

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****SPECIAL LEAVE PETITION (CIVIL) NO. OF 2015**
(ARISING OUT OF SLP (C) NO...CC 16129 OF 2015)

PRABHAKAR

.....PETITIONER

VERSUS

JOINT DIRECTOR
SERICULTURE DEPARTMENT & ANR.

.....RESPONDENT(S)

J U D G M E N T**A.K. SIKRI, J.**

Delay condoned.

This special leave petition arises from the judgment dated June 06, 2011 passed by the High Court of Karnataka, Circuit Bench at Dharwad, whereby writ appeal of the respondents (hereinafter referred to as the 'Management') herein was allowed resulting in setting aside the award of the Labour Court directing reinstatement of the petitioner herein in service without back wages and other benefits, even when the said order was upheld by the Single Judge of the said High Court in the writ petition filed by the Management challenging the award.

- 2) We may state at the outset that the main factor with which the High Court has been influenced is that the petitioner, whose services were terminated on April 01, 1985, raised the industrial dispute only in the year 1999, i.e. after a period of more than fourteen years. On the facts of this case, the High Court has held that there was no 'live' dispute and even when no period of limitation is provided for raising the disputes under the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act') and provisions of the Limitation Act, 1963 are not applicable, there could not have been a reference at such a belated stage, inasmuch as, after a lapse of such abnormal time, the dispute ceases to exist and, therefore, the appropriate Government had no jurisdiction or power to make a reference of a non-existent dispute. The petitioner has questioned the appropriateness of this view taken by the High Court.
- 3) Primary submission of the learned counsel appearing for the petitioner is that once it is accepted that the law of limitation does not apply, the Government could make the reference even if the dispute was raised belatedly and in such circumstances power of the Labour Court is to mould the relief. In support of this contention, learned counsel referred to the judgment of this Court in ***Raghubir Singh v. General Manager, Haryana Roadways, Hissar***¹. In order to appreciate the aforesaid

¹ (2014) 10 SCC 301

contention, we scan through the basic facts of the present case.

- 4) The petitioner was appointed as a Clerk in the Sericulture Department, Government of Karnataka, Belgaum on April 01, 1984. His services were terminated on April 01, 1985. During the period April 01, 1985 till 1999, the petitioner did not approach any judicial/quasi-judicial authority challenging the said termination. In fact, not even a notice or legal notice was served upon the Management questioning the validity of the said termination. However, some time in the year 1999, the petitioner approached the appropriate Government alleging that his services were terminated illegally and in violation of the provisions of Section 25F of the Act. Insofar as delay is concerned, in the claim made by the petitioner, only explanation given was that he had approached the Management on several occasions with request to reinstate him in service and pay back wages and other consequential benefits. He also alleged that though the Management initially assured that they would reinstate him, but dragged on the matter on one pretext or the other and when they ultimately told him that they would not reinstate him into service, he had no alternative but to raise the industrial dispute. The conciliation proceedings have started, which ended in failure. Thereafter, the appropriate Government referred the matter regarding validity of termination of the petitioner for adjudication.

- 5) The Management had taken a specific plea in the conciliation proceedings as well as before the Labour Court that such a reference was not competent and the petitioner was not entitled to any relief when he had raised the dispute after fourteen years of his termination. On merits it was pleaded that the Management had not terminated the services and, in fact, it is the petitioner who left the services. Various issues were framed by the Labour Court, which included a specific issue as to whether any relief could be given when the dispute was raised after fourteen years of alleged termination. After the evidence was led, the Labour Court passed the award holding that the petitioner had worked for more than 240 days and his services were terminated by the Management without complying with the provisions of Section 25F of the Act. The termination was, thus, held to be invalid. The contention of the Management that the petitioner had left the service of his own was negated by the Labour Court with the reason that no person would give up the work easily without any cause and as the petitioner had not got any alternate employment anywhere, the question of leaving his job by himself did not arise. Insofar as the issue of raising the dispute belatedly is concerned, the Labour Court held that even if there was a delay of fourteen years, only relief was required to be moulded because of that reason. Thus, the Labour Court ordered reinstatement, but denied back

wages or other benefits. For this purpose, the Labour Court referred to the judgment of this Court in ***Sapan Kumar Pandit v. U.P. State Electricity Board & Ors.***²

