

CASE NO.:  
Appeal (civil) 2103 of 2004

PETITIONER:  
U.P. State Road Transport Corporation

RESPONDENT:  
Babu Ram

DATE OF JUDGMENT: 04/07/2006

BENCH:  
ARIJIT PASAYAT & R.V. RAVEENDRAN

JUDGMENT:

J U D G M E N T

ARIJIT PASAYAT, J.

Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court dismissing the writ petition filed by the appellant.

The background facts as projected by the appellant are as follows:

The respondent was appointed on purely temporary basis in the year 1980 to meet the urgent needs during the Khumbh Festival. It was clearly mentioned in the appointment letter that service of the respondent, as well as the similar situated persons, was purely of temporary nature and can be terminated at any time without prior intimation. The respondent was engaged from time to time to meet the need for specific time bound work. As there was no further need for engaging the respondent and others, their services were terminated by order dated 19.9.1983. By order dated 29.8.1998 the Deputy Labour Commissioner referred following dispute for adjudication under U.P. Industrial Disputes Act, 1947 (in short 'the Act'):

"Whether termination of service/retranchment of workman Sh. Baburam, S/o Nathhu Singh, Chawkidar by his employers w.e.f. 19.09.1983 is legal and/or valid? If not, then to what relief/compensation the concerned workman is entitled?"

By order dated 11.11.2002 the Presiding Officer, Labour Court, Allahabad, Rampur held that the termination/retranchment of the respondent w.e.f. 19.9.1983 was illegal and invalid. Consequently the Labour Court directed that respondent should be reinstated with continuity of service and be paid back wages and other benefits.

One of the contentions of the appellant before the Labour Court was that the reference was based on a belated claim. There was no specific finding recorded by the Labour Court in this regard. A writ petition was filed before the Allahabad High Court. Before the learned Single Judge, the appellant submitted that the respondent has not offered any explanation for the belated claim raised after 15 years in view of the fact that the grievance of the respondent was raised in the

conciliation proceedings initiated in 1998. The High Court dismissed the writ petition.

Learned counsel for the appellant in this appeal reiterated the contentions urged before the High Court. Learned counsel for the respondent on the other hand submitted that the delay of about 15 years has been condoned by the Assistant Commissioner/Deputy Commissioner. It cannot therefore be said that there was any delay.

So far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.

However, certain observations made by this Court need to be noted. In *Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors.* (2000 (2) SCC 455) it was noted at paragraph 6 as follows:

"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."

In *S.M. Nilajkar and Ors. v. Telecom District Manager, Karnataka* (2003 (4) SCC 27) the position was reiterated as follows: (at para 17)

"17. 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 *M/s. Shalimar Works Ltd. v. Their Workmen* (supra) (AIR 1959 SC 1217), 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 therefor. 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 reemployment of the most of the old workmen was held to be fatal in *M/s. Shalimar Works Limited v. Their Workmen* (supra) (AIR 1959 SC 1217), in *Nedungadi Bank Ltd. v. K.P. Madhavankutty and others* (supra) AIR 2000 SC 839, a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In *Ratan Chandra Samanta and others v. Union of India and others* (supra) (1993 AIR SCW 2214, 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 Employees Under P&T Department v. Union of India* (supra) (AIR 1987 SC 2342), 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 non suited on the ground of delay."

The above position was highlighted recently in *Employers in relation to the Management of Sudamdih Colliery of M/s Bharat Coking Coal Ltd. v. Their Workmen* represented by *Rashtriya Colliery Mazdoor Sangh* (2006 (1) Supreme 282).

It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have

been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures.

That being so, the order of the High Court is clearly unsustainable. We, therefore, set aside the order of the High Court and remit the matter to the High Court to consider the question of delay in seeking reference and decide the matter afresh in accordance with law.

The appeal is accordingly disposed of. No costs.

JUDIS