(2009) 05 DEL CK 0468

Delhi High Court

Case No: WPC No. 4392 of 1997

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

Date of Decision: May 6, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Industrial Disputes Act, 1947 - 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.