

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5980 OF 2019
WITH
INTERIM APPLICATION NO. 19213 OF 2022**

The Divisional Controller,
M.S.R.T.C. Central Bus Depot,
Kolhapur.

...Petitioner

V/s.

Subhash Mahadev Desai
At Post: Gargoti (Sonalee),
Tal: Bhudargad, Kolhapur.

...Respondent

Mr. Yashodeep Deshmukh with Ms. Vaidehi Pradeep and Mr. Amey Tawde, for Petitioner.
Mr. Kedar P. Lad, for Respondent.

CORAM : SANDEEP V. MARNE, J.
Judgment Resd. On : 6 February 2024.
Judgment Pron. On : 13 February 2024.

JUDGMENT :

1. Maharashtra State Road Transport Corporation has filed this petition challenging the Award dated 26 March 2018 passed by the Presiding Officer, Labour Court-I, Kolhapur in Reference (IDA) No. 65 of 2014. By the impugned Award, the Labour Court has partly answered the Reference in affirmative and has set aside the Order dated 16 March 1998 dismissing the Respondent from service. The Labour Court has directed the Petitioner to reinstate the Respondent in service alongwith continuity and consequential benefits. The Labour Court has

further directed payment of 30% backwages to the Respondent from 16 March 1998 till the date of reinstatement.

2. The Respondent was employed as a Bus Driver with the Petitioner-Transport Corporation and was deputed to drive the Bus on Belgaum-Kolhapur route on 9 November 1996. Apparently, an accident took place while the Respondent was driving the bus, which dashed against a private bus resulting in some damage to the bus. It is alleged that when Respondent approached the Police Station to report the accident, a private settlement took place between the Respondent and owner of the private bus. The owner of the private bus showed willingness to pay Rs.2,000/- towards damages suffered to the Petitioner's bus. It is the case of the Respondent that the said amount received from private bus owner was duly deposited by him with the Kolhapur Depot. Disciplinary proceedings were initiated against the Respondent by issuance of Memorandum of Chargesheet dated 15 November 1996. In the domestic enquiry, Respondent was found guilty and by Order dated 16 March 1998, penalty of dismissal from service was imposed on him. The First Appeal and Second Appeal preferred by the Respondent against the order of dismissal were rejected, last order being passed on 16 March 2001. Respondent apparently did not agitate the matter further and it is the case of the Petitioner that the matter attained quietus.

3. Respondent approached the Deputy Labour Commissioner raising a grievance about his dismissal on 13 March 2014 and a Reference was made to the Industrial Court, Kolhapur, which was numbered as Reference (IDA) No. 65 of 2014. By the impugned Award, the Labour Court has partly answered the

Reference in the affirmative and has set aside the penalty of dismissal from service imposed on Respondent and has directed his reinstatement with continuity in service, consequential benefits and 30% backwages. The Petitioner-Corporation is aggrieved by the Labour Court's decision and has filed the present petition.

4. Mr. Deshmukh, the learned counsel appearing for the Petitioner-Corporation would submit that the Labour Court ought to have dismissed the Reference on the ground of gross and inordinate delay. That no industrial dispute existed as on the date of making the order of reference. That the Respondent had acquiesced in the dismissal order as he failed to adopt any proceedings after rejection of his Second Appeal on 16 March 2001. That the delay of 13 years resulted in serious prejudice to the Petitioner in the matter of its defence. That after passing of Part-I Award in favour of the Respondent, Petitioner was unable to lead evidence on account of long passage of time. That the Labour Court has awarded 30% backwages to the Respondent for a substantial long period of time of 20 years by ignoring the delay. Mr. Deshmukh would rely upon the judgment of the Apex Court in *Asstt. Engineer, CAD, Kota Vs. Dhan Kunwar* (2006) 5 SCC 481, *Shiv Dass Vs. Union of India and others* (2007) 9 SCC 274 and *General Manager, Haryana Roadways* (2005) 5 SCC 591.

5. *Per-contra*, Mr. Lad, the learned counsel appearing for the Respondent would oppose the petition and support the Order passed by the Labour Court. Inviting my attention to the provisions of Section 10 of the Industrial Disputes Act, 1947 (**I.D. Act**), he would submit that no specific period of limitation is prescribed for raising an industrial dispute which according to Mr.

