



**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

CWPOA No.7399 of 2019
Decided on : 26.11.2025

Vijay Kumar

...Petitioner

Versus

State of Himachal Pradesh and Others

...Respondents

Coram

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting?. No*

For the petitioner: Mr. Bhim Raj Sharma,
Advocate.

For the respondents: Mr. Sumit Sharma, Deputy
Advocate General.

Ranjan Sharma, Judge

Petitioner, Vijay Kumar, had initially filed Original Application No.1729 of 2016 before State Administrative Tribunal and upon abolition of Tribunal, the matter stood re-transferred to this Court, as CWPOA No.7399 of 2019, seeking the following reliefs :-

- “i) That the break in service in each year from 1996 to 2004 be condoned for the purpose of counting the seniority.
- (ii). That the applicant be granted seniority for

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*



the break period with effect from 1996 to 2004.

- (iii). That the applicant be granted seniority with all consequential benefits.”

FACTUAL MATRIX:

2. Grievance of the petitioner is that he was engaged as Daily Waged Chowkidar w.e.f. 17.03.1996 in Irrigation and Public Health Division, Dehra, District Kangra, (HP) and his services was regularized w.e.f. 23.09.2012 against the post of Chowkidar, under Irrigation and Public Health Division, Dehra, District Kangra, H.P. It is further averred that the petitioner had rendered continuous service with 240 days from 2005 to 2011 onwards as per Mandays Chart [Annexure R-II]. It is averred that though the petitioner stands regularized as Chowkidar on 22.09.2012 [Annexure R-I] prospectively, but in case the period of break given during the years from 1996 till the year 2004, during which he could not complete 240 days is condoned and counted towards actual service, then the petitioner shall be entitled for regularization/work charge status from an earlier date and accordingly, he may be given the rescheduled consequential



benefits.

STAND OF RESPONDENT-STATE IN THE REPLY-AFFIDAVIT:

3. Upon issuance of notice on 07.05.2016, State Authorities-Respondents have filed Reply-Affidavit dated 18.06.2016 of Superintending Engineer, I.P.H. Circle, Dharamshala, stating therein that the claim relating to the year 1996 to 2004 has been agitated by way of instant petition after 12 years, which suffers from delay and laches.

3(i). Reply-Affidavit further indicates that even as per the Industrial Disputes Act, 1947 the fact as to whether the claimed assertion that the petitioner was given breaks during 1996 to 2004 as in the Mandays Chart [Annexure R-II] is a matter which cannot be gone into in writ proceedings.

3(ii). Reply-Affidavit further indicates that the petitioner was regularized in terms of the policy on 22.09.2012 [Annexure R-I] from a prospective date. It is further averred that once the petitioner had accepted his regularization on 22.09.2012 [Annexure A-1], therefore, the petitioner have neither any right nor locus standi to seek condoning of the alleged



break period by counting and adding same towards actual service rendered from 1996 to 2004. It is averred that the petitioner having accepted the regularization on the basis of continuous service cannot turn around and seek a different status and that too after about 12 years. Even, the plea of estoppel has been taken in the Reply-Affidavit by the State Authorities. In this background, a prayer is made for dismissal of the writ petition.

NO REBUTTAL-REJOINDER:

4. Petitioner has chosen not to file rejoinder, so as to rebut contentions in the Reply-Affidavit.

5. Heard, Mr. Bhim Raj Sharma, Learned Counsel for the petitioner and Mr. Sumit Sharma, Learned Deputy Advocate General for the Respondents-State.

ANALYSIS:

6. Taking into account the entirety of the facts and circumstances and the material on record, this Court is of the considered view, that prayer made by the petitioner for counting the break period rendered from 1996 to 2004 as



in the Mandays Chart [Annexure R-II] towards actual service rendered during this period for reckoning it as 240 days of service and then to reschedule regularization/work charge status retrospectively from date of completion of 8 years of service *cannot be acceded to, for the following reasons:*

6(i) Perusal of the Mandays Chart [Annexure R-II] indicates that the petitioner has in fact rendered service ranging between 111 days to 210 days during the year 1996 to 2004. Petitioner has asserted that he could not complete 240 days as breaks were given to him by the respondents during this period. The assertion of the petitioner that breaks were given during 1996 to 2004 cannot be asserted and established in writ proceedings. The fact as to whether non-completion of 240 days was in fact, on account of break in service or due to any other reason(s), attributable to the petitioner or the respondents has to be established by leading evidence in appropriate proceedings. Nothing has been placed on record to determine that the non-completion of 240 days during 1996 to 2004 was due to fictional



breaks so as to enable him to complete continuous 240 days in each year during this period. Factum as to whether non-completion of continuous service of 240 days during 1996 to 2004 was due to breaks or other reasons leads to disputed questions of fact, which cannot be tested and examined in writ proceedings.

6(ii). If complex factual disputes arise, the writ court ought not to embark upon such adjudication and the petitioner may be relegated to an alternative efficacious remedy, in view of the mandate of the Hon'ble Supreme Court in ***A.P. Electrical Equipment Corporation vs. Tahsildar & Ors, 2025 SCC OnLine SC 447***, on 27.02.2025, has held that once there are compelling reasons revealing serious dispute between the parties on a question of fact and the material/evidence on record are insufficient/inconclusive to enable the Court to come at a definite conclusion then, the Court should refrain from exercising jurisdiction under Article 226 of the Constitution of India, but may relegate the petitioner to seek appropriate remedy before the appropriate forum, in the following terms:



51. This Court in the case of **Gunwant Kaurv. Bhatinda Municipality reported in AIR 1970 SC 602** observed as follows:-

“The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to *dismiss the petition in limine*. The High Court is not deprived of its jurisdiction to entertain a petition under Art.226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Art.226 the High Court has jurisdiction to try issues both of fact and law. Exercise of jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. **When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition.** Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made, dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that **the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous**



reasons.”

52. In one of the recent pronouncements of this Court in **State of U.P. &Anr. v. Ehsan &Anr. reported in 2023 INSC 906**, this Court observed that:-

“28. We are conscious of the law that existence of an alternative remedy is not an absolute bar on exercise of writ jurisdiction. More so, when a writ petition has been entertained, parties have exchanged their pleadings/ affidavits and the matter has remained pending for long. **In such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such compelling reason may arise where there is a serious dispute between the parties on a question of fact and materials/evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion.**

30. No doubt, in a writ proceeding between the State and a landholder, the Court can, on the basis of materials/evidence(s) placed on record, determine whether possession has been taken or not and while doing so, it may draw adverse inference against the State where the statutory mode of taking possession has not been followed State of UP vs. Hari Ram (supra)]. However, where possession is stated to have been taken long ago and there is undue delay on the part of landholder in approaching the writ court, infraction of the prescribed procedure for taking possession would not be a determining factor, inasmuch as, it could be taken



that the person for whose benefit the procedure existed had waived his right thereunder. In such an event, the factum of actual possession would have to be determined on the basis of materials/evidence(s) available on record and not merely by finding fault in the procedure adopted for taking possession from the land holder. **And if the writ court finds it difficult to determine such question, either for insufficient/ inconclusive materials/ evidence(s) on record or because oral evidence would also be required to form a definite opinion, it may relegate the writ petitioner to a suit, if the suit is otherwise maintainable.**

6(iii). While dealing with claim for regularization, where the factum of 240 days of continuous service was disputed, the Hon'ble Supreme Court in ***Ernakulam Regional Co-operative Milk Producers Union Ltd. vs. Nithu & Ors., 2024 SCC OnLine SC 650***, held in following terms:-

- "10. At the same time, in ground (A) taken by the **respondents in the writ petition they have averred that all of them were in continuous service for a period of over 240 days in a period of 12 calendar months and therefore, ought to be treated as permanent workers under the provisions of ID Act.** It has also been asserted that the appellant-Society herein is an organization covered under the provisions of the ID Act. Despite that, the respondent did not raise a dispute for it to be referred for adjudication by the State Government. Instead, while the



conciliation proceedings were still pending before the District Labour Officer, who has been impleaded as respondent No. 11 herein and the same did not bear any positive result **instead of seeking their remedies under the ID Act, the respondents continued to press the writ petition filed by them.**

11. Despite a specific plea taken by the appellant-Society in its counter affidavit filed in response to the writ petition, as pointed out by Mr. C.U. Singh, learned Senior counsel appearing for the appellant-Society, that the writ petitioners were engaged purely on a casual basis and that they were nominated from amongst the members of the Apex Cooperative Society (APCOS) and the terms and conditions of the Circulars issued by the appellant-Society had made it abundantly clear that the nominees would not have any right of permanent employment, such a plea did not find favour with the High Court. **Further, the appellant-Society had specifically averred in its counter affidavit that as none of the writ petitioners had worked for over 200 days in a calendar year, even otherwise, they were not entitled to claim permanent employment.**
12. In our opinion, all the **aforesaid questions would fall in the realm of disputed questions of fact that would have required evidenceto be lead and proper assessmentand adjudication before an appropriate authoritywhich in the instant case, even as per the respondents-writ petitioners, would have been a remedy available under the ID Act.** This aspect seem to have been lost sight of by the learned Single Judge as also the Division Bench. The learned Single Judge appears to have got swayed by the judgement in the



case of *Umadevi* (supra) to hold that the respondents-writ petitioners had put in service for over two decades and were therefore entitled to be regularized in terms of the directions issued in the said decision, unmindful of the fact that the *appellant-Society* had categorically refuted the plea taken by the respondents-writ petitioners that they had put in 240 days of regular service in the past 12 months and instead, had asserted that they failed to satisfy the criteria laid down in *Umadevi* (supra) for purposes of regularization.

21. In the instant case, *the disputed questions of facts go to the very root of the matter inasmuch as the appellant-Society has questioned the plea of the respondents-writ petitioners that they have put in 240 days of continuous service in the previous 12 months and would therefore, be entitled to regularization. **This aspect requires evidence and its evaluation before the proper forum.***

6(iv). In a similar fact-situation, this Court has held that seriously disputed questions of fact, involving nature of employment, the period of service or other related issues on which no definite findings can be recorded in the writ proceedings and these issue could only be established by adducing oral and documentary evidence before appropriate forum and therefore, in such an eventuality, the proper course is to relegate the parties before appropriate forum. Reference may be made to the judgments



passed by this Court, in **Sunder Lal vs. Municipal Corporation, CWPOA No. 6617 of 2020**, decided on 06.11.2024, and **Deep Ram vs. Municipal Corporation, Shimla & Anr, CWPOA No. 6609 of 2020**, decided on 07.01.2025, wherein, in view of disputed factual controversy, the claim for counting the period of alleged break towards 240 days of continuous service was negated by this Court.

ACQUIESCENCE BARS RIGHT AND REMEDY:

7. Perusal of the material on record indicates that the petitioner was engaged as Daily Waged Chowkidhar from 1996 and he completed only 111 to 210 days as per the Mandays Chart [*Annexure R-II*] till 2004. Even otherwise, as per the Industrial Disputes Act, 1947, the assertion of the petitioner that he had worked for the actual days as spelt out in the Mandays Chart [*Annexure R-II*] but was given breaks by the employer certainly leads to Industrial Disputes Act and the petitioner was bound to raise an “industrial dispute” under Section 2(k) and Section 10 of the Industrial Disputes Act, 1947, in view of the statutory provision, which read as under:-



**STATUTORY PROVISION OF SECTION 2(K) AND
SECTION 10 OF INDUSTRIAL DISPUTES ACT,
READS AS UNDER:**

7(i-a).

**SECTION 2(k) OF INDUSTRIAL DISPUTES
ACT, 1947**

- (k) “industrial dispute” means **any dispute or difference** between employers and employers, or **between employers and workmen**, or between workmen and workmen, which **is connected with the employment or non-employment or the terms of employment or with the conditions of labour**, of any person;

**SECTION 10 OF THE INDUSTRIAL
DISPUTES ACT, 1947**

**REFERENCE OF DISPUTES TO BOARDS,
COURTS OR TRIBUNALS**

- 10.** Reference of disputes to Boards, Courts or Tribunals.
- (1)** Where the appropriate Government is of opinion that **any industrial dispute exists or is apprehended**, it may at any time, by order in writing,—
- (a) refer the dispute to a Board for promoting a settlement thereof; or
 - (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or
 - (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
 - (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:



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

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

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

(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, 6 Labour Court, Tribunal or National Tribunal], the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

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

Provided that where such industrial dispute is connected with an individual



workman, no such period shall exceed three months:

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

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

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

In the background of the mandate of Section 2(k) and Section 10 of the Industrial Disputes Act, 1947, as reproduced hereinabove, once any dispute or difference arose between the petitioner vis-à-vis the respondents in connection with employment or non-employment or the terms of employment or conditions of labour then, the petitioner was legally bound to apply to the



appropriate Government for framing of a reference under Section 10(2) of the said Act. As per the Mandays Chart [*Annexure R-II*] the petitioner has in fact worked for different spells from 111 to 210 days during from 1996 to 2004 *whereas* the petitioner claims to have been given breaks due to which he could not complete 240 days of continuous service during these years *whereas Respondents in Reply-Affidavit* stated that services were discontinued due to non-availability of work. Based on variance in stand of the petitioner vis-à-vis State Authorities the petitioner was bound to raise an industrial dispute by applying to the appropriate Government for framing of a reference under the Industrial Disputes Act. Admittedly the petitioner had failed to raise an “industrial dispute” since 1996 for about 20 years till the filing of the instant Original Application No.1729 of 2016 [converted as CWPOA No.7399 of 2019 filed on 22.02.2016]. The petitioner remained silent and acquiescied in his rights and remedy therefore, the petitioner has no right to seek counting of the period of alleged breaks towards the continuous service of



240 days during 1996 to 2004. Resultantly, non-completion of 240 days, disentitles the petitioner from seeking antedating of either work charge status or regularization granted as per existing policy prospectively. Even, after grant of regularization on 22.09.2012, the petitioner remained silent till filing of instant petition in 2016. Deprecating the practice of filing belated petition claim, after having acquiesced with respect to his rights and remedies, the Hon'ble Supreme Court has held in **Union of India and others vs. N. Murugesan and others, (2022) 2 SCC 25**, as under:-

20. The **principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions**. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring



prudence of the Court than of a strict application of law. **The underlying principle governing these concepts would be one of estoppel.** The question of prejudice is also an important issue to be taken note of by the Court.

21. The word **laches** is derived from the **French language meaning “remissness and slackness”**. It thus **involves unreasonable delay or negligence in pursuing a claim** involving an equitable relief while causing prejudice to the other party. **It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.**
22. Two essential factors to be seen are the **length of the delay and the nature of acts done during the interval**. As stated, it would also involve **acquiescence on the part of the party approaching the Court apart from the change in position in the interregnum**. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy to a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the Court. **Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.”**

Based on the principle of law, in the case
of **N. Murugesan, Manish Sharma and Greatship**



(India) Limited, this Court is of the considered view, that the petitioner's has failed to invoke his statutory remedy under Section 10 of the Industrial Disputes Act by not seeking framing of reference and its adjudication by an Industrial Tribunal, by asserting and establishing that the breaks were given during 1996 to 2004 due to which he could not complete 240 days of continuous service and such a plea cannot be accepted on its face value and the same is seriously disputed by the Respondents in the Reply-Affidavit, alleging that his services were discontinued as no work was available, due to which he worked for only 111 to 210 days during the period from 1996 to 2004 as per [Annexure R-II]. Even if, this Court goes by the plea of the petitioner that the alleged breaks were given to him during the period from 1996 to 2004 [as in the Mandays Chart Annexure R-II] then also, such a dispute or difference regarding employment [actual service] vis-à-vis non-employment [as no work was available] came within the ambit of "Industrial Dispute", for which the petitioner was bound to avail the statutory remedy by seeking reference from the



appropriate Government and its adjudication by Labour Court-cum-Industrial Tribunal constituted under the Industrial Disputes Act, 1947. Facts reveal that the petitioner acquiesced in his rights/remedies from 1996 till 2004 till the filing of the petition in the year 2016 disentitles the petitioner for any relief after about 12 years and the claim is without merit and is accordingly turned down.

JUDGMENT IN CASE OF RAVI KUMAR VERSUS STATE [CWP NO.4489 OF 2009] NOT APPLICABLE:

8. Learned Counsel for the petitioner contends that fictional breaks period deserves to be counted towards continuous service period, in terms of the judgment passed by this Court in the case of **Ravi Kumar versus State of Himachal Pradesh, CWP No.4489 of 2009**, decided on 14.12.2009.

The reliance placed on the judgment in the case of **Ravi Kumar [Supra]** is misplaced, for the reason, that the judgment in the case of **Ravi Kumar [supra]** was based on the judgment of the Hon'ble Supreme Court, in **Mohd. Abdul Kadir and another versus Director General of Police, Assam and others, (2009) 6 SCC 611**, whereby, the period between



termination and re-appointment was counted towards continuous service rendered by an employee in view of the *Circular dated 17.03.1995* passed by the State of Assam. No such communication or circular has been placed on record by the petitioner in the instant case. In the absence of any such communication or circular, the judgment in the case of ***Mohd. Abdul Kadir***, which has been relied upon in the case of ***Ravi Kumar (supra)*** for counting the period between termination till appointment is not applicable in the instant case. Moreover, the facts in the case of ***Ravi Kumar (supra)*** are at variance, *for the reason*, that the plea of the petitioner-Ravi Kumar that he was given fictional breaks was not seriously disputed by Respondents *coupled with* the fact that the alleged period of break in aforesaid case was for about 15 days *whereas* in instant case, the non-completion of 240 days was not on account of breaks but on account of abandonment of non-availability of work and that too for longer spells ranging from 30 days to 129 days during the period 1996 to 2004 *with added distinctive feature* that the petitioner-Ravi Kumar had availed his



legal remedy expeditiously *whereas in instant case*, the petitioner remained negligent and allowed the cause to become stale/dead and his inaction had led to fading away of dispute so as to become non-existent and frivolous. Moreover, the disputed facts as to whether the non-completion of 240 days from 1996 to 2004 was due to fictional breaks or non-availability of work [in absence of any conclusive evidence] could only be asserted and established by adducing evidence before the Statutory Forum i.e. Industrial Tribunal-cum-Labour Court and not before this Court in writ proceedings. Thus, the reliance placed by the petitioner on the judgment in the case of **Ravi Kumar (supra)** is misplaced as the aforesaid judgment is distinguishable and not applicable on facts/law.

CLAIM BECOME STALE AND DEAD DISENTITLES PETITIONER FOR RELIEF:

9. Factual matrix reveals that the petitioner had rendered service of 111 to 210 days during the year 1996 till the year 2004. Pertinently, the petitioner did not raise any Industrial Dispute between the period from 1996 till 2004 and he slept over the rights and remedies. The factum as to whether the



non-competition of continuous service of 240 days during the period 1996 to 2004 was attributable to the petitioner or the respondents is a matter which leads to Industrial Disputes as per Section 10 of Industrial Disputes Act. Once the petitioner chose not to avail the remedy under Section 10 of the Industrial Disputes Act and had permitted the cause and the claim to become stale and dead without raising demand for framing of reference during the aforesaid period from 1996 till 2004 and thereafter till the filing of the instant petition in the year 2016 disentitles the petitioner for any relief in instant proceedings on account of delay, laches and acquiescence. Further, the issue as to whether non-completion of 240 days during the year(s) from 1996 till 2004 was attributable to the petitioner or the respondents is a fact which could be tested, examined and proved by the parties by adducing or rebutting the evidence to be led before the Statutory Form i.e. Industrial Tribunal-cum-Labour Court, which was not availed by the petitioner, in instant case.

**LIBERTY TO APPROACH APPROPRIATE
GOVERNMENT: DECLINED IN PECULIAR FACT-**



SITUATION:

10. While dealing with the effect of delay in demanding/making reference of the Industrial Dispute to the Labour Court under Section 10(1) of the Act, the appropriate Government has to perform its administrative function, by forming opinion as to whether the disputes exists or is apprehended by considering all relevant aspects. Delay in raising an Industrial Dispute [by not making a request for framing of a reference] when, the dispute does not exist or is no longer alive or has become stale or has faded away or had become non-existent is certainly an important aspect. Liveliness of the dispute is the fact which is to be examined as to whether the workman had agitated the grievance and remained active or had slept over the remedy. An explanation given for delay is to be considered by the appropriate Government, while framing or refusing to frame a reference. In case, reference was framed ignoring the fact that dispute had faded away or had become stale or non-existent then also, the aggrieved employer is not remediless, who can assail the order of framing reference in



writ proceedings. However, in case, on totality of facts and upon considering various aspects including delay even if an appropriate Government frames a reference then also, the Industrial Tribunal-Labour Court is bound to decide the Preliminary Issue, by permitting parties to adduce evidence and such delay may be a relevant factor for moulding relief(s), in terms of ***Full Bench Judgment of this Court in Jai Singh vs. State of Himachal Pradesh and others, CWP No. 2190 of 2020***, decided on 19.11.2020, the operative paras of the judgment are reproduced here-in-below

28. **Following principles of law can, therefore be culled out** from series of precedents discussed above, as to the **effect of delay in demanding /making reference of the industrial dispute to the Labour Court/Industrial Tribunal** under Section 10(1) of the Act:-
- i) That the function of the appropriate Government while dealing with question of making reference of industrial dispute under Section 10(1) of the Act, is an administrative function and not a judicial or quasi judicial function.
 - ii) That the Government before taking a decision on the question of making reference of the industrial dispute has to form a definite opinion whether or not such dispute exists or is apprehended.
 - iii) That whether or not the industrial dispute



exists or is apprehended in the meaning of Section 10(1) of the Act can be decided by the appropriate Government alone and not by any other authority including by this Court.

- iv) That the **appropriate Government in discharging the administrative function of** taking a decision to make or refuse to make, reference of the industrial dispute under *Section 10(1) of the Act*, *has to apply its mind on relevant considerations and has not to act mechanically as a post office.*
- v) That while **forming an opinion** as to whether the industrial dispute exists or is apprehended, the appropriate Government is not entitled to adjudicate the dispute itself on merits.
- vi) That the delay by itself does not denude the appropriate Government of its power to examine advisability of making reference of the industrial dispute **but the delay would certainly be relevant for deciding the basic question whether or not the industrial dispute “exists” which also includes the decision to find out whether on account of delay the dispute has ceased to exist or has ceased to be alive or has become stale or has faded away.**
- vii) That **whether or not** a dispute is *alive or has become stale or non-existent*, would always depend on the facts of each case and **no rule of universal application can be laid down for the same.**
- viii) That even if Section 10(1) of the Act empowers the appropriate Government to **form an opinion “at any time” on the question whether any “industrialdispute” “exists or is apprehended”, and there is no time limit prescribed for taking such a**



- decision**, yet such power has to be exercised by the appropriate Government within a reasonable time.
- ix) That the period for making reference of industrial dispute is co-extensive with the existence of dispute because the factum of the “existence” or “apprehension of the dispute” is conditioned by the effect of the delay on the liveliness of the dispute.
 - x) That the appropriate Government in arriving at the decision to make a reference of industrial dispute or otherwise, in the context of delay, may examine whether the workman or the Union has been agitating the matter before the appropriate fora so as to keep the dispute alive, which however, does not necessarily mean that in a case **where such action has not been initiated, the dispute has ceased to exist.**
 - xi) That the appropriate Government can, as per Section 10(1) of the Act, take a decision on the question of making reference “at any time”, thus *implying that there is no limitation in taking such decision* and the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to such proceedings.
 - xii) That the appropriate Government while taking a decision on the question of making reference, need not provide an elaborate opportunity of hearing to the workman *but it is under an obligation to consider his explanation for delay in making the demand.*
 - xiii) That in cases where the appropriate Government while examining the question of making a reference of industrial dispute arrives at a decision that the question that on account of delay the dispute has ceased to exist or alive, would require elaborate examination of the evidence, it



may while making a reference of the industrial dispute, additionally formulate question on this aspect to be decided as ***preliminary issue*** while simultaneously also making a reference on the industrial dispute to be decided as ***secondary issue***.

- xiv) That even in a case where reference has been made to the Industrial Court after ***prolonged delay, such Court would be entitled to mould the relief*** by declining whole or part of the back wages.
- xv) That even when a reference is made by appropriate Government in a case after huge and enormous unexplained delay, the industrial Court would be entitled to return the reference since such Court judiciously exercises its wide jurisdiction under Section 11-A of the Industrial Disputes Act and is under obligation to consider whether in such like situation any relief at all could be granted to the workman.

In above backdrop and *in facts of instant case*, this Court has not hesitation to hold that the alleged Industrial Dispute Act had become stale, non-existent, faded away and become frivolous on account of inaction, lethargy, slackness and negligence of the petitioner. Petitioner had destroyed his right and remedy by not asserting a claim at relevant time or a reasonable time [during the years 1996 to 2004] that alleged breaks were uncalled for. Having accepted the incumbency as such and having not assailed the



alleged breaks leads to the inference of acquiescence disentitling the petitioner for any relief after 12 years. Nothing has been placed on record to establish the liveliness of the dispute [relating to 1996 to 2004] till the filing of instant petition in the year 2016. Instant petition filed after a long lapse of about 12 years results in destroying not only the right but remedy also. Moreover, the claimed breaks given during the period(s) [1996 to 2004] and seriously disputed by the Respondents asserting abandonment. Even if the Statute i.e. the Industrial Disputes Act does not prescribes any limitation for seeking framing of a reference but still the claim for reference has to be asserted within a reasonable time. Delay of 12 years and that too without any cogent and convincing explanation for delay, disentitles the petitioner for relief in writ proceedings.

DIRECTIONS:

11. In view of above discussion and for the reasons recorded hereinabove, the instant petition is dismissed, *in the following terms:*

- (i) Claim of the petitioner for seeking condoning the breaks given during 1996 to 2004 and in counting alleged break



period towards continuous service of 240 days by filing instant writ petition after 12 years in 2016 suffers from delay and laches, is declined;

- (ii) Prayer of petitioner for condoning breaks given during 1996 to 2004 being seriously disputed and having become stale, dead, non-existent, frivolous and the acquiescence of petitioner destroying his rights/remedy disentitles the petitioner for any relief(s);
- (iii) Reliance on the judgment in case of **Mohd. Abdul Kadir** and **Ravi Kumar (supra)** is mis-placed and is not tenable in view of the discussion made hereinabove;
- (iv) Parties to bear respective costs.

In aforesaid terms, the instant petition and all pending miscellaneous application(s), if any, shall stand disposed of accordingly.

(Ranjan Sharma)
Judge

November 26, 2025
[himani]