HIGH COURT OF JUDICATURE MADHYA PRADESH, JABALPUR

WRIT PETITION NO.2202 OF 2016

Municipal Corporation, Jabalpur

Vs.

The Presiding Officer, Labour Court, Jabalpur & another

WRIT PETITION NO.2203 OF 2016

Municipal Corporation, Jabalpur

Vs.

The Presiding Officer, Labour Court, Jabalpur & another

WRIT PETITION NO.2293 OF 2016

Municipal Corporation, Jabalpur

Vs.

The Presiding Officer, Labour Court, Jabalpur & another

WRIT PETITION NO.2302 OF 2016

Municipal Corporation, Jabalpur

Vs.

The Presiding Officer, Labour Court, Jabalpur & another

WRIT PETITION NO.9702 OF 2016

Kishan Saini

Vs.

Municipal Corporation, Jabalpur

Present :-

Shri Saurabh Sunder, Advocate for the petitioner/ Municipal Corporation, Jabalpur in W.P. Nos.2202/2016, 2203/2016, 2293/2016 and 2302/2016.

Shri K.N. Pethia, Advocate for the petitioner in W.P. No.9702/2016.

Shri Rajesh Kumar Pandey, Advocate for the respondent No.2 in W.P. No.2202/2016.

Shri K.N. Pethiya, Advocate for the respondent No.2 in W.P. No.2203/2016.

Shri Saurabh Sunder, Advocate for the respondent in W.P. No.9702/2016.

None for the respondents in W.P. No.2302/2016, 2293/2016

Whether Approved for Reporting : **Yes**

Law Laid Down: (i) **Limitation -** inordinate delay in filing reference is required to be dealt with by the Labour Court in its proper perspective – In the present case, application for reinstatement was filed after 4 years, the same is held liable to be dismissed on the ground of delay and laches. Reliance is placed on **Prabhakar vs Joint Director, Sericulture Department and another, (2015) 15 SCC 1** (ii) **Industrial Disputes Act, 1947** – Section 25-B(2)(a)(ii) **- Burden of proof** – initial burden rests with the workman to prove the factum of continuous work for 240 days in a year - Reliance is placed on **RBI v. S. Mani, (2005) 5 SCC 100.**

Significant Paragraph Nos.12, 13, 14, 15, 16, 17

ORDER

(Passed on this the 10th day of October, 2017)

The order passed in W.P. No.2202/2016 shall also govern the disposal of W.P. Nos. 2203/2016, 2293/2016, 2302/2016 and 9702/2016. Since the issues raised in all the writ petitions are common, hence they are heard analogously.

2. The petitioner before this Court Municipal Corporation, Jabalpur has challenged the award dated 14.8.2015 passed by the Presiding Officer, Labour Court, Jabalpur in a case of retrenchment of workman claiming reinstatement wherein the learned Judge of the Labour Court, instead of

reinstatement has awarded a lump sum compensation of Rs.1,00,000/- to each of the private respondents.

3. The petitioner – Municipal Corporation, Jabalpur has filed this petition assailing the award dated 14.8.2015 mainly on two grounds viz. firstly, that the reference by the workman before the Conciliation Officer was submitted after inordinate delay of 4 years and despite holding that there was delay on the part of the workman this aspect of the matter has not been considered by the Labour Court in its proper perspective. Secondly, the other ground which the petitioner-Corporation has raised is that the private respondents have not discharged the initial burden placed upon them to prove their case that they had worked continuously for 240 days in the respondent's establishment and in the absence of the same, the learned Labour Court wrongly shifted the burden on the petitioner – Corporation to prove that the private respondents had continuously worked with the petitioner – Corporation for a period of more than 240 days.

4. Learned counsel for the petitioner Shri Saurabh Sunder has relied upon the decision of the Apex Court in the case of **Prabhakar vs Joint Director, Sericulture Department and another (2015) 15 SCC 1** (para 5, 8, 9, 22 to 32). The aforesaid judgment has dealt with the issue of delay in raising an industrial dispute. The learned counsel has also relied upon the decision of the Apex Court in the case of **Range Forest Officer vs S.T. Hadimani, (2002) 3 SCC 25** (para 3) to submit that the initial burden lies on the workman to prove his case and the

same cannot be shifted to the employer to his detriment.

