Shri Balle Ram Vs Ashok Kapoor, Secy. (Labour) and Another

Court: Delhi High Court

Date of Decision: May 6, 2009

Acts Referred: Constitution of India, 1950 â€" Article 226, 227
Industrial Disputes Act, 1947 â€" Section 10, 10(1), 10(2), 12, 12(4)

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: Party-in-Person, for the Appellant; Vinay Sabharwal, for the Respondent

Final Decision: Dismissed

Judgement

Kailash Gambhir, J.
By way of this petition filed under Articles 226 & 227 of the Constitution of India, the petitioner seeks issue of an

appropriate writ, order or direction to quash order dated 21/03/1997 and order dated 23/04/1997 in the review petition passed by Respondent

No. 1.

2. The brief conspectus of the facts as set out in the petition are as under:

The petitioner was appointed by the respondent No. 2 as Conductor in the year 1983 and after completion of training the petitioner was posted as

Conducted w.e.f. 6.3.84 vide his Badge No. 20737. On 7.1.85 the respondent No. 2/DTC terminated the services of the petitioner on the basis

of a report of ATI against the petitioner. In the said report it was alleged that the two passengers boarded the bus. No. DLP-4073 of Route No.

817 from Sewak Park to Najafgarh at 8.30 A.M. but they did not purchase the ticket. However, case of the petitioner is that the said passengers

purchased the ticket but the ATI snatched the tickets from them and made fictitious report against the petitioner as he was having personal grudge

against the petitioner. On the basis of the said allegations the petitioner was removed from the service on the same day and monthly salary and

other dues and benefits of the petitioners were withheld by the respondent. The petitioner got issued a demand notice dated 21.9.91 to DTC and a

reminder dated 6.5.94 was also sent to the respondent No. 2/DTC. On 17.4.95 the petitioner filed his statement of claim before the Conciliation

Officer against the respondent No. 2. Vide order dated 21.3.97 the respondent No. 1 rejected the claim petition of the petitioner. Thereafter the

petitioner filed review petition which was also dismissed vide order dated 23.4.97. In the present petition the petitioners has challenged the orders

dated 21.3.97 and 23.4.97.

3. The counsel for the respondent has raised a preliminary objection that the present petition is hopelessly time- barred and is liable to be dismissed

summarily on this account itself. The counsel submits that initially the reference of the dispute was sought for by the petitioner nearly 10 years after

his services were terminated. His services were terminated on 08/01/1985 whereas, he had filed his statement of claim before the Conciliation

Officer, Govt. of Delhi in April 1995. The counsel urges that even no explanation has been put forth by the petitioner and thus Respondent No. 1

rightly did not refer the matter to the Industrial Tribunal for adjudication.

4. Per contra, counsel for the petitioner maintains that the orders dated 21/03/1997 and 23/04/1997 passed by the Respondent No. 1 are illegal

and unjustified and are not speaking orders. The counsel avers that due to undue hardship caused to the petitioner on illegal removal of the

petitioner from the services of DTC, the petitioner could not approach the Respondent No. 1 on time. The counsel contends that the petitioner has

a strong case on merits thus this Court may exercise its jurisdiction under Article 226 of the Constitution. The counsel relied on the decision in

Ajaib Singh v. Sirhind Cooperative Marketing-Cum-Processing Service Society Limited and Anr. 1999 SCC (L&S) 1054 of the Hon''ble Apex

Court.

5. I have heard the learned Counsel for the parties and perused the record.

6. Before I proceed to discuss the merits of the arguments raised by the learned Counsel appearing for the parties in regard to correctness and

legality of the impugned orders, it will be appropriate to refer to few judgments relating to contention of the parties regarding jurisdiction vested in

the appropriate Government while exercising its administrative power of making a reference u/s 10(1)(c) of the Act.

7. It is not in dispute that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising industrial dispute

and the Hon''ble Supreme Court in its various judgments cited by counsel for the petitioner has been considerate in condoning even long delays on

the part of the workman in raising an industrial dispute but rationale of all these judgments is that every case has to be taken on its facts and

circumstances and it is nowhere held that howsoever an inordinate and unexplained delay may be on the part of the workman, the delay has to be

condoned.

8. Explaining the ratio of the decision in State of Madras Vs. C.P. Sarathy and Another, , in Western India Match Co. Ltd. Vs. The Western India

Match Co. Workers Union and Others, The Supreme Court explained the power of appropriate government u/s 10 of the I.D. Act and observed

as under:

In the State of Madras v. C.P. Sarathy, this Court held on construction of Section 10(1) of the Central Act that the function of the appropriate

Government there under is an administrative functions. It was so held presumably because the Government cannot go into the merits of the dispute

its function being only to refer such a dispute for adjudication so that the industrial relations between the employer and his employees may not

continue to remain disturbed and the dispute may be resolved through a judicial process as speedily as possible.

