

In the High Court of Judicature for Rajasthan

Jaipur Bench

DB Special Appeal (W) No.825/ 2013

Date of Order ::: 27/2/2015

Hon'ble Mr. Justice Ajay Rastogi
Hon'ble Mr. Justice JK Ranka

Mr. AR Meena, for appellant.

Instant special appeal is preferred against order of the Ld. Single Judge dt. 15.5.2013.

Brief facts of the case are that the appellant as alleged by him joined service on 1.4.1978 on daily wage basis and his services were terminated w.e.f. 1.7.1982. Indisputably, on the application filed by the appellant on 15.10.2009, the conciliation officer sent its failure report dt.21.2.2011 and the state govt. after examining the record did not consider appropriate to make reference & declined u/ S.12(5) of the Industrial Disputes Act, 1947 (Act 1947) vide its order dt.7.6.2011 and that was the subject matter of challenge in the writ petition. Indisputably, there was delay of 27 years in initiating the so called alleged Industrial dispute terminating services w.e.f. 1.7.1982, certainly by passage of time there no industrial dispute subsists which needs adjudication and before the Ld. Single Judge and so also before us, the explanation furnished is not at all justiciable and even after the delay of 27 years the grievance raised by the appellant becomes stale.

It is true that so far as delay in seeking reference is concerned there cannot be any universal formula and it would always depend on the facts of each case. The Apex Court in *Nedungadi Bank Ltd. Vs. K.P. Madhavankutty & Ors.* (2000) 111 J 561 SC observed as under-

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.

In the light of what has been observed by the Apex court, we do not find any error being committed by the Id. Single Judge while

passing order impugned which may call for interference.

Consequently, the special appeal being devoid of merit and accordingly dismissed.

[JK Ranka], J

[Ajay Rastogi], J.

dsr-

"All corrections made in the judgment/order have been incorporated in the judgment/order being emailed"

Datar Singh
P.S.



सत्यमेव जयते