In that case, the Supreme Court has held that upon the expiry of term of the tenancy the tenant had no authority to continue in occupation of the common land belonging to the Gram Panchayat. Upon the expiry of the period of tenancy the tenant becomes an unauthorised occupant of the land. He could, therefore, be lawfully proceeded against under the provisions of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 read with Rule 19 of the Punjab Village Common Lands (Regulation) Rules, 1964. The relevant portion of the judgment of the Hon'ble Supreme Court is reproduced as under :—

> "Respondent No. 1 Bachan, was inducted as a tenant for a limited period of five years in 1963. Upon the expiry of the term of the tenancy he had no authority to continue in occupation of the common land belonging to the appellant Gram Panchayat. He, upon the expiry of the five years term had thus become an unauthorised occupant. He could, therefore, be lawfully proceeded against under the provisions of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 read with Rule 19 of the Punjab Village Common Lands (Regulation) Rules, 1964."

(6) In view of the judgment of the Supreme Court, we hold that a Division Bench of this Court in *Om Parkash* v. *The Assistant Collector Ist Grade, Narnaul and others* (CWP No. 17276 of 1991), does not lay down good law and is, thus, over-ruled impliedly.

(7) This reference, thus, stands answered accordingly.

R.N.R.

Before H.S. Brar, K.S. Kumaran & Swatanter Kumar, JJ

RAM CHANDER MORYA,—*Petitioner*

versus

THE STATE OF HARYANA & OTHERS,—*Respondents*

CWP 3353 of 1993

5th August, 1998

Industrial Disputes Act, 1947—S. 10(1)—Limitation Act, 1963—Arts. 113 & 137—Declining of reference by appropriate Government on ground of delay & laches—S. 10(1) prescribing no period of limitation—Period of limitation prescribed in the

Limitation Act, 1963, normally three years—Industrial workers cannot be put to rigors of Limitation Act—In absence of period of limitation, Court fixing reasonable time of five years after accrual of cause of action beyond which claims held to be "clearly belated" as pointed out by the Supreme Court in Bombay Union of Journalists' case—Such fixation of limitation to be treated as broad guideline and where workman furnishes even a slightest explanation for delay, appropriate Government held disentitled to refuse the reference—Determination of question of belatedness to be left to the Labour Court itself.

Held that it is not possible to provide a straight jacket formula or any hard and fast rule which would define or cover the expression reasonable period of time as obviously it will depend upon the facts and circumstances of each and every case; but at the same time it is not advisable to leave it only to guess work of the appropriate Government to determine as to what is the reasonable period within which an industrial dispute could be referred to a Labour Court or an appropriate Tribunal. A guideline shall have to be provided to the appropriate Government to hold as to what period of time could be taken as clearly belated after which a reference of a dispute under section 10 of the Act could be denied. In other words, a guideline has to be provided to the appropriate Government as to the period of time after which a reference of the claim of the worker for adjudication to the Labour Court or the Tribunal could be refused on the basis of its being clearly belated.

(Para 40)

Further held, that reasonable time in case of reference of an industrial dispute by an appropriate Government to the Labour Court or the Tribunal should be some what liberal as compared to the limitation available in the ordinary course to the Government servants to file a suit.

(Para 47)

Further held, that after taking into consideration the various provisions of law, and after taking into consideration the words "clearly belated" mentioned by the Supreme Court in Bombay Union of *Journalists and others* v. *The State of Bombay and another*, AIR 1964 SC 1617, we would merely indicate that reasonable time in case of reference of an industrial dispute by an appropriate Government to the Labour Court or the Tribunal will be five years. In other words, if any industrial worker or union or any other person on behalf of the worker does not apply to the appropriate

Government for reference of an industrial dispute under section 10(1) of the Act to the Labour Court or the Tribunal for a period of five years and tenders no explanation for the delay beyond five years, this delay beyond the period of five years shall be taken as clearly belated.

(Para 48)

Further held, that we leave a note of caution here that if a worker or the union pleads/furnishes even a slightest explanation for delay in submitting his/its request to the appropriate Government for reference of his/its dispute to a Labour Court or the Industrial Tribunal then the appropriate Government shall leave the determination of the question of belatedness to the Labour Court or the Industrial Tribunal. It will then be the province of the Labour Court or the Industrial Tribunal to decide the question of reasonable delay in filing the application after taking into consideration the relevant material placed before it.