5. On the other hand, Shri K.N. Pethia, learned counsel appearing for the petitioner in W.P. No.9702/2016 and for the respondent in W.P. No.2203/2016 and Shri Rajesh Kumar Pandey, learned counsel appearing for respondents in W.P. No.2202/2016 submitted that no illegality has been committed by the Labour Court in passing the impugned award for the reason that the Industrial Dispute Act, 1947 does not provide any limitation to raise the dispute before the Conciliation Officer.

6. Shri Pethia has also relied upon the decision of the Apex Court in the case of **Raghubir Singh vs General Manager, Haryana Roadways, Hissar** reported in **2014 (143) FLR 469** wherein the Apex Court has held that in Industrial Disputes Act, 1947 no limitation is provided and as such the provisions of Limitation Act are not applicable. He has further submitted that the learned Judge of the Labour Court has rightly held that after giving an opportunity to the respondents to lead their evidence, there is no question of delay in filing the reference under the provision of Industrial Dispute Act. He has further submitted that the objection regarding the limitation has not been raised by the petitioner-Corporation before the Conciliation Officer and that this objection has been raised for the first time. In such circumstances, it may be presumed that they have forgone their right to challenge the proceedings on the ground of limitation. Reference to the judgement of this court in W.P.No.16849/2015 has also been made that it squarely covers

the issue at hand.

7. It is further submitted by Shri Pethia, learned counsel appearing for the workman that the employer was given due opportunity to produce the service record of the workman but despite availing the opportunity the employer have not come out with any document to show that the workman has not worked for more than 240 days and the same has also been recorded by the learned Judge of the Labour Court in para 9 of its judgment that the employer was ordered to produce the document but as no document was filed, hence adverse inference is drawn against them and thus the employee has worked in the department for more than 240 days prior to 26.12.2006.

8. Shri Rajesh Kumar Pandey, learned counsel in W.P.No. 2202/2016 has submitted that the award passed by the Labour Court is on lower side and in which only a lump sum amount of Rs.1,00,000/- has been awarded despite the fact the respondent had worked for a period of more than 5 years. Learned counsel has also placed reliance upon the decision of the Apex Court in the case of **Vice-Chancellor, Lucknow, University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another, AIR 2015 SC 3473** (para 17).

9. Heard learned counsel for the parties and perused the record.

10. Before dealing with the questions raised in this petition, it would be expedient to refer to the issues which were framed by the learned judge of the Labour Court :

1 क्या प्रथम पक्ष ने द्वितीय पक्ष के अधीन सेवा समाप्ति के

पूर्व 240 दिन कार्य एक वर्ष की अवधि में किया है ?

2 क्या प्रथम पक्ष की सेवा समाप्ति अवैधानिक छंटनी की श्रेणी में आती है ?

3 क्या प्रथम पक्ष ने यह प्रकरण अत्यधिक विलंब से प्रस्तुत किया है ? इस कारण से विचारणीय योग्य नहीं है ?

4 क्या प्रथम पक्ष सेवासमाप्ति के बाद से बेरोजगार है और पुनः स्थापना के साथ पिछला वेतन पाने का अधिकारी है?

5 क्या प्रथम पक्ष को सेवा में पुर्नस्थापना के स्थान पर क्षतिपूर्ति दिलाया जाना न्यायोचित है ?

11. Issue no.1 and 2 are relevant for the purpose of this petition which sufficiently throw light on both the question of burden of proof as well of limitation as raised by the petitioner. Dealing with the question of limitation, the learned Judge of the Labour Court has held in para 11 of the judgement that it is true that the services of the workman were terminated on 26.12.2006 whereas the dispute was referred by the workman to the Conciliation Officer in the year 2010 without assigning any reason for this delay but still under the Industrial Dispute Act, 1947 there is no provision of limitation which may restrain a workman from filing an application raising the industrial dispute on account of delay, thus, in this manner the issue of delay has been decided.

12. Learned counsel for the petitioner has relied upon the decision rendered in the case of **Prabhakar (supra),** para 5, 8, 9, 22 to 24, 27 to 32, 36 to 45 reads as under :

"**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 25-F of the Act. The termination was, thus, held to be invalid.

8. 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. 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.

9. 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 a number of years of the cause of action. Whether the dispute can still be treated as surviving? Or whether it can be said that the dispute does not exist when the workmen concerned after their say termination kept quiet for a number of years and thus acquiesced into the action?

