

Naresh Kumar Alias Billu Vs. State of Uttaranchal and ors.

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Court : Uttaranchal

Decided On : May-06-2005

Reported in : (2006)IILLJ509UC

Judge : Rajesh Tandon, J.

Acts : Uttar Pradesh Industrial Disputes Act, 1947 - Sections 2A, 4F, 4K, 6I(3), 6N, 10, 10(1), 12(5) and 37C; Indian Limitation Act, 1963 - Schedule - Article 137; [Uttar Pradesh Reorganisation Act, 2000](#) - Sections 86

Appeal No. : Civil Petition No. 707/2004

Appellant : Naresh Kumar Alias Billu

Respondent : State of Uttaranchal and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Pankaj Miglani, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Rajesh Tandon, J.

1. Heard Sri Pankaj Miglani learned Counsel for the petitioner and learned Standing Counsel for the respondents.
2. By the present writ petition the petitioner has prayed for setting aside the order dated July 22, 2004 passed by the respondent No. 3 contained as Annexure-3 to the petition and to issue an order or direction in the nature of mandamus directing the respondent No. 3 to refer the dispute to the Labour Court for its adjudication.
3. Briefly stated, the petitioner has been working as Beldar since March 4, 1982 till February 23, 1989 with respondent No. 4. On February 24, 1989, he was stopped from doing work and his services were retrenched without following the procedure as has been prescribed under Section 6-N of U.P. Industrial Disputes Act, 1947.
4. On January 17, 2004, the petitioner made an application to the Conciliation Officer under Section 2-A of the U.P. Industrial Disputes Act along with the application for condonation of delay and the case was registered as C.P./C.D. Case No. 42 of 2004.
5. The Conciliation Officer has sent notice to both the parties directing them to file their written statement and to remain present in his office on April 8, 2004 at 2.00 p.m.
6. After the exchange of the pleadings by the parties the matter aforesaid up for hearing before respondent No. 3 on July 22, 2004, the Conciliation Officer dropped the reference merely on the ground that the present dispute was raised by the petitioner after the long delay of 15 years.
7. Petitioner has submitted that respondent No. 3 illegally passed the order dated July 22, 2004 as the matter of delay does not bar the jurisdiction of Labour Court and provisions of Article 137 of the Indian Limitation Act are not applicable in cases of industrial disputes.
8. In connected Civil Petition No. 1035 of 2004, the respondent No. 3 while rejecting the application under Section 2-A of the U.P. Industrial Disputes Act, 1947 has referred the judgment of the Apex Court in Nedungadi Bank Ltd. v. K.P. Mahadevan Kutti MANU/SC/0049/2000 : (2000)ILLJ561SC where the facts were

completely different and related to the dismissal of the service from the bank and his appeal was dismissed, thereafter, an application was filed before the State Government under Section 10 of the Act. However, in the aforesaid judgment, the Apex Court has observed that law does not prescribe any time limit for the appropriate Government to exercise its powers under Section 10 of the Act, this power can be exercised at any point of time but it cannot be availed in order to revive the matter which had since been settled.

9. Further in the aforesaid judgment (supra), it has been stated that he availed his remedy of appeal under the rules governing his conditions of service. It could not be said that in the circumstances industrial dispute did arise or was even apprehended. In these circumstances, the Apex Court has observed that the appropriate Government cannot in a mechanical fashion make the reference of the alleged dispute terming as industrial dispute.

10. First submission of the learned Counsel for the petitioner with regard to delay is that the Assistant Labour Commissioner has no jurisdiction to adjudicate the dispute on the ground of delay and as such the order dated July 22, 2004 passed by the Assistant Labour Commissioner respondent No. 3 is illegal while refusing to refer the dispute before the Labour Court.

