

D. B. CIVIL SPECIAL APPEAL (WRI T) NO. 928/2008

Smt. Al eeman & Ors.
Vs.
State of Rajasthan & Ors.

Date of Judgment :: July 31, 2008.

HON' BLE THE CHIEF JUSTICE MR. NARAYAN ROY
HON' BLE MR. JUSTICE MOHAMMAD RAFIQ

Mr. Amin Al i for the appellants.

This appeal seeks to challenge the judgment of the Learned Single Judge dated 7.12.2007 whereby the writ petition of the appellants was dismissed.

In the writ petition, the appellants have challenged the order dated 3.6.2004 passed by the appropriate government refusing to make reference of the dispute to the Industrial Tribunal.

The learned counsel for the appellants has argued that the appropriate government was not justified in declining to make reference only on the ground that in the earlier reference, the matter was not contested by the appellants and subsequently the writ petition of the appellants was dismissed by this Court. The delay alone could not be a reason for refusing to make reference. Learned counsel submitted that common reference was made with regard to 181 employees terminated simultaneously by order dated 29.5.1970, and the award was passed on 22.4.1975. However, subsequently this Court in the writ petition filed by the management, remanded the matter back to the Tribunal. The Tribunal then again passed the award on 2.2.1987 confining the relief however to only 39 employees.

The appellants also filed an application before the tribunal to include their names in so far as grant of relief under the said award was concerned; that

application was dismissed by the tribunal on 20.7.1988. The appellants then filed writ petition before this Court which too was dismissed on 15.9.2000. The learned counsel argued that it cannot be said that the industrial dispute ceased to exist and that the appellants had all along been pursuing their remedy. Learned counsel relied on the judgment of the Supreme Court in Sapan Kumar Pandit Vs. U.P. State Electricity Board & Ors, AIR 2001 SC 2562 and argued that the Supreme Court in the aforesaid judgment has interpreted the words "at any time" appearing in Section 10 of the Industrial Disputes Act and held that when irrespective of the delay, when it is reasonably possible to conclude in a particular case that the dispute has not ceased to exist and the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons, it does not cause the dispute to wane into total eclipse.

We have gone through the judgment passed by the learned Single Judge as also the order of the appropriate government refusing to make reference.

The alleged termination in the present matter relates to the year 1970. The termination is stated to have been made on 29.5.1970. The government when passed the order refusing to make reference on 3.6.2004, already thirty three years had gone-by then. Now when we are deciding this matter, thirty eight years have lapsed in between. The government in addition to the delay has also assigned other reasons that when the original industrial dispute was referred to the tribunal, the appellant did not pursue their remedy before it and thereafter, their writ petition was also dismissed by this Court. The judgment of the Supreme Court on which reliance is placed by the

Learned counsel for the appellants was delivered in the fact situation obtaining in that particular case wherein already a dispute was pending adjudication before the Industrial Tribunal and the workman concerned was assured by the management that as and when the award would be rendered by the tribunal, he would also be granted the same relief. In that context, when the relief was denied and he approached the government for referring the industrial dispute, the dispute was actually referred by the government to the tribunal, the High Court at the instance of the management, quashed the order making reference. The Supreme Court, therefore, held that the dispute did not cease to exist and that had remained alive. Another Supreme Court Judgment on the subject that is nearer on the point is rendered in the case of Nedungadi Bank Ltd. Vs. K. P. Madhavankutty & Ors., (2000) 2 SCC 455. In that case, it was held by the Supreme Court that law although does not prescribe any time limit for the appropriate government to exercise its powers under Section 10 of the Industrial Disputes Act, this power cannot be exercised at any point of time and to revive matters which had already been settled. Power is to be exercised reasonably and in a rational manner. In that case though the delay was only of 7 years and yet when the Central Government exercised the power making reference, the interference was made by the Court and it was held that the dispute in the matter had become stale. In the present case, therefore, we do not find any infirmity in the approach taken by the appropriate government refusing to make reference wherein regard to termination of the order 1970, the dispute had become stale and ceased to exist.