9. In Bombay Union of Journalists and Others Vs. The State of Bombay and Another, , the relevant scheme of the Act as disclosed by Section 12

viz-a-viz the powers of the appropriate Government u/s 10 was discussed. It was held therein as under:

When the appropriate Government considers the question as to whether a reference should be made u/s 12(5), it has to act u/s 10(1) of the Act,

and Section 10(1) confers discretion on the appropriate Government either to refer the dispute, or not to refer it, for industrial adjudication

according as it is of the opinion that it is expedient to do so or not. In other words, in dealing with an industrial dispute in respect of which a failure

report has been submitted u/s 12(4), the appropriate Government ultimately exercises its power u/s 10(1), subjects to this that Section 12(5)

imposes an obligation on it to record reasons for not making the reference, when the dispute has gone through conciliation and a failure report has

been made u/s 12(4).

10. Thus, from the above discussion it is pertinent to note that while conceding a very limited jurisdiction to the State Government to examine

patent frivolousness of the demands, it is to be understood as a rule, that adjudication of demands made by workmen should be left to the Tribunal

to decide. Section 10 permits appropriate Government to determine whether dispute ""exists or is apprehended"" and then refer it for adjudication

on merits. The ""demarcated functions are (1) reference; (2) adjudication. When a reference is rejected on the specious plea that the Government

cannot bear the additional burden, it constitutes adjudication and there by usurpation of the power of quasi-judicial Tribunal by an Administrative

authority, namely, the Appropriate Government. There may be exceptional cases in which the State Government may, on a proper examination of

the demand come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Government should be very slow

to attempt an examination of the demand with a view to decline reference and Courts will always be vigilant whenever the government attempts to

usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render Sections 10 and 12(5)

of the Industrial Disputes Act nugatory.

11. A judgment reported in The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, . the Supreme Court has held that the power to

condone the limitation cannot be exercised to condone any period of limitation for reviving matter which had since been settled. It would be

appropriate to reproduce the following observation of the Supreme Court:

Law does not prescribe any time-limit for the appropriate Government to exercise its powers u/s 10 of the Act. It is not that this power can be

exercised at any point of time and to revive matters which had since heel settled. Power is to be exercised reasonably and in a rational manner.

There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years

of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have

been apprehended. A dispute which is stale could not be the subject-matter of reference u/s 10 of the Act. As to when a dispute can be said to be

stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that

the reference be made u/s 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the

time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed

from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised

by the respondent for raising an industrial dispute was ex-facie bad and incompetent.

12. In another judgment reported in S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, , the Supreme Court after the decision

of the High Court for having given relief to the workman on the ground of delay has observed as under:

It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying

relief to the appellants. We cannot agree. It is true, as held in Shalimar Works Limited Vs. Their Workmen, , that merely because the Industrial

Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard

to the delay and reasons therefore. There is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable

that the disputes 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. A delay of 4 years in raising the dispute after even re-employment of the most of the old

workmen was held to be fatal in Shalimar Works Limited Vs. Their Workmen, . In The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and

Others, , a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In Ratan Chandra Sammanta and Ors. v. Union of India

and Ors. (supra) 1993 AIR SCW 2214 (supra), it was held that a casual labourer retrenched by the employer deprives himself of remedy

available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in

material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has

been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising

the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in

1985-86 or 1986-87. Pursuant to the judgment in Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI)

and Others, , the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome

thereof. On 16-1-1990 they were refused to be accommodated in the scheme. On 28-12-1990 they initiated the proceedings under the Industrial

Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not

think that the appellants deserve to be nonsuited on the ground of delay.

13. My brother Judge A.K. Sikri in the judgment Ramesh Kumar Vs. Saraswati, has also very elaborately dealt the issue of delay in the said

judgment and has held that where the matter raised by the workman is belated, the same must form a relevant part for refusing reference and the

decision of the Government refusing to make a reference on the ground of inordinate and unexplained delay on the part of the workman was held

as just and proper.

14. Analysis of the above decisions, clearly shows that the appropriate Government is vested with administrative power to make or decline a

reference. Such power is to be exercised in line with the law enunciated by the Courts and essentially must not transgress its jurisdiction and travel

into the matters of final determination which would squarely fall within the jurisdiction of the Labour Court or Tribunal. Application of mind for valid

and appropriate reasons is the pre-requisite for denial or making a reference in terms of these provisions. The reasonableness in terms of period is

sufficiently adopted under the scheme of this Act. This is manifest from the fact that on the one hand there is no specific limitation stipulated for

raising a demand or making a reference but the proceedings of the authorities immediately preceding the reference as indicated in Section 12 of the

Act and post proceedings or determination of the dispute again within the specified time u/s 10(2)(a) of the Act shows the legislative intendment for

adherence to the prescribed schedule of time and expeditious disposal of industrial disputes. One of the irresistible conclusions of the above

discussion is that the concept of reasonable time has great application to objective implementation of various orders and period of limitation weigh

with the authorities as well as with the Courts while dealing with the matters. Thus, it may not be quite correct to argue that Government would

have no jurisdiction to decline reference of an industrial dispute, which has become stale and has extinguished because of unexplained prolonged

delay. The time may not be of essence but is certainly a relevant factor to be taken into consideration by the appropriate Government at the

appropriate stage.

15. In the present facts and circumstances of the case, there is no justification or Explanation has been given as to what prevented the petitioner to

raise an industrial dispute against his alleged termination which admittedly took place on 08/01/1985. In the absence of any explanation been put

forth by the petitioner in this regard, I do not find any merit in the present petition. The same is hereby dismissed.