. Addl. Commissioner of Labour
having office at Shivaji Nagar,
Mumbai Pune Rd., Pune 411005.

... Respondents.

Mr. Kiran S. Bapat, Senior Advocate a/w. Mr. T.Y. Yadav a/w. Mr. Omkar Chavan i/b. M/s. Desai & Desai Associates for the Petitioner in all Writ Petitions.

Mr. Kartikeya Bahadur i/b. Kaustubh Gidh, Advocate for Respondent No. 1 in WP/7191/2017, WP/4676/2018, WP/6247/2017, WP/4692/2017, WP/7187/2017, WP/7182/2017, WP/6256/2017, WP/6251/2017, WP/7193/2017, WP/6253/2017, WP/7188/2017, WP/7186/2017, WP/6239/2017, WP/6237/2017, WP/7194/2017, WP/6236/2017, WP/6008/2017, WP/6257/2017, WP/7190/2017, WP/7184/2017, WP/6243/2017, WP/6244/2017, WP/6238/2017, WP/5998/2017, WP/6241/2017, WP/6248/2017, WP/7192/2017, WP/4895/2017, WP/4690/2018, WP/6255/2017, WP/6007/2017, WP/4689/2018, WP/7183/2017, WP/6245/2017, WP/5999/2017, WP/6250/2017, WP/6249/2017.

Mr. B.V. Samant, Additional G.P. a/w. Mr. Abhijeet Naik, AGP for State-Respondent Nos. 2 & 3 in WP/4692/2018, WP/6008/2017,

WP/4690/2018, WP/6236/2017, WP/6239/2017, WP/5998/2017, WP/7187/2017, WP/7193/2017, WP/7193/2017, WP/6241/2017, WP/6256/2017, WP/6237/2017.

Mr. S.H. Kankal, AGP for State -Respondent Nos. 2 & 3 in WP/5999/2017, WP/6253/2017, WP/6238/2017, WP/4895/2017, WP/7184/2017, WP/7186/2017, WP/6244/2017, WP/6257/2017, WP/6247/2017, WP/7194/2017, WP/7183/2017, WP/6248/2017, WP/6250/2017, WP/7191/2017, WP/7192/2017.

Mr. Vikas M. Mali, AGP for State-Respondent Nos. 2 & 3 in WP/7190/2017, WP/6249/2017, WP/4689/2017, WP/6243/2017, WP/7188/2017.

Ms. R.A. Salunkhe, AGP for State-Respondent Nos. 2 & 3 in WP/6255/2017, WP/6245/2017.

Mr. Siddhesh B. Kalel, AGP for State-Respondent Nos. 2 & 3 in WP/6251/2017, WP/7182/2017, WP/4676/2017, WP/6007/2017.

Ms. Pooja Joshi Deshpande, AGP for State-Respondent Nos. 2 & 3 in WP/6243/2017.

Mr. K.S. Thorat, "B" Panel Advocate for State-Respondent Nos. 2 & 3 in WP/6253/2017.

**CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, J.J.**

DATE: 18 July 2024.

JUDGMENT (*Per Nitin Jamdar, J*) :

Rule. Rule made returnable forthwith. Respondents waive service.

2. The Respondents worked at the Petitioner's manufacturing

plant. Respondents services were terminated. The Respondents raised a demand that they were illegally terminated by the Petitioner, which culminated in an industrial Reference made by the appropriate Government under the Industrial Disputes Act, 1947 to the Labour Court. The Petitioner has challenged the order of Reference on the ground that the claims of Respondents were belated and extinguished and no industrial dispute was in existence when the Reference was made.

3. The Petitioner had a manufacturing plant at Kodoli, Satara. The Petitioner closed its operations and retrenched/terminated the services of the Respondents—Workmen in June 2001. A notice was issued on 28 June 2001 by the Petitioner, addressed to all the workers, stating that there was insufficient work at the plant and that production would be closed for some days. The notice further said that the company would be closed from 11 July 2001 due to the lack of work. It was stated that workers would be given first preference whenever work would be available to the company. If no work was available, adequate compensation would be paid.

4. Some workers (other than the Respondents) challenged the Petitioner's action by filing complaints of unfair labour practices before the Industrial Court, Satara. The Industrial Court, by judgment dated 1 November 2002, allowed the complaints and held that the Petitioner had engaged in unfair labour practices under

items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Thereafter, these workers settled the dispute with the Petitioner.

