CASE NO.:
Appeal (civil) 4471 of 2001

PETITIONER:
SAPAN KUMAR PANDIT

Vs.

RESPONDENT:
U.P. STATE ELECTRICITY BOARD AND ORS.

DATE OF JUDGMENT: 24/07/2001

BENCH:
K.T. Thomas & R.P. Sethi

JUDGMENT:

THOMAS, J.

Leave granted.

A period of fifteen years is apparently too long a range, even for a Government to make reference of industrial dispute for adjudication. At the first blush it looks inordinate a delay and so was felt by the High Court of Allahabad which consequently quashed the reference order passed by the Government solely on the ground of such delay. The aggrieved workman has therefore approached this Court challenging the aforesaid judgment of the High Court. According to him the High Court should not have bypassed the explanation offered by him as to why the Government did not make a reference earlier.

Appellant was appointed as a clerk on 1.1.1974 in the Electricity Distribution Division, Mathura of the U.P. State Electricity Board (for short the Board). But his services were terminated on 17.7.1975. He raised an industrial dispute that the termination of his services was illegal. The State Government by an order dated 29.3.1993 referred the following dispute to the Labour Court for adjudication as per Section 4.K of the U.P. Industrial Disputes Act (for short the U.P. Act):

Whether termination of the appellant on 17.7.1975 by the employer was proper and legal; if so, to what reliefs the workman is entitled?

The Labour Court took up the reference as Adjudication Case No.158 of 1993. The respondent Board filed a writ petition before the Allahabad High Court assailing the aforesaid reference order and also praying for quashing the adjudication case pending in the Labour Court. The

appellant was arrayed as respondent No.5 in the said writ petition. A single Judge of the High Court of Allahabad took the view that the delay is so inordinate that the

dispute has ceased to exist by efflux of time and hence no reference under the U.P. Act should have been made. Accordingly, the order of reference passed by the Government was quashed by the High Court. Learned single Judge made the following epilogistic remarks:

On consideration of various authorities, I am of the view that normally a dispute which is an industrial dispute be referred by the State Government under Section 4-K of the U.P. Industrial Disputes Act so long such a dispute exists or the Government apprehends that such a dispute is likely to exist. However, in case there is undue and inordinate as well as unexplained delay, presumption may arise on the facts and circumstances of a particular case that no dispute exists in present and in such cases the reference made by the Government may be quashed. In the facts and circumstances of the present case the respondent No.5 kept silence for more than 15 years and he woke up only after the petition of other co-workmen was allowed and he made no efforts to get his dispute referred to the Industrial Tribunal or Labour Court. Now he cannot be allowed to raise such a dispute after lapse of such a long time.

It is not a case that appellant woke up at the end of fifteen years like a Rip Van Winkle and raised an industrial dispute. His version of what transpired during the long interval needs to be mentioned here. It reads like this: Along with the appellant the Board retrenched 10 other workmen. Those 10 belonged to a union (U.P. Bijali Karmachari Sangh, Mathura). The said union raised the dispute on 16.9.1976 and the State Government referred the matter to the Industrial Tribunal, Kanpur. The Board gave an assurance to the appellant that in the event of any of the claims of the 10 workmen was upheld by the Labour Court the same benefit would be extended to the appellant, no matter that he did not take up his cause to any legal forum. By the time the Industrial Tribunal decided the case of 10 workmen the Board had re-absorbed two of them. However, the Industrial Tribunal passed an award on 10.11.1979 holding that those retrenched persons were entitled to retrenchment compensation. The Tribunal further held that in view of the liberalised policy of the Board the workmen concerned should be given an opportunity to appear in the qualifying examination by relaxing the age on the basis of their initial date of appointment as could be seen from the muster roll and if they succeeded in the examination they could be considered for appointment against regular vacancies.

The Union was not satisfied with the said award. Hence they filed a writ petition in 1980 before the High Court of Allahabad. On 28.4.1988 the High Court allowed that petition and held that the retrenchment was bad in law and that they are entitled to be reinstated. Though the Board filed a special leave petition in this Court it was dismissed in 1989.

According to the appellant he was entertaining the expectation that the Board would extend the same benefit to him. He was persisting with his request to the Board that

he should be treated on a par with the 8 workmen, some of whom were re-employed by the Board. When appellant found that this was not done he approached the Conciliation Officer appointed by the State Government. But his application for condoning the delay for initiating conciliation proceeding was disallowed by the conciliation officer. However, the Deputy Labour Commissioner went to his rescue as the delay was condoned and the conciliation proceedings were revived. This happened on 28.1.1992. It was in the aforesaid background that the State Government made the reference for adjudication on 29.3.1993. It is at this stage we have to extract Section 4K of the U.P. Act.

4K. Reference of disputes to Labour Court or Tribunal.- Where the State Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court if the matter of industrial dispute is one of those contained in the First Schedule, or to a Tribunal if the matter of dispute is one contained in the First Schedule or the Second Schedule for adjudication:

Provided that where the dispute relates to any matter specified in the Second Schedule and is not likely to affect more than one hundred workmen, the State Government may, if it so thinks fit, make the reference to a Labour Court.

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 re-kindled 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 Governments 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 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.

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 Governments 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 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.

In considering the factual position whether the dispute did exist on the date of reference the Government could take into account factors, inter alia, such as the subsistence of conciliation proceedings. It is of no consequence that conciliation proceedings were commenced after a long period. But such conciliation proceedings are evidence of the existence of the industrial dispute. It is an admitted fact that on the date of reference in this case the conciliation proceedings were not concluded. If so, it cannot be said that the dispute did not exist on that day.

The High Court relied on the following observations of the decision of this Court in M/s. Shalimar Works Ltd. vs. Their Workmen (AIR 1959 SC 1217):

It is true that there is no limitation prescribed for reference of disputes to an industrial tribunal; even so it is only reasonable that dispute should be referred as soon as possible after they have arisen and particularly so when disputes relate to discharge of workmen wholesale, as in this case.

The context for making the said observations is while dealing with the scope of Section 33A of the ID Act. It is a special provision for adjudication as to whether conditions of service have been changed by an employer during the pendency of conciliation or other adjudicatory proceedings. An aggrieved person in such situation is given the right to make a complaint in writing to one of the authorities mentioned in the section. Evidently the context is different and hence the observations made by this Court in that context are not apposite so far as this case is concerned.

Learned counsel for the Board invited our attention to a recent decision of a two Judge Bench of this Court in Nedungadi Bank Ltd vs. K.P. Madhavankutty and ors. {2000 (2) SCC 455}. No doubt in the said decision it is said that the power of the Government under Section 10 of the ID Act cannot be exercised at any point of time or for reviving the matters which have already been settled although law does not prescribe any time limit. The crux of the observations in the said decision is the following:

A dispute which is stale could not be the subject matter of reference under Section 10 of the ID Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case.

It is useful to refer to a three Judge Bench decision

of this Court as it related to the scope of the very same provision i.e. Section 4K of the U.P. Act. In M/s. Western India Watch Co. Ltd vs. The Western India Watch Co. Workers Union (AIR 1970 SC 1205) learned Judges made the following observations:

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 adjourned 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.

There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons it does not cause the dispute to wane into total eclipse. In this case when the Government have chosen to refer the dispute for adjudication under Section 4K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination.

For the aforesaid reasons we allow this appeal and set aside the impugned judgment.

J

[K.T. Thomas]

J
[R.P. Sethi]

July 24 , 2001.
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