22. As early as in 1959, this Court in *Shalimar Works Ltd.* v. *Workmen* [*Shalimar Works Ltd.* v. *Workmen*, AIR 1959 SC 1217 : (1960) 1 SCR 150] pointed out that there is no limitation prescribed in making a reference of disputes to

the 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 years 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.

23. Again, in *Western India Match Co. Ltd.* [*Western India Match Co. Ltd.* v. *Workers' Union*, (1970) 1 SCC 225] , though upholding the reference of dispute made nearly six years after the previous refusal to 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. The following observations from this judgment need to be noticed for the purposes of the present case: (SCC pp. 231-32, paras 8 & 13)

> "*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."

24. Again in *Vazir Sultan Tobacco Co. Ltd.* v. *State of A.P.* [*Vazir Sultan Tobacco Co. Ltd.* v. *State of A.P.*, (1964) 1 LLJ 622 (AP)] the Andhra Pradesh High Court held that reference made nearly six years after the dispute amounted to being inordinate, unreasonable and unjustifiable.

27. In *Raghubir Singh* v. *Haryana Roadways* [*Raghubir Singh* v. *Haryana Roadways*, (2014) 10 SCC 301 : (2015) 1 SCC (L&S) 23] , this Court scanned through most of the available case law on the subject and emphasised 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 the Labour Court within reasonable time considering the circumstances in which the appellant therein was placed. In fact, the Court accepted the explanation for delay given by the workman 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.

28. The aforesaid case law depicts the following:

28.1. The law of limitation does not apply to the proceedings under the Industrial Disputes Act, 1947.

28.2. The words "*at any time*" used in Section 10 would support that there is no period of limitation in making an order of reference.

28.3. 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.

28.4. 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.

29. 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.

30. 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.

31. Section 2(*k*) of the IDA defines "industrial dispute" and it reads as under:

> "**2. (*k*)** '**industrial dispute**' means any dispute or difference between employers and employers, 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 person;"

32. As per Section 2-A 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.

36. 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 the petitioner on 1-4-1985, the petitioner does not dispute his termination as wrongful and does not make any demand for reinstatement for a 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 a 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 workman did not raise any protest and did not demand his reinstatement, the employer presumed that the workman has accepted his termination and, therefore, he did not raise any dispute about his termination. It can be said that workman, 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.

37. Let us examine the matter from another aspect viz. laches and delays and acquiescence.

38. 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".

39. 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 the 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.

40. 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 the 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.

41. 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.

42. On the basis of the aforesaid discussion, we summarise the legal position as under:

42.1. 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 2-A 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.

42.2. Dispute or difference arises when one party makes a demand and the other party rejects the same. It is held by this Court in a number of cases that before raising the industrial dispute making of demand is a necessary precondition. 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 exists.

42.3. 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 cease 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.

42.4. 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 2-A 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 a 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.

42.5. Take another example. A workman approaches the civil court by filing a suit against his termination which was pending for a number of years and was ultimately dismissed on the ground that the 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 the dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum.

42.6. 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.

43. 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.

> **44.** To summarise, although there is no limitation prescribed under the Act for making a reference under Section 10(1) of the ID 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 ID 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.
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> **45.** On the application of the aforesaid principle to the facts of the present case, we are of the view that the 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 no jurisdiction or power to make reference of a non-existing dispute."
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> (emphasis supplied)

13. On the other hand, Shri K.N.Pethia, learned counsel for the respondent/workman has relied upon the decision of the Apex Court in the case of **Raghubir Singh** (supra) to submit that there is no provision of any limitation provided in the Industrial Disputes Act and an application can be made at any time, but this decision has already been considered by the Apex court in the subsequent judgement in para 27 of **Prabhakar's case** (supra).

14. Thus, in view of the aforesaid dictum laid down by the Apex Court, this court is of the considered opinion that the learned Judge of the Labour Court has not dealt with the issue

of delay in its proper perspective and despite holding that there was unexplained delay of four years in filing the application, has still allowed the same simply holding that there is no provision of limitation provided to file an application under the Indusrtrial Disputes Act.

