U.P. State Electricity Board and Another Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Sept. 17, 1999

Acts Referred: Uttar Pradesh Industrial Disputes Act, 1947 â€" Section 4K

Citation: (2001) 3 LLJ 482

Hon'ble Judges: P.K. Jain, J

Bench: Single Bench

Final Decision: Allowed

Judgement

P.K. Jain, J.
Respondent No. 5 Sapan Kumar Pandit was employed with petitioner No. 2, the Executive Engineer, Electricity Distribution-

1, Mathura as a clerk with effect from January 1, 1974.

2. According to the case of respondent No. 5 he was working on the said post as Muster roll employee and his services were dispensed with from

July 17, 1975. On September 9, 1991 he applied to the State Conciliation Officer, Agra under the U.P. Industrial Disputes Act for conciliation

alleging that on July 17, 1975 without any prior intimation the services of the employee were terminated by retrenchment. On June 14, 1991, a

request for conciliation was made with the employers but the employers paid no heed. The dispute arose on July 17, 1975. It was stated that an

application for condonation of delay was also being moved. A prayer was made that a conciliation committee be formed for conciliation between

the parties and the employers be directed to take the employee back in the service; wages for the intervening period be also awarded. In the delay

condonation application it was stated that the applicant had served for more than 240 days during a calendar year, he was entitled to absorption in

regular cadre. Some of the colleagues of the employees have filed a case through their union U.P. Bijli Karmachari Sangh against the unlawful

orders of their termination but since the applicant was not a member of that union he could not file the case. The applicant continued to correspond

with petitioner No. 1. Out of the ten workmen retrenched 2 were taken in service and the applicant was also assured that he will be taken back in

service if the decision in the case filed by Bijli Karmachari Sangh goes in favour of the Sangh. The Industrial Tribunal held that the workmen

concerned had put in 240 days continuous service during the period of 12 calendar months and they became entitled to retrenchment

compensation or appointment against the regular vacancies of Routine Grade Clerk. The Board filed Writ Petition before the Hon"ble High Court

where it was held that petitioners are entitled to be reinstated with full backwages. The Board filed SLP which was numbered as 11921 of 1988

and the SLP was dismissed by the Hon"ble Supreme Court on January 9, 1989. On the basis of assurance given by the Board to the applicant, he

applied for reinstatement on June 14, 1991 but no reply was given to him and ultimately the applicant decided to move the petition for conciliation.

3. The application for condonation of delay as well as conciliation proceedings were contested by the petitioners on the ground that the applicant

was a Muster roll employee. Two workmen out of the ten retrenched employees had appeared in a competitive examination held by the

department and after qualifying the test they have been taken in regular services. Facts relating to U.P. Bijli Karmachari Sangh filing a case of

reinstatement by 8 employees and other facts relating to the ultimate result of such litigation were not disputed. However, it was stated that no

assurance was ever given to the applicant and the application was barred by limitation and was not legally maintainable. The respondent sat over

the matter for 16 years and filed the application for reinstatement in service for which no sufficient reasons have been given.

4. The Assistant Labour Commissioner, Agra by order dated January 28, 1992 as contained in Annexure 5 rejected the application for

condonation of delay as the conciliation application was barred by limitation.

5. An application for review as contained in Annexure 6 with the writ petition was moved by the respondent No. 5 before the Labour

Commissioner, U.P. Kanpur. This application was also contested by the petitioners who have filed objections as contained in Annexure 7 to the

writ petition. The review application was, however, allowed by order dated November 23, 1992 as contained in Annexure 8. Thereafter the

matter was referred to the State Government.

6. The State Government by order dated March 29, 1993 as contained in Annexure 1 referred the following dispute u/s 4-K of the U.P. Industrial

Disputes Act:

Whether termination of services of Sri Sapan Kumar Pandit son of Sri K.K. Pandit, on July 17, 1975 by the employers was proper and legal? If

not, to what relief the worker is entitled?

7. The petitioners through the present petition prayed for quashing the aforesaid reference order dated March 29, 1993 and also for quashing the

order dated November 23, 1992 passed by the Labour Commissioner as aforesaid. Another prayer is made for quashing reference pending

before the Labour Court as Adjudication Case No. 158 of 1993.

