(v) Any person aggrieved by the decision of the Superintending Canal Officer can challenge the same by filing representation before the Chief Canal Officer within one week of the decision who will dispose of the same expeditiously.

(10) For the reasons aforementioned, the writ petition is devoid of merit and is dismissed but with no order as to costs. However, it is directed that the guidelines laid down in the preceding paragraph of this judgment will be implemented by the competent authority while sanctioning rice shoots.

S.C.K.

Before : N. K. Sodhi, J.

SADHU SINGH,—*Petitioner.*

versus

THE LABOUR COMMISSIONER, PUNJAB, CHANDIGARH AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 3246 of 1985

30th April, 1991.

Industrial Disputes Act, 1947—S. 10—State Government declined to refer dispute in January, 1977 and workman duly informed—Workman kept silent for eight years—Cannot now in 1985, at this belated stage challenge order of Government declining reference.

Held, that by now almost 15 years have passed since the services of the petitioner were allegedly terminated in July, 1976 and he kept mum for eight years after the State Government had declined to refer the industrial dispute which he raised through a demand notice. It would not be in the interest of industrial peace to direct the State Government to reconsider the matter afresh and involve the parties in a bout of litigation at this late stage. The writ petition, thus, merits dismissal on the ground of inordinate delay.

(Para 4)

RAM AVTAR SHARMA AND OTHERS *V.* STATE OF HARYANA AND ANOTHER A.I.R. 1985 S.C. 915

(DISTINGUISHED)

Petition under Articles 226/227 of the Constitution of India praying that the petition may kindly be accepted, and

(*i*) *the respondents may be directed to produce the entire record of the case;*

(ii) a writ of Certiorari or Mandamus *or any other writ, order or direction be issued quashing the orders Annexures "P1" and "P2" and the respondent No. 1 be directed to refer the industrial dispute raised by the petitioner to the Labour Court for adjudication;*

(iii) any other relief to which the petitioner is found entitled in the circumstances of the present case may also be allowed to the petitioner;

(iv) cost of the writ petition may be allowed to the petitioner.

Mrs. Sabina, Advocate, *for the Petitioner.*

Somesh Ojha, Advocate, *for respondent No.* 2.

JUDGMENT

N. K. Sodhi, J.

(1) Sadhu Singh, petitioner, was employed as a Conductor with the Pepsu Road Transport Corporation and after he had worked for a little more than one year, his services were allegedly terminated on July 15, 1976. He raised an industrial dispute by serving a demand notice dated August 11, 1976 on the management under section 2(A) of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act'). On receipt of the demand notice the Conciliation Officer took cognizance of the dispute between the petitioner and the management and started conciliation proceedings. The Management took the stand that the petitioner had voluntarily resigned from the job and his services were never terminated as alleged by him. The Conciliation Officer, after perusing the original record and hearing the parties could not bring about a settlement and must have sent his failure report to the State Government setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof together with a full statement of such facts and circumstances and the reasons on account of which, in his opinon, a settlement could not be arrived at. On a consideration of the failure report, demand notice and other relevant material, the State Government as per its order dated January 27, 1977 declined to refer the dispute for adjudication and a communication to this effect was sent to the petitioner on behalf of the Labour Commissioner, Punjab, exercising the powers of the State Government under the Act. It is this communication which has been impugned in the present writ petition.

(2) After the communication dated January 27, 1977, the petitioner kept quiet for eight years and it was on January 30, 1985 that he represented to the State Government regarding the rejection of the reference which he had sought by serving the demand notice dated August 11, 1976. This representation was also rejected and the petitioner was sent a communication dated March 4, 1985, in this regard. It was at this stage that the present writ petition was filed challenging the order of the Government dated January 27, 1977 declining the reference.

(3) It is contended by the learned counsel for the petitioner that the State Government while declining the reference could not opine as to whether the resignation put up by the management was under duress or not and since the State Government had adjudicated upon the matter, the order of the State Government was liable to be struck down. In support of her contention, she relied upon *M. P. Irrigation Karamchari Sangh* v. *State of M. P. and another* (1).

(4) Before deciding the contention of the learned counsel for the petitioner, I may observe that by now almost 15 years have passed since the services of the petitioner were allgedly terminated in July, 1976 and he kept mum for eight years after the State Government had declined to refer the industrial dispute which he raised through a demand notice. It would not be in the interest of industrial peace to direct the State Government to reconsider the matter afresh and involve the parties in a bout of litigation at this late stage, particularly when the petitioner, according to his own averments in the petition, had only a little more than one year's service to his credit at the time of the alleged termination. The writ petition, thus, merits dismissal on the ground of inordinate delay. Even otherwise also, there is no substance in the case. I am of the view that the State Government could have *prima facie* looked at the matter with a view to decide as to whether it was a fit case for making a reference under section 10 of the Act and to see for itself as to the perversity or frivolousness of the demand raised by the workman. The State Government has this limited jurisdiction, though it is true that adjudication of demands made by workmen should be left to the Tribunals to decide. Their Lordships of the Supreme Court in *M. P. Irrigation Karamchari Sangh's* case (supra) have observed that "there may be exceptional cases, in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are perverse

(1) A.I.R. 1985 S.C. 860.

or frivolous and do not merit a reference". In the case before their Lordships of the Supreme Court, the employees of the Chambal Hydel Irrigation Scheme under the Government of Madhya Pradesh through their Union raised a demand, amongst others, claiming dearness allowance equal to that of Central Government employees and the State Government while declining the reference observed that the Government was not in a position to bear the additional burden. This was obviously a question of evidence as to whether the Government could bear the additional burden or not and the State Government could not *prima facie* without evidence hold that it was not possible for the State Government to bear that burden. It was in these circumstances that their Lordships quashed the order of the State Government declining to refer the dispute and observed as under :—

> "What the State Government has done in this case is not a *prima facie* examination of the merits of the question involved. To say that granting of dearness allowance equal to that of the employees of the Central Government would cost additional financial burden on the Government is to make a unilateral decision without necessary evidence and without giving an opportunity to the workmen to rebut this conclusion. This virtually amounts to a final adjudication of the demand itself. The demand can never be characterised as either perverse or frivolous. The conclusion so arrived at robs the employees of an opportunity to place evidence before the Tribunal and substantiate the reasonableness of the demand."

