HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 11575/2019

Gopiram Yadav S/o Mr. Ramnarayan Yadav,

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Labour Department, Secretariat Jaipur.
2. Labour Commissioner And Conciliation Officer, Jaipur.
3. Regional Forest Officer, World Forestry, Jhalana Dungri, Jaipur (Raj.)
4. Forest Extension Officer, Grass Farm Nursery, Khatipura, Jaipur (Raj.)

----Respondents

For Petitioner(s) : Mr. Kan Singh Rathore

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

RESERVED ON :: 03.08.2023
PRONOUNCED ON :: 17.08.2023
REPORTABLE

1. The legal issues involved in this petition is "Whether appropriate Government can refuse to make a Reference under Section 10 of the Industrial Disputes Act, 1947 on the ground of delay and latches? Whether the Government can take up the role of Adjudicating Authority while deciding the question as to whether a Reference be made or not?"

2. By way of filing this petition, the petitioner has challenged the validity of the impugned order dated 19.12.2011 by which the

appropriate Government has refused to make Reference to the Labour Court on the ground of raising the dispute after 24 years of termination.

3. The petitioner/workman herein raised an industrial dispute contending that he was engaged as 'Beldar' on 01.02.1985 and worked on that post till 28.12.1986. His attendance was marked in muster rolls and he has worked for more than 240 days in a calendar year but on 28.12.1986 his services were terminated orally without any notice or payment of one month's wages. It was pleaded that no seniority list was prepared. Hence, his services were terminated against the provision of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947'). The case of the petitioner is that he was illiterate and he requested the respondent/employer to reinstate him back in service but except assurance no steps were taken for getting him back in service.

4. The reconciliation proceedings were conducted between the parties but both parties decided to stick to their stands, hence, the reconciliation failed on 27.06.2011 before the Labour Industrial Jaipur Region, who referred the matter to the appropriate Government to proceed further vide its letter dated 19.07.2011.

5. The appropriate Government refused to refer the dispute to the Labour Court/Industrial Tribunal on the ground of delay and latches as the dispute was referred after a delay of 24 years and no reasonable explanation of this inordinate delay was given by the workman, hence, the claim was treated as 'Stale Claim' vide impugned order dated 19.12.2011.

6. Feeling aggrieved by the impugned order dated 19.12.2011, the petitioner has submitted this petition before this Court. Learned Counsel for the petitioner submitted that no limitation has been prescribed under the Act of 1947 for raising the industrial dispute and seeking reference under the Act. Counsel submits that the provision under Article 137 of the Limitation Act are not applicable upon the applications submitted under the Act of 1947. In support of his contention, he has placed reliance upon the following judgments:-

1. Ajaib Singh Vs. Sirhind Co-op. Marketing-Cum-Processing Service Society Limited reported in **1999(2) SCT 667.**
2. Raghubir Singh Vs. General Manager, Haryana Roadways reported in **2014 (10) SCC 301**

7. Heard and considered the submissions.

8. Perusal of the material available on the record indicates that by passing the impugned order dated 19.12.2011, the appropriate Government has refused to refer the dispute to the Labour Court on the ground of delay and treated the dispute of the petitioner as 'Stale Claim'.

9. Before proceeding further to deal with the issue in question it would be gainful to quote the relevant provision contained under Section 10 of the Act of 1947 which deals with Reference of disputes to Boards, Courts and Tribunal. Section 10 reads as under:

> **"10. Reference of disputes to Boards, Courts or Tribunals.-**
>
> (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing-

(a)refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified, in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub- section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

(1A) Where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Tribunal for adjudication.

(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly,-

(2A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government:

Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months:

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

Provided also that in computing any period specified in this sub- section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub- section had expired without such proceedings being completed.

(3) Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal] under this section, the appropriate Government may by order prohibit the continuance of any strike or lock- out in connection with such dispute which may be in existence on the date of the reference.

(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal] under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be] shall confine its adjudication to those points and matters incidental thereto.

(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a Labour Court, Tribunal or National Tribunal] under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments.

