



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

WRIT PETITION NO.3018 OF 2023

Rohidas Lotan Patil,

Age- 71 years, Occ- Nil,

R/o- At post Hol Village, Taluka- Sindkheda,

District- Dhule.

..Petitioner/Ori. Second
Party Workman

Versus

Chief Executive Officer,

Jalgaon Jilla Dekherekh Sahkari Sangh,

Ganesh Colony, Unity Chamber,

Jalgaon, District- Jalgaon.

..Respondent/Ori. First
Party Employer

...

Mr. S. R. Patil, Advocate for the Petitioner.

Mr. V. A. Pawar and Pradeep Salunke, Advocate for Respondent.

...

CORAM : S. G. CHAPALGAONKAR, J.

Reserved On : 01st AUGUST, 2025.

Pronounce On : 13th AUGUST, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of the parties, matter is taken up for final hearing at admission stage.

2. The petitioner impugns judgment and award dated 25.11.2021 passed by Labour Court, Jalgaon in Reference IDA No.2/2019, thereby rejecting Reference.

3. On 11.06.1975 petitioner was appointed as Secretary with Jalgaon Zilla Dekharekh Sahakari Sangh and posted at Vividh Karyakari Society at Janve. On 05.06.1982, petitioner has been terminated from services on allegation of misappropriation.

According to petitioner, two criminal cases were registered against him with allegations of misappropriation. The RCC No.59/1982 and RCC/82/1987 were tried before learned Judicial Magistrate First Class at Amalner. The petitioner has been acquitted on 22.07.1987 and 15.02.2013 respectively.

4. According to petitioner, he made representations to respondent-employer seeking reinstatement with continuity of services vide representations dated 11.02.1988, 05.01.1990 and 16.08.1993. The petitioner has also given legal notices dated 13.02.2014 and 22.02.2016 and demanded for reinstatement with continuity of services till the date of attaining age of superannuation. However, respondent failed to act upon same or reply to petitioner.

5. The petitioner raised industrial dispute before Competent Authority i.e. Deputy Commissioner of Labour at Nashik. When conciliation failed, industrial dispute was referred for adjudication to Labour Court at Jalgaon vide Reference IDA No.2/2019. The learned Labour Court dismissed Reference mainly on the ground of delay and laches vide impugned judgment and award dated 25.11.2021.

6. Mr. S. R. Patil, learned Advocate appearing for petitioner submits that no limitation is provided for making IDA Reference or

its adjudication by Labour Court. However, learned Labour Court rejected Reference mainly on the ground that it has been made after 37 years and petitioner failed to approach Labour Court under provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'MRTU and PULP Act, 1971'). According to Mr. Patil, Labour Court failed to frame issue of delay and laches and grant opportunity to petitioner to advance his submission in this regard. He would further submit that petitioner was terminated from services without proper enquiry. The allegations of misappropriation made against petitioner were not substantiated in criminal proceedings, which resulted into acquittal. Mr. Patil relies upon observations of Supreme Court of India in case of ***Raghubir Singh Vs. Ganeral Manager, Haryana Roadways, Hissar***¹ to contend that Reference cannot be rejected only on the ground of delay and laches. According to him, once Competent Authority makes Reference in exercise of powers conferred under Section 10(1)(c) of Industrial Dispute Act to Labour Court or Industrial Tribunal, issue of limitation does not arise.

7. Per contra, Mr. Pawar, learned Advocate appearing for respondent submits that although limitation period is not prescribed under Industrial Disputes Act, Labour Court or Industrial Tribunal cannot entertain stale claim, only because

¹ (2014) 10 SCC 301

Reference is made under Section 10 of the Industrial Disputes Act. According to him, making of Reference is only an administrative function and Reference is required to be made only on satisfaction based on material on record, where there is apprehension of industrial dispute.

8. Having considered submissions advanced, undisputed facts leading to present Writ Petition can be stated as under:

- (a) The petitioner was appointed as Secretary w.e.f. 11.06.1975 with respondent-Sangh.
- (b) On 05.06.1982, services of petitioner were terminated with allegations of misappropriation.
- (c) The petitioner was subjected to criminal prosecution in RCC/59/1982 and RCC/82/1987 for offences punishable under Sections 408, 467, 477(A) of Indian Penal Code.
- (d) The learned Judicial Magistrate First Class, Amalner on conclusion of trial, acquitted petitioner vide judgments of acquittal dated 22.07.1987 and 15.02.2013.
- (e) Meanwhile, petitioner made some representations seeking his reinstatement with continuity in service from the date of dismissal till date he attains age of superannuation i.e. 31.05.2009.
- (f) On 11.04.2018, petitioner sent demand notice for quashing and setting aside dismissal order dated 05.06.1982 and

raised industrial dispute before Deputy Commissioner of Labour, who referred industrial dispute for adjudication to Labour Court Jalgaon.

