# IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

#### **BEFORE**

## HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA ON THE 20<sup>th</sup> OF NOVEMBER, 2023 WRIT PETITION No. 6338 of 2020

## **BETWEEN:-**

THE SECRETARY, KRISHI UPAJ MANDI SAMITI, BUDHAR DISTRICT SHAHDOL (MADHYA PRADESH)

....PETITIONER

(BY SHRI UTKARSH PACHORI - ADVOCATE)

#### <u>AND</u>

SHATRUDAMAN SINGH S/O LATE SHRI YADVENDRA SINGH R/O VILLAGE SEMRATOLA, RASMOHINI, POST RASMOHINI, DISTRICT SHAHDOL (MADHYA PRADESH)

....RESPONDENTS

#### (BY SHRI MANHAR DIXIT - ADVOCATE)

This petition coming on for admission this day, the court passed the following:

## **ORDER**

This Petition under Article 226 of Constitution of India has been filed against order dated 10.07.1997 passed by Labour Court, Shahdol in case No.36/I.D.A./94 (Reference) and order dated 06.11.2019 passed by Labour Cour, Shahdol in case No.F.21/16 I.D./33C-2.

- 2. At the outset, it is made clear that the case was not argued by counsel for petitioner and he had prayed for adjournment.
- 3. The prayer for adjournment was vehemently opposed by counsel for respondent and it was submitted that respondent is fighting for his

legitimate rights from the year 1992 and every time matter is being adjourned, therefore, no adjournment should be granted.

- 4. Accordingly, counsel for petitioner was directed to argue the matter. However, he submitted that he has not opened the file and has not gone through the same, therefore, he is not in a position to argue the matter and requested that the Court may decide the writ petition after going through the same.
- 5. It appears that respondent had claimed that he was engaged on daily wages w.e.f. 16.05.1985 as Nakedar in Krishi Upaj Mandi Samiti Budhar, District Shahdol. Thereafter, he was removed from service w.e.f. 12.07.1991 without following provisions of Industrial Dispute Act. Accordingly, matter was referred to Labour Court for adjudication of an issue "as to whether the action of management in removing Shri Shatrudaman Singh from service is valid and legal. If not, to what relief he is entitled for?" Petitioner was proceeded *ex-parte* and by award dated 10.07.1997, it was held by Labour Court that action of petitioner in terminating service of respondent without any notice or retrenchment compensation is bad and accordingly, petitioner was directed to reinstate respondent in service alongwith entire back wages.
- 6. It is the case of respondent that in spite of award, he was not taken back in service and accordingly, a legal notice dated 10.10.2002 was served through an Advocate. In spite of that petitioner did not take respondent back in service and accordingly, respondent moved an application under Section 33(C)(2) of Industrial Dispute Act on 28.06.2016 seeking execution of award dated 10.07.1997 claiming back wages w.e.f. 12.07.1991 till the age of superannuation. Respondent calculated the amount of back wages to tune of Rs.7,54,078/-. The aforesaid amount was claimed with interest. Petitioner submitted its