Lad can be raised 'at any point of time'. He would submit that Part-I Award was delivered by the Labour Court against the Petitioner which was not challenged and has attained finality. That Petitioner did not lead any evidence nor cross-examined the Respondent after delivery of Part-I Award. That the pretext of non-availability of evidence sought to be raised by the Petitioner is false as Petitioner filed numerous documents on record to defend itself in the Reference. That delay can be relevant only for the purpose of deciding backwages. That, considering the delay in raising the Reference, the Labour Court has rightly restricted the backwages to 30%. In support of his contentions, Mr. Lad would rely upon the judgments in *Sapan Kumar Pandit Vs. U.P. State Electricity Board* 2001 (5) SC 235, *Kuldeep Singh Vs. G.M., Instrument Design Development & Facilities Centre & Another* 2011 AIR (SC) 455, *Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar* 2014 AIR (SCW) 5515 and *Vidyadhar Vs. Mankikrao & Anr.* 1999 AIR (SC) 1441.

6. Rival contention of the parties now fall for my consideration.

7. The Respondent was found guilty in disciplinary proceedings initiated against him by Petitioner and has been visited with the penalty of dismissal from service by Order dated 16 March 1998. Respondent exhausted the departmental remedies of filing First and Second Appeal. The Second Appeal preferred by him was rejected on 16 March 2001. Thus, the cause of action to raise industrial dispute in respect of his dismissal arose for him on 16 March 2001. He however failed to raise any grievance within a reasonable time after 16 March 2001. He appears to have sent

demand notice for the first time on 13 March 2014. However, it appears that Reference in pursuance of the demand so raised by the Respondent came to be made to the Labour Court by the Deputy Labour Commissioner in the year 2014. The Reference appears to have been registered on 12 December 2014. Thus there is considerable delay of 13 long years in raising the dispute in respect of Respondent's dismissal from service. The issue is whether the Labour Court is justified in awarding any relief to the Respondent in the light of delay of 13 long years on his part to raise the industrial dispute.

8. Section 10 of the I.D. Act does not specify the period of limitation for raising of industrial dispute. Sub Section (1) of Section 10 of the I.D. Act reads thus :

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

(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):

Provided further that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

9. Since no period of limitation is prescribed under Section 10 of the I.D. Act for making the order of reference, does it mean that an industrial dispute can be allowed to be raised at any point of time as when desired by the Workman? The Appropriate Government can make a reference in respect of a dispute, which continues to survive as on the date of making the order of reference. The dispute which has long since settled and does not survive on the date of making the order of reference cannot obviously be referred taking disadvantage of the fact that Section 10 is silent *qua* the aspect of period of limitation. The law in this area is well settled by catena of decisions. It would be apposite to discuss few judgments on the issue of delay in making an order of reference under Section 10 of ID Act. In *Shalimar Works Ltd. v. Workmen*, AIR 1959 SC 1217, three Judges Bench of the Apex Court held delay of 4 years in raising dispute relating to discharge to be fatal. The Apex Court held:

13. It is true that there is no limitation prescribed for reference of disputes to an Industrial Tribunal; even so it is only reasonable that disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly so when disputes relate to discharge of workmen wholesale, as in this case. The industry has to carry on and if for any reason there has been a wholesale discharge of workmen and closure of the industry followed by its reopening and fresh recruitment of labour, it is necessary that a dispute regarding reinstatement of a large number of workmen should be referred for adjudication within a reasonable time. We are of opinion that in this particular case the dispute was not referred for adjudication within a reasonable time as it was sent to the Industrial Tribunal more than four years after even re-employment of most of the old workmen.

10. In *Nedungadi Bank Ltd. v. K.P. Madhavankutty*, (2000) 2 SCC 455 the Apex Court has held as under:

6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. **A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act.** As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex facie bad and incompetent.

11. Having considered the law, I now proceed to decide whether the delay of 13 long years in raising the reference is fatal in the present case. Perusal of the Order passed by the Industrial Court would indicate that the issue of delay is not at all considered by it while delivering the impugned Award dated 23 March 2018. Since Part-I Award dated 10 July 2017 was delivered against the Petitioner, the Labour Court has proceeded to decide only the issue of correctness of penalty imposed on the Respondent. The aspect of delay is taken into consideration only for the purpose of deciding the issue of backwages. The Labour Court has not discussed the issue of delay in granting the relief of reinstatement. This in my view this is a fundamental error committed by the Industrial Court.