11. So far as the first point is concerned, learned Counsel for the petitioner has submitted that the functions of the respondent No. 3 are merely of an administrative nature and not of judicial nature and hence the question as to whether the workman has completed 240 days of continuous service or not is a matter of fact and has to be adjudicated by the Labour Court and not to be dealt at the stage of conciliation proceedings. Apex Court in the case *Ajaib Singh v. Sirhind Co-operative Marketing-cum-Processing Service Society Ltd.* MANU/SC/0254/1999 : (1999)ILLJ 1260 SC , held that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally

questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour Court or Board, dealing with the case can be appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.

12. On account of the admitted delay, the Labour Court ought to have appropriately moulded the relief by denying the appellant-workman some part of the back wages. The Apex Court has observed as under 1999-I-LLJ-1260 at p. 1264:

10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour Court or Board, dealing with the case 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/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned Counsel for the respondent-management on the Full Bench judgment of the Punjab and Haryana High Court in *Ram Chander Morya v. State of Haryana* 1999 (1) SCT 141 is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held 'neither any limitation has been provided nor any guidelines to determine as to what shall be the period of limitation in such cases'. However, it went on further to say that 'reasonable time in the cases of labour for demand of reference or dispute by appropriate Government to Labour Tribunal will be five year after which the Government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay. We are of the Opinion that the Punjab and

Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application under Section 37-C of the Act to the adjudicated. It is not the function of the Court to prescribe the limitation where the Legislature in its wisdom had thought it fit to prescribe any period. The Courts admittedly interpret law and do not make laws. Personal view of the Judges presiding the Court cannot be stretched to authorize them to interpret law in such a manner, which would amount to legislation intentionally left over by the Legislature. The judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purposes of invoking the jurisdiction of the Courts/ Boards and Tribunals under the Act.

13. The aforesaid analogy has further been followed in the case of Gurmail Singh v. Principal, Government College of Education 2000 (9) SCC 496 : 2000-I-LLJ-1080. The Apex Court has observed as under at p. 1081 of LLJ:

3...As laid down by this Court in the case of Ajaib Singh v. Sirhind Co-operative Society Marketing-cum-Processing Service Ltd. 1999-I-LLJ-1260 (SC) if the order of dismissal is challenged belatedly, the dispute would still continue for adjudication, the only question would be to deprive back wages for the period of delay in raising such a dispute if on merits it is to succeed...

14. The observations of the Apex Court in Telco Convoy Drivers Mazdoor Sangh v. State of Bihar MANU/SC/0605/1989 : (1989)IILLJ558SC are fully applicable. The same is quoted below at p. 561 of LLJ:

14. Applying the principle laid down by this Court in the above decision, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under Section 10(1) of the Act. As has been held in M.P. Irrigation Karamchari Sangh case 1985-I-LLJ-519 (SC) (supra), there may be exceptional cases in which the State Government may, on a proper examination of the demand with a view to declining reference and Courts will always be vigilant

whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes, and that to allow the Government to do so would be to render Section 10 and Section 12(5) of the Act nugatory.

15. In *Sharad Kumar v. Govt. of NCT of Delhi* MANU/SC/0313/2002 : (2002)IILLJ275SC , the Apex Court has observed that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it decided the question as to whether its power to make a reference should be exercised under Section 10(1) read with Section 12(5) of the Act. In *Sharad Kumar v. Govt. of NCT of Delhi* (supra), the Hon'ble Supreme Court has relied upon the judgment in *M.P. Irrigation Karamchari Sangh v. State of M.P.* MANU/SC/0221/1985 : (1985)ILLJ519SC , as well as *Bombay Union of Journalists v. State of Bombay* MANU/SC/0135/1963 : (1964)ILLJ351SC and has held as under 2002-II-LLJ-275 at p. 282

