

(2007) 08 AHC CK 0239

Allahabad High Court

Case No: None

U.P. State Road Transport
Corporation

APPELLANT

Vs

State of U.P., Presiding Officer,
Labour Court U.P. and Ram Pati
Ram

RESPONDENT

Date of Decision: Aug. 27, 2007

Acts Referred:

- Limitation Act, 1963 - Section 3

Citation: (2007) 115 FLR 486

Hon'ble Judges: S.U. Khan, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

S.U. Khan, J.

Heard learned Counsel for the parties.

2. This writ petition is directed against award dated 28.3.1998 given by the Presiding Officer, Labour Court U.P. Gorakhpur in Adjudication Case No. 272 of 1992. The matter which was referred to the Labour Court was as to whether the action of petitioner employer terminating the services of its employee Ram Pati respondent No. 3 with effect from 22.8.1978 was valid or not. Reference was made through government order dated 25.3.1992 and the Industrial Dispute was raised by respondent No. 3 in 1991 through C.P. Case No. 40 of 1991 i.e. after about 13 years of his termination. The labour court directed reinstatement with full back wages.

3. Services of respondent No. 3 who was conductor were terminated after domestic enquiry. Preliminary issue regarding fairness of domestic enquiry was framed on 23.8.1993. The Presiding Officer, Labour Court in respect of the said issue passed an order on 29.9.1993 mentioning therein that the Administrative Clerk had died hence

no evidence could be given by the employer with regard to fairness of domestic enquiry. The Labour Court due to absence of any evidence on behalf of the employer held that the enquiry was not fair and permitted the employer to prove the charge before the labour court. In para 7 of the award, it is mentioned that 12 documents were filed by the employer and 26 by the workman. In para 8, it is mentioned that no party adduced any oral evidence hence no document was proved in accordance with law.

4. The charge against the respondent No. 3 was that he was carrying ticketless passengers and this mistake was detected at the time of surprise checking.

5. In the absence of any evidence on behalf of the employer the labour court held that the charge was not proved.

6. In this writ petition an interim order was passed on 8.2.1999 directing the employer to deposit 50% back wages and payment of wages from the date of award. According to Sri K.P. Agarwal learned Counsel for the workman the workman was taken back in service after the impugned award and interim order passed in this writ petition and he retired on 31.1.2004.

7. The Supreme Court in the following authorities has held that undue delay i.e. delay of 7 or more years in raising the dispute is fatal. However, the learned Counsel for the workman has argued that question of delay was not raised by the employer before the labour court.

5. Learned Counsel has further argued that even in the grounds of writ petition no such plea has been taken. Ground No. A of the writ petition is quoted below.

A Because, respondent No. 3 was clearly guilty of gross laches and hence the reference itself was bad 1997 (76) FLR 955 and [U.P. State Electricity Board and Another Vs. Presiding Officer, Labour Court and Others](#),

6. Learned Counsel for the petitioner employer has further argued that on the question of laches and delay doctrine of non traverse does not apply and the labour court should have itself rejected the claim on the ground of undue delay and that this question can be raised at any, stage.

7. In this regard analogy may be drawn from Section 3 of Limitation Act by virtue of which every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

8. Even though strictly speaking there is no limitation for raising industrial dispute or making reference still principle of laches applies. Stale dispute does not qualify to be industrial dispute either existing or apprehended. The words "Industrial Dispute exists or is apprehended" qualify the words "at any time" used in Section 4K of U.P. Industrial Disputes Act.

9. Moreover, due to undue delay in raising the dispute the employer was handicapped and could not adduce evidence to prove fairness of domestic enquiry or the charge before the labour court. After long time memories fade, people retire and records become untraceable.

10. The Supreme Court in the following authorities has held that delay of 7 or more years in raising the industrial dispute is fatal.

1. [Manager \(Now Regional Director\) R.B.I. Vs. Gopinath Sharma and Another,](#)

2. [Assistant Engineer, C.A.D., Kota Vs. Dhan Kunwar,](#)

3. [Chief Engineer, Ranjit Sagar Dam and Another Vs. Sham Lal,](#)

11. Learned Counsel for the workman has cited an authority reported In [U.P. State Electricity Board Vs. Rajesh Kumar,](#) to contend that even 19 years delay in making reference and raising the industrial dispute is not fatal. However, in the said authority the facts were quite different and it was held that in the matter of delay facts and circumstances of each cases are to be considered. The second authority cited by the learned Counsel for the workman is [Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others,](#) In the said case initially government had refused to make the reference however afterwards" reference was made. In the said authority effect of lapse of time in making reference was considered. In the instant case even industrial dispute was raised very late and moreover no reason was given by the workman for the delay. Similarly, in the authority of Employers in relation to the Management of S. Colliery of Bharat Cooking Coal v. Their, Workman 2006 (108) FLR 7401 (SC) was held that no formula of universal application in the matter of delay could be laid down. In [Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others,](#) cited by learned Counsel for the workman, it was held that opinion as to the existence of the dispute has to be formed by the Government alone and no one else. In the said case dispute had been raised by several other similarly situated employees also and the workman concerned (appellant before the Supreme Court) was assured by the Electricity Board that in case other employees won the case same benefit would be extended to him. The next authority is that of [Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another,](#) In the said case, it was held that delay unless coupled with proof of real prejudice to the employer is not fatal. In the instant case delay did cause prejudice to the employer as it could not adduce proper evidence.

12. There is one more aspect of the matter, which requires consideration. It was admitted to the workman that his services were terminated after domestic enquiry. The burden to prove that enquiry was not fair is upon the workman. He did not plead that in what manner enquiry was not fair i.e. in what sense opportunity of hearing was denied to him. Neither of the parties adduced any oral evidence. In the absence of even oral assertion on the part of the workman regarding unfairness of

domestic enquiry, the domestic enquiry was to be presumed as fair.

13. In view of the fact that under the impugned award and interim order passed in this writ petition, workman was taken back in service it is directed that what ever wages salary were paid to the workman shall not be refundable, however, no further amount should be payable to the workman. If any amount was deposited by the employer under interim order of this Court then the same alongwith accrued interest, if any, shall be returned to the employer.

14. Writ petition is accordingly disposed of.