



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 4954 OF 2011

- 1] The Executive Engineer,
Public Works Department (Division),
District – Amravati.
- 2] The Sub-Divisional Engineer,
Public Works Sub Division No. 2,
Amravati.

...PETITIONERS

Versus

Pramod s/o Deoraoji Dabhade,
aged about 25 years, Occ. Nil,
R/o Hanawatkhedha, Post – Paratwada,
Tq. Achalpur, District – Amravati.

...RESPONDENT

Shri S.B. Bissa, A.G.P for the petitioners.
None for the respondent.

CORAM : ANIL L. PANSARE, J.
DATE : SEPTEMBER 23, 2024

ORAL JUDGMENT :

The petitioner – Public Works Department has assailed the award dated 29/11/2010 passed by the Presiding Officer, Labour Court, Amravati, in Reference (IDA) No. 60/1997. The Reference Court has ordered the petitioner to pay to respondent compensation of Rs.40,000/-.

2] The award has been challenged, *inter alia*, on the ground of delay in filing reference. The learned A.G.P. has restricted the challenge on this point alone. The learned A.G.P. submits that the Deputy Commissioner of Labour, Nagpur, has referred the dispute for adjudication to the Labour Court, Amravati, to examine the entitlement of the respondent for reinstatement with backwages and continuity of service with effect from 26/12/1986.

3] It appears that the respondent approached the Deputy Commissioner of Labour, Nagpur, on the count that he was appointed on daily wages as Labour with effect from 1/12/1985 and has rendered continuous service till 26/12/1986. His service was abruptly terminated with effect from 26/12/1986. Thereafter, he issued notice dated 1/4/1997. He then approached the Deputy Commissioner of Labour, Nagpur, who referred the dispute to the Labour Court, Amravati.

4] The learned A.G.P. submits that the respondent remained silent for about 12 years. He has not even filed

application seeking condonation of delay. He further submits that the petitioner has, in its reply, taken a specific plea that the reference was barred by limitation. Despite such stand, the Labour Court, Amravati, has ordered the petitioner to pay to the respondent compensation of Rs.40,000/-, which according to the learned A.G.P, is unsustainable.

5] In support of his contention, the learned A.G.P has relied upon the judgment passed by the Hon'ble Supreme Court in the case of *Prabhakar Vs. Joint Director, Sericulture Department And Another [(2015) 15 SCC 1]*, wherein the Supreme Court held that the words 'at any time' used in Section 10 of the Industrial Disputes Act, 1947, show that there is no limit for making the reference. However, the appropriate Government must ensure that dispute is still existing or live dispute and has not become a stale claim. Whether the dispute is live or stale depends on the facts and circumstances of each case and no hard and fast rule for making order of reference can be laid down. The Supreme Court further held that relief can be denied on the ground of unexplained delay and laches and/or on presumption that such person had waived his right

or acquiesced and also to safeguard industrial peace. The Supreme Court, however, clarified that where Court finds dispute still exists, though raised belatedly, it is always open to the Court to mould the relief accordingly, either by granting reinstatement without backwages or lesser backwages or granting compensation instead of backwages.

6] The learned A.G.P. has then referred to the judgment passed by a Co-ordinate Bench of this Court in the case of *Executive Engineer, Public Works Department, Wardha Vs. Namdeo Govindrao Nandurkar* [2011(4) Mh.L.J. 33], wherein this Court, after taking stock of various judgments of the Supreme Court, held thus :

“19. In view of the aforesaid law laid down by the Apex Court, it has to be held that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In case of delay, no formula of universal application can be laid down and it would depend upon the facts and circumstances of each case. The Court dealing with the reference will have to hold an enquiry and record its finding on the question whether the reference should be dismissed on the ground of delay. In appropriate cases, the Court may mould the relief either by reducing the backwages or by denying it completely.

While considering the question of delay, the Court will have to be guided by certain principles, which are culled out from various judgments of the Apex Court, discussed above, are stated as under :

(a) A plea of delay must be specifically raised so that an employee gets an opportunity to lead evidence and explain it.

(b) There is a need to raise an industrial dispute within a reasonable period and the onus of showing that the dispute was raised within a reasonable time is upon the employee.

(c) It is for the employee to explain, the delay by furnishing acceptable explanation to the satisfaction of the Court or that he was not responsible for the delay caused.

(d) The fact that the workman was making repeated representations, is not sufficient to explain the delay.

(e) Delayed reference causes prejudice to both the employer and the employee. Lapse of time results in losing the remedy and the right as well.

(f) Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded by denying full or partial backwages, is a matter of discretion, which should be judicially exercised depending upon the facts and circumstances of the case and no fixed formula can be laid down.

(g) The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable.

(h) The person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the work. It would be difficult to obtain witnesses, who would be competent to give evidence so many years later if the Labour Court wishes to hold an enquiry into the matter.

(i) An administrative order making reference of industrial dispute, which does not take into consideration the statutory requirements or travels outside, can be a subject-matter of judicial review by the High Court under Article 226 of the Constitution of India. This does not mean that the adjudicating

authority/Labour Court cannot make an enquiry to find out whether the reference should be dismissed on the ground of delay or that the relief is required to be moulded keeping in view the facts and circumstances of the case.”

7] As could be seen, in both the judgments, the Courts took a view that it is necessary to raise dispute within a reasonable period. The Supreme Court has held that relief can be denied on the ground of unexplained delay and laches and/or on presumption that such person had waived his right. Both the Courts, however, have clarified that where Court finds dispute still exists, though raised belatedly, it is always open to the Court to mould the relief accordingly.

8] In the present case, the Labour Court has considered the issue of delay. The Labour Court has referred to the evidence wherein the respondent had categorically stated that after his termination, he approached the petitioner from time to time, who only gave assurance but did not reinstate him. The Labour Court then found that in cross-examination, this testimony remained unshattered.

9] Thus, in the present case, the respondent has

tendered explanation for approaching belatedly. The Deputy Commissioner of Labour, Nagpur, thought it proper to refer the dispute to the Labour Court, meaning thereby, that he found that the dispute is still existing or is live and has not become stale claim. In the circumstances, it cannot be held that the respondent has acquiesced his claim/right.

10] The Labour Court has then considered the effect of delay and moulded the relief to grant Rs.40,000/- as compensation instead of reinstatement.

11] Thus, the Labour Court has exercised discretion in terms of settled principles of law. I do not find any reason to interfere with the said order in writ jurisdiction.

12] The petition is accordingly dismissed. Rule is discharged.

JUDGE

Sumit