IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.1748 of 2019
Date of decision: 15.07.2024

Suresh Kumar. ...Petitioner.

Versus

State of H.P. & Ors. ...Respondents.

Coram:

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?[1]

For the petitioner : Mr. Anil Bansal, Advocate, for the Advocate.

For the respondents : Mr. Leena Guleria Deputy Advocate General, for respondents/State.

Jyotsna Rewal Dua, Judge

With consent of learned counsel for the parties, matter is heard at this stage.

2. Respondent No.4-Joint Labour Commissioner, Himachal Pradesh, has declined to refer the dispute raised by the petitioner for adjudication to the learned Labour Court-cum-Industrial Tribunal. Feeling aggrieved, the petitioner has assailed the order dated 06.04.2017 passed by respondent No.4.

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[1] ***Whether reporters of Local Papers may be allowed to see the judgment? Yes***

3. In the impugned order dated 06.04.2017, respondent No.4 has observed as under:-

3(i). The petitioner had raised an Industrial dispute. As per the report submitted by Labour Officer-cum-Conciliation Officer, Shimla Zone, Shimla under Section 12(4) of the Industrial Disputes Act, 1947, the dispute could not be settled during conciliation proceedings;

3(ii). Respondent No.4 in exercise of powers under Section 12(5) of the Act, examined the report submitted to him under Section 12(4) of the Act and came to to the conclusion that:-

(a) The petitioner had worked with Public Works Department till December 2008;

(b) He had raised his demand on 17.12.2018;

(c) The demand was raised after lapse of 7 years of alleged dis-engagement without giving any justification for delay;

In view of above, respondent No.4 concluded that there was no dispute for the intervening period from December 2008 to 17.12.2015 and that no fresh cause of action was asserted by the petitioner. The dispute

was stale, belated and had faded away with time. Accordingly, the petitioner's prayer to refer the matter to the Court for adjudication was declined.

4. Heard learned counsel on both sides. At this stage, it would be appropriate to refer to the following principles of law drawn by the Hon'ble Larger Bench of this Court in *CWP No.2190 of 2020 along with connected matters* (***Jai Singh vs. State of H.P. & Ors.***) decided on 30.03.2022 regarding effect of delay in demanding/making reference under Section 10 of the Industrial Disputes Act:-

> *"28. Following principles of law can, therefore be culled out from series of the precedents discussed above, as to the effect of delay in demanding /making reference of the industrial dispute to the Labour Court/Industrial Tribunal under Section 10(1) of the Act:-*
>
> *i) That the function of the appropriate Government while dealing with question of making reference of industrial dispute under Section 10(1) of the Act, is an administrative function and not a judicial or quasi judicial function.*
>
> *ii) That the Government before taking a decision on the question of making reference of the industrial dispute has to form a definite opinion whether or not such dispute exits or is apprehended.*

iii) That whether or not the industrial dispute exists or is apprehended in the meaning of Section 10(1) of the Act can be decided by the appropriate Government alone and not by any other authority including by this Court.

iv) That the appropriate Government in discharging the administrative function of taking a decision to make or refuse to make, reference of the industrial dispute under Section 10(1) of the Act, has to apply its mind on relevant considerations and has not to act mechanically as a post office.

v) That while forming an opinion as to whether the industrial dispute exists or is apprehended, the appropriate Government is not entitled to adjudicate the dispute itself on merits.

vi) That the delay by itself does not denude the appropriate Government of its power to examine advisability of making reference of the industrial dispute but the delay would certainly be relevant for deciding the basic question whether or not the industrial dispute "exists" which also includes the decision to find out whether on account of delay the dispute has ceased to exist or has ceased to be alive or has become stale or has faded away.

vii) That whether or not a dispute is alive or has become stale or non-existent, would always depend on the facts of each case and no rule of universal application can be laid down for the same.

viii) That even if Section 10(1) of the Act empowers the appropriate Government to form an opinion "at any time" on the question

whether any "industrial dispute" "exists or is apprehended", and there is no time limit prescribed for taking such a decision, yet such power has to be exercised by the appropriate Government within a reasonable time.

ix) That the period for making reference of industrial dispute is co-extensive with the existence of dispute because the factum of the "existence" or "apprehension of the dispute" is conditioned by the effect of the delay on the liveliness of the dispute.

