
**National Institute of Public Co-operation and Child Deve. Vs Govt. of NCT
of Delhi and Others**

CW. No. 3403 of 1996

Court: Delhi High Court

Date of Decision: May 23, 2001

Acts Referred:

Constitution of India, 1950 – Article 309#Industrial Disputes Act, 1947 – Section 33(2), 33A

Hon'ble Judges: Mukul Mudgal, J

Bench: Single Bench

Advocate: Mr. A.K. Singla, for the Appellant; Mr. K.C. Dubey, Adv, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Mukul Mudgal, J.

This writ petition challenges the Order of Reference dated 20th September, 1989, made by the respondent No.1, Govt.

of NCT of Delhi regarding the dispute arising from the termination of the services of respondent No.3 who was at the relevant time employed as a

Lower Division Clerk. The writ petition has been filed in this Court on 4th of September, 1996. The main challenge in the writ petition is to the

non-applicability of the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") consequent to adoption of Central Civil

Services (Classification, Control & Appeal) Rules, 1965 by the petitioner and its plea that these rules framed under Article 309 govern its

employees to the exclusion of the provisions of the Industrial Disputes Act.

2. The Order of reference dated 20th September, 1989 arose from the termination of the services of the respondent No. 3-Ishwar Lal by the

petitioner and was made in the following terms:

TERMS OF REFERENCE

Whether the removal of Shri Ishwar Lal from his services is illegal and/or unjustified and if so, to what relief is he entitled and what other directions

are necessary in this circumstances of this case?

3. Mr. K.C. Dubey, learned counsel, appearing on behalf of respondent No. 3-workman as amicus curiae has submitted that the writ petition is

hopelessly barred by laches as right since 1989 up to 1996 the petitioner-Management participated in the proceedings before the Tribunal which

were at a very advanced stage and the very purpose of this writ petition is to tire out the resistance and to wipe out the resources of the respondent

No.3-workman and there is no satisfactory Explanation given by the petitioner/Management for the laches of about 7 years.

4. In particular the learned counsel for respondent No. 3 has submitted that the sequence of events eloquently demonstrated the plea of laches. He

has submitted that on 27.11.1989, the respondent No.3/claimant, who is an ex servicemen, filed his Statement of Claim before the Industrial

Tribunal (for short "the Tribunal"), pursuant to the reference of the disputes, raised by respondent No.3-workman. On 27th January, 1990, the

petitioner/Management filed its reply by way of opposition to statement of claims before the Tribunal and on 26th of March, 1990 rejoinder was

filed by respondent No.3-workman. Thereafter several hearings took place before the Tribunal on 27.3.1991, 4.3.1994 (when petitioner filed an

application for interim relief), 12.5.1994 and in May 1994 evidence on affidavit was filed by the petitioner-Management. On 19.9.1994,

respondent No. 3/claimant filed a complaint u/s 33A for the violation of Section 33(2)(b) by the petitioner/Management. On 20.10.1994 written

arguments were filed by the respondent No.3-workman. On 12.5.1995, the petitioner/Management filed a reply to the application u/s 33A of the

Act. Thereafter proceedings took place on 2.8.1995, 6.7.1995, 7.7.1995, 31.1.1996 and 21.2.1996 before the Tribunal. On 21.2.1996, issues

were framed and the issue No. 1 was ""Whether the management is not an industry and the Industrial Dispute Act is not applicable."" On 3.7.1996

management"s witness was cross-examined and the Management"s evidence was closed. On 17.7.1996, respondent No. 3 filed his evidence by

way of affidavit and on 14.8.1996 the petitioner-Management failed to cross-examine the respondent No.3-workman. Consequently the case was

adjourned to 15.10.1996 subject to payment of costs and in the meanwhile the present writ petition was filed in this Court and listed on 6th

September, 1996 when notice to show cause was issued and on 14.10.1996 an interim order restraining the Tribunal from giving its award/final

decision was passed.

5. In particular the learned counsel for respondent No. 3 has submitted that the petitioner/Management in its writ petition relies on a similar Writ

Petition No.3097/95 in which show cause notice had already been issued. Learned counsel for respondent No.3-workman submits further that at

least since 1995 from the date of the filing of the said writ petition No. 3097/95 in 1995 there was no reason for the petitioner not to approach this

Court and the writ petition has been filed in a motivated manner so as to frustrate and delay the proceedings before the Tribunal which were at a

very advanced stage. Learned counsel further submits that without going into the merits of the case this is a fit case where the writ petition should

be dismissed for totally unexplained laches.

6. The learned counsel for the petitioner, Shri A.K. Singla, in reply to the plea of laches has mainly relied upon the plea that from May, 1991 to

February, 1996 no other proceedings took place before the Tribunal except the determination of the interim relief application filed, by respondent

No.3-workman. In my view, even assuming that the interim relief was the only proceeding pending before the Tribunal from May, 1991 to

February, 1996, nevertheless this in no way is any Explanation for the laches pointed out by the respondent No. 3. Secondly from the list of dates

filed by respondent No.3 it is evident that the several hearings had taken place before the Tribunal in the period prior to the filing of the writ petition

bringing the adjudication of the disputes to a very advanced stage as enumerated above.