(6) Where any reference has been made under sub- section (1A) to a National Tribunal, then notwithstanding anything contained in this Act, no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal, and accordingly,-

(a) if the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be, in so far as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal; and

(b) it shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal.

Explanation.-- In this sub- section," Labour Court" or" Tribunal" includes any Court or Tribunal or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

(7) Where any industrial dispute, in relation to which the Central Government is not the appropriate Government, is referred to a National Tribunal, then notwithstanding anything contained in this Act, any reference in section 15, section 17, section 19, section 33A, section 33B and section 36A to the appropriate Government in relation to such dispute shall be construed as a reference to the Central Government but, save as aforesaid and as otherwise expressly provided in this Act, any reference in any other provision of this Act to the appropriate Government in relation to that dispute shall mean a reference to the State Government.

> (8) No proceedings pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate Government."

10. Perusal of the aforesaid provision clearly indicates that no limitation has been prescribed for raising demand by the workman and seeking Reference under the Act of 1947.

11. Earliest judgment on the subject is by Constitution Bench of the Supreme Court in **State of Bombay vs. K.P. Krishnan and others AIR 1960 SC 1223**, which held that Section 10 (1) of the Act confers wide and even absolute discretion, on the Government either to refer or to refuse to refer, an industrial dispute. An obligation is imposed on the Government to refer the dispute unless of course it is satisfied that the notice is frivolous, or vexatious or that considerations of expediency required that a reference should not be made. However, while making an order refusing to make reference, the appropriate Government is not expected to consider factors which are extraneous or irrelevant or not germane. Even in dealing with the question as to whether or not it would be expedient to make a reference, the Government must not act in punitive spirit but must consider the question fairly and reasonably and take into account only relevant facts and circumstances. This judgment was followed by the Supreme Court later in **Madhya Pradesh Irrigation Karamchari Sangh vs. State of M.P. and another, (1985) 2 SCC 102** and **V.**

Veeranajan and others vs. Government of Tamil Nadu, (1987) 1 SCC 479.

12. In **Bombay Union of Journalists and others vs. the State of Bombay and another, AIR 1964 SC 1617**, the Supreme Court held that while considering the question as to whether a reference should be made under Section 12 (5), the appropriate Government has to act under Section 10 (1) of the Act which confers discretion on the Government either to refer the dispute or not to refer it. Under Section 12 (5) of the Act, the appropriate Government is under an obligation to record reasons for not making the reference. However, when the matter involves a question of law and disputed question of fact, the appropriate Government should not purport to reach a final decision on the same as it is a subject matter to be decided by the Industrial Tribunal, but it cannot be said that the appropriate Government is precluded from considering even prima facie merit of the dispute when it decides the question as to whether its power to make a reference should be exercised. It was further held that if the claim made is patently frivolous or is clearly belated, the appropriate Government may refuse to make reference.

13. In **Telco Convoy Drivers Mazdoor Sangh and another vs. State of Bihar and others, (1989) 3 SCC 271**, the Supreme Court held that though while considering the question of making a reference under Section 10 (1), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended", but it is not entitled to adjudicate the dispute itself on its merits. While exercising power under Section 10 (1) of the

Act, the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function. It therefore cannot delve into the merits of the dispute and take upon itself the determination of the lis. The question whether the persons raising the dispute were workmen or not, cannot be decided by the Government in exercise of its administrative function under Section 10 (1) of the Act. Obviously, the question of delay was not under consideration in that case before the Supreme Court.

14. In **Ratan Chandra Sammanta and others vs. Union of India and others, (1993) supp (4) SCC 67**, the Supreme Court held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself as 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.

15. In **Workmen vs. I.I.T.I. Cycles of India Ltd. and others, (1995) Supp (2) SCC 733**, the Supreme Court held that it is not obligatory on the part of the appropriate Government to make a reference of a dispute in each and every case where the reference is sought as the Government has to weigh the facts keeping in mind the objective of industrial peace and smooth industrial relations between the parties and where the reasons given by the Government for not making the reference, are found to be relevant, the Courts cannot interfere.