- 6) As pointed out above, the writ petition preferred by the Management against this award was dismissed by the Single Judge of the High Court. Against the order of dismissal passed by the learned Single Judge, the Management preferred writ appeal, which has been allowed by the Division Bench vide impugned judgment dated June 06, 2011. This special leave petition is preferred challenging the said judgment and there is also a delay of 1438 days in filing the same.
- 7) From the facts narrated above, it becomes clear that for a period of fourteen years no grievance was made by the petitioner *qua* his alleged termination. Though it was averred that the petitioner had approached the Management time and again and was given assurance that he would be taken back in service, there is nothing on record to substantiate this. No notice was served upon the Management. There is no assurance given in writing by the Management at any point of time. Such assertions are clearly self-serving. Pertinently, even the Labour Court has not accepted the aforesaid explanation anywhere and has gone by the fact that the dispute was raised after a delay of fourteen years.

2 (2001) 6 SCC 222

Therefore, keeping in mind the aforesaid facts, we would decide the issue which has arisen, namely, whether reference of such a belated claim was appropriate.

- 8) It may be stated that the question is of utmost importance as it is seen that many times, as in the instant case, the workers raise dispute after number of years of the cause of action. Whether the dispute can still be treated as surviving? Or whether it can be said that dispute does not exist when the concerned workmen after his say termination kept quiet for number of years and thus acquiesced into the action?
- 9) Before we proceed to deal with the aforesaid questions, it would be proper to discuss the power of 'appropriate Government' under Section 10 of the Act in referring or refusing to refer the dispute for adjudication. It is a peculiar position provided under the Act that an aggrieved workman cannot approach the Labour Court or Industrial Tribunal directly for adjudication of 'industrial dispute'. Except those cases falling under Section 2A of the Act, he has to seek reference of dispute to Labour Court/Industrial Tribunal under Section 10 of the Act. 'Appropriate Government', as defined under Section 2(a) of the Act, is empowered to refer the dispute. Section 10(1) stipulates that 'appropriate Government' may, at any time, by order in writing, refer the

dispute to a Board, Labour Court or Industrial Tribunal where *'it is of the opinion that any industrial dispute exists or is apprehended'*. Interpreting this Section, way back in the year 1953, this Court in the case of ***State of Madras v. C.P. Sarathy & Anr.***³ stated the following propositions:

“(i) The Government should satisfy itself, on the facts and circumstances brought to its notice, in its subjective opinion that an 'industrial dispute' exists or is 'apprehended';

(ii) the factual existence of a dispute or its apprehension and the expediency of making reference are matters entirely for the Government to decide;

(iii) the order making a reference is an administrative act and it is not a judicial or a quasi-judicial act; and

(iv) the order of reference passed by the Government cannot be examined by the High Court in its jurisdiction under Art. 226 of the Constitution to see if the Government had material before it to support the conclusion that the dispute existed or was apprehended.”

These propositions were based on unamended Act which did not contain the words *'where the appropriate Government is of the opinion'*.

- 10) In ***Western India Match Company Ltd. v. The Western India Match Co. Workers Union & Ors.***⁴, this Court took support of ***C.P. Sarathy's***⁵ case to hold that function of the appropriate Government to make reference under Section 10(1) is an administrative function. This view

3 (1953) 4 SCR 334

4 (1970) 1 SCC 225

5 Note 3 above

that the appropriate Government is performing an administrative act and not judicial or quasi-judicial act while making reference is found in various judicial pronouncements made by this Court even thereafter.

- 11) The satisfaction of the existence of an industrial dispute or the satisfaction that an industrial dispute is apprehended is '*a condition precedent to the order of reference*'. An order of reference cannot be made mechanically without forming an opinion. For formation of the necessary opinion, the 'appropriate Government' must also be satisfied that a person whose dispute is being referred for adjudication is a 'workman'. If the dispute is not between an employer and his workman, it is not an 'industrial dispute' and the Government can justifiably refuse to refer the dispute. From the material placed before it, the Government reaches an administrative decision whether there exists an existing or apprehended industrial dispute. In either event, it can exercise the power under this Section.
- 12) The adequacy or the sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a party, it would be open to such a party to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction to make the

award. But if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters.