12. The issue of delay in raising the industrial dispute is relevant not just for deciding the issue of backwages but the same is also required to be taken into consideration for the purpose of deciding as to whether relief of reinstatement could be granted. In the present case, the Respondent simply slept over the matter for 13 long years. He raised complaint before the Labour Officer for the first time on 13 March 2014. Thus, during the period from 16 March 2001 (date of rejection of second appeal) till 13 March 2014 (date of raising complaint before the Labour Officer), the Respondent did not take any steps for challenging the dismissal order. He acquiesced in the same. It is not that the case involved discharge of other similarly placed employees which was pending adjudication or that Respondent's case was under consideration with Petitioner Corporation during the period of 13 years. Therefore though no period of limitation is specified for raising an industrial dispute under Section 10 of ID Act, in the facts of the present case, it is difficult to hold that any industrial dispute *qua* Respondent's termination existed as on 13 March 2014 when complaint was addressed by the Respondent to the Labour Officer.

13. There is yet another factor which the Labour Court ought to have taken into consideration in the light of delay caused for raising the dispute by the Respondent. The incident of accident occurred on 9 November 1996. The disciplinary enquiry was conducted and the penalty of dismissal from service was imposed on 16 March 1998. By the time the Labour Court delivered Part-I Award on 10 July 2017, period of almost 20 years had elapsed. The Petitioner-Corporation is not expected to preserve the records pertaining to disciplinary enquiry of Respondent for 20 long years. The witnesses required to be examined to prove the charge could

not have been made available after delay of 20 long years. Thus, the delay in filing the proceedings has acted to the advantage of the Respondent as the Petitioner-Corporation was not able to lead evidence before the Labour Court after delivery of Part-I Award. The issue here is whether a party can be permitted to take benefit of his own wrong ? The answer to the question would obviously be in the negative. Reliance of Petitioner on judgment in *Shiv Dass* (supra) in this regard appears to be apposite. The Apex has held as under:

6. Normally, in the case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prashad v. Chief Controller of Imports and Exports* [(1969) 1 SCC 185 : AIR 1970 SC 769] . Of course, the discretion has to be exercised judicially and reasonably.

14. The Labour Court has proceeded to award 30% backwages to the Respondent from 16 March 1998. By the time the final Award was delivered by the Labour Court, period of 20 long years had elapsed and the Labour Court ought to have been conscious of the fact that it was offering on a platter 30% backwages to an employee who was simply sleeping over his grievance for 13 long years. The Labour Court ought to have taken into consideration the financial implication on the Petitioner-Corporation, who otherwise is usually in precarious financial condition. The Labour Court therefore ought not to have issued direction for payment of 30% backwages to Respondent for over 20

long years. The Labour Court has held the Respondent guilty of delay but has still awarded him the relief of reinstatement and 30% backwages. The impugned Award passed by the Labour Court in my view is totally unsustainable.

15. Even in respect of the Industrial disputes, a quietus needs to be given in respect of the penalty awarded in disciplinary enquiry. Such penalty cannot be permitted to be challenged after undue delay of 13 long years. True it is that Section 10 of the I.D. Act is silent with regard to the period of limitation. This would however not mean that an employee of State Transport Corporation can be permitted to wake out of his deep slumber in the year 2014 and raise an industrial dispute to determine validity of his dismissal which had taken place in the year 1998.

16. Reliance is placed on behalf of Respondent on judgment of the Apex Court in *Sapan Kumar Pandit* (supra). However the facts in that case were entirely different. In that case the Respondent-Board had retrenched other workmen as well and the dispute *qua* such other retrenched workmen was pending adjudication before the Industrial Court and High Court. the Appellant therein waited for outcome of that litigation and prayed for grant of similar benefits. In these circumstances, the Apex Court held that the industrial dispute continued to exist as on the date of making reference. In *Kuldeep Singh* (supra) relied on behalf of Respondent, the workman therein was diligently pursuing the matter before the employer and before government authorities, which is not the case here. *Raghubir Singh* (supra) related to the case of delay on account of pendency of criminal case and demand for reinstatement after acquittal. Thus none of the

judgments relied upon on behalf of Respondent are applicable to the facts of the present case.

17. Considering the overall conspectus of the case, I am of the view that the Award passed by the Labour Court is indefensible. The petition accordingly succeeds. The Award dated 26 March 2018 passed by the Labour Court in Reference (IDA) No. 65 of 2014 is set aside. The Writ Petition is allowed in the above terms. The Interim Application stands disposed of.

SANDEEP V. MARNE, J.

**NEETA
SHAILESH
SAWANT**

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