In *Bombay Union of Journalists and others* v. *State of Bombay and another* (2), which was relied upon in *M. P. Irrigation Karamchari Sangh's case* (supra), their Lordships while referring to *State of Bombay* v. *K. P. Krishanan* (3), observed as under :—

> "The decision in that case clearly shows that when the appropriate Government considers the question as to whether any industrial dispute should be referred for adjudication or not, it may consider, *prima facie* the merits of the dispute and take into account other relevant considerations which

(2) A.I.R. 1964 S.C. 1617.
(3) A.I.R. 1960 S.C. 1223.

would help it to decide whether making a reference would be expedient or not. It is true that if the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly, on disputed questions of fact, the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal. But it would not be possible to accept the plea that the appropriate Government is precluded from considering even *prima facie* the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under S. 10(1) read with S. 12(5), or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not. It must, therefore, be held that a *prima facie* examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute under S. 10(1), and so the argument that the appropriate Government exceeded its jurisdiction in expressing its *prima facie* view on the nature of the termination of the services of appellants 2 and 3, cannot be accepted."

Again in para 8, it was observed as under:—

"... .....that in entertaining an application for a writ of *mandamus* against an order made by the appropriate Government under S. 10(1) read with S. 12(5), the court is not sitting in appeal over the order and is not entitled to consider the propriety or the satisfactory character of the reasons given by the said Government. It would be idle to suggest that in giving reasons to a party for refusing to make a reference under S. 12(5), the appropriate Government has to write an elaborate order indicating exhaustively all the reasons that weighed in its mind in refusing to make a reference. It is no doubt desirable that the party concerned should be told clearly and precisely the reasons why no reference is made, because the object of S. 12(5) appears

to be to require the appropriate Government to state its reasons for refusing to make a reference so that the reasons should stand public scrutiny; but that does not mean that a party challenging the validity of the Government's decision not to make a reference can require the court in writ proceedings to examine the propriety or correctness of the said reasons. If it appears that the reasons given show that the appropriate Government took into account a consideration which was irrelevant or foreign, that no doubt, may justify the claim for a writ of *mandamus*. But the argument that of the pleas raised by the appellants two have been considered and not the third, would not necessarily entitle the party to claim a writ under Article 226."

(5) In the case in hand, the State Government declined to refer the dispute on the ground that the petitioner could not show that the resignation set up by the management and admitted by the petitioner was under duress. This, in my opinion, was not an adjudication of the dispute but only a *prima facie* examination of the same on the basis of which the State Government could decline to refer the dispute.

(6) The learned counsel for the petitioner also placed reliance on *Ram Avtar Sharma and others* v. *State of Haryana and another* (4). This was a case where the employees had been charge-sheeted and after holding a domestic enquiry, the services were terminated by way of disciplinary action. When the industrial dispute was raised, the State Government after examining the enquiry file declined to refer the same on the ground that it did not consider the case to be fit for reference for adjudication as the services of the employees had been terminated after the charges against them stood proved in a domestic enquiry. It was this order of the State Government, which was quashed by their Lordships observing that the State Government had virtually adjudicated the dispute and had usurped the powers of the Tribunal, as a result of which the employees were deprived of the beneficial provisions of Section 11A of the Act from getting the matter examined from the Tribunal, in regard to the awarding of punishment commensurate with the gravity of the proved misconduct. The fact of the present case are totally different.

(4) A.I.R. 1985 S.C. 915.

(7) Lastly, reference may be made to the decision of this court in *Smt. Prem Lata* v. *State of Punjab and others,* by S. S. Sodhi, J., wherein also State Government had declined to refer the dispute for adjudication on the ground of delay and the workman in that case had settled the accounts with the management. Even though the factum of settlement was disputed, this Court upheld the order of the State Government and dismissed the writ petition.

(8) In the result, there is no merit in this writ petition and the same is dismissed with no order as to costs.

(5) C.W.P. No. 362 of 1980 decided on 19th September, 1988.

J.S.T.

Before : *S. S. Sodhi & G. C. Garg, JJ.*

HINDU HIGHER SECONDARY SCHOOL, KAITHAL,—*Appellant.*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Amended Letters Patent Appeal No. 1287 *of* 1990

30th September, 1991.

Haryana Aided Schools (Security of Service) Rules, 1974—*Rl.* 8—*Constitution of India,,* 1950—*Art.* 226—*Termination of service during period of probation—Termination on ground of decrease in number of students—Appellate Authority on facts finding that there had been no decrease in number of students—Post not abolished—No material on record showing that petitioner was junior-most teacher—Termination is illegal—Order of Appellate Authority directing reinstatement with consequential benefits upheld.*

Held, that there was no reduction in the posts of teachers or the abolition of even the post held by the respondent. If indeed, shortfall of students rendered it imperative to reduce the number of teachers, abolition of posts would be the obvious and natural consequence. There is neither any material on record to show how the respondent was in fact the junior most teacher or how even with the reduction of Sections from 29 to 27, it was upon him, that the axe had inevitably to fall. Hence, no occasion is provided here to grant any relief to the School as claimed and the appeal is consequently dismissed.

(Paras 6, 7 & 8)