- 13) When the 'appropriate Government' makes a reference of an industrial dispute for adjudication, it does not decide any question of fact or law. The only condition, which the exercise of that power should satisfy, is that there should be the existence or apprehension of an industrial dispute. When once the Government is satisfied about this question, it acquires jurisdiction to refer the dispute for adjudication. However, the condition precedent to the formation of such opinion, that there should be an existing or apprehended 'industrial dispute', is imperative and the recitals of the existence or apprehension of the industrial dispute cannot preclude the Court to exercise its power of judicial review and to determine whether, in fact, there was any material before the 'appropriate Government' and if there was; whether the Government applied its mind in coming to the conclusion that an industrial dispute was in existence or was apprehended and it was expedient to make the

reference. Therefore, an order of reference is open to judicial review if it is shown that the appropriate Government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration.

- 14) Likewise, when the appropriate Government refuses to make reference, it is also amenable to judicial review if it is shown that the appropriate Government did not take into consideration the relevant material which could show existence or apprehension of industrial dispute or if it is shown that the reasons for refusing to make reference are irrelevant or not germane to the formation of opinion.
- 15) It has been held in catena of judgments that while performing this administrative function, the Government would not decide the dispute between the parties which may be termed as judicial function and such judicial function is to be discharged by the Labour Court/Industrial Tribunal only. In ***Ram Avtar Sharma & Ors. v. State of Haryana & Anr.***⁶, this Court held that if the Government, while refusing to make reference delves into the merits of the dispute, it is not permissible under law and the appropriate course to make reference and such dispute are

6 (1985) 3 SCC 189

to be settled/decided by the Labour Court/Industrial Tribunal as an adjudicatory authority. Following observations of the Court are worth noting:

“Therefore the view that while exercising power under Section 10(1) the functions performed by the appropriate Government is an administrative function and not a judicial or quasi-judicial function is beyond the pale of controversy.

Now if the Government performs an administrative act while either making or refusing to make a reference under Section 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of lis. That would certainly be in excess of the power conferred by Section 10. Section 10 requires the appropriate Government to be satisfied that the industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima facie whether an industrial dispute exists or claim is frivolous or bogus or put forth extraneous and relevant reasons not for justice of industrial peace and harmony. Every administrative determination must be based on ground relevant and germane to the exercise of power. If the administrative determination is based on the relevant, extraneous or grounds not germane to the exercise of power, it is liable to be questioned in exercise of the power of judicial review.”

- 16) From the aforesaid discussion, it clearly follows that even when making a reference by the appropriate Government is an administrative act, before making such a reference it has to form an opinion as to whether any industrial dispute exists or is apprehended. While forming this opinion, the appropriate Government is supposed to take all relevant facts into consideration touching upon this aspect. If the power is not

exercised properly, it is amenable to judicial review. Thus, where an industrial dispute exists or is apprehended, but the appropriate Government refuses to make reference, such a refusal can be challenged in the court of law. Conversely, which is equally true, if the reference is made even when no dispute exists or is apprehended, such a reference will also be subject to judicial review.

- 17) We may refer to the judgment in the case of ***The Secretary, Indian Tea Association v. Ajit Kumar Barat & Ors.***⁷ In that case, the "appropriate Government" refused to make a reference on the ground that the concerned employee who had raised the dispute was not 'workman' within the meaning of Section 2(s) of the Act. While doing so, the Government considered the salary and allowances drawn by the employee as well as the nature of work performed by him, including his power to sanction expenses incurred by his Office. The concerned employee (respondent in the said case) filed a writ petition against the order of the appropriate Government refusing to make reference and the High Court in that writ petition directed the Government to make the reference as to whether he was a workman. Appeal filed by the appellant therein was also dismissed and in these circumstances the appellant preferred Special Leave Petition and that is how the matter came up for

⁷ (2000) 3 SCC 93

consideration before this Court. Granting leave and ultimately allowing the appeal of the appellant, this Court set aside the judgment of the High Court and upheld the order of the Government refusing to make reference. Relying upon its earlier judgment in the case of **C.P. Sarathy**⁸, **Prem Kakar v. State of Haryana & Anr.**⁹, and **Sultan Singh v. State of Haryana & Anr.**¹⁰, the Court observed that the order under Section 10 of the Act was an administrative order and the Government was entitled to go into the question whether industrial dispute exists or is apprehended and it will be only subjective satisfaction on the basis of material on records and being an administrative order no *lis* is involved. The position in law was summarised as under:

- (i) the appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable, wherever possible, for the Government to indicate the nature of dispute in the order of reference;
- (ii) the order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of

8 Note 3 above.

9 (1976) 3 SCC 433

10 (1996) 2 SCC 66

- the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order;
- (iii) an order made by the appropriate Government under Section 10 of the Act being an administrative order no *lis* is involved, as such an order is made on the subjective satisfaction of the Government;
 - (iv) if it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and;
 - (v) it would, however, be open to a party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act.
- 18) At this stage, it may be pointed out that admittedly the law of limitation does not apply to industrial disputes. Limitation Act does not apply to the proceedings under the Industrial Disputes Act and under the Industrial Disputes Act no period of limitation is prescribed. This is now well settled by series of judgments of this Court.
- 19) On the reading of these judgments, which are discussed hereinafter, it can be discerned that in some decisions where the reference was made after a lapse of considerable period, the Court did not set aside the

reference but moulded the relief by either granting reinstatement but denying back wages, fully or partially, or else granted compensation, denying reinstatement. On the other hand, in some of the decisions, the Court held that even when there was no time prescribed to exercise power under Section 10 of the Act, such a power could not be exercised at any point of time to revive matters which had since been settled or had to become stale. We would like to refer to these judgments at this juncture.

- 20) As early as in 1959, this Court in the case of ***Shalimar Works Ltd. v. Their Workmen***¹¹ pointed out that there is no limitation prescribed in making a reference of disputes to Industrial Tribunal under Section 10(1) of the Act. At the same time, the Court also remarked that the dispute should be referred as soon as possible after they have arisen and after conciliation proceedings have failed. In that case, reference was made after four year of dispute having arisen. In these circumstances, this Court held that relief of reinstatement should not be given to the discharged workmen in such a belated and vague reference.
- 21) Again, in ***Western India Match Company Ltd.***¹², though upholding the reference of dispute made nearly six years after the previous refusal to

11 (1960) 1 SCR 150

12 Note 4 above

make the reference, the Court observed that in exercising its discretion to make reference, the Government will take into consideration the time which had lapsed between its earlier decision and the date when it decides to reconsider it in the interest of justice and industrial peace. Following observations from this judgment need to be noticed for the purposes of the present case:

“8. 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. But the discretion is neither unfettered nor arbitrary for the section clearly provides that there must exist an industrial dispute as defined by the Act or such a dispute must be apprehended when the Government decides to refer it for adjudication. No reference thus can be made unless at the time when the Government decides to make it an industrial dispute between the employer and his employees either exists or is apprehended. 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. But the Government need not wait until such a procedure has been completed. In an urgent case, it can “at any time”, i.e., even when such proceedings have not begun or are still pending, decide to refer the dispute for adjudication. The expression “at any time” thus takes in such cases as where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed. As already stated, the expression “at any time” in the context in which it is used postulates that a reference can only be made if an industrial dispute exists or is apprehended. No reference is contemplated by the section when the dispute is not an industrial dispute, or even if it is so, it no longer exists or is not apprehended, for instance, where it is already adjudicated or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in

existence.

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13. It is true that where a Government reconsiders its previous decision and decides to make the reference, such a decision might cause inconvenience to the employer because the employer in the meantime might have acted on the belief that there would be no proceedings by way of adjudication of the dispute between him and his workmen. Such a consideration would, we should think, be taken into account by the Government whenever, in exercise of its discretion, it decides to reopen its previous decision as also the time which has lapsed between its earlier decision and the date when it decides to reconsider it. These are matters which the Government would have to take into account while deciding whether it should reopen its former decision in the interest of justice and industrial peace but have nothing to do with its jurisdiction under Section 4(k) of the Act. Whether the intervening period may be short or long would necessarily depend upon the facts and circumstances of each case, and therefore, in construing the expression “at any time” in Section 4(k) it would be impossible to lay down any limits to it.”