x) That the appropriate Government in arriving at the decision to make a reference of industrial dispute or otherwise, in the context of delay, may examine whether the workman or the Union has been agitating the matter before the appropriate fora so as to keep the dispute alive, which however, does not necessarily mean that in a case where such action has not been initiated, the dispute has ceased to exist.

xi) That the appropriate Government can, as per Section 10(1) of the Act, take a decision on the question of making reference "at any time", thus implying that there is no limitation in taking such decision and the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to such proceedings.

xii) That the appropriate Government while taking a decision on the question of making reference, need not provide an elaborate opportunity of hearing to the workman but it is under an obligation to consider his explanation for delay in making the demand.

xiii) That in cases where the appropriate Government while examining the question of making a reference of industrial dispute arrives at a decision that the question that on account

> *of delay the dispute has ceased to exist or alive, would require elaborate examination of the evidence, it may while making a reference of the industrial dispute, additionally formulate question on this aspect to be decided as preliminary issue while simultaneously also making a reference on the industrial dispute to be decided as secondary issue.*
>
> *xiv) That even in a case where reference has been made to the Industrial Court after prolonged delay, such Court would be entitled to mould the relief by declining whole or part of the back wages.*
>
> *xv) That even when a reference is made by appropriate Government in a case after huge and enormous unexplained delay, the industrial Court would be entitled to return the reference since such Court judiciously exercises its wide jurisdiction under Section 11-A of the Industrial Disputes Act and is under obligation to consider whether in such like situation any relief at all could be granted to the workman."*

5. A perusal of the impugned order makes it evident that the question of referring the dispute raised by the petitioner to the learned Labour Court/Industrial Tribunal needs to be considered afresh by respondent No.4 in light of the principles now culled out in Jai Singh's case (*supra*).

In the aforesaid decision, it has been, *inter alia*, held that the delay by itself does not denude the appropriate Government of its power to examine advisability of making

reference of the industrial dispute though the delay would certainly be relevant for deciding the basic question whether or not the industrial dispute “exists” which also includes the decision to find out whether on account of delay the dispute has ceased to exist or has ceased to be alive or has become stale or has faded away. Whether or not a dispute is alive or has become stale or non-existent, would depend upon facts of each case and no rule of universal application can be laid down for the same. The appropriate Government in arriving at the decision to make a reference of industrial dispute or otherwise, in the context of delay, may examine whether the workman or the Union has been agitating the matter before the appropriate forum so as to keep the dispute alive, which however, does not necessarily mean that in a case where such action has not been initiated, the dispute has ceased to exist.

The appropriate Government while taking a decision on the question of making reference, need not provide an elaborate opportunity of hearing to the workman but it is under an obligation to consider his explanation for delay in making the demand. In cases where the appropriate

Government while examining the question of making a reference of industrial dispute arrives at a decision that the question that on account of delay the dispute has ceased to exist or alive, would require elaborate examination of the evidence, it may while making a reference of the industrial dispute, additionally formulate question on this aspect to be decided as preliminary issue while simultaneously also making a reference on the industrial dispute to be decided as secondary issue.

Even when a reference is made by appropriate Government in a case after huge and enormous unexplained delay, the Industrial Court would be entitled to return the reference since such Court judiciously exercises its wide jurisdiction under Section 11-A of the Industrial Disputes Act and is under obligation to consider whether in such like situation any relief at all could be granted to the workman.

The above principles of law are required to be considered by the appropriate Government while taking a decision on referring a dispute raised by the workman to the learned Labour Court-cum-Industrial Tribunal. The impugned order does not reflect that the above principles

were kept in view while declining to refer the dispute raised by the petitioner for adjudication to the learned concerned Labour Court. In view of the afore reason, present writ petition is allowed. The impugned order 16.04.2017 is quashed and set aside. Respondent No.4 is directed to decide the matter afresh in accordance with law laid down by Hon'ble Larger Bench of this Court in judgment dated 30.03.2022 rendered in *CWP No.2190 of 2020 along with connected matters* (*Jai Singh vs. State of H.P. & Ors.*).

Pending miscellaneous application(s), if any, also stands disposed of.

Jyotsna Rewal Dua
Judge

15th July, 2024
(Pardeep)