8. Sri Tarun Agarwal, learned counsel for the petitioners and Sri Vinod Sinha, learned counsel appearing for respondent No. 5 have been heard at

length. No arguments have been made for the other respondents. They challenged the aforesaid orders and proceedings in Adjudication Case No.

158 of 1993 primarily on the ground that an old and stale industrial dispute between the Management and the employee cannot be kept alive for

16 years as it amounts to creating industrial unrest and obstructing industrial harmony. It is submitted by Sri Tarun Agarwal that the respondent No.

5 kept silent for about 16 years and it was suddenly on one fine morning that he moved for conciliation. No sufficient cause is shown for sitting idle

or being complacent for a period of 16 years and this fact has not been considered by the State Government - respondent No. 1 while passing an

order of reference as contained in Annexure 1. It has been submitted that before passing an order of reference the State Government had not given

any opportunity of hearing to the petitioners. Learned counsel appearing for respondent No. 5, however, submits that the circumstances for delay

in referring the matter to the industrial authorities have been explained in the Counter Affidavit as also in the application moved before the

conciliation authorities. It is further submitted that the delay was explained and in any case there is no limitation u/s 4-K of the U.P. Industrial

Disputes Act and since the dispute still exists, the State Government was well within its power to make the reference. It is also submitted that the

State Government was not required to hear the employers before making a reference.

9. So far as the second submission made by Sri Tarun Agarwal, learned counsel for the petitioners is concerned, I think there is no merit in it.

There is nothing in the Act which provides that before a reference is made by the State Government, the State Government is required to give an

opportunity of hearing to the employer. It has been held in Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and

Others, that ""from the words used in Section 4-K of the Act there can be no doubt that the legislature has left the question of making or refusing to

make a reference for adjudication to the discretion of the Government.

10. It was further held that in fact when the Government refuses to make a reference it does not exercise its powers; on the other hand it is only

when it decides to refer that it exercises, its powers. It "was held in Athertan Mills, Kanpur v. State of U. P. and Ors. 1996 (73) FLR 1862

that""..... the settled view of this Court as well as of the Hon''ble Supreme Court is that employer is not to be given an opportunity of hearing before

making a reference as in making reference the State Government cannot decide any dispute but it only sets the process of adjudication in motion

where the employer shall get full opportunity.

11. A reference may also be made to the cases of Indian Explosive Factories, Kanpur v. State of U.P. and Ors. 1981 (42) FLR 408 Avon

Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, Abdul Rehman Haji and Ors. v. Abdul Rehman and Ors.

1979 (39) FLR 357 and Binny Ltd. Vs. Their Workmen, .

12. In this view of the matter the submission of the learned counsel for the petitioners that the State Government had not given any opportunity of

hearing before making a reference for adjudication is of no avail and the reference order cannot be quashed on this ground.

13. Now coming to the main contention of the learned counsel for the petitioners, it is not in dispute that the respondent''s services, by way of

retrenchment, were terminated on July 17, 1975. He moved for conciliation for the first time on September 9, 1991 i.e. more than 16 years after

termination of the services. The petitioners in the petition have alleged that during the intervening period of July 17, 1975 to September 9, 1991 the

respondent No. 5 did not raise any grievance whatsoever nor did he write any letter or make any correspondence with the employer with regard

to his reinstatement. No complaint whatsoever was made by the respondent No. 5 with regard to his termination. In reply to such averments made

in the petition the respondent No. 5 has reiterated that he was assured from time to time that as the matter of U.P. Bijli Karmachari Sangh was

pending, the answering respondent would be entitled to the same relief as would be granted to U.P. Bijli Karmachari Sangh. However, in spite of

the judgment answering respondent was not taken back and, therefore, the answering respondent approached respondents 2 and 3. The delay has

been condoned by respondent No. 2 and the order condoning the delay does not require any interference by the Hon''ble High Court. The

petitioners filed rejoinder affidavit wherein they categorically averred that the contents of para 4 of the affidavit are denied and the contents of para