(Para 49)

JUDGMENT

Harphul Singh Brar, J

(1) Civil Writ petitions No. 3353 of 1993, 945 of 1995 and 6791 of 1992 are being decided by this common judgment as in all the three cases a similar question of law is involved. We need not to go into the facts of each and every case as a similar prayer has been made in all these petitions' for quashing the order of the Government of State of Haryana declining to refer the disputes to the Labour Court on the basis of delay and laches.

(2) Brief facts mentioned below have been taken from CWP No. 3353 of 1993.

(3) The petitioner was appointed with respondent No. 3 in Thermal Power House, H.S.E.B. Faridabad as T-Mate Workcharge w.e.f. 1st May, 1980. His services were terminated on 31st July, 1980 and thereafter again he was taken into service on daily wages but his services were again terminated on 16th November, 1984. The petitioner's services were terminated by respondent No. 3 without any rhyme or reason and no charge-sheet was served to the petitioner nor was any enquiry conducted. The petitioner's services were terminated without complying with the provisions of

Section 25 F of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act'). After the termination of his services, the petitioner has further alleged, that he moved the Deputy Commissioner on 6th November, 1985 against the termination of services and then had sent a reminder to the Chairman, HSEB, Panchkula on 24th October, 1989. Besides that he sent a letter to the Prime Minister of India on 23rd August, 1989 stating his entire story. Ultimately, according to the petitioner, when nothing was heard from the authorities concerned he served a demand notice [dated 11th October, 1991, the indication of which is available from Annexure P- 9 the order rejecting the case of the petitioner for sending the same for adjudication under section 10(1) of the Act] which has been annexed as Annexure P-7 with the petition.

(4) On 22nd November, 1992, the Joint Secretary, Government of Haryana in the Labour Department declinded to refer the dispute of the petitioner to the Labour Court or to the Tribunal. The order of the Joint Secretary dated 24th January, 1992 is annexed as Annexure P-9 with the petition. The order dated 24th January, 1992 of the Joint Secretary refusing to refer the dispute of the petitioner to the Labour Court has been challenged on various grounds but the sole question for determination before us in these petitions is as to whether the State Government/ appropriate Government under section 10(1) of the Act could refuse to refer the industrial dispute to an Industrial Tribunal as a Labour Court for determination merely on the question of delay and laches; particularly when no period of limitation has been prescribed for the same under section 10(1) of the Act.

(5) Learned counsel for the petitioners have contended that the State Government could not refuse to refer the industrial disputes raised by the petitioners to the Labour Court solely on the ground that there was delay on the part of the petitioners to raise the dispute, (delay in CWP No. 3353 of 93 is 7 years, in CWP No. 945 of 95 is 6 years and in CWP No. 6791 of 92 is 5 years), particularly when no period of limitation was prescribed under section 10(1) of the Act for reference of an industrial dispute to the Labour Court by the appropriate Government.

(6) Learned counsel for the petitioners have further elaborated their argument by submitting that consciously the Legislature has not provided any limitation for reference of industrial disputes to the authorities enumerated under section 10(1) of the Act, as according to the learned counsel, under the same Act limitation of one year has been provided under section

33C for making an application for recovery of money from an employer. Similarly, under section 25-O limitation of 90 days has been provided for an employer who intends to close down an undertaking of an industrial establishment, in the prescribed manner, for prior permission at-least ninety days before the date on which the intended closure is to become effective, to the appropriate Government. In any case, the learned counsel argue that when no limitation is provided under section 10(1) of the Act, as referred to above, respondent No. 3 i.e. Thermal Power House Faridabad, HSEB, through its Chief Engineer/State Government was not competent to reject the claim of the petitioner for referring his dispute to the Labour Court on the ground of delay and laches only. Learned counsel have cited the following authorities to substantiate their contention:—

Chief Mining Engineer, M/S East India Coal Co., Ltd., Bararee Colliery Dhanbad v. *Rameswarand & others (1), Town Municipal Council, Athani* v. *The Presiding Officer, Labour Courts, Hubli and others (2), Nityananda, M. Joshi and others* v. *Life Insurance Corporation of India and others (3), The Management of State Bank of Hyderabad* v. *Vasudev Anant Bhide etc. (4), Regional Provident Fund Commissioner* v. *M/s K.T. Rolling Mills Pvt. Ltd. (5), Shri Jagtar Singh* v. *Additional Director, Consolidation of Holdings Punjab, Jullundur and another (6). The Management of Haryana Urban Development Authority* v. *Miss Neelam Kumari and another (7).*

(7) Before discussing the matter in issue, it would be relevant to re-produce section 10(1) of the Act which reads as under :—

"*10. Reference of dispute 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

(1) A.I.R. 1968 S.C. 218
(2) 1969 (1) S.C.C. 873
(3) 1969 (2) S.C.C. 199
(4) 1969 (2) S.C.C. 491
(5) 1995 (3) R.S.J. 64
(6) 1984 P.L.R. 364
(7) 1993 (2) P.L.R. 552

(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, it if 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 sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced :

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

(8) *In Chief Mining Engineer, M/S East India Coal Co. Ltd., Bararee Colliery Dhanbad's case* (supra), it has been held that the applications made under section 33C(2) before the Labour Court could not be thrown out as barred by limitation or laches by the Labour Court as there was no justification in inducting a period of limitation provided in the Limitation Act into the provisions of Section 33C(2) which do not lay down any limitation and such a provision can only be made by legislature if it thought fit and not

by the Court on an analogy or any other such consideration.

(9) At the same time, the Supreme Court has drawn a distinction between the entertainment of an industrial dispute before a Tribunal and an application made under section 31C(2) of the Act. The relevant portion of the judgment which draws that distinction is re-produced hereunder for ready reference :—

> "These applications were made in 1962 though they related to claims for the years commencing from 1948 and onwards. The contention therefore was that part of these claims, at any rate, must be held to be barred either by limitation or by reason of laches on the part of the workmen. The answer to this contention is clearly provided in the case of Bombay Gas Co., 1964-3 SCR 709=(AIR 1964 SC 752) (supra) where a distinction was drawn between considerations which would prevail in an industrial adjudication and those which must prevail in a case filed under a statutory provision such as Section 33C(2). This court pointed out there that whereas an industrial dispute is entertained on grounds of social justice and therefore a Tribunal would in such a case take into consideration factors such as delay or laches, such considerations are irrelevant to claims made under a statutory provision unless such provision lays down any period of limitation."

(10) In *Town Municipal Council, Athani's case* (supra), it has been held by the Supreme Court that Article 137 of the Schedule to the Limitation Act, 1963 does not apply to applications under section 33C(2) of the Act and no limitation is prescribed for such applications.

(11) The cases of *Nityananda, M. Joshi and others* v. *Life Insurance Corporation of India and others* (supra) and the *Management of State Bank of Hyderabad* v. *Vasudev Anant Bhide etc.,* (supra) also reiterate the same view as has been taken by the Supreme Court in *Town Municipal Counsil, Athani's case* (supra).

(12) In *Regional Provident Fund Commissioner's case* (supra), the Supreme Court was dealing with the order of the Regional Provident Fund Commissioner of Maharashtra (the Commissioner) levying the damages on the respondent for default in the payment of the contribution in exercise of power under section 14-B of Employees' Provident Funds and Miscellaneous Provisions

Act, 1952. It would be relevant to re-produce section 14-B of the above said Act which reads as under :—

> "14-B. Power to recover damages.—Where an employer makes default in the payment of any contribution to the Fund, the Family Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of Section 15 or sub-section(5) of section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer, as may be authorised by the Central Govt. by notification in the official Gazette in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme :
>
> Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard :
>
> Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under Section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the scheme."

(13) Admittedly, Section 14-B has not laid down any period of limitation on the powers of the concerned authorities to recover damages from the employer. In the above noted case the respondent-employer had defaulted in depositing the contributions both of his own and as well as of the employees in time. The Commissioner, after applying his mind to the period of delay as well as to the quantum, imposed a sum of Rs. 52,034.80 as damages. The order of the Commissioner came to be challenged before the Bombay High Court by the respondent in that case who set aside the order solely on the ground that the proceeding was bad because of unreasonable delay in initiating the same. The High Court though pointed out that Section 14-B has not laid down any period of

limitation, the power has to be exercised within reasonable time. As the default related to the period from July 1968 to October 1977, relating to which proceedings came to be initiated in 1985, the High Court regarded the delay as unreasonable, and so, fatal. The Regional Provident Fund Commissioner preferred the appeal with the Supreme Court. After going through the facts of the case, the Supreme Court held that the delay in taking action under Section 14-B was fully explained and, thus, set aside the order of the Bombay High Court while accepting the appeal of the Regional Provident Fund Commissioner.

(14) It needs notice that the Supreme Court in that case has held as under :—

> "There can be no dispute in law that when a power is conferred by statute without mentioning the period within which it could be invoked, the same has to be done within reasonable period, as all powers must be exercised reasonably, and exercise of the same within reasonable period would be a facet of reasonable period would be a facet of reasonableness."

(15) The other authorities i.e. *Shri Jagtar Singh* v. *Additional Director, Consolidation of Holidings Punjab, Jullundur and another (supra)* and *The Management of Haryana Urban Development Authority* v. *Miss Neelam Kumari and another (supra)* on which the learned counsel for the petitioner have relied upon are of this Court.

(16) In Shri Jagtar Singh's case *(supra)*, a short legal question which fell for consideration and decision before the Full Bench was as to whether the bar of limitation under rule 18 of the Rules would also apply to a petition filed under Section 42 of the Act impugning the scheme prepared or confirmed or re-partition made by an Officer under the Act.

It will be advisible to notice the provisions of Section 42 of the Act and Rule 18 of the Rules which read as under :—

> "42.—Power of State Government to call for proceedings—The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act, call for and examine the record of any case pending before or disposed of by such

officer and may pass such order in reference thereto as it thinks fit.

Provided that no order, scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration."

(Rule 18)

"18. Limitation for application under Section 42—An application under section 42 shall be made within six months of the date of the order against which it is filed :

Provided that in computing the period of limitation the time spent in obtaining certified copies of the orders and the grounds of appeal, if any, filed under sub-section (3) or sub-section (4) of section 21, required to accompany the application shall be excluded :

Provided further, that an application may be admitted after the period of limitation prescribed therefor if the applicant satisfies the authority competent to take action under section 42 that he had sufficient cause for not making the application within such period."

(17) After dealing with the matter in question the Hon'ble Judges in the Full Bench ruled that rule 18 of the Rules does not apply to those petitions in which the legality or validity of a scheme prepared or confirmed or re-partition made is challenged.

(18) In *The Management of Haryana Urban Development Authority's case* (supra), it has been observed by a Division Bench of this Court which is re-produced as under :

"Since the Industrial Disputes Act, does not provide limitation for making a reference, or raising an industrial dispute or for deciding the industrial dispute, hence the provisions of Indian Limitation Act cannot be imbibed into the provisions of Industrial Disputes Act, which by itself is a complete Code. By importing the provisions of Indian Limitation Act into the Industrial Disputes Act, the very object of the Act providing speedy, simple straight remedy devoid of any technicality and avoidance of proverbial delays of Civil Courts would stand frustrated."

(19) In the later part of the judgment, it has been observed as under :—

> "Lastly, we may venture to state that we cannot refrain ourselves from observing that as observed above there is no period of limitation for making reference for raising industrial dispute, as basic object or consideration of the authority is up-keeping of industrial peace in the interest of society and the Act being beneficial to the workers. We may hasten to add that inordinate delay in raising dispute would result in producing unjust result and it may prove counter productive to industrial pleace. The inactivity of a worker in raising dispute may disentitle him from the relief and no premium can be permitted for the inactivity of the claimant or the applicant. One cannot be permitted to take benefits of one's own wrong."

(20) On the other hand, learned counsel for the respondents have contended that the State/appropriate Government is competent to decline the reference of an industrial dispute under Section 10 (1) on the ground of delay and laches alone. They have relied upon the following judgments of this Court as well as of the Supreme Court :—

> *State of Punjab* v. *Shri Kali Dass and another(8), Punjab State Electricity Board, Patiala* v. *Presiding Officer Labour Court, Bhatinda and another(9), Prem Singh and others* v. *Labour Commissioner Punjab, Sector 17, Chandigarh and others(10), Bombay Union of Journalists and others* v. *The State of Bombay and another(11).*

(21) In *Kali Dass's case* (supra), it was contended before the High Court in a petition under Article 226/227 of the Constitution of India that no relief should have been given by the Labour Court to the respondent-Kali Dass as the demand notice itself was given more than seven years after the alleged termination of service. After considering the matter, the Division Bench held that the workman cannot be allowed to approach the Labour Court after more than three years of the termination of service and ultimately the award of the Labour Court was quashed.

(8) 1997 (2) R.S.J. 240
(9) 1991 (2) R.S.J. 560
(10) 1994 (1) R.S.J. 690
(11) A.I.R. 1964 S.C. 1617

(22) To the same effect is the other authority i.e. *Punjab State Electricity Board, Patiala* Vs. *Presiding Officer Labour Court, Bhatinda and another (supra)* by a Single Judge of this Court.

(23) In Prem Singh and other's case (supra), a Division Bench of this Court was called upon to decide as to whether the residuary provisions of Article 137 of the Limitation Act, 1963 providing a period of three years of limitation apply to a reference under Section 10 of the Industrial Disputes Act, 1947 and if they do not apply whether delay/latches is a valid ground to decline a reference under Section 10 of the Act. The Division Bench after considering the matter held as under :—

> "Thus, to sum up, it must be held that no period of limitation is prescribed for making of a reference under Section 10(1) of the Act and that provisions of Articles 137 of the Limitation Act do not apply but nevertheless the appropriate Government should refer the disputes at the earliest and it is open to the said Government to decline a reference if it is belated or sought to be raised after a long lapse of time. As to when a dispute becomes stale so as to justify the Government to decline to refer the same for adjudication will depend upon the facts and circumstances of each case of which the appropriate Government would be the sole judge subject, of course, to judicial review by this Court under Article 226 of the Constitution."

(24) In *Bombay Union of Journalists and others' case (supra),* while discussing the scope of Section 10, the Supreme Court has observed as under :—

> "If the claim made is a patently frivolous or is clearly belated, the appropriate Government may refuse to make a reference."

(25) Before discussing the matter further, we want to notice two more authorities of the Supreme Court. The one is *The Gram Panchayat, Village Kanonda, Tehsil Bahadurgarh, District Rohtak, through its Sarpanch* v. *Director, Consolidation of Holdings, Haryana, Chandigarh and Others.*(12) and the other is *Gram Panchayat Kakran* v. *Addl. Director of Consolidation and Another* (13).

(12) J.T. 1989 (4) S.C. 357
(13) J.T. 1997 (8) S.C. 430

(26) In *The Gram Panchayat, Village Kanonda, Tehsil Bahadurgarh, District Rohtak, through its Sarpanch's case (supra), the case of Shri Jagtar Singh* Vs. *Additional Director, Consolidation of Holdings Punjab, Jullundur and another (supra)* has also been considered. In that case question of limitation for entertaining an application under Section 42 of the Act and provisions of rule 18 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 were considered. Decision of the Full Bench so far as it held that no limitation was prescribed for exercise of the revisional power under Section 42 against the scheme prepared or confirmed or repartition made was confirmed but it was held by the Supreme Court that the revisional power should be exercised within a reasonable time. The relevant portion of the judgment of the Supreme Court needs re-production and it is hereby re-produced as under:—

> "It is undoubted that when there is no limitation prescribed for exercise of the revisional power under Section 42 against the schemes prepared or confirmed or repartition made, it would be exercised within a reasonable time. *What is a reasonable time is always a question of fact depending upon the facts and circumstances in each case. When legislature chose not to fix a particular period of limitation by judicial dicta* it is not permissible to limit to a particular period. The long lapse of time may be a fact for the revisional authority to take into account in the light of the facts and circumstances obtainable in an appropriate case. No absolute or precise period of limitation could be predicted or laid."

(27) In Gram Panchayat Kakran's case (supra), while interpretting Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1949 and rule 18 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 the Supreme Court held that an application made after 40 years without any satisfactory explanation for delay cannot be considered as reasonable delay under Section 42. The relevant portion of the judgment of the Supreme Court is reproduced hereunder:—

> "Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 prescribes that an application under Section 42 shall be made within six months of the date of the order against which it is filed.

Under the 2nd proviso to that Rule, there is a power to admit the application after the period of limitation, which requires the applicant to satisfy the authorities that he has sufficient cause for not making the application within such period. The 2nd respondent has relied upon a decision of the Full Bench of the Punjab & Haryana High Court in the case of Jagtar Singh Vs Additional Director, Consolidation of Holdings, Jalandar (AIR 1984 Punjab & Haryana 216). In this decision the Court had held that the period prescribed under Rule 18 will apply only in respect of orders which are passed under the Act and will have no application to a Scheme which is framed or repartition which has been effected under the Act. This, however, cannot be understood as enabling the party which is aggrieved by the scheme or by repartition to make an application under Section 42 after an unreasonably long lapse of time. Even where no period of limitation is prescribed, the party aggrieved is required to move the appropriate authority for relief within a reasonable time."

(28) The authorities cited before us at the bar relate to post reference stage of an industrial dispute i.e. after the industrial dispute was referred to the Industrial Tribunal or to the Labour Court by the appropriate Government, but we are concerned with the question as to whether the appropriate Government under Section 10(1) of the Act could refuse to refer the industrial dispute to an Industrial Tribunal or the Labour Court for determination merely on the ground of delay and laches when no period of limitation was prescribed for the same under Section 10(1) of the Act.

(29) As has been noticed above, in some of the authorities it has been held that an industrial dispute can be entertained at any time as no period of limitation was provided under the Act. In others, it has been held that the workman cannot be allowed to approach the Labour Court after more than three years of the termination of his services. In some others it has been held that though there was no period of limitation prescribed under the statute still the dispute could be raised within a reasonable time and what is the reasonable time it depended upon the facts and circumstances of each and every case.

(30) The ultimate mandate which seems to have been given by the Supreme Court is that even where no period of limitation is

prescribed under a statute the party aggrieved is required to move the appropriate authority within a reasonable time and what is reasonable time is always a question of fact depending upon the facts and circumstances of each case.

(31) There is no dispute about the proposition of law that the appropriate Government may refuse to make a reference under Section 10(1) of the Act if the claim is clearly belated. The words "clearly belated" we borrow from the judgment of the Supreme Court in *Bombay Union of Journalists and others' case* (supra).

(32) No authority has been cited or brought to our notice which could throw some light to elaborate the expression 'clearly belated.'

(33) The normal meaning which we can give to these words are that when limitation is prescribed for some action to be taken and that action is taken after the expiry of the prescribed period without any explanation at all when it would be understood that the application is clearly belated. For example limitation of one year has been prescribed under Section 33 (c) of the Act for making an application for recovery of money from an employer. If the application is filed after the prescribed period of limitation of one year without any explanation at all then it would be understood that the application is clearly belated. In the same manner, when a period of three years is prescribed under the Limitation Act, 1963, for filing a suit for declaration but the suit is filed beyond three years, without offering any valid explanation for the same then it would be understood that the suit filed was clearly belated.

(34) It is easy to understand and explain the meaning of expression 'clearly belated' when limitation is prescribed under the statute, but it may be difficult to understand and apply these words when no limitation is prescribed under the statute. For example no limitation is prescribed under Section 10(1) of the Act for the appropriate Government to refer an industrial dispute under section 10 of the Act to an Industrial Tribunal or to a Labour Court.

(35) First of all, it will have to be determined as to whether any period of limitation can be prescribed for reference of an industrial dispute to an Industrial Tribunal or Labour Court under Section 10(1) of the Act when no such limitation is prescribed under this section for reference of an industrial dispute to an Industrial

Tribunal or a Labour Court. We find the answer to this question in some of the authoritative pronouncements of the Supreme Court.

(36) In Regional Provident Fund Commissioner's case (supra), it has been held that when a power is conferred by statute without mentioning the period within which it could be invoked, the same has to be done within reasonable period, as all powers must be exercised reasonably, and the exercise of the same within reasonable period would be a facet of reasonableness.

(37) In *Gram Panchayat Village Kanoda's case (Supra)* the Supreme Court was dealing with the powers of the State Government under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1949, to vary and revise any order, scheme or re-partition made by the consolidation authorities. Obviously no period of limitation was provided for the same under the Consolidation Act. The Hon'ble Supreme Court finally held that when there is no limitation prescribed for exercise of the revisional power under Section 42 of the Act against the Scheme prepared or confirmed or re-partition made, it should be exercised within a reasonable time. What is reasonable time is always a question of fact depending upon the facts and circumstances of each case.

(38) In *Gram Panchayat Kakran's case (Supra),* as has been referred and discussed in detail above, it has been clearly held by the Supreme Court that where no period of limitation is prescribed under a statute the party aggrieved is required to move the appropriate authority within a reasonable time.

(39) On the basis of the authoritative pronouncements of the Supreme Court as discussed above, we are of the considered view that though no period of limitation is prescribed under Section 10(1) of the Act for reference of an industrial dispute to an Industrial Tribunal or a Labour Court, an application for reference should be made before the appropriate Government, within a reasonable period of time; and what is the reasonable period of time shall depend upon the facts and circumstances of each individual case.

(40) It is not possible to provide a straight jacket formula or any hard and fast rule which would define or cover the expression reasonable period of time as obviously it will depend upon the facts and circumstances of each and every case; but at the same time it is not advisable to leave it only to guess work of the appropriate Government to determine as to what is the reasonable period within

which an industrial dispute could be referred to a Labour Court or an appropriate Tribunal. A guideline shall have to be provided to the appropriate Government to hold as to what period of time could be taken as clearly belated after which a reference of a dispute under section 10 of the Act could be denied. In other words, a guideline has to be provided to the appropriate Government as to the period of time after which a reference of the claim of the worker for adjudication to the Labour Court or the Tribunal could be refused on the basis of its being clearly belated.

(41) There are various statutes governing the suspension, reversion, termination and dismissal of the employees of the Government as well as of the Corporations wherein a period of limitation for filing suits, appeals, applications, review applications and revisions etc. is provided. In the Industrial Dispute Act, 1947 limitation has been provided in some cases e.g. under Section 33-C when recovery of money is due to the workman from an employer, the workman can make an application to the appropriate Government for the recovery of money due to him. Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer. It is further provided that any such application may be entertained after the expiry of period of one year if the appropriate Government is satisfied that the applicant had sufficient cause for not making an application within the said period.

(42) No limitation is provided under Section 10 of the Act for making a reference the appropriate Government to a Labour Court or to the relevant Industrial Tribunal.

(43) In the whole of the Act no guideline is provided as to what shall be the period of limitation in cases where no limitation is provided in the Act.

(44) We find such type of provision in the Indian Limitation Act, 1963 in the shape of Article 113 falling under the head 'Suit for which there is no prescribed period' and article 137 of the Indian Limitation Act, 1963 provides that any suit for which no period of limitation is provided else-where in the schedule, limitation shall be three years after the right to sue accrues. Article 137 of the Indian Limitation Act, 1963 provides that any other application for which no period of limitation is provided elsewhere in this division, limitation shall be three years when the right to apply accrues.

(45) Government employees are required to challenge their termination, dismissal etc. by way of filing a civil suit for declaration within three years from the date the cause of action accrues to them.

(46) In a similar manner, for a writ petition to be filed by an aggrieved person against an offending action of the State Tribunal or other authority, three years was taken as a normal period for filing the writ petition.

(47) It is pertinent to note here that the case of an illiterate and poor labourer in a factory cannot be compared with government employees who are literate and are conscious of their rights. Even the Supreme Court in *Bombay Union of Journalists'* case (supra), while interpreting section 10(1) of the Act has clearly held that the appropriate Government may refuse to make a reference under Section 10(1) if the claim made is clearly belated. We consider that reasonable time in case of reference of an industrial dispute by an appropriate Government to the Labour Court or the Tribunal should be some what liberal as compared to the limitation available in the ordinary course to the Government servants to file a suit.

(48) After taking into consideration the various provisions of law, stated above, and after taking into consideration the words "clearly belated" mentioned by the Supreme Court in *Bombay Union of Journalists'* case (supra), we would merely indicate that reasonable time in case of reference of an industrial dispute by an appropriate Government to the Labour Court or the Tribunal will be five years. In other words, if any industrial worker or union or any other person on behalf of the worker does not apply to the appropriate Government for reference of an industrial dispute under Section 10(1) of the Act to the Labour Court or the Tribunal for a period of five years and tenders no explanation for the delay beyond five years, this delay beyond the period of five years shall be taken as clearly belated.

(49) We leave a note of caution here that if a worker or the union pleads/furnishes even a slightest explanation for delay in submitting his/its request to the appropriate Government for reference of his/its dispute to a Labour Court or the Industrial Tribunal then the appropriate Government shall leave the determination of the question of belatedness to the Labour Court or the Industrial Tribunal. It will then be the province of the Labour Court or the Industrial Tribunal to decide the question of reasonable delay in filing the application after taking into consideration the

relevant material placed before it. Now we come to the individual cases.

(50) In C.W.P. No. 3353 of 1993, the petitioner has challenged the order dated 22nd November, 1992 of the Joint Secretary, Haryana Government, Labour Department, annexed as Annexure P-9 with the petition, *vide* which the Government of Haryana in the Labour Department had refused to send the case of the petitioner for proper adjudication to the Labour Court on the ground that the demand notice was given to the Government after a lapse of about seven years. It has been specifically mentioned by the petitioner in his petition that he has been pursuing the matter with the various authority before the demand notice had to be served to the Government ultimately. It has so been mentioned specifically in para 6 of the petition.

(51) Again it is settled law and it has even been so held by us in Full Bench case (CWP No. 3393 of 93) that the Government is required to pass a speaking order before declining the reference made by the worker. In the case in hand, order dated 22nd November, 1992, Annexure P-9, suffers from both these infirmities, The order dated 22nd November, 1992 (Annexure P-9), is, thus, set aside and a direction is issued to the respondents to forward the case of the petitioner to the State of Haryana under Section 10(1)(a) of the Act for reference.

(52) Similarly, in C.W.P. No. 6791 of 1992, the order under challenge by the petitioner is dated 24th March, 1992 which is annexed as Annexure P-1 with the petition. In this order (Annexure P-1), it has been mentioned that the reference of the petitioner has been declined as it was filed before the appropriate authority after a period of five years. This order is also a cryptic one. No reasons have been given by the concerned authority that there was a delay of five years in filing the demand of the petitioner before the concerned authority. The question of delay in this case can be decided only by the Labour Court after taking evidence on both the sides. The order dated 24th March, 1992, Annexure P-1, is, thus, set aside and a direction is issued to the respondents to forward the case of the petitioner to the State of Haryana under Section 10(1)(a) of the Act for reference.

(53) Similarly in C.W.P. No. 945 of 1995, the order under challenge by the petitioner which is dated 30th October, 1994, (Annexure P-6) is cryptic and no reasons have been given for holding

as to what was the basis on which it was found that there was a delay of six years before the dispute was raised by the petitioner before the appropriate authority. Neither any evidence has been discussed nor any fact has been so referred which could be clinching for the government to hold that there was no explanation tendered by the petitioner to approach the Government late i.e. after a period of six years. This order dated 30th October, 1994, Annexure P-6, is also set aside being cryptic and non speaking and a direction is issued to the respondents to forward the case of the petitioner to the State of Haryana under Section 10(1)(a) of the Act for reference. All the three writ petitions mentioned in this para of the petition are, thus, allowed.

R.N.R.

Before Swatanter Kumar, J

BANWARI,—*Petitioner*

versus

NAGINA,—*Respondent*

CIVIL REVISION No. 4287 of 1997

6th February, 1998

Code of Civil Procedure, 1908—Order 18 Rl. 2—Has to be read in conjunction with the provisions of Order 18 Rule 17-A, CPC.

Held that additional evidence can be permitted to the party if the party permitting such relief had failed to lead the evidence at the earlier stage after exercising due diligence and there was sufficient cause for granting such permission. Primary distinction is between not to able to produce in spite of due diligence and waiver to lead evidence. 'Waiver' is an intentional act or an act which can be reasonably construed from the record that the party intentionally failed to lead evidence which it ought to have. There is also no doubt to the fact that Order 18 Rule 2 C.P.C. has to be read in conjunction with the provisions of Order 18 Rule 17-A. CPC.

(Para 4)

Code of Civil Procedure, 1908—Order 18 Rule 17-A-Case fixed for recording plaintiff's evidence in rebuttal-Plaintiff basing his claim on the written statement filed in previous suit where his