16. In **Mohamad Kavi Mohamad Amin vs. Fatmabi Ibrahim, (1997)6 SCC 71**, the Supreme Court held that wherever a power

is vested in a statutory authority without prescribing any time limit, such power should be exercised within a reasonable time. In **N. Balakrishnan vs. M. Krishnamurthy, (1998) 7 SCC 123**, the Supreme Court held that a legal remedy cannot be kept alive for unreasonable period even if the statute does not provide for any limitation.

17. In **Ajaib Singh vs. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and another, (1999) 6 SCC 82**, the Supreme Court held that even in cases of prolonged delay, relief can be moulded by declining whole or part of the back wages. It further held that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act. In cases where the delay is shown to be existing, the Industrial Court can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment or in appropriate cases direct the payment of part of the back wages instead of full back wages. The Supreme Court although upheld the award of the Labour Court for reinstatement and continuity of service, but in view of 7 years' long delay in seeking reference of the dispute, restricted the back wages from the date of issuance of notice of demand till the date of award by the Labour Court to the extent of 60% and awarded full back wages only after succeeding period.

18. Under challenge before the Supreme Court in **Nedungadi Bank Ltd. vs K.P. Madhavankutty and Ors, (2000) 2 SCC 455** was judgment of the Division Bench of Kerala High Court,

which had allowed the appeal filed by the workmen and set aside the judgment of the learned Single Judge, whereby the writ petition filed by the Bank was allowed by quashing the reference made by the Central Government under Section 10 of the Industrial Disputes Act (for short, the "Act"). The Supreme Court held that "even though there is no statutory limitation period for making reference of industrial dispute, but such powers should be exercised reasonably and in a rational manner and not in a mechanical fashion. When a dispute becomes stale would depend upon the facts and circumstances of each case. The following observations of the Supreme Court in para-6 are worth quoting:-

> "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 lapse of about seven years of 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 industrial dispute was ex facie bad and incompetent."

19. In **Sapan Kumar Pandit vs. U.P. State Electricity Board and others, (2001) SCC 222**, the judgment of High Court of Allahabad was challenged before the Supreme Court, which quashed the reference order passed by the appropriate Government on the ground of delay of 15 years. The Supreme Court held that the limitation period for making reference of industrial dispute is coextensive with the existence of dispute. The opinion as to the existence of the dispute has to be formed by the Government alone and none else. After referring to Section 4-K of the U.P. Industrial Disputes Act, which is akin to Section 10 of the Act, the Supreme Court in paras 8 and 9 of the judgment held as under:-

> "8. 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 rekindled 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.
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> 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.
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> 9. 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.

20. In **S.M. Nilajkar and Ors. vs. Telecom District Manager, Karnataka, (2003) 4 SCC 27**, the argument of the respondents before the Supreme Court was that on account of mere delay in raising the dispute by the appellants workmen, the High Court was not justified in denying the relief to them. Although, the Supreme Court upheld that argument in the facts of the case, yet relying on its earlier decision in **Shalimar Works Ltd. vs. Workmen, AIR 1959 SC 1217**, the Supreme Court held that merely because the Industrial Disputes Act does not provide for 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 therefore. 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.

21. In **Haryana State Coop. Land Development Bank vs. Neelam, (2005) 5 SCC 91**, the Supreme Court held that although the Court cannot import a period of limitation when the statue does not prescribe the same, as was observed in Ajaib Singh (supra) 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 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.

22. In **U.P. State Road Transport Corpn. vs. Babu Ram, (2006) 5 SCC 433**, the Supreme Court held that so far as delay in seeking reference is concerned, no formula of universal application can be laid down for determination of the said question, it would depend on facts of each individual case. In **Asstt. Engineer, CAD, Kota vs. Dhan Kunwar, (2006) 5 SCC 481**, also the Supreme Court held that it may be noted that so far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on the facts of each individual case.

23. The Supreme Court in **Rashtriya Chemicals & Fertilizers Ltd. And another vs. General Employees' Association and others, (2007) 5 SCC 273,** held that the High Court cannot straightway direct the appropriate government to refer the dispute. It is for the appropriate Government to apply its mind to

relevant factors and satisfy itself as to the existence of a dispute before deciding to refer the dispute.