3 of the petition are reiterated. The allegations that respondent No. 5 was assured from time to time by the petitioners is wholly erroneous and

denied. No such assurance was given by the petitioners to the respondent No. 5 at any stage nor did he raise any grievance. The allegations that

inspite of the judgment the answering respondent was not taken back is wholly erroneous, the delay of 16 years could not have been condoned by

the respondent No. 2. There is no material before this Court showing as to when and by whom the assurance as alleged by respondent No. 5 in

para 4 of the counter affidavit was given when he had approached the petitioners. No document or copy thereof showing that respondent No. 5

had ever approached the petitioners and that they had assured him that he would be taken back in service if the petition filed by other employees

was allowed, has been filed. The allegations in this regard as contained in the counter affidavit which have been specifically denied by filing the

rejoinder affidavit are vague and not supported by any documentary evidence. Even after the petitions filed by the remaining eight employees were

finally decided it is not shown that the answering respondent No. 5 had made any written request to the petitioners on the basis of the assurance

given by them earlier to reinstate him. In these circumstances in the absence of material before the Court, the claim of respondent No. 5 that he did

not approach the Tribunal or State Government for referring the industrial dispute for the reason that he was given an assurance by petitioners that

in case other employees were successful in getting an order in their favour he will also be reinstated cannot be accepted. Moreover, when the

petitioners by filing rejoinder affidavit have specifically refuted such a claim it was for the respondent No. 5 to have placed relevant material before

this Court which he has not done. Therefore, his contention as contained in para 4 of the counter affidavit cannot be accepted.

14. The question now arises whether in the facts and circumstances stated above the industrial dispute could have been referred by the State

Government for decision. It cannot be disputed that u/s 4-K of the U.P. Industrial Disputes Act no limitation for raising the dispute is provided.

The expression used in Section 4-K is that the dispute can be raised at any time but it is clarified by the expression that there must exist an

industrial dispute as defined by the Act or such a dispute must be apprehended when the Government decided to refer for adjudication. This was

the view taken by the Hon''ble Supreme Court in the case of Western India Match Company Ltd. v. Western Indian Match Company Workers

and Ors. (supra). It was held in para 8 that therefore, the expression ""at any time"" though seemingly without any limits, is governed by the context

in which it appears. Ordinarily, the question of making a reference would arise after conciliation proceedings have been gone through and the

Conciliation Officer has made a failure report. The Court had, however not decided the question whether in cases of inordinate and unexplained

delay the reference can be made'' by the Government so as to jeopardise the interest of the employer. Such a situation has arisen in the case of

Shalimar Works Limited Vs. Their Workmen, wherein it was held by the Court that even though no limitation is provided for making a reference of

the disputes to the industrial tribunal yet such dispute should be referred within a reasonable time after the same has arisen and after the

reconciliation proceedings have failed. The Court has held as follows:

It is true that there is no limitation prescribed for reference of disputes to an industrial Tribunal; even so it is only reasonable that dispute 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 the case. The industry has to carry on and if for any reason there has been a wholesale discharge of the 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 larger

number of workmen should be referred for adjudication within a reasonable time. We are of the opinion that in this particular case 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 workers .....

15. In the circumstances the appeal of the workmen on question of reinstatement was dismissed by the Hon''ble Supreme Court.

16. Learned counsel for the petitioners has also referred to the decision of this Court in Athertan Mills, Kanpur v. State of U.P. and Ors. (supra),

in which it was held that ""it was not a case of mere lapse of time, but it is a case of long lapse of time after which a party cannot be expected to

retain the evidence when admittedly the Management changed more than once. The State Government in these peculiar facts and circumstances, in

my opinion, ought to have applied its mind seriously to the period already lapsed which brought about material changes. An industrial dispute is not

expected to remain alive for such a long time. It was also not expected from the labour unions to raise such a stale and dead claim as industrial

dispute before the State Government ..... the labour unions to espouse such dispute with a pious object to maintain peace and harmony in the

industrial sector so that production may continue uninterrupted. Thus, the labour unions do not discharge a lesser responsibility in espousing the

claim of the workmen before the State Government for making reference hence, this responsibility should be discharged with care, here failure

appears on both ends.