7. Nevertheless the learned counsel for the petitioner argued on merits and relied upon the judgment of the Full Bench of Kerala High Court

reported as Director, Postal Services (South) Kerala Circle, Trivandrum & Another Vs K.R.B. Kaimal & Another 1984 LAB.L.C. 628 to

contend that by virtue of the fact that the petitioner-Management had adopted the Secretarial Civil Services Rules 1995, the ratio of the aforesaid

judgment which held that the temporary clerks of Posts & Telegraph-respondents are governed by the said Rules and not the provisions of the

Industrial Disputes Act, squarely applied to the facts of the present case also and hence the proceedings before the Industrial Tribunal were

without jurisdiction. For considering this plea the relevant Para in respondent No.1's counter affidavit reads as under:

That the petitioner is admittedly a Society registered under the Societies Registration Act and has framed its bye-laws. In terms of bye-law 32 the

Society has adopted the Central Civil Services (Classification and Control Appeal) Rules 1995 and CCS (Conduct) Rules 1964 as being

applicable to the employees of the Society mutates mutants. Accordingly it will be evident that it is the voluntary act of the Society by which the

Petitioner Society has adopted the CCS(CCA) Rules 1965. These rules have not been made applicable to the Petitioner Society on their own

strength propel vigor . The Respondent submits that by such voluntary adoption of the CCS(CCA) Rules, 1965, it cannot be said in law that the

employees of the Society are Government servants or held a civil post under the Government so as to exclude them from the purview of the

Industrial Disputes Act. The Respondent further submits that such device and strategy to exclude the operation of the Industrial Dispute Act ought

to be prevented.....

A reference to the decision of the Hon"ble Supreme Court of India in ""Director of Postal Services Vs KRB Kaimal"" 1984 LIC 628 is wholly

inapplicable and the said case is entirely distinguishable from the fact of the present case inasmuch as in the decision of the Supreme Court, the

Court was dealing with the postal service to which the CCS(CCA) Rules were applicable on their own force as condition of service under Article

309 of the Constitution of India whereas in the present case it is the voluntary act of the Society in adopting the CCS(CCA) Rules in its bye-laws.

The answering respondent crave/leave to make submissions with respect to the true scope and interpretation of the said judgments during the

course of hearing.

No rejoinder was filed by the petitioner in reply to the above plea raised by the respondent No. 1. Thus the averment of respondent No. 1 stands

admitted. I am of the view that the writ petition warrants dismissal not only on the grounds of laches which are substantially unexplained by the

petitioner but even on the merits of the plea of applicability of CCS (CCA) Rules and consequent ousting of jurisdiction of the Tribunal. I am of the

view that in the Director of Postal Services case(Supra) the rules directly applied to the Postal Department unlike the petitioners" case. An entity

which is covered by the Industrial Disputes Act can not by a voluntary adoption of CCA Rules, get out of the statutorily applicable jurisdiction of

the Industrial Disputes Act. It has not been denied by the petitioner, that but for the voluntary adoption of the CCA Rules the said Rules would not

have governed it ipso facto. Furthermore, the said Rules do not apply proprio vigore to the petitioner and it can not be said that the employees of

the petitioner company are government servants or hold a civil post under the Union of India. Accordingly there is no merit in the plea of the

petitioner that the CCA Rules voluntarily adopted by it, exclude the operation of the Industrial Disputes Act. Even otherwise on the question of

laches there is no rational Explanation of the inordinate delay in approaching this Court in 1996 in respect of a reference made in 1989 which had

progressed to an advanced stage and in which the petitioner fully took part. There is also substance in the grievance of the respondent No. 3 that

the petitioners" attempt is to prolong the resolution of the dispute on merits. No other plea was urged by the learned counsel for the petitioner.

Thus, I am satisfied that both on the plea of CCA Rules displacing the applicability of Industrial Disputes Act, and on the grounds of laches, the

writ petition deserves to be dismissed and the same is accordingly dismissed. The interim Order dated 14th October, 1996, which was confirmed

on 27th August, 1997 stands vacated.

8. Taking into account the fact that the reference is of the year 1989, the Industrial Tribunal should dispose of the reference within 6 months from

today. Considering the facts and circumstances of the case and the pendency of the proceedings in this Court for about 5 years during which the

case was listed on at least 18 occasions in this Court, the respondent No.3 would be entitled to costs quantified at Rs.10,000/- payable within 4

weeks from today. Since the counsel, Shri Dubey is appearing as amicus Curiae in this matter, a sum of Rs. 5,000/- out of the costs of

Rs.10,000/- be paid directly to him and the balance sum of Rs. 5,000/- be paid to respondent No. 3 within the stipulated period of four weeks.

The writ petition accordingly stands disposed of.