15. So far as the issue of burden of proof is concerned, in present case it appears that the learned Judge of the Labour Court had directed the petitioner Corporation to submit the documents relating to the services of the petitioners but despite many opportunities the Corporation failed to produce the same hence it was held that adverse inference shall be drawn against the petitioners in the light of the affidavits filed by the workmen that they had worked continuously for more than 240 days. In this regard, the learned counsel for the respondent has also relied upon the decision in the case of **Range Forest Officer (supra)**, para 3 of the same reads as under :

> "**3**. … It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."
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> (emphasis supplied)

16. In the case of **Range Forest Officer (supra)** the issue involved is similar to that of present case. In the case of **Range Forest Officer (supra)** the Apex Court has held that merely filing of an affidavit would not suffice and the case of the workman was dismissed and in the present case also although an opportunity to file the document was given to the petitioner-Corporation but still that would not discharge the initial burden casted on the employees to stand on their own legs.

17. In view of the aforesaid, this court is unable to endorse the views expressed by the Labour Court in shifting the burden of proof on the petitioner. Reference may also be made to the decision rendered in the case of ***RBI v. S. Mani, (2005) 5 SCC 100,*** in which the hon'ble Apex Court has dealt with the issue of burden of proof in the following manner:-

> " ***Burden of proof***
>
> **28.** The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service stating:
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> "It is admitted case of the parties that all the first parties under the references CRs Nos. 1 to 11 of 1992 have been appointed by the second party as ticca mazdoors. As per the first parties, they had worked continuously from April 1980 to December 1982. But the second party had denied the abovesaid claim of continuous service of the first parties on the ground that the first parties has not been appointed as regular workmen but they were working only as temporary part-time workers as ticca mazdoor and their services were required whenever necessity arose that too on the leave vacancies of regular employees. But as strongly contended by the counsel for the first party, since the second party had denied the abovesaid claim of

continuous period of service, it is for the second party to prove through the records available with them as the relevant records could be available only with the second party."

29. The Tribunal, therefore, accepted that the appellant had denied the respondents' claim as regards their continuous service.

30. In *Range Forest Officer* v. *S.T. Hadimani* it was stated: (SCC p. 26, para 3)

"*3*. … In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

(See also *Essen Deinki* v. *Rajiv Kumar*)

31. In *Siri Niwas*– this Court held: (SCC pp. 197-98, para 13)

"*13*. The provisions of the Evidence Act, 1872 per se are not applicable in an industrial adjudication. The general principles of it are, however, applicable. It is also imperative for the Industrial Tribunal to see that the principles of natural justice are complied with. The burden of proof was on the respondent workman herein to show that he had worked for 240 days in the preceding twelve months prior to his alleged retrenchment. In terms of Section 25-F of the Industrial Disputes Act, 1947, an order retrenching a workman would not be effective unless the conditions precedent therefor are satisfied. Section 25-F postulates the following conditions to be fulfilled by an employer for effecting a valid retrenchment:

(*i*) one month's notice in writing indicating the reasons for retrenchment or wages in lieu thereof;

(*ii*) payment of compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months."

> It was further observed: (SCC p. 198, para 14)
>
> "*14*. … As noticed hereinbefore, the burden of proof was on the workman. From the award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25-B of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the appellant herein including the muster rolls. It is improbable that a person working in a local authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He did not even examine any other witness in support of his case."
>
> **32.** Yet again in *Hariram* it was opined: (SCC p. 250, para 10)
>
> "*10*. … We cannot but bear in mind the fact that the initial burden of establishing the factum of their continuous work for 240 days in a year rests with the respondent applicants."

(emphasis supplied)

18. In the circumstance, this Court finds that the petitioner-Municipal Corporation has been able to make out a case for interference in the order passed by the learned Labour Judge and as a consequence the impugned awards dated 14.8.2015, 27.7.2015, 1.9.2015 and 1.9.2015 passed in W.P. Nos.2202/2016, 2203/2016, 2293/2016 and 2302/2016 respectively are hereby **quashed**.

19. In W.P. No.2202/2016, Shri Rajesh Kumar Pandey, learned counsel for the respondent No.2-workman has also relied upon the decision of the Apex Court in the case of **Vice-Chancellor, Lucknow, University, Lucknow, Uttar Pradesh (supra)**, but since the petitions filed by the Corporation against

the award of compensation has already been dismissed, the prayer of respondent No.2/workman for enhancement of compensation stands rejected.

20. In the result, Writ petition Nos. 2202/2016, 2203/2016, 2293/2016 and 2302/2016 filed by the Municipal Corporation are **allowed**.

21. So far as Writ Petition No.9702/2016 filed by the workman is concerned, for the reasons stated in preceding paragraphs, the same is **dismissed**.

(Subodh Abhyankar)
Judge
10/10/2017

DV