24. In *M.P. Irrigation Karamchari Sangh v. State of M.P.* 1985-I-LLJ-519 (SC) taking note of the decision in the case of *Bombay Union of Journalists v. State of Bombay* MANU/SC/0135/1963 : (1964)ILLJ351SC wherein it was held that appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under Section 10(1) read with Section 12(5), or not, this Court held that the Court had made it clear in the same judgment that it was a province of the Industrial Tribunal to decide the disputed questions of facts. This Court made the following observations 1985-I-LL-519 at p. 522:5...Therefore, while conceding a very limited jurisdiction to the State Government to examine patent frivolousness of the demands, it is to be understood as a rule, that adjudication of the demands made by workmen should be left to the Tribunal to decide. Section 10 permits appropriate Government to determine whether dispute exists or is apprehended and then refer it for adjudication on merits. The demarcated functions are : (1) reference, (2) adjudication. When a reference is rejected on the specious plea that the Government cannot bear the additional burden, it constitutes adjudication and thereby usurpation of the power of a quasi-judicial Tribunal by an administrative authority namely, the appropriate Government. In our opinion, the reasons given by the State Government to decline reference are

beyond the powers of the Government under the relevant Sections of the Industrial Disputes Act. What the State Government has done in this case is not a prima facie examination of the merits of the question involved. To say that granting of dearness allowance equal to that of the employees of the Central Government would cost additional financial burden on the Government is to make a unilateral decision without giving an opportunity to the workmen to rebut this conclusion. This virtually amounts to a final adjudication of the demand itself. The demand can never be characterized as either perverse or frivolous. The conclusion so arrived at robs the employees of an opportunity to place evidence before the Tribunal and to substantiate the reasonableness of the demand.

16. In *Sapan Kumar Pandit v. U.P. State Electricity Board* MANU/SC/0376/2001 : (2001)IILLJ788SC , the Apex Court has held as under at pp. 791 & 792 of LLJ:

10. In considering the factual position whether the dispute did exist on the date of reference the Government could take into account factors, inter alia, such as the subsistence of conciliation proceedings. It is of no consequence that conciliation proceedings were commenced after a long period. But such conciliation proceedings are evidence of the existence of the industrial dispute. It is an admitted fact that on the date of reference in this case the conciliation proceedings were not concluded. If so, it cannot be said that the dispute did not exist on that day.

It is useful to refer to a three Judges' Bench decision of this Court as it related to scope of the very same provision i.e. Section 4-K of the U.P. Act. In *Western India Watch Co. Ltd. v. Western India Watch Co. Workers Union* MANU/SC/0375/1970 : (1970)IILLJ256SC , learned Judges made the following observations:

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 adjourned 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.

17. Further reliance has been placed on the Government Order dated December 31, 1958 while rejecting the application under Section 2-A of the Industrial Disputes Act, where the matter requires reference of dispute to Conciliation Board, it provides that no such application shall ordinarily be entertained, if it is in respect of dispute raised after more than six months.

18. In connected Civil Petition No. 1343 of 2004, it has been stated as under:

That the notification dated December 31, 1958 upon which respondent No. 3 has relied upon was enforceable only for the period of one year and has never been extended and as such was no more in existence on the appointed day, thus there was no question of its applicability on the State of Uttaranchal, under Section 86 of the U.P. Reorganisation Act, 2000 and as such the impugned order deserved to be set aside on this score alone.

In the counter-affidavit the respondents have replied as under: That in reply to contents of paras 3 to 12 of the writ petition, it is submitted that as the application was moved by the petitioner was highly time-barred and no reasons were explained for the delay and laches as such the same was rightly rejected by the competent authority. It is submitted that the application of the petitioner was rejected on the ground of delay as no sufficient cause was shown by him.

As such the averments that it has elapsed after one year has not been denied specifically by the respondent.