(g) The Labour Court, Jalgaon dismissed Reference vide impugned order dated 25.11.2021.

9. Perusal of reasons adopted by Labour Court, it can be observed that rejection of Reference is mainly on the ground that petitioner raised industrial dispute after 37 years of termination of services, so also he failed to exhaust remedy to assail termination order under provision of MRTU and PULP Act, 1971.

10. Section 10 of Industrial Disputes Act 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

²[(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):]

11. Plain reading of aforesaid provision would show that when industrial dispute exists or is apprehended, appropriate Government can refer dispute to Court for enquiry or if relates to any matter specified in Second Schedule to Labour Court for adjudication or make Reference to Tribunal, if dispute relates to matters specified in Second Schedule or Third Schedule. It is, therefore, obvious that Reference can be made only when industrial disputes exists or is apprehended by Competent Authority. It is implicit that even in case of delay in raising industrial dispute, appropriate Government has power to make Reference, if it is of the opinion that any industrial dispute exists or is apprehended at any time between workman and employer. In case of ***Raghubir Singh*** (supra) Supreme Court of India by giving reference to earlier judgments in case of ***Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota v. Mohan Lal***², ***Avon Services Production Agencies (Pvt.) Ltd. Vs. Industrial Tribunal, Haryana & Ors.***³ and ***S. M. Nilajkar and Ors. Vs. Telecom District Manager, Karnataka***⁴ observed in paragraph no.17 as under:

² (2013) 14 SCC 543.

³ (1979) 1 SCC 1.

⁴ (2003) 4 SCC 27.

“17. In view of the legal principles laid down by this Court in the S. M. Nilajkar⁸, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.”

12. Later on, in case of ***Prabhakar Vs. Joint Director Sericulture Department and Another***⁵, Supreme Court again considered impact of delay and laches in Reference made under Section 10(1) of Industrial Disputes Act and observed in paragraph no.14 as under:

“40. 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.

⁵ 2015 (15) SCC 1.

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 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.”

13. The aforesaid legal position would make explicit that existence of industrial dispute is a paramount and important consideration while dealing with Reference. Only existent or apprehended industrial disputes can be referred for consideration

of Court or Tribunal. However, at the time of taking decision whether Reference to be made or not, appropriate Government need not venture into merits of dispute, as making Reference is only administrative function. Only because Reference is made under Section 10(1), Court or Tribunal is not precluded from entering into aspects of delay and laches or to record findings as to existence or non-existence of dispute.

14. It can be observed that for raising industrial dispute demand is pre-condition. In case, employer fails to make demand, dispute cannot be referred. In present case, although petitioner has been terminated from services in the year 1982, demand for making Reference is made sometimes in the year 2019. Accordingly, Reference was made. The termination of petitioner was for allegation of misappropriation. Two criminal cases registered against him ended in acquittal in the year 1987 and 2013. It is not case of petitioner that he was prevented from making demand for Reference or to approach Labour Court against alleged illegal termination under MRTU and PULP Act, 1971.

15. In this background, it becomes imperative to examine whether dispute was existing, when demand was raised. It is true that law of limitation would not apply when it is shown that there is dispute in praesenti. However, from record of present case, it is not discernible that delay in making industrial dispute was for

sufficient reasons, petitioner has not explained delay and laches by bringing material disclosing existence of dispute. Sequence of events as demonstrated above, certainly shows that stale claim was referred to Labour Court. Therefore, even no limitation is prescribed, when for long period petitioner failed to take resort to remedy provided under law for redressal of his grievance, Court can deny relief presuming that person has waived his right. In present case, petitioner has been terminated in the year 1982. He attained age of superannuation in the year 2009. The criminal cases registered against him ended in acquittal in the year 1987 and 2013 and notice of demand was issued sometimes in the year 2019. Therefore, conclusion is that Reference of stale or non-existence of claim was made under provision of Section 10 of Industrial Disputes Act. The Industrial Court is right in refusing to entertain such reference.

16. In that view of the matter, there is no merit in Writ Petition. Hence, Writ Petition stands dismissed.

17. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE