Exh. No.

Received On : 27/07/2018

Registered On : 01/08/2018

Decided On : 18/03/2020

Duration : 1Y. 07 M.17D.

BEFORE PRESIDING OFFICER, FIRST LABOUR COURT, KOLHAPUR.

Reference (IDA) No. 46/2018.
(CNR No.MHLC09-000487-2018)

Dispute between

Shetakari Sahakari Sangh Ltd.,
Old Rajwada, Bhawani Mandap, Kolhapur.. .. **First party**

And

Shri. Dattatray Hindurao Yadav,
R/o. 2377, C Ward, Shaniwar Peth,
Sonya Maruti Chowk, Kolhapur. ..**Second party**.

Appearance :-

Shri. V.D. Narvekar, Advocate for First party.
Shri. B.B. Powar, Advocate for Second party.

A W A R D

(Date :- 18/03/2020)

This is the reference received from State Government for adjudication of dispute between the parties which involves much contested issues on facts as well as Law. The present reference is received from the State Government to adjudicate the dispute whether First party employer Shetakari Sahakari Sangh Ltd. has illegally terminated the services of the second party w.e.f. 25/12/2006 by office order dated 14/12/2006 and further, to adjudicate whether the second party is entitled for reinstatement in service with continuity of service and full back wages from the date of his termination.

2. Notices were issued to both the parties for filing statement of claim and written statement on behalf of second party and first party. In response to notices, second party has

LABOUR COURT

submitted statement of claim at Exh. U-2 and first party has submitted their written statement at Exh. C-2.

3. After going through the rival contentions of both the parties my learned predecessor has framed the issues and I have answered the same with my observations thereon.

Sr. No.	**ISSUES**	**FINDINGS**
1)	Whether second party was illegally terminated by the first party on 25/12/2006 without following due process of law ?	**In the affirmative.**
2)	Whether second party is entitle for reinstatement with continuity of service with full back wages ?	**Partly affirmative. Entitled for lump-sum compensation.**
3)	What order ?	**As per final award.**

R E A S O N S

4. In order to appreciate the controversy involved in the matter, it is necessary to set out the facts in details. For the sake of brevity, contents of statement of claim and written statement are summarized in nut shell, hereinafter along with the arguments of both parties. The learned advocate for Second Party argued in consonance with the contents of statement of claim, documents and depositions of parties on record.

5. Before I examine the factual matrix of the case in hand, I think it apposite to put-forth some details in respect of employment and termination of Second Party workman and the same are stated as under :-

1) Date of Appointment - 1983

2) Date of Termination – 25/12/2006.

3) Post on which Second Party was working - Salesman

4) Salary of Second Party shown in Claim – Rs. 5000/- (No Salary Slip attached).

6. Learned advocate for Second Party argued that, Second party was in the employment of the first party and was terminated from the services as per details shown above. As per second party, even if the word ‘retired’ is included in the order, in-fact, it is otherwise a

dismissal order issued by the first party. It was submitted that Second Party was illegally terminated by First Party, and therefore, present industrial dispute is raised.

7. It was then argued that Second party is a member of Kolhapur Zilla Sahakari Nokar Union and the said union is recognized and representative union working in the first party establishment. First party has retired the second party at the age of 55 years. First party has not given any notice while reducing the age to be 55 years instead of 60 years as retirement age. The said fact was not informed to the workers union acting in the first party employer and to competent government offices. Therefore, act of terminating the services of the second party at the age of 55 years was illegal.

8. Second Party's learned advocate then, submitted that Model Standing Orders are applicable to the first party establishment. As per Service Rules and Model Standing Orders, retirement age of second party is 60 years. First party has not made any changes in Model Standing Orders while reducing retirement age and therefore, act of terminating the second party under the guise of retirement was illegal. It was argued that First party has violated the provisions of Model Standing Orders and therefore, act of terminating the second party from the service was mala-fide one. First party has not followed the condition as per custom prevailing to retire the employee on the last date of retirement age.

9. In the course of argument, my attention was drawn to the facts that earlier litigation were held between First Party and their employees. It was argued that on previous occasion, the first party has reduced the retirement age of employees to be 58 years instead of 60 years and therefore, Kolhapur Zilha Sahakari Nokar Union has challenged the said fact in the court of law. In those matters decision was given that retiring the employees at the age of 58 years instead of 60 years was illegal. However, first party adopted the same *Nokarnama* and fixed retirement age as 55 years from 58 years. Therefore, litigations continued on before Labour Court, Hon'ble Industrial Court, Hon'ble Bombay High Court and Hon'ble Supreme Court of India. All the pending litigations were disposed of with result and Judgment that retiring the employees at the age of 55 years by reducing retirement age was illegal. Therefore, it was submitted that second party is entitled to work in the first party till the age of completion of 60 years.

10. On the backdrop of above situation, it was then argued on behalf of Second party that retiring the second party from the employment of first party was wrong and illegal. Before terminating the services of the second party, first party has not followed the provisions of law. Second party has further stated that he was working for Eight Hours per day. He had never instructed any workers to do any type of work. He has not sanctioned or rejected leave of any

workmen. He has not transferred any workman from one place to another place. He was not having supervision or control of any workers working in the first party establishment. It was further submitted that agreement in respect of salary and other service conditions took place between the first party and second party Kolhapur Zilha Sahakari Nokar Union. As per the conditions mentioned in the agreement, first party used to give salary to their workers.

11. It was then argued that some workers as well as workers of union has filed cases against first party for deciding the retirement age ex-parte. The issues involved in those cases and present reference are one and same. Second party has further stated that first party may raise objection that present reference is not referred within time limit, the second party has given certain grounds to explain the delay while preferring the reference. Referring to para (20) of the statement of claim, it was argued that second party has pleaded and proved that delay caused was not intentional one.

12. Learned advocate for Second Party strenuously argued that First Party illegally retired the Second Party vide office order dated 14/12/2006. In-fact the said illegal retirement is nothing but termination from service without following due process of law. Therefore, industrial dispute is raised challenging the said termination order.

13. It was argued that custom of denying the retirement benefits to the employees who files litigation was prevailing in the First Party Sangh and same was followed by First Party. Second Party was denied the benefits despite repeated demands, and therefore there was delay in preferring the complaint.

14. While explaining the reasons for delay in raising industrial dispute, it was then argued that Kolhapur Zilla Sahakari Nokar Union has filed cases against the First Party for ex-parte effecting the less age. The issues involved in those cases and present are one and same. First party officer Shri. Dilip Mohite, Shri. Anandrao Chuyekar, Adv. Shamrao Shinde and Smt. Devyani Ghotavdekar, Managing director and Labour Officer told the Second Party that his claim will be considered as per the decisions of other cases filed by union. Second party was again and again requesting the first party to allow him on job. Second Party was with the hope that First Party would consider the request of the Second Party. It was argued that because of above reasons Second Party could not file the cases in time. It was then argued that first party has given the retirement benefits to some of the employees in view of earlier orders by the court, therefore, second party was with a hope that he also will get the same benefits. It was argued that first party has not taken the second Party in service nor given the service benefits like other employees named Shri. K K Farakate, Shri. Dhulappa Patil and Shri. Ganpatrao Bagal. Second Party was with a hope

that like other employees he will be reinstated in the service, therefore, he was waiting for positive response from First Party and hence, could not raise the dispute in time.

15. Thus, by adverting to above grounds on the point of delay and laches and other points, learned advocate of the Second Party argued before the court that the delay caused was not intentional one and if the delay is condoned there would be any loss whatsoever to the first Party. Lastly, it was argued that reference be allowed and second party be given the benefits in terms of reference.

16. First Party appeared in the matter and submitted their Written Statement. First party has raised various grounds of objection in their written statement. Learned advocate for First party also vehemently argued and opposed to the reference on various grounds on facts and law points as well. Defence of the First party is summarized in brief as follows:-

Admitted Facts by First Party.

Following facts are admitted by the First Party in their Written Statement :-

It is admitted to First Party that Second Party was working with the First Party since the date of appointment. It is also admitted to the the First Party that first party runs their business through branches all over district. It is admitted that appointment of employees of all branches, their termination, supervision is done by one officer of the First Party. It is admitted to the First Party that Second Party was working for 8 hours with the First Party. Further, it is admitted to First Party that Second Party was not instructing any worker to do the work. Second Party had no power to sanction or reject the leave of other employees. Second Party was not supervising any workers in the First Party. It is admitted by the First Party that even the Second Party was given different post / designation he was doing the work of workman.

Disputed Facts Between the Parties.

A) As per first party there was inordinate delay in raising industrial dispute. Further, as per First Party amended Section 2A (2) is applicable to the present reference, hence, Second Party ought to have approached before this court within 3 years from the date of termination.

As per Second Party, in view of Section-10 of the Industrial Dispute Act, industrial dispute can be raised at any time, hence, there was no delay. As per Second Party amended section 2-A (2)

is not applicable to the present case and the reference is referred by the State Government in view of Section-10 of the Industrial Disputes Act.

B) As per First Party, Second party was legally retired from the service in view of Nokarnama executed between the parties.

As per Second Party, he was illegally terminated from the service in contravention of provisions of Model Standing Orders. First party has changed the service conditions of Second Party without giving him notice of change as contemplated in section-9 A of the Industrial Disputes Act.

17. By referring to the contents of written Statement, learned advocate for First Party vehemently argued that, Additional Labour Commissioner Pune, Division Pune has no power and authority to refer the dispute to this court. Therefore, reference is not maintainable. Second party has no live cause of action to raise the dispute. Second Party has not approached this court within the time limit provided in Industrial Disputes Act, 1947. As per first party dispute was not alive between first party and second party, therefore, reference is not maintainable.

18. As per First party, because of amendment in section 2-A(2) (which came into force from 15th September 2010) workman who has been terminated may make an application directly to the labour court for adjudication of individual dispute after expiry of 45 days from the date of application made to the conciliation officer. The section further contemplates that application must be made before the expiry of three years from the date of termination. Therefore, as per first party, Second party ought to have raised dispute within three years from the date of termination. Second party has approached to this court after expiry of three years from the date of alleged termination. First Party has submitted that Second Party has approached after inordinate delay and laches, hence, reference was liable to be rejected.

19. First party submitted that Second Party was retired and not terminated. Second Party was retired from the service on 30/11/2006 vide office order dt. 25/11/2006. First Party has not produced any office order showing retirement date as per their version. Here it is noted by the court that First Party has inserted the wrong date of retirement. Documents before me shows that Second Party was allegedly retired from service on 25/12/2006 vide office order dt. 14/12/2006.

20. The First party has retired the Second Party as per the Nokarnama executed between both the parties. The age of retirement was decided and fixed in accordance with the terms and conditions of Nokarnama executed between the parties. Therefore, first party has acted

according to law and has not violated any law. It was specifically argued that First Party has not changed, altered or violated the service conditions.

21. It was then submitted that Second Party has not made any complaint in regard to retirement after receipt of the office order. Recognized Union also has not approached the first party with the grievance about alleged illegality. It was argued that recognized/representative union ought to have raised industrial dispute on behalf of all workers and second party individually has no right to raise the dispute.

22. Learned advocate for First Party with his strenuous efforts in argument submitted before the court that Second Party has raised the alleged dispute and approached this court after coming to know of the relief granted by the court in similar cases. It was submitted that the same can not be proper explanation for delay and laches. Second Party was fence sitter who was waiting for the decisions of Hon'ble Industrial Court, Hon'ble High Court and Hon'ble Apex Court. Till the Judgment of Hon'ble Apex Court, Second Party was silent. Learned advocate for First Party denied that second Party had no source of income for his survival.

23. On other points, by referring to the judgments of Hon'ble Apex court on record, it was argued that there was no need to file writ petition challenging the legality of reference as the First party is having remedy to agitate the issue before this court. It was further argued that this court is empowered to ascertain the validity of reference as incidental issue touching the present dispute. It was argued that while challenging the reference all employees including union were aware of the fact that resolutions are passed by Sangh. Said resolutions are not challenged by Union and Second Party. As per MRTU and PULP Act, Union is the sole bargaining agency and Second Party has no right to raise the present industrial dispute. Therefore, it was sought to argue that act of retiring employees as per resolution was legal and fair.

24. It is pertinent note that, First Party has raised defence in present reference that Second Party has no right and locus-standi to raise the industrial dispute and the same was required to be raised by recognized union active in the First party. However, in Complaint(ULP) No. 87 and 100 of 1999 First Party took a contrary defence that, the complaint is not maintainable and its General Secretary has no locus-standi to institute and file the complaint as only the individual employee alone can agitate his grievance if any, under the items invoked by the complainant for the subject matter of retirement. The said defence being hot and cold at the same time is out of consideration and hence, the same is discarded.

25. After careful perusal of terms of reference, it reveals that this is not the case where employee had voluntarily retired from the service, and thus there was end of employer-employee relationship between first party and second Party workman which can not be construed in any circumstances termination/ discharge, dismissal or retrenchment. The main and principle issue involved in the present reference is delay and laches while raising the industrial dispute and second party was not terminated from the service but he was legally retired from the service in view of Nokarnama executed between the parties.

26. Before I examine the issues No. 1 and 2, I consider it apposite to discuss and apply my mind to the grounds of objections touching the issue of delay and laches as raised by First Party. First Party has raised principle objection that present reference suffers from inordinate delay and laches and therefore, the same is not maintainable. Another ground of objection raised by First Party is that the present reference is not maintainable for the reason that Additional Labour Commissioner Pune was not authorized to refer the present dispute. One more objection raised was, amended provisions of section-2A(2) are applicable to the case in hand. In view of the said provision, present reference was not maintainable as per first party.

27. While answering the issue on the point of delay and laches, learned advocate for second party submitted that it is not the case of the second party that second party workman has directly approached the Labour Court under the amended provisions of Sec. 2A(2) & (3) of the Act, compelling the second party to approach this court within 45 days as per amended section. It was therefore argued that no question of limitation exits as contemplated in the amended provision. It was argued that this is the reference received from the State Government for adjudication of dispute as per section-10 of the Industrial Disputes Act. In section-10 of the Industrial Disputes Act, no limitation is provided for raising the industrial dispute. Learned advocate for Second Party further submits that First Party has not challenged the order of the Additional Commissioner of Pune who had made this reference to the court. It was then submitted that, even if the court comes to conclusion that there is delay or objection is raised by first party on the point of inordinate delay, Second Party in Para-20 of Statement of Claim and also in affidavit of examination in chief mentioned the grounds of delay for raising industrial dispute. I have not repeated those grounds of delay as already have considered it in earlier part of this award.

28. Without prejudice to contention taken in para-20 of the statement of claim, in the alternate, it was also submitted that the amended provisions of section-2A (2) and (3) of the Act does not repeal Section-10 of the Act and thereby even after the said amendment also, Section-10

remains in the statute book and section-10 is not struck off by the framer/author of the statute from the statute book. Amended Section-2A(2) has not repealed the other provisions of Industrial Disputes Act. It was submitted that remedy under section 10 is not taken away by amended provision of section 2A(2).

29. Admittedly, in accordance with the above pleadings of statement of claim, burden of proof is on the second party to prove that present reference does not suffers from delay and laches and therefore, the same is maintainable. I have to see whether Second Party has proved the grounds taken in Para-20 of the statement of claim. I have to further see whether Second Party apart from factual aspects, lawfully proves that the reference is not barred by law of limitation. Second party has examined himself by filing affidavit of examination in chief. Contention taken in para-20 of the Statement of claim are reiterated in the affidavit from Para-25 A to 25 D and 25 G, while explaining the delay and laches.

30. After careful perusal of cross examination, it is seen that, second Party in his cross examination admitted that, dispute was raised in the beginning of year 2016 . It was admitted that in the end of the year 2015, second party came to know that other workers succeeded who had preferred complaints against the first Party. Second Party denied that he was waiting for the results of the complaints filed by other workers. Second party has admitted that from the date of retirement till the raising of present of dispute he had not complained anywhere about his illegal termination. Further, it is admitted to second party that he has received and he has accepted the retirement benefits after retirement. Second Party further admitted that after retirement, he had never complained in writing to the First Party about his illegal termination.

31. I have tried to find out, whether any documentary evidence in support of oral evidence was submitted or not by the second party. Second Party has only produced the photocopy of office order issued by First Party. However, it appears from the record before me that Second Party has not submitted any documentary evidence to show that he had along with other workers approached higher authorities of the First Party Sangh. Learned Advocate for Second Party also fairly admitted in the course of argument that such evidence is not before the court. However, he has submitted that Second Party initially had given a demand letter to the First Party before raising industrial dispute. Learned advocate of the Second Party read out the said letter and submitted that the letter given to First Party Sangh itself shows that despite the letter to First party, first party has not replied nor responded to the Second Party and thereafter as pleaded in the statement of claim, second party again and again approached higher authorities of first party for settlement of his dispute. The above argument on behalf of the Second Party in respect of Para- 20 of the

statement of claim is not acceptable one. The reason for discarding the above argument is, the admissions given by second party in his cross examination clearly shows that second party has not complained to first party about his illegal termination till raising the industrial dispute. Second Party has not examined any independent witness or co-worker to show that he was requesting the first party again and again for settlement of dispute but first party did not pay attention to the request of the second party. However, in my opinion, it was the duty of First Party to reply the letter given by Second Party and settle the dispute amicably.

32. Learned advocate for first party relied on the Judgment of Hon'ble Apex Court in the matter of U.P.State Road Transport Corporation Vs Ram Singh and ors (2010) Supreme Court Cases (L &S) 934), wherein it was held that delay should not be unreasonable. Delay of 13 years in raising dispute was held unreasonable. Learned advocate of first Party further relied in the matter of Management of Ashok Leyland Hosur Vs Presiding officer, Labour Court,Salem and Ors, (2016 III CLR 225), and argued that limitation being legal issue, the plea raised by First party based on statutory provision Viz Section 2 A (3) of the I.D. Act has to dealt as preliminary issue. It is pertinent to note that the above citation is in respect of challenge to the dismissal of interlocutory applications filed by the management. I have carefully gone through the ratio laid down by Hon'ble Apex Court. Hon'ble Apex Court has held that, though in general, Law of limitation is not applicable to the Industrial disputes, the provisions of limitation for raising industrial disputes as provided in section- 2 A (2) & (3) and in Section 10 (4 A) of the Industrial Disputes Act, 1947 can not be precluded and raising of preliminary objections to the very maintainability of the disputes before the labour court /Tribunal can not be stopped. It was further observed that what the labour court has to frame all the issues and then take up the issue touching upon jurisdiction of the labour court as well as the issues relating to limitation as a first among several other issues, which may be framed. The same is being done in the present reference. Issue of limitation, inordinate delay and laches and other legal objections affecting the jurisdiction of this court are being considered first of all as preliminary issue and then other issues are taken for discussion.

33. It is observed in earlier part of the award that, considering the admissions given in cross examination and considering the documentary evidence or record, second Party was not successful in proving the contents of statement of claim referring to limitation, inordinate delay in raising industrial dispute, however even if Second Party was not successful in establishing the contents of Para-20 of statement of claim, issue of delay and laches can be considered from different angel,in the light of Judgments of Hon'ble Apex Courts and provisions of Section 10 of the

Industrial Disputes Act. It will be appropriate to extract the relevant provision of section-10 which is reproduced as under:-

10. **Reference of disputes to Boards, Courts or Tribunals.**-

(1) 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)-------

(d)------

34. From the bare reading of Section 10-of Industrial Disputes Act, it appears that the word "at any time" is used in the provisions. Therefore, simple interpretation of the word " at any time" denotes that there is no provision in raising Industrial Dispute. Once the industrial dispute as per section-10 is raised before conciliation officer, it is for the Government to refer or not to refer the dispute for adjudication. On enquiry if it appears to the Government that industrial dispute exists or apprehended between parties it can as contemplated in sections of the Industrial Dispute Act, tries to settle the matter amicably. But if he feels that there are no possibilities of conciliation between the parties,he prepares the failure report and sent it to competent authority under the Act. Competent authority relying on report of conciliation officer, decides whether dispute can be referred for adjudication or not. In the above process conciliation officer can not go in the merit of the case.

35. Learned advocate of First Party relied on the judgment of Hon'ble Supreme Court, PRABHAKAR VS SERICULTURE DEPTT, (2016) 2 Supreme court cases (L&S) 149), and submits that dispute was not alive when referred to the court. Before the reference of this matter to the court, Second Party has accepted all his dues without any complaints. Consequently, as the dispute is not alive, still government has wrongly referred this matter to the court. In Para-26 of the above judgment it is held that " Even in SapanKumar Pandit, the court emphasis that limitation period for making the reference is co extensive with the existence of the dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make reference or to refuse to make reference. In the facts of that case, the court found that dispute remained alive and therefore reference was legally made. What is significant is that the court in that judgment interpreted the words " at any time" occurring in section 10 of the Act and clarified that though these words, prima facie indicates that there is no time limit for making reference, but such meaning can not be

assigned to these words and the real test is the existence of a dispute on the date of reference for adjudication.

36. Relying on above ratio, it was argued that disputes was not in existence and dispute not being alive, can not be referred for adjudication. I am not inclined to accept the above respectful submission of learned advocate of First Party. Considering the facts of this case and after going through the documents before me, I am of the opinion that dispute was alive when the decision was taken to refer the matter for adjudication. Dispute before the Conciliation officer was in respect of terms of employment and termination of employment. As per section 2 K, Industrial dispute means any dispute or difference between employers and employers, or between employers and workman or between workman and workman which is connected with the employment or non employment or terms of employment or with the conditions of labour of any person.

37. Further, as per Section 2-A, dispute relating to discharge, dismissal, retrenchment or termination of an individual are also deemed as industrial dispute and therefore an individual is given right to raise the dispute.

38. Facts emerges from the case before me that, second party raised dispute for illegal termination from the service in view of the Nokarnama. First Party has admitted that Model Standing Orders are applicable to the First Party Sangh. In such circumstances, statutory provisions will prevail over any administrative order of First Party. First Party has not produced any documentary evidence to show that the resolution to reduce the age of employee was not in contravention of provisions of Model Standing Orders. First Party has not even shown as to how the resolution to reduce the age of retirement was legal. Inspite of specific demand before conciliation officer for reinstatement, First Party has merely said that Second Party had no right of job and he is legally retired from the job. It is pertinent to note that when present dispute was raised, first party was well aware of the fact that upto Hon'ble Supreme Court, first party was not succeeded in proving their defence in other cases of retiring the employees by reducing their age was concurrently held to be illegal by various Courts of Law. Instead of obeying the court order, first party preferred to not to settle the dispute. The said fact in my opinion shows that dispute was not settled and same was alive.

39. First Party was well aware of the Judgment of Hon'ble Bombay High Court which is decided against them on the same issue involved in the present reference. In writ petition No. 8060/2006 between Shetkari Sahakari Sangh Ltd Vs Kolhapur zilla Sahakari Nokar Union, it was observed that " Both, the Labour court and the Industrial Court in my view, have cogent reasons

allowed the complaints. Both the courts below held that the Model Standing Orders apply to the workman and the age of retirement could not have been reduced to 58 years." It is fact that in other cases filed under the provisions of MRTU and PULP Act, Labour Court and Hon'ble Industrial Court has held that First Party has engaged in unfair labour practice by reducing the age of employees in contravention of Model Standing Orders. First Party is also aware of the Judgment delivered in Writ Petition No. 5081 of 2015 wherein it was observed by the Hon'ble Bombay High Court that " The petitioner had thereafter approached this court against the order by filing Writ Petition No. 8060 of 2006. The Writ Petition was dismissed by reasoned order dt. 21st August 2007. Further in Para-4 of the said writ petition Hon'ble Bombay High court was disappointed on the conduct of the First Party Sangh who was petitioner in the above writ petition and it was observed that " In that circumstances, it was in-fact necessary for the petitioner to accept the order and reinstate the employees in service with full back wages. Instead of taking corrective action, the petitioner not only challenged the order before Industrial court but has carried it further to this court. The petitioner is therefore not entitled to be heard in the matter and it's petition is liable to be dismissed with costs for unnecessarily dragging the respondents to the court".

40. From the above facts and conduct of First Party now it can be said that this is the third time, whereupon First party has reduced the age of Second Party in contravention of Model Standing Orders and inspite of obeying the orders and Judgment of Hon'ble Bombay High Court preferred to not to settle the industrial dispute. Therefore, in my opinion, for the obvious reason as above mentioned the argument of the First Party that the dispute was not alive has to discarded as the same being devoid of merits. It is the First Party who was responsible and who had disturbed industrial harmony by not obeying the orders of Hon'ble Higher Court. Had the First party settled the dispute by giving reinstatement by following the provisions of Model Standing Orders, question of industrial dispute would not have taken place.

41. While challenging the present reference on another ground of applicability of Section 2 A (2) of the Act, learned advocate for First Party strenuously and effort fully tried to submit that the present reference can not be termed as reference under section-10 of the Act, but the same has to be termed as reference under section- 2 A (2) of the Act. Learned advocate for First Party read out the provisions of Section 2 A (2) and submitted that in the light of amended position in the Act, Second Party ought to have challenged his termination within 3 years from termination and ought to have come before this court within 45 days. To get the clear idea, amended provision of Section 2 A (2) is reproduced hereunder.

Section 2 A (2) :-

Notwithstanding anything contained in section-10, any such workman as is specified in sub-section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the conciliation officer of the appropriate government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an individual dispute referred to it by the appropriate government.

42. From the perusal of bare provision, it is seen and inference can be drawn that there is no obstinate clause in the above provision. Before amendment in the provision as above, workman was required to raise industrial dispute for Reference to the Labour / Industrial Court for adjudication only through the State Government under section-10. Effect of the amended provision in section-2 A now a days in changing circumstances is that the workman / employee can directly approach the Labour Court by submitting an application and the Labour Court has to deal with such matters as a reference referred by State Government. Therefore, I am not convinced with the respectful submission of learned advocate of First Party that Second Party workman ought to have directly approached the labour court within 45 days as contemplated in the amended provision. In my opinion, amended Section 2 A (2) does not in any way prevent the second party workman to raise industrial dispute under section-10.

43. I am not convinced with the above submission on behalf of the First Party. Admittedly, as per the record before me, second party had given application for conciliation and mediation as per Section-2 A of the Industrial Dispute Act. It is pertinent to note that in view of application by second party, Conciliation proceedings were held in front of conciliation officer between the First Party and Second Party. I have carefully gone through the contents of conciliation proceedings. First party before conciliation officer only stated that Second Party is retired from the service as per law and he / she is not legally entitled to claim the benefits of remaining service. No any objection in respect of amended section 2A (2) was raised before the Conciliation officer. Therefore, in my opinion, First Party was well aware that the proceedings going on before the conciliation officer were as contemplated in Section-10 of the Act. Further, when conciliation failed between the parties, failure report was prepared and was sent to State Government. Further, it is significant to note that State government while referring the present matter Additional Labour Commissioner Pune has in his order (exhibit O-1) stated that he had gone through and considered the report of conciliation officer, and therefore, he is referring the matter for adjudication of dispute between the parties.

LABOUR COURT

44. First party has placed much reliance on the point of inordinate delay and laches while raising the industrial dispute by second party, therefore, on the point of delay and laches, first party relied on following Judgments :-

1. Punjab S. Dongare V/s. Deputy Ex. Engineer (2019 (2) BLC 650)

Petitioner workman relied on judgment of Hon'ble Supreme Court in the matter of Jasmer Singh V State of Haryana and another it was argued that there was no delay.

Factual matrix were of above citation were discussed by Hon'ble Bombay High Court. It was observed that the workman was charge sheeted and terminated from service from 29/12/2005 pursuant to inquiry which held the misconduct of unauthorized absence proved. Thereafter, he raised a dispute on 12/06/2014 which was decided against the workman by award dated 04/04/2018.

Accordingly, Hon'ble Bombay High Court gone through the factual matrix of the petition in the matter of Jasmer Singh V State of Haryana. In the matter of Jasmer Singh fact was the services of the workman were terminated on 31/12/1993 without complying mandatory provisions of Section- 25F, 25G and 25H of the Industrial Disputes Act. The workman raised dispute on 27/11/ 1996 i.e. within three years of the termination which was referred to the tribunal for adjudication. The tribunal answered then reference in favour of the workman. The employer challenged the award of the tribunal in writ petition which was allowed by learned Single judge of the High Court and appeal preferred by workman was dismissed by Hon'ble Division Bench.

Hon'ble Bombay High Court further observed that in Jasmer Singh v/s. State of Haryana and ors, Hon. High Court was of the view that workman can not be allowed to approach the labour court after three years of limitation. Hon'ble Supreme Court observed that tribunal rightly placed reliance upon the judgment in Ajaib Singh V/s. Shirhind Co-operative Marketing–cum Processing Service Society Ltd.,(1991 I CLR) in which it is held that there no period of limitation to the proceedings under I.D. Act. Hon'ble Supreme Court after considering the scope and ambit of exercise of power under article 227 of the Constitution of India concluded that High Court clearly erred in reversing the findings of fact recorded by the tribunal.

In the above petition, employer invited the attention to the judgment of Hon'ble Supreme Court, (particularly para 40, 41, 42 and 43) in Prabhakar V/s. Joint Director, Agriculture Department and another. Hon'ble Bombay High Court after referring all the above paras in Para no 6 of the judgment, concluded in para No. 8 that " if the facts in the present case are tested on the anvil of the settled legal position, it is apparent that the failure of the workman to question the termination for 8 years and for which delay there is no explanation offered, would lead to irresistible presumption that workman had waived his right or acquiesced into the termination and therefore, there was no live dispute in existence.

As above Hon'ble High Court concluded that dispute was not alive and petition was liable to be dismissed. In my opinion, issue discussed in the above petition was workman has waived his right or acquiesced but after termination workman raised dispute after 8 years of termination which suffered from delay and laches. In the present case in hand, I have opined that dispute was alive on the date of reference. In my earlier part of award, I have elaborately discussed how the dispute between First Party and Second Party in terms of employment was in existence. Therefore, in my humble opinion, the factual aspects involved in above petition and facts of the present reference in hand in respect of termination are entirely different. The way in which the second party was retired from service by reducing his retirement age in contravention of provisions of

Model Standing Orders and Industrial Disputes Act can certainly be said that the dispute between the parties was alive when the reference was made to this court. Therefore, in my humble opinion, considering the facts of the case, the judgment relied on by the first party is not applicable to present case.

2. Sadashiv V/s. Kumbhar V/s. S.J. Irion and Steel Pvt. Ltd. (2020 (1) BLC 156)

This is the another judgment relied on by the First Party touching the issue of delay and laches. It appears that the present writ petition is preferred against the award of labour court. Hon'ble Bombay High court gone through the factual aspects put forth before the labour court. It was observed that petitioner workman came with the case that he was made to forcibly resign with effect from 1/12/2002 on false pretext that company is going to close down. Petitioner workman raised industrial dispute sometime in the year 2007. The labour court was pleased to reject the reference vide award dt 20th March 2015 on the ground that there is delay of five years in approaching authorities. Hence, the above petition was preferred by workman.

During the course of challenge, it was pointed out before the Hon'ble Bombay High Court that management entered in out of court settlement with similar situate employees and paid the employees 50% of the back wages as awarded by the labour court. It was observed that " it is thus apparent that it is only after the similar situate workers succeeded in the reference before the labour court and after the ex-parte order was rejected by the labour court, that the petitioner approached the conciliation officer only in the year 2007. Therefore, by referring to para 22.2. of the judgment in State of Uttarpradesh and others, it was observed that the view of the labour court in rejecting the claim on the ground of delay, laches and acquiesce can not be said to be perverse and erroneous.

In the present case in hand, admittedly, second party has raised industrial dispute belatedly after the decision of Hon'ble Bombay High Court in the matter of Shetkari Sangh. However, First Party in the present case has not come with the stand that the settlement was arrived between First Party and recognized union to reduce the age of retirement. It is also not the case of the First Party that after the decision in the matter in Shetkari Sahakari Sangh Ltd. V/s. Kolhapur Zilla Sahakari Nokar Union and Ors. union entered into settlement with the first party or there was out of court settlement between the parties. In earlier part of award, I have observed that this is not the case where employee had voluntarily retired from the service and thus there was end of employer employee relationship between first party and second party workman which can not be construed in any circumstances termination / discharge or retrenchment. In the same line this not the case where second party has come before the court that he was made to forcibly resign from the service. I have observed that it was the first party who ought to have settled the dispute after the judgment against them was delivered by Hon'ble Bombay Court and Hon'ble Supreme Court. Therefore, considering the facts involved in the present case, I humbly opinion that above judgment, facts mentioned in judgment and the ratio laid down after consideration of facts is not applicable to the present case in hand.

3. Director Food and Supplies Punjab V/s. Gurmit Singh (2007 (2) SCC (L & S) 252.

In the above citation, it was held that labour court not having considered plea that claim was made after Nine years without any explanation, matter remitted for decision fresh. In Para-7,

Hon'ble Supreme Court observed that, “no finding was recorded on the plea taken by the present appellant that the claim was made after 9 years without explaining belated approach”.

Observations made in Para-11 of the Judgment are perfectly applicable to the present reference in the hand which is actually in favour of Second party. Only the observations made by Hon'ble Supreme Court that labour Court did not decide the issue of delay. In the present case in hand, I have dealt with the issue of inordinate delay and laches as preliminary issue and also discussed the same elaborately,in earlier part of award.

4. Krishi Utpadan Samity V/s. Pahal Singh (2008 (2) SCC (L &S) 482)

It was held that labour court is under an obligation to consider as to whether any relief, if at all, could be granted in favour the workman in view of the fact that the industrial dispute had been raised after 18 years. It was observed that delay defeats equity. It was further observed that it was obligatory on the part of labour court to consider that the respondent was in employment in very short period. In the present case in hand, I have considered the length of service of the second party. Considering the facts involved in the present reference, and considering the fact that dispute between the parties was alive, I have opined that the present reference does not suffers from delay and laches. In my opinion, the present reference can not be termed as stale clam, therefore, in my humble opinion, above citation is not applicable to the present case in hand.

5. State of Gujrat V/s. Bhanji Gopal Karchhar (2017) I SCC (L &S) 42)

I have carefully gone through the judgment of Hon'ble Apex Court. It was held that reference pertaining to entitlement of respondent to reinstatement made in the year 1995, where respondent was dismissed in year 1968 and had superannuated in year 1992 was not proper.

After careful reading of the judgment, it appeared to me that Hon'ble Apex Court in Para-6 questioned themselves that “ we do not understand as to how the industrial reference with regard to the entitlement of the respondent workman to reinstatement etc. could have been made in the year 1995 in a situation where the respondent workman after dismissal from service in year 1968 had superannuated from the service in the year 1992. While it is correct that the said facts were not pointed out before the labour court hearing the industrial reference, the same which go to the root of the matter, were easily verifiable from the admitted facts of the case if an attempt was to be made.

By saying that, be that as it may, Hon'ble Apex Court stated that a consideration of the award of learned labour court on merit also indicate that the labour court virtually sat in judgment over the conclusions of the inquiry officer as if it was hearing an appeal against the findings of the domestic enquiry. This is not the fact in the case in hand. The issue involved in the present reference is not of termination or dismissal emerged after the result of domestic enquiry. In my opinion, the above writ petition was disposed with the observations that having regard to the glaring infirmities in the award and the facts of the case, as noted above High Court should have corrected the errors committed by labour court.

Above observations itself shows that the writ petition was allowed by considering the glaring infirmities in the award. In my opinion, Hon'ble Apex Court has not given any observation in respect of delay except questioning themselves at noted in para-6 of the petition.

For the above reasons, I feel that the citation relied on by the first party on the point of delay and laches is not applicable to the present reference.

6. State of U.P. V/s. Arvindkumar Srivastav (2015) I SCC (L & S) 199)

Above is the judgment touching the issue of illegality in selection process. Fact involved in the matter was selection process took place in the year 1986, appointment letters issued in the year 1986 were cancelled in 1987 which were challenged by the respondent only in the year 1996, i.e. after 9 years which showed that they had accepted their cancellation of their appointment. It was further observed that it would be totally unjust to direct their appointment, that too after a period 27 years when most of the respondent would be almost 50 years of age or above.

Learned advocate of the First party invited my attention to the highlighted portion of judgment and would submit that second party was fence sitter and in view of the observation made in highlighted portion, second party can not claim that the benefit of the judgment rendered in the case of similarly situated persons can be extended to him. Highlighted portion of the judgment is reproduced hereunder to have clear idea.

" however, this principle is subject to well recognized exceptions in the form of delay and laches as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reasons that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees can not claim that benefits of the judgment rendered in the case of similarly situated persons be extended to them."

Apart from above highlighted para, there are other paras which throws light on entitlement of benefits to the employees when judgment in rem is delivered. In para 22.1 of the judgment it is observed after referring to article 14 of the Constitution of India that normal rule would be that merely because other similarly situated persons did not approach the court earlier, they are not be treated differently. In earlier part of para 22.3 Hon'ble Apex Court has observed that this exception may not apply in those cases where judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement obligation is cast upon the authorities itself to extend the benefits to all similarly situated persons.

Learned advocate of first party however relied on remaining part of the para 22.3 which is as under -

" on the other hand, if the judgment of the court was in personam holding that benefits of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefits of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delay".

By referring to above judgment it was argued that with a specific stand by the First party that Second Party is not entitled to get the benefits of judgment of Hon'ble Bombay High Court in 5081 of 2015 and Special Leave to appeal (C) No (s) 34266/2015 before Hon'ble Supreme Court.

It is pertinent to note that initially Kolhapur Zhilla Sahakari Nokar Union filed complaints against the First Party alleging unfair labour practice. Labour Court decided the

complaints against the First Party and directed to reinstate the members of union with back wages. First Party therefore preferred the petition No. 5081 of 2015 against the union. The said union is recognized union in the first Party. Therefore, it is obvious that the judgment of Hon'ble High court is applicable to all the members of the union even though they have not approached the court. I am of the considered view that, after the pronouncement of judgment by Hon'ble Bombay High Court, and Hon'ble Supreme Court, First party ought to have extended the benefits to all similarly situated persons like Second Party workman in the present reference. Also first party has not shown to me, how the judgment of Hon'ble Bombay High Court where the Recognized union was made party to the petition, can be termed as judgment in personam instead of judgment in rem.

45. Hon'ble Apex Courts have, in various judgments considered the position of section-10 after insertion of amended section 2 A (2). Some of the observations are reproduced herein below so as to ascertain the current ratio in respect of the issue above mentioned.

> **" The compulsion to avail the remedy under section-10 has been now made voluntary and it is for the suitor to select either to avail the remedy under section-10 of the Act or to avail the remedy under the amended provisions of section-2A(2) of the Act. Thus, by way of an amendment, two remedies have been made available to the workman for raising the industrial dispute. Therefore, the Labour Court has committed an error in holding that once the amended provisions of section-2A(2) came into force, remedy under section-10 is barred"**
>
> **It is also observed that " Learned advocate for the petitioner has drawn the attention of this Court that, before the date of amendment in Section-2A and section-2A(1) was already available in the statute book, whereas sub section-2 and 3 have been inserted by way of amendment with effect from 18.08.2010. Thus, the industrial dispute of the individual workman is otherwise referable under section-10 of the I.D. Act for adjudication. The said right of individual workman prevailing before the date of amendment has not been snatched away by the amendment, otherwise the amended provisions would have certainly stated in a specific terms that the individual workman can raise industrial dispute directly to the Labour Court only and cannot raise the dispute under section-10 of the Act. Thus, amended provisions of the Act is providing an additional concurrent remedy to the workman and does not take way the remedy of section-10 of the Act"**
>
> **It is also observed that the " Labour Legislation like the Industrial Disputes Act is meant for the benefits of the labourer / workmen and even preamble of the amendment of 2010 also suggests that the amendment is made for the benefit of the workmen and for better and additional facility to raise an industrial dispute, therefore, amended provisions of Section 2A(2) and (3) should not be interpreted against the interest of the workman / employee"**
>
> **In one judgment it is observed that " The petitioner has further drawn the attention of this Court that, the legislation never intended to discriminate between the Union and the individual workman, inasmuch as such discrimination was removed by an amendment even before 2010. Therefore, section-2A, as stood before 2010 was introduced and individual workman made to have a reference under section-10 by putting the individual workman at par with the Union by an amended provision of section-2A of I.D.Act 2010, the three years limitation is prescribed for raising an industrial dispute, by an individual workman directly to the Labour Court. Thus, if the arguments of Respondent company would be accepted of implied repeal of section-10, then only Union would be able to raise industrial dispute under section-10 without any bar of limitation and the individual workman would has never intended to cause such discrimination between the Union and the individual workman for offering the remedy for raising the Industrial Dispute. An amended provisions of 2010 is an**

additional benefits granted to a workman, which cannot be taken away under the guise of implied repeal of section-10."

46. Above are the observations of Hon'ble Apex Courts which is the answer to the objection raised by First Party. In my opinion, amended provision of Section 2 A (2) is not applicable to the present reference, therefore, same does not come in the way of Second Party. I confirm that the case in the hand is Reference made by Appropriate Authority of the Government under section-10 of the Industrial Disputes Act, 1947 and not an application made by second party to the labour court under section 2 A (2) of the Act. I also confirm that the present reference does not suffers from delay and laches.

As to Issue No. 1 :-

47. Issue No. 1 pertains to whether Second Party was illegally terminated by the first party on 25/12/2006 without following due process of law. To prove the said issue Second Party has examined himself and he was also cross examined by learned advocate of First party. First Party also examined Shri. Appaso Baburao Nirmal on their behalf and the said witness was cross examined by the learned advocate of the Second Party. Heard both the learned advocates on behalf of Second Party and First party at length and in detail. I have gone through the documents, depositions and case laws cited by both the parties.

48. Second party in his affidavit of examination in chief stated that First party had illegally terminated him from service on 25/12/2006 by issuing office order. The said officer order is submitted at Exh. No. U-8/1. It was stated that even if the word " retired" as used in office order shows that second Party was retired, in fact he was dismissed from the service. Therefore, as per Second Party it is dismissal order and said order is issued without following due process of law. Second party in deposition further stated that he was retired at the age of 55 years instead of 60 years. While retiring him at the age of 55 he was not given any advance notice of change in respect of change in service conditions. Model Standing Orders are applicable to the First Party Sangh and hence, as per provisions of Model Standing Orders, age of retirement is 60 years.

49. In para-13 of the affidavit, Second Party stated that he was doing 8 hours work in the first party. He did not instruct the other employees for any work. He had no power to sanction or reject the leave of other employees. He had never transferred any employee of First Party. He was not having control or supervision on other employees and he was working as workman.

50. Learned advocate of the First Party took cross examination of the Second party. Following are the admissions given by the Second party in his cross examination.

It is admitted by the second party that in the Nokarnama it was stated that Second Party was suppose to retire on 55 of years of his age and accordingly, he was retired. After retirement , Second Party has not complained to the First Party that he was illegally retired from service. It is admitted to the Second Party that he has accepted all the dues after retirement. It is admitted to the Second Party that some workers have preferred complaints before the court for wrongly retiring them from service. Those complaints were decided in favour of workers and Second party came to know about the judgment in favour of workers. Second Party denied that after the Judgment of other workers, he has raised present dispute for getting the benefits that were received by other workers.

51. To prove that Second Party was not illegally terminated, but was legally retired from the service, First Party has examined one Shri Appaso Baburao Nirmal, Secretary of the First Party, (herein after called and referred as DW No. 1). Witness on behalf of First Party deposed that as per Nokarnama executed between First Party and Second Party and as per resolution, Second Party was superannuated. It was deposed that first party acted upon in view of the resolution, Nokarnama, and implied consent of the recognized union, superannuated the second Party at the age of 55 years. Witness on behalf of First Party further deposed that Second Party has not raised any grievance about superannuation, and recognized union also not raised any dispute. Witness on behalf of First Party in para-5 of the affidavit admitted the facts of judgment passed by Labour Court in August 2012, Revision before Hon'ble Industrial Court, and writ petition before Hon'ble Supreme Court of India. Witness on behalf of First Party admitted that in all above litigations, judgments were passed in favour of workers of First Party. Witness further admitted in deposition that Hon'ble Supreme Court has partly allowed the writ petition with 80% of back wages to workers in five equal installments with cost of Rs. 5000/-

52. Learned advocate of Second Party took cross examination of the above witness. From the perusal of cross examination, it appears that it was admitted that Second Party was working with the First Party. It was also admitted that in Model Standing Orders, the age of superannuation of the workman is mentioned as 60 years. It was admitted that leave applications of employees are mostly granted or rejected by head office of the first Party. Witness of First Party admitted that Model Standing Orders are applicable to the First Party. It was then admitted that in Model Standing Orders, age of superannuation is 60 years. It was then admitted that that First

Party had not obtained any sanction either from competent authority or under Co-operative Societies Act for reducing the Age of superannuation of employees from 60 to 55 years.

53. Second party has produced the copy of office order, wherein it was stated that Second Party is retiring as per the service rules of the First Party on attaining age of 55 years. It is admitted to the First Party that they have issued the said office order and retired the second party on attaining age of 55 years.

54. Cross examination of the witness of first party reveals that first party has admitted employer employee relationship with the Second Party. Learned advocate of the First Party vehemently argued that Second party was legally retired from the service as per service rules of Nokarnama and the second Party has never complained to First Party that he was illegally retired from the service. It was then submitted that Second Party has accepted all the retrial benefits and therefore, he has no locus-standi to raise the dispute about his termination.

I am not inclined to accept the above respectful submission on behalf of First Party. The reason for the same is that First Party has not submitted the photo copy of Nokarnama or resolution based on which service of the second Party was terminated. First Party further did not submit the copy of Resolution by which it was decided to reduce the age of employees from 58 to 55. Witness on behalf of First Party in cross examination specifically admitted that First Party had not obtained any sanction either from competent authority or under co-operative societies act for reducing the age of superannuation of employees from 60 to 55 years. It is established that Model Standing orders are applicable to the First Party. It is significant to note that, much reliance was placed by the first party on the Nokarnama. However, first party did not submit the copy of Nokarnama. It was bounden duty of first party to produce the copy of Nokarnama and prove the same through witness. In the absence of document, mere pleading of first party in respect of Nokarnama do not have place for consideration. First party has not proved the contents of Nokarnama. Therefore, defence of first party relying on Nokarnama is devoid of merit.

55. Apart from above objections, learned advocate for first party additionally submitted that the dispute raised by the second party is after his superannuation. It was submitted that after the superannuation, employer-employee relationship does not exist between first party and second party. It was submitted that second party has not challenged his superannuation. Therefore, as per first party, second party was prevented from challenging his termination in the absence of challenging superannuation. The submission that after superannuation, employer-employee relationship does not exist between first party and second party is also not acceptable one. First party without following due process of law can not take such type of defence to support their story.

In the matter of Dara Singh V/s. M/s. BCCL, Dhanbad, (2015 LLR (SN) 1005, wherein it is held that section-10(8) of the Industrial Disputes Act, 1947 mandates that the Industrial Tribunal/Labour Court shall adjudicate the dispute even the concerned workman had died. In the same line, I am of humble opinion that this court is not prevented from adjudicating the dispute of the workman, who is superannuated. It is also pertinent to note that State Government has referred the dispute for adjudication of alleged illegal termination of the second party workman. In catena of the Judgment, it is now established that the Tribunal /Labour Court can not go beyond the terms of reference. Therefore, in my opinion, the submission on behalf of first party that second party after superannuation was not authorized to raise the industrial dispute is devoid of merit.

56. I have carefully gone through the relevant provision of Model Standing orders which is as under.

Clause 27 – The age for retirement or superannuation of the workmen may be sixty or such other age, as may be agreed upon between the employer and the workmen by any agreement, settlement, award which may be binding on the employer and workmen under any law for the time being in force.

57. Above provision specifically provides that the age of superannuation is 60 years of age. First party has nowhere satisfied to me that the Nokarnama or the Resolution of first Party was in consonance of provisions of Model Standing Orders. It is settled principle of Law that Statutory provisions prevails over any administrative or executive order. Therefore, in my opinion, Nokarnama and terms and conditions mentioned therein can not have legal sanctity or force. Once it is held that Nokarnama can not be considered as service condition of second party, termination of the second party has to be looked into in the light of provisions of Model Standing Orders. Second Party has come before the court with the grievance that First Party has terminated his service abruptly by reducing his age of retirement, in contravention of Model Standing Orders. Model Standing Orders provides for fixation of age for retirement or superannuation. Schedule-I of Model Standing Orders is applicable for workmen doing manual or technical work. Schedule-I Clause 27 is in respect of what should be the retirement and superannuation age of the workman.

58. Admittedly as stated above, Nokarnama can not be termed or referred as Model Standing Orders applicable to the employer and workmen. It is not proved or established by the First Party that Nokarnama was in terms of Model Standing Orders, i.e. it was agreement, settlement, award entered between the parties. In such circumstances, it is not acceptable that Second Party was legally retired in view of Nokarnama. I am of the considerable view that

reducing the age of retirement by way of resolution is a change in the service condition of second Party. Therefore, as contemplated in Section-9 A of Industrial Dispute Act, First party was bound to give notice of change before effecting any change in service condition. Following is the relevant provision of Section-9 A of Industrial Disputes Act.

Notice of change :-

No employer, who purposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change—

(a) where the change is effected in pursuance of any 2 [settlement or award]; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

59. First Party has not shown or established that Notice of Change was not required as the said change was effected in pursuance of any settlement or award. Above facts clearly shows that First Party has illegally retired the second Party at the age of 55, instead of retiring the second Party at the age of 60. The act of retiring the second party by reducing his age, in contravention of Model Standing Orders is nothing but illegal termination from service. I am of considerable view that First party has illegally terminated the Second Party with effect from 25/12/2006. With my observations, I answer the Issue No. 1 in the affirmative.

As to Issue No. 2 :-

60. I have answered the Issue No. 1 in the affirmative, therefore, Second Party is entitled to certain relief from the court. When it is proved and established that workman was illegally terminated from the service, generally he is entitled for the relief of reinstatement with continuity in service and full back wages. But such reinstatement are not automatic but depends on facts and circumstance of each case. However, while granting back wages, Our Hon'ble Apex Courts have given the guidelines as to when full, partial back wages or no back wages are to be awarded. Some of the following authorities touching the issues are considered while considering the issue of back wages.

1) M/s Tirupati Jute Industries (p) Ltd vs State of West Bengal (2009) 14, SCC 406) , 1/3 back wages would be appropriate when the workmen have superannuated.

2) Executive Engineer,Water services Div Haryana V/s. Kartar Singh (AIR 2009 SC (supp) 2341) – 25% back wages will be appropriate in the absence of proof of gainful employment.

3) W.H Brady and Company Ltd Vs Sulochana A.R. 2012, LLR 209 (SN) (Guj HC) -When workman not brought evidence worth the name, in support of her claim for 100% back wages during interim pendency of the proceedings, the labour court has rightly granted 20 % instead of full back wages.

4) Management of State Bank of India Vs Presiding officer, Industrial Tribunal, Orissa 2015 LLR (SN) 216 (Ori HC) -limiting back wages to 50 % is an adequate justification in view of inordinate delay in raising industrial dispute.

5) State of Punjab vs Desh Bandhu, (2007 AIR SCW 2083 (SC) – Compensation would be appropriate when termination was challenged after Nine years.

6) Life Insurance Corporation of India Vs Ram Pal Singh Bise, (AIR 2010(SC) – Monetary compensation would be appropriate when reinstated workman has retired.

In my opinion, quantum of compensation, in lieu of reinstatement, depends upon duration of service, paying capacity of employer and period of litigation, inordinate delay in raising industrial dispute. Also the trend of recent judgments of Hon'ble Apex Courts reveal awarding of compensation instead of reinstatement.

61. On the point of reinstatement in service and back wages alongwith consequential benefits second party relied on following Judgments :-

1. Bhuvnesh Kumar Dwlvedi V/s. M/s. Hindaloco Industries Ltd.(2014 LLR 673)

Above citation is relied on by the second party to show that he is entitled for full back wages when he was not gainfully employed. In para-33 of the petition, Hon'ble Supreme Court referred the legal principle laid down in the land mark judgment of Deepali Gundu Surwase V/s. Kranti Junior Adhyapak Mahavidyalaya and Ors. held that the burden to prove the gainful employment of the workmen is on the employer. Even though it is observed that if the employer fails to discharge the burden of gainful employment, ratio in respect of entitlement of workman to full back wages, can not be applied, considering the facts and circumstance of the case in hand. By relying on other judgment of Hon'ble Apex Court, I have hold that second Party is entitled to lump compensation. Therefore, in my opinion, except the ratio of full back wages, other ratio in respect of gainful employment is applied to the present case in hand and therefore, the same is taken into consideration.

2. Deepali Gundu surwase V/s. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2014 II CLR 813)

In the said Judgment, Hon. Supreme Court has discussed about misconception that whenever reinstatement is directed continuity of service and consequential benefits should follow as a matter of course. Further, the question whether appellant was entitled to back wages for the period during which she was forcibly kept out of service by the management of the school. In the present case in hand, I have observed that second party is now retired or superannuated from the

service, therefore, I came to conclusion that instead of reinstatement with continuity of service and back wages alongwith consequential benefits, awarding lump sum compensation would meet the ends of justice. Another judgment of three bench who has delivered in the matter of Surendra Kumar V/s. Central Government Industrial Tribunal-cum-Labour Court New Delhi (Supra) was considered in the above Judgment and the observations of Hon. Three Judge Bench was quoted as follows :-

In such and other exceptional cases the court may mould the relief, but ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the present case, instead of awarding back wages and other relief by using discretionary power I have given lump sum compensation to the second party. Therefore, in my humble opinion the ratio laid down in the above Judgment in respect of grant of back wages is not applicable to the facts and circumstances of the present case. However, I have carefully gone through para-31 of the Judgment wherein it is observed that when the punishment is reduced by the court as being excessive, there can be either a direction for reinstatement or a direction for a nominal lump sum compensation.

From the overall reading of the Judgment, it appears that appellant in concerned writ petition was illegally terminated and was forcibly kept out of service. The present case in hand is the case of otherwise termination from the service by reducing the retirement age in contravention of provisions of Model Standing Orders. The principle of ratio followed in the Judgment are pertaining to the order of terminating the services of the workman must originally lead the reinstatement of service of the workman. In my opinion, one more observations and ratio discussed in the present Judgment is applicable to the point where question of gainful employment arise.

Hon. Apex Court has observed that, "therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee can not be asked to prove the negative, he has to atleast assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may.

Admittedly, second party in the affidavit of examination in chief stated on oath that after termination he was not gainfully employed elsewhere. Therefore, in my opinion, ratio of gainful employment observed in the above citation is applicable to the facts and circumstances of the case in hand.

3. Nicholas Piramal India ltd. V/s. Harisingh (2015 II CLR 468)

In the above Judgment, Hon. Supreme Court has observed that, " finding of facts recorded by the Labour Court or Tribunal on the basis of evidence on record, are not to be interfered with by the High Court in the exercise of its writ jurisdiction, unless those findings of facts are perverse or not based on the evidence on record". In my opinion, the above citation is in respect of power of Hon. High Court to interfere in the finding of facts recorded by the labour court or tribunal. This is the reference before me under section -10 of I.D. The situation involved in the writ petition is different than the present case in hand. Therefore, in my humble opinion, ratios laid down in the above citation are not applicable to the present case before me.

4. K.S. Ravindran V/s. Branch Manager, New India Assurance Company Ltd. (2015 II CLR 373)

The citation relied on by the second party is in respect of entitlement to the relief of reinstatement and back wages and consequential relief. It was noted that the denial of back wages to the employee, who has suffered due to an illegal act of the employer, would amount to indirectly punishing concerned employee and rewarding the employer by the relieving him of the obligation to pay back wages including emoluments. In the present case in hand, I have observed that second party is now retired or superannuated from the service, therefore, I came to conclusion that instead of reinstatement with continuity of service and back wages alongwith consequential benefits, awarding lump sum compensation would meet the ends of justice.

5. Gauri Shankar V/s. State of Rajasthan (2015 II CLR 497)

From the perusal of Judgment, it appears that the Hon. Learned Single Judge partly allowed the writ petition and awarded him the compensation of Rs. 1,50,000/- to the appellant workman, in lieu of reinstatement and back wages. The said award was upheld by Hon. Division Bench of High Court. It was held that termination of appellant employed is void ab initio in law for non compliance of the mandatory provisions of Industrial Disputes Act. Hence, Labour court has rightly granted reinstatement to the workman. However, it was held that without assigning any proper and valid reason labour court denied back wages to the workman which can not be sustained. It was challenged that learned single Judge in the exercise of its powers under constitution of India erroneously interfere with impugned award of reinstatement and future salary from the date of award till the date of his reinstatement.

Hon. Supreme Court set aside the Judgment of Hon. Learned Single Judge and Hon. Division Bench confirming that the same suffers from erroneous reasoning and also errors of law and therefore, the appeal before Hon. Supreme Court was allowed with modification with 25% back wages from the date of award of Labour Court till the reinstatement of appellant workman in service.

It appears that the workman concerned in the above writ petition was appointed against the permanent and sanctioned post, however, he was retrenched on 01/04/1992. The workman has challenged the said retrenchment wherein the Labour Court adjudicated the industrial dispute referred to him and passed an award. It was held that appellant workman was removed from the service on 01/04/1992. Further, it was held that respondent department failed to comply with the mandatory requirement as provided u/s. 25F clauses (a) and (b) and section-25G and H of the Act. Labour Court has passed the award of reinstatement on 28/06/2001 but the denied back wages for the reason that he has not worked from 01/04/1992 till passing of the award. However, it was held that he was also entitled for receiving salary from the date of award till the date of reinstatement. Respondent department has challenged the correctness of award before the Hon. Single Judge of the High Court and before Hon. Division Bench. Hon. Single Judge confirmed the findings rendered by the Labour Court that workman remained in service till March 1992 and was retrenched thereafter from the service. It was also confirmed that order of termination is held to be void ab initio. However, Hon. Single Judge looking to the fact that workman was retrenched from the service in March 1992 and he was working just on casual basis, Hon. Single Judge held that the equities shall be balanced by awarding compensation of Rs. 1,50,000/- in lieu of reinstatement. The correctness of the Judgment of Hon. Single Judge was challenged in appeal before Hon. Division Bench of High Court. Hon. Division Bench upheld the view of Hon. Single Judge of High Court. The correctness of the Judgment of Hon. Single Judge and Hon. Division Bench was challenged before Hon. Supreme Court in the above petition.

Hon. Supreme Court has set aside the Judgment of Hon. Single Judge and Division Bench and has restored the Judgment of Labour Court and further directed the respondent department to reinstate the workman in his post and pay 25% back wages from the date of termination till the date of award and full salary from the date of award passed by the Labour

Court till the date of his reinstatement by calculating his wages/ salary on the basis of periodical revision of the same.

From overall consideration of factual aspects as above, it appears that above litigation emerged from the reference received from the State Government which went upto Hon'ble Supreme Court. Above litigation was in respect of adjudication of dispute pertaining to removal of the appellant workman. Present reference in hand is also reference received from the State Government for adjudication of dispute pertaining to termination of Second Party by First Party. In the judgment cited by second party objection in reference to section-25F clauses (a) and (b) and section-25G and H of the Act. Also award granting lump sum compensation was set aside and 25 % back wages was awarded considering the peculiar circumstance of the case. In the above writ petition, as referred in para 4 it was retrenchment which was held void ab initio. The present case in hand is of illegal termination of service by reducing the retirement age. In my opinion, factual aspects in respect of termination in above citation and present case in hand are entirely different. However, in both the case termination is held to illegal. From the above citation, I do not find that appellant workman was prematurely retired from the service by reducing his retirement age. Also I do not find that at the time of retrenchment appellant workman had accepted his dues prior to retrenchment. I have observed that second Party workman has raised the industrial dispute prior to his actual retirement or in some cases after superannuation. Although second party has pleaded that First Party has in violation of section-25 F has terminated the second party, but the same is not proved by the second party. It is noted in the above citation that in the exercise of its supervisory jurisdiction under article 226 and 227 of the constitution of India, the high court can not interfere with the findings of facts by labour court or tribunals, unless the said findings are perverse or not based on the evidence on record. It is needless to say that either of the parties are at liberty and can lawfully raise the ground before Hon'ble Higher authorities in respect of error apparent on the face or record after passing of the present award. In the above citation, Hon'ble Supreme Court has discussed the supervisory jurisdiction of the Hon'ble High court, which is not the subject matter of the present reference. In my humble opinion, because of above distinguishing facts in both the matter, citation relied on by the second Party is not applicable to facts and circumstance of the case in hand and therefore the same is not taken into consideration.

6. Rajula Nagarpalika through Chief Officer V/s. Kamleshbhai Bhikhubhai Mehta and Ors. (2015 II CLR 392)

Division Bench of Hon'ble Gujrat High Court has confirmed the judgment of Hon'ble Single Judge and Judgment of labour Court. Considering the peculiar circumstances of the case, alternative prayer of the appellant to award reasonable compensation in lieu of reinstatement and full back wages was also rejected. Issue involved in the writ petition was termination of the employee without following due procedure of the law in form of section 25 and other provisions of act. Hon'ble Division bench rejected the alternative prayer to award reasonable compensation on the ground that appellant was adamant it its attitude which amounts flouting the orders passed by the learned single judge as well as the labour court.

In the above citation while rejecting the alternative prayer of reasonable compensation and while granting full back wages, in para 7 it was noted that respondent employee is around 45 years of age and the fact that he still has 15 more years to service. Such is not the situation in the present reference in hand. Second Party is retired from the service and no more service is remained to the account of the Second Party. Therefore, in my humble opinion, above citation is not applicable to the present reference in hand.

7. U.P. State Electricity Board V/s. Sheo Shankar Sharma and ors. (2015 II CLR 99)

The above citation was relied on by the second Party to show that how he was entitled to 50% back wages after his termination. I have carefully read out the judgment, it appeared to me that the issue involved in the matter was mere long unauthorized absence from duty will not justify, discharge from service. In the present reference, termination of the second Party was not for unauthorized absence from duties but was after reducing his retirement age in view of resolution passed by First Party. I have observed that second party is not entitled to reinstatement with full back wages and consequential benefits, but entitled for lump sum compensation. Therefore, in my humble opinion, judgment cited by the Second Party is not applicable to the present case in hand.

8. Lalchand Govindrao Dhoke V/s. Industrial Court, Maharashtra, Nagpur Bench and Ors. (2005 III CLR 250)

In the above citation, in respect of back wages Hon'ble Bombay High Court has observed that back wages were refused to the petitioner on the ground that petitioner not tried for other job. It was held that the burden is upon employer to establish that the workman was gainfully employed during the interregnum for denial of back wages. In para-4 it was observed that the labour court overlooked that in accordance with catena of decisions. The burden is upon the employer to establish that workman was gainfully employed during the interregnum for denial of back wages. Admittedly the above ratio is applicable to the present case in hand. Second party has deposed on oath that after termination he was unemployed and he could not get the job elsewhere. It was the duty of the first Party to discharge the burden and prove that second party was gainfully employed and he was not unemployed. First Party has not brought any material on record to show that second Party was gainfully employed pending the reference. In my humble opinion, ratio laid down in the above citation on the point of gainful employment are applicable to the present reference and therefore, the same is taken into consideration.

9. Chaganlal Prahladrai Singhanja V/s. The Maharashtra State Co-operative Marketing Federation Ltd.(1992 I CLR 332)

The ratio laid down in 2005 III CLR 250 is similar to the present citation, hence the same is taken into consideration and relied on while passing the award.

10. B.N. Raghavendra Rao V/s. The Presiding Officer, II Additional Labour Court and Anr. (1992 I CLR 240)

In the above citation Hon'ble Division Bench of High Court of Karnataka at Benglore, awarded lump sum compensation amount of Rs 25,000/- in lieu of back wages to the workman. I have carefully gone through the judgment. The writ petition was against the award passed by labour court. Labour court refused to grant back wages mainly on the ground that the KSRTC was running in loss and as such it is not just and proper to grant back wages for the period during which proceedings were pending. Hon'ble Single Judge also confirmed the judgment of labour court. Against the judgment of Hon'ble Single Judge, above writ petition was preferred before the Division bench. It was observed that the concerned labour judge failed to exercise its discretion judicially. Therefore, referring to the judgment of Hon'ble Supreme Court, " M/s Hindustan Tin Works V/s its employee (AIR 1979 SC 75) compensation in lieu of back wages was awarded to the petitioner.

Considering the fact that second Party is retired, and there is no scope for reinstatement of second party, I have used discretionary power and awarded lump sum compensation instead of back wages. Therefore, in view of ratio of Hon'ble Supreme court, above citation is applicable to the present reference.

62. From the record before me now it is established that Second party was illegally retired which is otherwise termination. In view of Model Standing Orders, Second Party was suppose to work with the First Party till the completion of 60 years of age. It means Second Party was kept out of employment approximately for 5 years. However, Second party has raised industrial dispute before his superannuation, by giving demand notice. It reveals that Second Party has raised Industrial dispute approximately after 11 years after his termination and thereafter present reference is received by this court. I am of the view that for the reason of inordinate delay on behalf Second Party in raising industrial dispute, First Party should not be financially burdened for period in which Second Party had not worked with the First Party. As on today it is matter of fact that Second Party is superannuated during the pendency of this reference. In such circumstances, there is no question of reinstatement of the Second Party. Therefore, the only question that remains for consideration is about the relief to be awarded to second party.

63. From the record before me it reveals that Second Party has shown his Salary Rs. 5000/- per month. Because of inordinate delay in raising industrial dispute, second Party in my opinion, in the backdrop of ratios of Hon'ble Apex Courts (supra)is entitled to monetary benefits by way of lump sum compensation instead of full back wages and consequential benefits.

64. Admittedly, Second Party has accepted all the retrial dues up to the date of alleged termination or alleged retirement date and the said fact is admitted by Second Party in his cross examination. Therefore, the only question that remains is the dues from termination date up to retirement age of 60 years. As observed earlier there is inordinate delay in raising industrial dispute on behalf of Second Party, it would be injustice to First Party if second party is given full relief despite of inordinate delay in raising industrial dispute. However, as it is established that First Party has illegally retired the Second Party by reducing his age of retirement, second party is entitled to certain relief. It is established that Second Party had not worked with the First Party after his alleged retirement till the date of retirement or superannuation. Considering the remaining service to the account of the Second Party after alleged retirement from service, considering the fact that second Party has accepted his retirement dues without protest on the date of alleged retirement, considering the fact that second party is now superannuated and no service is remained to the account of the second party, grant of lump sum amount in form of

compensation would meet the end of justice. As per Section 11 A of the Industrial Disputes Act, this court is also empowered to give appropriate relief in case of discharge or dismissal of workmen where reinstatement is not possible.

65. It is pertinent to note that Second Party did not produce any material on record to show his actual salary till the date of retirement or superannuation. Second party has only stated that at the time of termination he / she was receiving Rs. 5000/- as Salary. The said salary is not objected or challenged by the First Party. Therefore, there is no alternative but to award lump sum compensation amount by considering the salary on record. Second party would have received his salary per month for further five years since the date of termination. First Party also did not submit any documentary evidence showing the salary of the Second Party on the date of superannuation. Second Party has prayed for reinstatement with full back wages and consequential reliefs also.

66. Here it is pertinent to note that second Party gave application and demanded Salary Slip, Salary Registers, Salary Slip of the month prior to termination. The said application is rejected by my learned predecessor with the observations that Second Party was under obligation to prove his claim on his own documents. Here Second Party could have given application calling witness on behalf of First Party to bring the documents before the court at later stage. But the same has not done by Second party. Therefore, now it is on record that the Second Party was receiving Salary of Rs. 5000/- per month before his termination. Hence, base of an amount Rs. 5000/- as per month salary is taken into consideration for the purpose of lump sum compensation.

67. If over all an amount of Rs. 5000/- is taken into consideration while granting compensation, it would be consideration of 100% back wages which is not possible in the facts and circumstances of the present case. Therefore, having regard to the facts and circumstances of this case, I am of the opinion that awarding lump sum amount of Rs.1,40,000/- instead of back wages and consequential benefits to the second Party, would meet the ends of justice. With my above observations, second party is entitled for lump sum compensation. Hence, I answer issue No.2 partly affirmative and proceed to pass the following Award.

AWARD

1. Reference is partly allowed.

2. It is adjudicated and declared that termination of service of second party dt. 25/12/2006 by the first party is illegal and unjustified.

3. It is hereby declared that office order issued to Second Party retiring him is illegal and same being otherwise illegal termination, is quashed and set aside.

4. The first party is hereby directed to pay lump sum compensation of Rs.1,40,000/- to the Second party within 7 weeks after publication of award on notice board of court failing which the same will carry interest at the rate of 7% per annum till the actual realization of amount.

5. As the second party is awarded with lump sum compensation, the prayer of reinstatement with continuity of service and back wages alongwith consequential benefits, is hereby rejected.

6. In peculiar circumstances, there shall be no cost of the proceeding.

7. Copies of award be sent to the Government for its publication.

Sd/-

Place :- Kolhapur. (P.M. Maindargi)
Presiding Officer,
Date :- 18/03/2020. Labour Court No. I, Kolhapur.

Argued on	:- 18/03/2020	Award transcribed on	:- 18/03/2020
Award dictated on	:- 18/03/2020	Award checked and signed on	:- 19/03/2020

LABOUR COURT