- 22) Again in ***Vazir Sultan Tobacco Company v. State of Andhra Pradesh***¹³, the Andhra Pradesh High Court held that reference made nearly six years after the dispute amounted to inordinate, unreasonable and unjustifiable.
- 23) In ***Nedungadi Bank Ltd. v. K.P. Madhavankutty & Ors.***¹⁴, the Court cautioned that power of reference should be exercised reasonably and in a rational manner and not in a mechanical fashion. It was specifically observed that power to make reference cannot be exercised to revive

13 (1964) 1 LLJ 622

14 (2000) 2 SCC 455

settled matters or to refer stale disputes in spite of absence of statutory limitation period. The Court not only reiterated that the courts had power of judicial review, though to limited extent, but also made following pertinent observations on delay:

“6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 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 been 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 under Section 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 under Section 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.

7. In the present appeal it is not the case of the respondent that the disciplinary proceedings, which resulted in his dismissal, were in any way illegal or there was even any irregularity. He availed his remedy of appeal under the rules governing his conditions of service. It could not be said that in the circumstances an industrial dispute did arise or was even apprehended after a lapse of about seven years of the dismissal of the respondent. Whenever a workman raises some dispute it does not become an industrial dispute and the appropriate Government cannot

in a mechanical fashion make the reference of the alleged dispute terming it as an industrial dispute. The Central Government lacked power to make reference both on the ground of delay in invoking the power under Section 10 of the Act and there being no industrial dispute existing or even apprehended. The purpose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace and defeats the very object and purpose of the Act. The Bank was justified in thus moving the High Court seeking an order to quash the reference in question.

8. It was submitted by the respondent that once a reference has been made under Section 10 of the Act a Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court. That is not a correct proposition to state. An administrative order which does not take into consideration statutory requirements or travels outside that is certainly subject to judicial review, limited though it might be. The High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. In *National Engg. Industries Ltd. v. State of Rajasthan* {(2000) 1 SCC 371} this Court observed:

“24. It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be the subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the Industrial Tribunal (*sic* dispute) which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended the appropriate Government lacks power to make any reference.”

24) Even in ***Sapan Kumar Pandit***¹⁵, the Court emphasized that limitation

¹⁵ Note 2 above

period for making the reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. In the facts of that case, the Court found that dispute remained alive and, therefore, reference was legally made. What is significant is that the Court in that judgment interpreted the words '*at any time*' occurring in Section 10 of the Act and clarified that though these words, *prima facie*, indicate that there is no time limit for making the reference, but such a meaning cannot be assigned to these words and the real test is the existence of a dispute on the date of reference for adjudication. We would like to reproduce paras 8 and 9 elaborating this principle:

"8. The above section is almost in tune with Section 10 of the Industrial Disputes Act, 1947, and the difference between these two provisions does not relate to the points at issue in this case. Though no time limit is fixed for making the reference for a dispute for adjudication, could any State Government revive a dispute which had submerged in stupor by long lapse of time and rekindled by making a reference of it to adjudication? The words "at any time" as used in the section are *prima facie* indicator to a period without boundary. But such an interpretation making the power unending would be pedantic. There is inherent evidence in this sub-section itself to indicate that the time has some circumscription. The words "where the Government is of opinion that any industrial dispute exists or is apprehended" have to be read in conjunction with the words "at any time". They are, in a way, complimentary to each other. The Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring

expression "at any time" terminates with the eclipse of the industrial dispute. It, therefore, means that if the dispute existed on the day when the reference was made by the Government, it is idle (*sic* – ideal) to ascertain the number of years which elapsed since the commencement of the dispute to determine whether the delay would have extinguished the power of the Government to make the reference.

9. Hence the real test is, was the industrial dispute in existence on the date of reference for adjudication? If the answer is in the negative then the Government's power to make a reference would have extinguished. On the other hand, if the answer is in positive terms the Government could have exercised the power whatever be the range of the period which lapsed since the inception of the dispute. That apart, a decision of the Government in this regard cannot be listed (*sic*) on the possibility of what another party would think, whether any dispute existed or not. The section indicates that if in the opinion of the Government the dispute existed then the Government could make the reference. The only authority which can form such an opinion is the Government. If the Government decides to make the reference, there is a presumption that in the opinion of the Government, there existed such a dispute."

- 25) In ***Raghubir Singh v. General Manager, Haryana Roadways, Hissar***¹⁶, this Court scanned through most of the available case law on the subject and emphasized that the words '*at any time*' occurring in Section 10 of the Act would imply that law of limitation did not apply. On facts, the Court held that the State Government had rightly exercised its power and referred the dispute to Labour Court within reasonable time considering circumstances in which the appellant therein was placed. In fact, the Court accepted the explanation for delay given by the workman

16 (2014) 10 SCC 301

in raising the dispute. In that case, it was found that there was a criminal case pending against the workman and further the Management had assured him that he would be reinstated on his acquittal. It was also noticed that even despite delay, there was no loss or unavailability of evidence due to the said delay.

26) The aforesaid case law depicts the following:

- (a) Law of limitation does not apply to the proceedings under the Industrial Disputes Act, 1947.
- (b) The words '*at any time*' used in Section 10 would support that there is no period of limitation in making an order of reference.
- (c) At the same time, the appropriate Government has to keep in mind as to whether the dispute is still existing or live dispute and has not become a stale claim and if that is so, the reference can be refused.
- (d) Whether dispute is alive or it has become stale/non-existent at the time when the workman approaches the appropriate Government is an aspect which would depend upon the facts and circumstances of each case and there cannot be any hard and fast rule regarding the time for making the order of reference.

27) If one examines the judgments in the aforesaid perspective, it would be easy to reconcile all the judgments. At the same time, in some cases the Court did not hold the reference to be bad in law and the delay on the

part of the workman in raising the dispute became the cause for moulding the relief only. On the other hand, in some other decisions, this Court specifically held that if the matter raised is belated or stale that would be a relevant consideration on which the reference should be refused. Which parameters are to be kept in mind while taking one or the other approach needs to be discussed with some elaboration, which would include discussion on certain aspects that would be kept in mind by the courts for taking a particular view. We, thus, intend to embark on the said discussion keeping in mind the central aspect which should be the forefront, namely, whether the dispute existed at the time when the appropriate Government had to decide whether to make a reference or not or the Labour Court/ Industrial Tribunal to decide the same issue coming before it.

- 28) In this process, let us first examine as to what would constitute 'industrial dispute' because of the simple reason that the appropriate Government has power to refer what is known as an 'industrial dispute' and likewise the Labour Court/Industrial Tribunal has jurisdiction to decide if there is an industrial dispute. We are not going into the entire gamut of what constitutes 'industrial dispute' within the meaning of Section 2(k) of the Act. Our focus is only on the aspect that what can be referred should be the dispute which is existing and *in praesenti* when the reference is

sought. To put it otherwise, if it no longer remains an industrial dispute or industrial dispute 'does not exist' at that time, there would not be any question on making reference or adjudicating the matter as it is not an industrial dispute.

- 29) Section 2(k) of the IDA defines 'industrial dispute' and it reads as under:

“‘industrial dispute’ means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons;”

- 30) As per Section 2A dispute relating to discharge, dismissal, retrenchment or termination of an individual are also deemed as industrial dispute and, therefore, an individual is given right to raise these disputes.
- 31) The term 'industrial dispute' connotes a real and substantial difference having some element of persistency, and likely, if not adjusted, to endanger the industrial peace of the community. The expression 'dispute or difference' as used in the definition, therefore, means a controversy fairly definite and of real substance, connected with the employment or non-employment or with the terms of employment or the conditions of labour of any person, and is one in which the contesting parties are directly interested in maintaining the respective contentions.

- 32) To understand the meaning of the word 'dispute', it would be appropriate to start with the grammatical or dictionary meaning of the term:

'Dispute': "to argue about, to contend for, to oppose by argument' to call in question - to argue or debate (with about or over), - a contest with words; an argument; a debate; a quarrel;

- 33) Blacks law dictionary, 5th Edition, page 424 defines 'dispute' as under:

“ A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.”

- 34) Thus, a dispute or difference arises when demand is made by one side (i.e. workmen) and rejected by the other side (i.e. the employer) and *vice versa*. Hence an 'industrial dispute' cannot be said to exist until and unless the demand is made by the workmen and it has been rejected by the employer. How such demand should be raised and at what stage may also be relevant but we are not concerned with this aspect in the instant case. Therefore, what would happen if no demand is made at all at the time when the cause of action arises? In other words, like in the instant case, what would be the consequence if after the termination of the services of petitioner on April 01, 1985, the petitioner does not dispute his termination as wrongful and does not make any demand for reinstatement for number of years? Can it still be said that there is a

dispute? Or can it be said that workmen can make such demand after lapse of several years and on making such demand dispute would come into existence at that time. It can always be pleaded by the employer in such a case that after the termination of the services when the workmen did not raise any protest and did not demand his reinstatement, the employer presumed that the workmen has accepted his termination and, therefore, he did not raise any dispute about his termination. It can be said that workmen, in such a case, acquiesced into the act of the employer in terminating his services and, therefore, accepted his termination. He cannot after a lapse of several years make a demand and then convert it into a 'dispute' what had otherwise become a buried issue.