reply taking a defence that respondent was never intending to join establishment after passing of award. From the certified copy of award, which was filed alongwith application under Section 33(C) (2) of Industrial Dispute Act, it is clear that respondent himself had applied for certified copy of award on 11.07.2002 and lodged the claim under Section 33(C)(2) of Industrial Dispute Act only after attaining the age of superannuation and no application for condonation of delay has been filed. Respondent entered into witness box. In his examination-in-chief, he had claimed that on 16.08.1997, he had given an application thereby submitting his joining but said joining was not accepted. Thereafter, respondent was daily visiting the office of petitioner but he was not taken back in service and ultimately, on 14.08.2002, he sent a legal notice through his Counsel. Thereafter on 24.01.2003 and 23.02.2003, he again made a request for taking him back in service but the same was avoided on one pretext or the other. Thereafter, on 19.04.2004, he again sent a reminder. Petitioner also appeared in meeting dated 02.07.2004, where he was informed that matter is pending before High Court and therefore, he will not be kept in service and thus, it is claimed that he is entitled for an amount of Rs.7,54,078/-, which became due from 12.07.1991 to 31.03.2016. In cross examination, he admitted that in his applications marked as Exhibit P/4 to P/8, it has not been mentioned that he is intending to submit his joining on 16.08.1997 in compliance of award dated 10.07.1997. He admitted that in applications, Exhibit P/4 to P/8, he has not mentioned that on what date he had appeared for submitting his joining. He admitted that after 10.08.1997, he never made any application before the Court complaining non-compliance of award. However, he claimed that he was informed that a matter is pending before the High Court. He admitted that he has not filed the details of dates on which he had appeared for submitting his joining between 1997 to 2016. He never gave any application to senior officers for permitting him to join and he also never made a complaint to Secretary, Krishi Upaj Mandi for not taking him back in service. He admitted that there is no acknowledgment of receipt of application dated 16.08.1997, Exhibit P/2. He admitted that acknowledgments of receipt of applications were given only after legal notice was sent through his Advocate in the year 2002. He admitted that he has not worked in Krishi Upaj Mandi from 1997. However, he explained that he was not allowed to perform his duties. Petitioner also examined one Rameshlal Vanwasi, who stated that respondent neither reported for work after award dated 10.07.1997 nor submitted any application seeking joining on said post. However, Labour Court has allowed the claim of respondent vide impugned order dated 06.11.2019 and petitioner has been directed to pay an amount of Rs.7,54,078/- to respondent by way of wages/salary for the period 12.07.1991 to 31.03.2016 within a period of two months, failing which respondent shall be entitled for interest at the rate of 12% per annum till the actual payment is made.

- 7. From the grounds, which have been raised in writ petition, it is clear that petitioner has assailed the award dated 10.07.1997 as well as order dated 06.11.2019 passed under Section 33(C) (2) of Industrial Dispute Act.
- 8. Another ground, which has been raised in the writ petition is that application under Section 33(C)(2) of Industrial Dispute Act was not maintainable as the Labour Court cannot adjudicate the dispute and it is merely an execution proceeding. The application under Section 33(C)(2) of Industrial Dispute Act was barred by time and respondent approached the Labour only after attaining the age of superannuation. Petitioner was

never informed about award dated 10.07.1997 and only it was brought to the notice of petitioner by a legal notice dated 10.10.2002 sent by respondent through an Advocate. Respondent was not interested in serving petitioner's institution and award dated 10.07.1997 is not sustainable and there is no finding of unfair labour practice.

- **9.** Per contra, petition is vehemently opposed by counsel for respondent. It is submitted that no period of limitation is provided for maintaining application under Section 33(C)(2) of Industrial Dispute Act.
- **10.** Heard the learned counsel for respondent.

#### Challenge to award dated 10.07.1997.

- 11. The present petition has been filed on 07.03.2020. Even according to petitioner, he came to know about award dated 10.07.1997 when a legal notice was sent by respondent on 10.10.2002 through an Advocate. Petitioner has not clarified the reasons for not appearing before the Labour Court. Even otherwise, according to petitioner, award dated 10.07.1997 passed by Labour Court in case No.36/I.D.A./94 (Reference) had already come to its notice in the month of October, 2002 when the legal notice sent by respondent through his Lawyer was received. The present petition has been filed in the year 2020 i.e. after 18 long years of receipt of copy of award. No application under Order 9 Rule 13 CPC was filed by petitioner for setting aside award dated 10.07.1997 and even no reasons have been assigned for non-appearance of petitioner before Labour Court. Furthermore, no explanation has been given by petitioner for delay of 18 years in filing this writ petition.
- **12.** Accordingly, it held that challenge to award dated 10.07.1997 passed by Labour Court Shahdol in case No.36/I.D.A./94 (Reference) is

barred by delay and laches, therefore, challenge to said award is hereby **dismissed** on the ground of delay and laches.