On the second question regarding the conciliation order passed by the Government of Uttar Pradesh dated December 31, 1958, learned Counsel for the petitioner has submitted that it refers to the reference of the dispute to Conciliation Board. Rule 2 provides as under:

2. Reference of disputes to Conciliation Board.- (1) An application for the settlement of an industrial dispute may be made before the Conciliation Officer of the area concerned in Form 1 (With five spare copies thereof)

(1) in the case of workman-

(a) subject to the provisions of Sub-section (3) of Section 6-I, by an officer of a union of which he is a member or by an officer of a Federation of Unions to which such union is affiliated: or

(b) where no union of workmen exists by the five representatives of the workmen employed in a concern or industry, duly elected in concern or industry at a meeting held for the purpose, or by all the workmen employed in the concern if their number is not more than five:

(Provided that where no union of workmen exists and the application is made by representatives of the workmen duly elected as aforesaid, a copy of the resolution adopted at a meeting held for purpose shall be attached to the application in Form 1, and)

(ii) in the case of an employer -

(a) by the employer himself; or

(b) by an officer of a union or association of employers of which the employer is a member; or

(c) by an officer of a Federation of Unions or associations of employers, to which the union or association referred to in Clause (b) above is affiliated: or

(d) where the employer is an incorporated company or other body corporate by the agent, manager or other principal officer of the corporation:

Provided that no such application shall ordinarily be entertained by the Conciliation Officer if it is in respect of a dispute arising more than six months previous to the date of the application or if the dispute has already been the subject of proceedings before a Conciliation Board, a Labour Court or a Tribunal (or an Arbitrator) and finally settled (herein):

Provided further that, notwithstanding anything hereinbefore contained, the Labour Commissioner (or the Deputy Labour Commissioner (Industrial Relations) or the State Government may refer a dispute to any Conciliation Officer for settlement by Conciliation Board.

(2) where a Conciliation Officer refuses to entertain an application, he shall record in writing his reasons for such refusal and communicate them to the applicant who may, within one month of receipt thereof, represent.

19. Further in accordance with the proviso, the word 'ordinarily' has been used and the same cannot be termed as giving power to the Conciliation Officer to reject the dispute as the power to refer the dispute notwithstanding the time fixed.

20. However, the learned Counsel for the petitioner has brought to the notice of the Court that the said Government Order was effective for the period of one year, which has already elapsed as will appear from Clause 15 of the said Government Order, the same are quoted below

15. Date of commencement and operation of the Order. - This Order shall come into force at once and shall remain in force for a period of one year, with effect from the date of the Order, unless withdrawn or cancelled.

Learned counsel for the petitioner has further submitted that the U.P. Conciliation Order is applicable with regard to the reference of dispute of Conciliation Board and not of the individual disputes. Section 2-A refers to the individual dispute and the same is quoted below:

2-A. Dismissal etc., of an individual workman to be deemed to be an industrial dispute- Where any employer discharges, 'dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference

between that workman and his employer connected with or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

21. This Government Order according to Clause 15 itself being no more in existence, reliance placed by the Assistant Labour Commissioner, therefore, cannot be allowed to stand so far as the present case is concerned and the same cannot be enforced.

22. Further in view of the law laid down by the Apex Court in various decisions neither any limitation nor any guideline has been provided in order to determine the period of limitation in such cases and as such the time of reference by the appellate Court to Labour Court or Tribunal cannot be subjected to the law of limitation.

23. Further, if the order of retrenchment is challenged belatedly, the dispute could still continue for adjudication before the Labour Court or the Tribunal and the Labour Court or the Tribunal will be at liberty to determine the fact by framing issue in this regard. The very purpose of the meaning of 'conciliation' as defined under Section 4-F of the U.P. Industrial Disputes Act shall be taken away, in case he is allowed to adjudicate the matter on merits. Thus in the Dictionary meaning 'conciliation' means 'Bringing of opposing parties or individuals into harmony'. The conciliator should try to mediate between the parties and in case, he fails to do so the matter may be sent for adjudication in accordance with the provisions of U.P. Industrial Disputes Act.

24. In view of the aforesaid legal proposition the order dated July 22, 2004 passed by the respondent No. 3 cannot be sustained and is hereby quashed. The respondent No. 3 is directed to consider the case of the petitioner in accordance with law.

25. Writ petition is accordingly allowed. There will be no order as to costs.