17. The petition filed by the employers in the said case was allowed and the order of the '' Government making a reference of the dispute was

quashed. Similar view was taken by the Punjab and Haryana High Court as well as Bombay High Court in Karnal Central Coop. Bank Ltd. Vs.

P.O., Indl. Tribunal-cum-Labour Court and Others, and R. Ganeshan Vs. Union of India (UOI) and Others, respectively. In Karnal Central Co-

operative Bank''s case (supra) the dispute was raised 10 years after the date of termination of service. The Court had observed that"" if a workman

has not shown any cause much less sufficient cause for invoking the jurisdiction of the Tribunal after a period of 10 years, it is not understood that

when the State Government declined to refer the dispute in September, 1990 on the ground of delay, how it could refer the same in January, 1992

when the delay had further increased. I have seen the record and there is nothing to justify the making of the reference at such a belated stage.

Consequently the impugned award based on this reference has to be quashed.

18. In R. Ganeshan ''s case (supra) the Court had held that R. Ganeshan Vs. Union of India (UOI) and Others,

the petitioner has been dismissed way back on October 8, 1980. As far as the petitioner is concerned the order of dismissal came into effect on

October 8, 1980. Nothing prevented the petitioner from raising the dispute soon thereafter. It is true that an application u/s 33- C(2)(b) for

approval was filed by the third respondent. That, however, in my view, is no bar for the petitioner to raise the dispute.

It is true that the Act does not lay down any period of limitation. This, however, does not mean that a dispute can be raised at any time even after

an inordinate delay that can be a legitimate ground for holding that there does not exist in present an industrial dispute.

The Court had also referred to the cases of Bombay Union of Journalists and Others Vs. The State of Bombay and Another, and Shaw Wallace

and Co. Ltd. Vs. State of Tamil Nadu and Others, . In the first case the Supreme Court had held that if the claim made is patently frivolous, or is

clearly belated the appropriate Government may refuse to make a reference. In the second case the Madras High Court had observed that if the

claim is stale, is belated, it need not be referred for adjudication.

19. Learned counsel for the respondent No. 5 has referred to an unreported decision of this Court in Writ Petition No. 3354 of 1992(28) Jai

Pratap Singh v. The State of U.P. and Ors., decided on April 25, 1992 wherein the delay of 21 years in raising the dispute was not considered to

be adverse. A reference has also been made to the case of Western India Match Co. v. Its Workmen (supra) decided by the Supreme Court.

20. I have already pointed out above that in Western India Match Co. v. It''s Workmen (supra) the question of effect of inordinate and

unexplained delay was not considered. In the other case, i.e., the decision in Writ Petition No. 3354 (28) of 1992 (supra) the facts appeared to be

that earlier the direction was given by the High Court in Writ Petition No. 6064 of 1991 (S/S) that the State Government shall within 2 months

from the date of production of certified copy of the order pass an order in the light of the observations made in the judgment. The State

Government again rejected the petitioner"s prayer to refer the dispute and both the times it was rejected on merits of the case. It was in these

circumstances that when the second Writ Petition was filed the Court allowed it and quashing the order of the State Government had issued a

mandamus to it to refer the dispute to the Industrial/Labour Court.

21. On consideration of various authorities, I am of the view that normally a dispute which is an industrial dispute be referred by the State

Government u/s 4-K of the U.P. Industrial Disputes Act so long such a dispute exists or the Government apprehends that such a dispute is likely to

exist. However, in case there is undue and inordinate as well as unexplained delay, a presumption may arise on the facts and circumstances of a

particular case that no dispute exists in present and in such cases the reference made by the Government may be quashed. In the fact and

circumstances of the present case the respondent No. 5 kept silent for more than 15 years and he woke up only after the petition of other co-

workmen was allowed and he made no efforts to get his dispute referred to the Industrial Tribunal or Labour Court. Now he cannot be allowed to

raise such a dispute after lapse of such a long time.

22. In this view of the matter, the writ petition is allowed, reference order passed by the State Government as contained in Annexure-I is quashed

and proceedings of Adjudication Case No. 158 or 1993 pending before the Labour Court - respondent No. 4 are also quashed.