#### Challenge to order dated 06.11.2019

- 13. By award dated 10.07.1997, a direction was given to reinstate the respondent with 100% back wages. The application under Section 33(C)(2) of Industrial Dispute Act was filed on 28.06.2016 i.e. 19 years after the award dated 10.07.1997 was passed. Although there is a provision for limitation for maintaining application under Section 33(C)(1) of Industrial Dispute Act but no limitation has been provided for maintaining application under Section 33(C)(2) of Industrial Dispute Act.
- 14. The Supreme Court in the case of Chief Mining Engineer, M/s East India Coal Co. Ltd. Bararee Colliery Dhanbad Vs. Rameshwar and Others reported in AIR 1968 SC 218 has held as under:
  - "6. These applications were made in 1962 though they related to claims for the years commencing from 1948 and onwards. contention therefore was that part of these claims, at any rate, must be held to be barred either by limitation or by reason of laches on the part of the workmen. The answer to this contention is clearly provided in the case of Bombay Gas Co. [(1964) 3 SCR 709] where a distinction was drawn between considerations which would prevail in an industrial adjudication and those which must prevail in a case filed under a statutory provision such as Section 33-C(2). This Court pointed out there that whereas an industrial dispute is entertained on grounds of social justice and therefore a Tribunal would in such a case take into consideration factors such as delay or laches, such considerations are irrelevant to claims made under a statutory provision unless such provision lays down any period of limitation. The Court held that there is no

justification in inducting a period of limitation provided in the Limitation Act into the provisions of Section 33-C(2) which do not lay down any limitation and that such a provision can only be made by legislature if it thought fit and not by the analogy or any other such court on an consideration. It is a matter of some significance that though the legislature amended Section 33-C by Act 36 of 1964 and introduced limitation in the section, it did so by means of a proviso only in respect of claims made under sub-section 1 but did not provide any limitation for claims under subsection 2. In view of this fact and the decision in Bombay Gas Company case Mr Gokhale conceded that he could not press the contention that the present claims were barred by limitation or laches."

- 15. Even otherwise, there is no provision for limitation in maintaining an application under Section 33(C)(2) of Industrial Dispute Act. Therefore, the Labour Court did not commit any mistake by holding that there is no provision of limitation. However, Labour Court has come to a conclusion that in absence of any provision for Limitation Act, application filed by respondent under Section 33(C)(2) of Industrial Dispute Act cannot be dismissed on the ground of delay.
- **16.** Now the only question for consideration is as to whether in absence of any provision for Limitation Act, the Court can refuse to grant relief or not?
- 17. The Supreme Court in the case of **Prabhakar Vs. Joint Director Sericulture Department And Another** reported in **AIR 2016 SC 2984** has held as under:
  - **"40.** On the basis of the 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 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 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 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 only is administrative function. At the same time, basis of material on satisfaction of the existence of the industrial dispute or the apprehension of an industrial is dispute 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 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. 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 delavs and demonstrate that 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 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. 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 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. 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."

18. The Supreme Court in the case of Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91 has held as under:

**"13.** In Ajaib Singh [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 381 the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him from approaching the court at an earlier stage or even to satisfy the court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting the Industrial Disputes Act only with a view to find out as to whether the provisions of Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the court cannot import a period of limitation when the statute does not prescribe the same, as was observed in *Ajaib* Singh [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38] but it does not mean that irrespective of the facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court.

**14.** The decision of *Ajaib Singh* [(1999) 6 SCC 82: 1999 SCC (L&S) 1054: JT (1999) 3 SC 38] must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well known, is an authority of what it decides and not

what can logically be deduced therefrom (Bharat Forge Co. Ltd. v. Uttam Manohar Nakate [(2005) 2 SCC 489 : JT (2005) 1 SC 303] and Kalyan Chandra Sarkar v. Rajesh Ranjan [(2005) 2 SCC 42 : (2005) 1 Scale 385], SCC p. 58, para 42 : Scale para 42)."