5. In the year 2015, the Petitioner applied for No Objection to the Assistant Labour Commissioner for the transfer of the land and building of the plant to a third party. The Respondents—Workers raised a demand against the Petitioner on 29 May 2015 regarding their retrenchment/termination in June 2001. The Petitioner replied on 23 June 2015, contending that the Respondents were retrenched after following the due process of law and after such a delay no dispute existed.

6. Respondent No.3, the Additional Commissioner of Labour, admitted the demand in conciliation. The Conciliation Officer, on 30 August 2016, gave a failure report. Thereafter, on 18 November 2016, the Additional Commissioner of Labour, by exercising power under Section 10 of the Industrial Disputes Act, 1947, referred the matter for adjudication to the Labour Court, Satara. References were then given individual numbers.

7. While the proceedings in the Labour Court under Reference were going on, the Petitioner approached this Court with these petitions with a prayer to quash and set aside the order of Reference made by Respondent No. 3 on 18 November 2016. Replies were

filed by the Respondents in some of the Writ Petitions, which were adopted in other Writ Petitions. A rejoinder is filed by the Petitioner.

8. We have heard Mr. Kiran Bapat, the learned Senior Advocate for the Petitioners, Mr. Kaustubh Gidh for Respondents-workers and the learned Additional/Assistant Government Pleader appearing for the State.

9. The Petitioner's contentions in short, are as follows. There is a delay in raising the dispute by the Respondents. When the Reference was made, an industrial dispute between the parties did not exist. If the industrial dispute does not exist, then the Reference cannot be made. The appropriate Government—Respondent No. 3 did not record its satisfaction regarding the existence of an industrial dispute, which is a condition precedent for the order of Reference. The dispute was raised after 14 years, and the Respondents acquiesced to the act of termination and had accepted their termination. Since there were delay and laches, the Reference could not have been made. It is not necessary for the State Government to make a reference whenever there is a demand and failure. The legislature has inserted Section 2-A in the Industrial Disputes Act, 1947 (for short 'Act of 1947'), giving workmen the right to approach the Labour Court, and after an application is made to the Conciliation Officer, there is a time limit of 3 years under Section 2-A(3), which indicates the legislative intent for making references speedily. In the present

cases, a stale and non-existent dispute has been referred for adjudication to the Industrial Court and the Labour Court. Some of the workers had approached the Labour Court under the MRTU and PULP Act, and, therefore, in view of the bar of Section 59 of this Act, the Reference could not have been entertained. The order of Reference should be quashed and set aside.

10. The Respondent—Workmen have defended the Reference contending as follows. It is not necessary for the appropriate Government to give detailed reasons and pass orders akin to a judgment when making a Reference. Mere delay does not mean that industrial dispute has ceased to exist. Each case should be decided on its own facts, and the facts of the present case such as content of the notice and transfer of land will show that the dispute existed when the Reference was made. Petitioner's arguments can be advanced before the Labour Court, and it is for the Labour Court to decide whether any order should be passed in the proceedings upon the Reference. Even the aspect of delay can be considered by the Labour Court. If the order of Reference is quashed, the rights of the Respondents will be completely foreclosed without hearing. No prejudice is demonstrated and would be caused to the Petitioner as all its contentions are being kept open. The proceedings before the Labour Court be allowed to continue to be taken to their logical end.

11. We have considered the rival contentions.

12. Under the Act of 1947, workers who have been retrenched can raise an industrial dispute and approach the Conciliation Officer to attempt an amicable settlement. Section 12 of the Act of 1947 provides for the Conciliation Officer to make efforts for the parties to come to a fair and amicable settlement. If no settlement is reached during conciliation, the Conciliation Officer sends a failure report to the appropriate Government. Upon receiving this report, the appropriate Government can refer the industrial dispute under Section 10(1) of the Act to a Labour Court or Tribunal for adjudication. The relevant part of Section 10 reads thus:

“10. Reference of disputes to Boards, Courts or Tribunals.

—(1) 1 Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,—

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):]

.....”

Once the Reference is made, the labour court is required to adjudicate the dispute and make an award. The procedure for proceedings before the labour court includes issuing notices to the parties involved, hearing evidence, and deciding on the dispute. After adjudication, the labour court will pass an award binding on the parties involved. The phrase 'at any time' occurring in the Section 10(1) is important.

13. Section 10 which is reproduced would show that there is no limitation period in view of the phrase 'at any time'. The scope of the power of the appropriate Government while making a reference when there is a delay was the subject matter in various judicial pronouncements. The Petitioners have relied on the decisions of the Hon'ble Supreme Court in the case of *Prabhakar v/s. Joint Director, Sericulture Department & anr.*¹, *Nedungadi Bank Ltd. v/s. K.P. Madhavankutty & others*² and *The Joint Director Sericulture Department v/s. Prabhakar*³ of Karnataka High Court. Respondents have relied upon the decisions of the Supreme Court in the case of *Ajaib Singh v/s. Sirhind Cooperative Marketing Cum-Processing Service Society Limited and Anr.*⁴, *Kuldeep Singh v/s. General Manager, Instrument Design Development and Facilities Center and Anr.*⁵, *Sapan Kumar Pandit vs. U.P. State Electricity Board and Ors.*⁶,

1 (2015) 15 SCC

2 (2000) 2 Supreme Court Cases 455

3 2011 SCC OnLine Kar 4023

4 (1999) 6 SCC 82

5 (2010) 14 SCC 176

6 (2001) 6 SCC 222

Raghubir Singh v/s. General Manager, Haryana Roadways, Hissar⁷ and State of Uttar Pradesh and Ors. v/s. Arvind Kumar Srivastava and others⁸.

14. Our respectful summary of the law laid down by the Hon'ble Supreme Court in the above decisions, which will guide us in deciding the controversy at hand, is as follows. The satisfaction of the appropriate Government as to the existence of an industrial dispute is a condition precedent to the order of Reference. The words 'at any time' used in section 10 of the Act of 1947 show that there is no period of limitation in making an order of Reference. At the same time, the appropriate Government has to ascertain whether the dispute still exists and has not become a stale claim. The order of Reference cannot be made mechanically without forming an opinion. The adequacy or sufficiency of the material on which the opinion is formed is beyond judicial scrutiny. The policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed unless there is a satisfactory explanation for the delay. Thus, notwithstanding the fact that the law of limitation does not apply, even if a considerable period has lapsed and there are laches and delays, the industrial dispute may not cease to exist. However, if the worker is able to give a satisfactory explanation and demonstrates that the dispute is still alive, the delay would not be material because the law of limitation has no application. If the

⁷ (2014) 10 SCC 301

⁸ (2015) 1 SCC 347

dispute existed on the day when the Reference was made by the Government, it is irrelevant to the duration since the commencement of the dispute. The real test is whether the industrial dispute existed on the date of Reference for adjudication. The decision of the appropriate Government in this regard cannot be questioned based on the perception of one party as to whether any dispute existed or not. That decision-making is left to the appropriate Government. If the appropriate Government decides to make the Reference, there is a presumption that, in the opinion of the Government, the dispute existed. The function of the appropriate Government while dealing with the question of making a reference to an industrial dispute is an administrative function and not a judicial or quasi-judicial function. When making a reference, the appropriate Government is not under obligation to write a reasoned order but must have material before making a decision. The appropriate Government, before taking a decision on the question of making a reference of the industrial dispute, has to form a definite opinion on whether or not such a dispute exists or is apprehended. Whether or not a dispute is alive or has become stale or non-existent would always depend on the facts of each case and no rule of universal application can be laid down for the same. Where the Reference was made after a lapse of a considerable period, the Labour Court/Tribunal can mould the relief by either granting reinstatement but denying wages, full or partially, or else granting compensation denying reinstatement.

15. The object of the Act of 1947 is of ensuring justice for both employers and employees, and advancing industrial progress. It is a legislation that provides and regulates the service conditions of the workers. The provisions of the Act and the fact situation will have to be interpreted in a manner that advances the object of the legislature which is the settlement of industrial disputes.

16. Keeping these principles laid down by the Hon'ble Supreme Court and the legislative intent in mind, we turn now to the facts of the present case.

17. This enquiry is not on the merits of the Respondent's case akin to grant of relief but whether, on the face of it, can it be held that an industrial dispute was not in existence when the Reference was made. It is not in dispute that the relationship of employer and worker existed between the parties and the subject matter of dispute is an industrial dispute.

18. The Respondents – Workmen have filed an affidavit in reply and also have placed their statement in the Labour Court on record. They have also placed on record the judgment of the Industrial Court in the complaint filed by 21 workmen dated 1 November 2002, where certain basic facts regarding the controversy can be seen.

19. Based on the material on record, the case of the Respondents – Workers, as contended, can be understood as follows. The Petitioner

started manufacturing activities in the year 1987 in the name of Bhor Industries Ltd. The manufacturing and production activities were carried out at the plant situated at Satara. The factory at Satara produced PVC film of different sizes and colours. It also produced insulation tapes. From the year 1995 till 30 June 2001, the functioning of the factory was smooth and the company earned profits. Around 210 workers were working at Satara, and almost 600 were working daily with Petitioner company. Under the pretext of the non-availability of work, the Petitioner diverted work from Satara to Bhor and tried to shift machinery from Satara to Bhor. Even though some of the workmen had become permanent, they were sought to be retrenched. In the order of 1 November 2002, the Industrial Court considered whether the Industries at Bhor and Satara had functional integrity and noted that both had functional integrity and one person owned all branches. While closing the Satara branch, necessary permissions from the Government were not obtained, and the industry was closed by committing a breach of Section 25-O and 25-N of the Industrial Disputes Act, which was illegal. The Notice issued by the Petitioner held out a promise to the Respondents that when work is available, they will be given preference. They believed in this promise, and when they realised that the plant would never be revived as no objection is being sought for transfer of the plant in the year 2015, they sought the industrial Reference. This is, in short, the case of the Respondent – Workers.

20. We have considered this case put by the Respondents-Workers.

The Petitioner had closed the plant on the ground that there was not enough work available, and the notice suggested that when the work was available, the same would be provided. The notice put up by the Petitioner in June 2001 indicated a promise that there is a likelihood that the plant will commence. This indicated promise was not time-bound. It did not say that if there is no work provided within a particular time, the compensation would be paid. Some of the workers, the Respondents chose to wait till the plant restarted. Their case is that it was when they realised that the plant would never restart as the application was being made for No Objection to transfer the plant, they moved for the Reference, raising the dispute. Therefore, the contention of the Respondents that they believed that the plant might restart, cannot be held to be absurd. Whether it should be believed and Respondents be given relief is for the Labour Court to decide. Though it is correct that when the order of Reference is questioned, the workers should demonstrate the existence of an industrial dispute. However, this burden is not akin to proving the case before the Labour Court as it is for the final relief.

21. The judicial pronouncements cited by the Petitioners *Supra* arose in fact situation of a terminations of workers who had sought to agitate the claim for reinstatement after a long period of time. In the case in hand the facts are different. The nature of the notice issued by the Petitioner and the subsequent action of the Petitioner of applying for No Objection, stand on a different footing. The law is settled that

there is no limitation provided under the Act of 1946 for making a Reference. Law is also settled that mere delay does not mean the industrial dispute is extinguished. The scrutiny of the Court will have to be regarding the existence of an industrial dispute when the Reference is made. Enquiry as to whether the existence of Reference is different from the enquiry whether the outcome of the Reference would be in favour of the applicant.

22. Therefore, the situation at hand indicates that an industrial dispute existed when the reference was made by Respondent No.3 under Section 2-A of the Industrial Disputes Act. No doubt, the Petitioner has denied the assertions and contentions of the Respondents on the merits of the dispute. But once we find that the industrial dispute existed, we cannot substitute ourselves in the place of the Labour Court to go deeper into the controversy to give definitive findings on the merits of the same, and as if to decide the Reference itself.

23. The Respondents also point out that Petitioner has not shown any prejudice, such as loss of record, etc., to defend the Reference. Since the Petitioner would get an opportunity to deal with the Reference on merits, no prejudice would be caused.

24. All the contentions of the Petitioner can be urged before the Labour Court such as bar of Section 59 of the Maharashtra

Recognition of Trade Union and Prevention of Unfair Labour Practices Act; no relief should be granted to the Respondents in view of the delay; no monetary benefit should be given; it is not practicable to grant any relief; and that Respondents have acquiesced to the termination. Similarly, the Respondents can argue their case that the termination was illegal and the delay does not mean that the Respondents are acquiesced to the termination. The point to underscore is that all the arguments of both parties on merits will have to be considered by the Labour Court. However, if the order of Reference is set aside at this stage, the proceedings before the Labour Court would be terminated without any adjudication on merits. Therefore, in writ jurisdiction, we will have to be circumspect before setting aside the order of Reference.

25. As the stale and acquiesced claims, if permitted to be reopened, will disturb the industrial peace, it is equally true that not referring of legitimately existing industrial disputes on the ground of delay can also result in breach of industrial peace. To achieve this balance, the Court will have to see the totality of the circumstances peculiar to each of the cases. Having considered the totality of the facts and circumstances, we are of the opinion that an industrial dispute was in existence between the parties when the Reference was made by Respondent No.3 under the Act of 1947.

26. Thus the order of Respondent No.3 dated 8 November 2016, making a Reference under the Industrial Disputes Act, 1947 to the

Labour Court, Satara, calls for no interference. The proceedings pending before the Labour Court, Satara, will be decided on their own merits.

27. Rule stands discharged. Writ Petitions are dismissed. No order as to costs.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)