24. The Supreme Court in **Krisihi Utpadan Mandi Samity, Manglor vs. Pahal Singh, (2007) 12 SCC 193** was dealing with a case where industrial dispute had been raised 18 years after the date of retrenchment. The Labour Court declared the termination of the services by the management as illegal and directed reinstatement of the workman with continuity of service and back wages. The Supreme Court held that the Labour Court is under an obligation to consider as to whether any relief, if at all could be granted in favour of the workman in view of the fact that the industrial dispute had been raised after 18 years. The Supreme Court held that it is well settled principle of law that "delay defeats equity". It was further held that the Labour Court exercises its wide jurisdiction under Section 11-A of the Industrial Disputes Act, but such jurisdiction must be exercised judiciously. A relief of reinstatement with all back wages is not to be given without considering the relevant factors therefore, only because it would be lawful to do so. The Supreme Court set aside the judgment of the High Court and allowed the appeal.

25. In **State of Karnataka and another vs. Ravi Kumar, (2009) 13 SCC 746**, the Supreme Court held that delay of 14 years in seeking reference and challenging the order of termination was fatal because the person supervising could be expected to prove after 14 years that the respondent did not work or that he did not work for 240 days in a year or that he voluntarily left the work. Since the reference was stale, it ought to

have been rejected on that ground alone. Holding thus, the Supreme Court set aside the judgment of the High Court and restored the award of the Labour Court which rejected the reference.

26. In **Rahaman Industries Private Limited vs. State of Uttar Pradesh and others, (2016) 12 SCC 420,** challenge before the Supreme Court was made to the order of the High Court giving peremptory direction to the appropriate Government to refer the dispute raised by the workmen for adjudication. It was argued that the order of the High Court has virtually taken away the discretion on the part of the Government to look into the issue as to whether there is a referable dispute at all. Upholding the argument, the Supreme Court held that it is not as if the Government has to act as a post office by referring each and every petition received by them. The Government is well within its jurisdiction to see whether there exists a dispute worth referring for adjudication. In Para-3 the Supreme Court held as under:-

> "3. We find force in the submission made by the learned Counsel. In the scheme of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), it is not as if the Government has to act as a post office by referring each and every petition received by them. The Government is well within its jurisdiction to see whether there exists a dispute worth referring for adjudication. No doubt, the Government is not entitled to enter a finding on the merits of the case and decline reference. The Government has to satisfy itself, after applying its mind to the relevant factors and satisfy itself to the existence of dispute before taking a decision to refer the same for adjudication. Only in case, on judicial scrutiny, the court finds that the refusal of the Government to make a reference of the dispute is unjustified on irrelevant factors, the court may issue a direction to the Government to make a reference".

27. The issue and the controversy involved in this petition has already been decided by the Larger Bench of the Himachal Pradesh High Court in the case of **Shri Jai Singh Vs. State of H.P. and Others CWP No.2190/2020** by answering this issue in Para 28 which reads as under:

> "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.
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> 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.
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> 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."

28. The intention of the legislature is to be gathered from the words used under Section 10 (1) of the Act of 1947, therefore, it is not open for the appropriate Government to travel beyond the intention of the legislature and it could not be presumed that the legislature has committed mistake in not providing limitation period while interpreting the statutory provision. Thus, it can safely be held that it would not be open for the appropriate Government, while exercising the powers under Section 10 (1) of the Act to decide the question whether the claim of the workman is stale or not.

29. Hence, it is clear that the delay and latches itself cannot be a ground for refusing to make a Reference. If a person is guilty of delay and latches, it may be a ground for the Labour Court, either to refuse to grant any relief or refuse to grant relief of back wages. The Government cannot take up the role of an

Adjudicating Authority while deciding the question as to whether a Reference should be made or not.

30. While referring the dispute, the appropriate Government can formulate the question of 'Delay & Latches' to be decided by the Labour Court as a preliminary issue while simultaneously also making a reference on the industrial dispute to be decided on secondary issue.

31. In the result, the impugned order is quashed and set aside, the Government is directed to make a Reference of the dispute.

32. Petition stands disposed of with the aforesaid directions.

(ANOOP KUMAR DHAND),J

Pcg/101