- 19. Thus, it is clear that when there is no provision for limitation in maintaining application under Section 33(C)(2) of Industrial Dispute Act, the Court can refuse or mold the relief by taking into consideration the unexplained delay in moving such an application.
- **20.** To decide this writ petition, following dates are necessary:

10.07.1997	Award of reinstatement with full back wages was
	passed in favour of respondent.
16.08.1997	It is the claim of respondent that he appeared
	before petitioner for the first time to submit his
	joining in compliance of award dated 10.07.1997.
	However, no acknowledgment of receipt of
	application has been filed.
10.10.2002	A legal notice through an Advocate was sent.
24.01.2003	The respondent again made applications for
&	submitting his joining but he was not allowed to
23.02.2003	work.
19.04.2004	Again a reminder was sent but respondent was not
	taken in service.
28.06.2016	An application under Section 33(C)(2) of
	Industrial Dispute Act was filed.

21. Respondent in his evidence has clearly admitted that he has not filed any acknowledgment of receipt of his application filed on 16.08.1997 and on subsequent dates to show that any such application

was given by respondent. Although, respondent has tried to give an explanation that prior to receipt of legal notice sent by his counsel, petitioner was not giving any acknowledgment of receipt but the said explanation cannot be accepted. If petitioner had refused to give an acknowledgment of receipt of an application, then respondent should have sent it through registered post. Even otherwise, he could have made a complaint to higher authorities. He should have filed an application under Section 33(C)(2) of Industrial Dispute Act but none of the abovementioned remedies, which were available to respondent, were availed by him. Even according to petitioner, certified copy of award was obtained by respondent in the year 2002. Thus, it is clear that after award dated 10.07.1997 was passed, respondent approached the petitioner by sending a legal notice through his Counsel on 10.10.2002 and prior thereto there is nothing on record to show that respondent had ever approached the petitioner to express his willingness to perform his duties.

- 22. Furthermore, from the affidavit of respondent, it is clear that when petitioner did not respond to legal notice sent through his Counsel, then respondent approached the petitioner on 24.01.2003, 23.02.2003 and 19.04.2004 by making representations and ultimately, on 02.07.2004, his joining was refused on the ground that case is pending before High Court. Thus, it is clear that at when on 02.07.2004, respondent was made to known that petitioner is not going to accept his joining, then there was no reason for respondent to wait for next 12 years to approach the Labour Court under Section 33(C)(2) of Industrial Dispute Act.
- 23. It is not the case of respondent that any writ petition against award passed by Labour Court on 10.07.1997 was ever filed before the High Court by petitioner. Thus, it is clear that respondent did not submit his

joining immediately after award was passed and waited for 5 long years and only on 10.10.2002, he sent a legal notice through his Counsel and even certified copy of award was obtained by respondent in the year 2002. Thereafter, it is clear from paragraph 8 of affidavit under Order 18 Rule 4 CPC that when respondent was finally informed by petitioner on 02.07.2004 that his joining will not be accepted, then it was expected from respondent to approach the Labour Court immediately or within reasonable time under Section 33(C)(2) of Industrial Dispute Act. That was not done and respondent waited for next 12 years to approach the Labour Court.

- 24. Under these circumstances, this Court is of considered opinion that Labour Court should have considered the aspect of delayed approach to the Labour Court for the purposes of granting relief to respondent. However, that aspect has been completely ignored by Labour Court. Under these circumstances, this Court is of considered opinion that application under Section 33(C)(2) of Industrial Dispute Act was not filed within a reasonable period and respondent waited for more than 19 years to approach the Labour Court under Section 33(C)(2) of Industrial Dispute Act for recovery of back wages. In fact respondent himself was not interested in working in the institution of petitioner and he approached the Labour Court only after attaining the age of superannuation, which clearly indicates that his intention was not to work in the institution of petitioner but his intention was to somehow take the back wages without performing any duties. Under these circumstances, the Labour Court should have refused to grant relief claimed by respondent.
- **25.** For the reasons mentioned above, this Court is of considered opinion that order dated 06.11.2019 passed by Labour Court, Shahdol in

case No.F.21/16 I.D./33C-2 cannot be given stamp of approval. It is, accordingly, **quashed**.

**26.** Petition succeeds and hereby **allowed**.

(G.S. AHLUWALIA) JUDGE

Shanu