- 35) Let us examine the matter from another aspect, viz. laches and delays and acquiescence.
- 36) It is now a well recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases Courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of

laches is in fact an application of maxim of equity "delay defeats equities".

- 37) This principle is applied in those cases where discretionary orders of the Court are claimed, such as specific performance, permanent or temporary injunction, appointment of receiver etc. These principles are also applied in the writ petitions filed under Articles 32 and 226 of Constitution of India. In such cases, Courts can still refuse relief where the delay on the petitioner's part has prejudiced the respondent even though the petitioner might have come to Court within the period prescribed by the Limitation Act.
- 38) Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong.
- 39) Thus, in those cases where period of limitation is prescribed within which the action is to be brought before the Court, if the action is not brought within that prescribed period the aggrieved party loses remedy and

cannot enforce his legal right after the period of limitation is over. Likewise, in other cases even where no limitation is prescribed, but for a long period the aggrieved party does not approach the machinery provided under the law for redressal of his grievance, it can be presumed that relief can be denied on the ground of unexplained delay and laches and/or on the presumption that such person has waived his right or acquiesced into the act of other. As mentioned above, these principles as part of equity are based on principles relatable to sound public policy that if a person does not exercise his right for a long time then such a right is non-existent.

- 40) On the basis of aforesaid discussion, we summarise the legal position as under:

An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that 'any industrial dispute exists or is apprehended'. The words 'industrial dispute exists' are of paramount importance unless there is an existence of an industrial dispute (or the dispute is apprehended or it is

apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a *sine qua non* for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute. Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary pre-condition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exist. Since there is no period of limitation, it gives right to the workman to raise the dispute even

belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute *in praesenti*. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances disclose that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as “dead”, then it would be non-existent dispute which cannot be referred. Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under Section 2A of the Act. In such a scenario, it can be treated that the dispute was live and existing

as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending for number of years and was ultimately dismissed on the ground that Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that dispute is still alive as the workman had not accepted the termination but was agitating the same; *albeit* in a wrong forum. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court

can also hold that there is no “industrial dispute” within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted.

- 41) We may hasten to clarify that in those cases where the Court finds that dispute still existed, though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is still open for the Court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement. We are of the opinion that the law on this issue has to be applied in the aforesaid perspective in such matters.
- 42) To summarise, although there is no limitation prescribed under the Act for making a reference under Section 10(1) of the Act, yet it is for the 'appropriate Government' to consider whether it is expedient or not to make the reference. The words 'at any time' used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the Act. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is

likely to have on the employers' financial arrangement and to avoid dislocation of an industry.

43) On the application of the aforesaid principle to the facts of the present case, we are of the view that High Court correctly decided the issue holding that the reference at such a belated stage i.e. after fourteen years of termination without any justifiable explanation for delay, the appropriate Government had not jurisdiction or power to make reference of a non-existing dispute.

44) This special leave petition is, therefore, dismissed.

.....J.
(A.K. SIKRI)

.....J.
(ROHINTON FALI NARIMAN)

**NEW DELHI;
SEPTEMBER 07, 2015.**

ITEM NO.20

COURT NO.14

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C).....CC No(s).
16129/2015

(Arising out of impugned final judgment and order dated 06/06/2011
in WA No. 6145/2009 passed by the High Court Of Karnataka Circuit
Bench At Dharwad)

SRI. PRABHAKAR

Petitioner(s)

VERSUS

JOINT DIRECTOR SERICULTURE DEPARTMENT AND ANR.

Respondent(s)

(with appln. (s) for c/delay in filing slp)

Date : 07/09/2015 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mr. Sharanagouda Patil, Adv.
Ms. Supreeta Patil, Adv.
For M/s S-legal Associates

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

The special leave petition is dismissed in terms of the signed
reportable judgment.

(Ashwani Thakur)	(Renu Diwan)
COURT MASTER	COURT MASTER
(Signed reportable judgment is placed on the file)	