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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP-1980-2011 (O&M)****RESERVED ON: 20.05.2026****DATE OF PRONOUNCEMENT: 25.06.2026****UPLOADED ON WEBSITE ON:25.06.2026****M/S MAHINDRA & MAHINDRA LTD.****-PETITIONER****V/S****STATE OF PUNJAB AND OTHERS****-RESPONDENTS****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Pawan Kumar Mutneja, Sr. Advocate assisted by
Mr. V.S.Mahal, Advocate
for the petitioner.

Mr. Amit Kumar Goyal, Addl.A.G., Punjab.

Mr. Chanandeep Singh, Advocate,
for respondent no.4-workman.

KULDEEP TIWARI, J.

1. Through the instant petition, cast under Article 226 of the Constitution of India, the petitioner-management has thrown a challenge to the reference order dated 08.02.2010 (Annexure P-10) whereby the Assistant Labour Commissioner, Mohali, in exercise of powers conferred by Section 2-A and Para C of sub section (1) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act of 1947'), referred the matter to the Industrial Tribunal concerned. A challenge is also thrown to the notification dated 19.03.2008 (Annexure P-11), whereby the powers exercisable by the State Government under Section

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10, and sub-section (3), (4), (5) and (6) of Section 12 of the Industrial Disputes Act, 1947, in relation to the industrial disputes falling under Section 2-A of the Act, shall also be exercisable by the Assistant Labour Commissioner/Labour-cum-Conciliation Officers

2. At the outset, it is imperative to note that through an interim order dated 18.01.2012, the matter was ordered to be placed before Hon'ble the Chief Justice, as vires of the notification (*supra*), was under challenge in some other matter. Consequent thereupon, the matter was referred to a Division Bench of this Court, to decide the validity of the notification (*supra*). The Division Bench, vide order dated 07.05.2012, as passed in a bunch of petitions led by CWP-6067-2011, upheld the legality and validity of the notification dated 19.03.2008, with a further direction that the matters be placed before the learned Single Bench for decisions on the other questions arising in the respective writ petitions.

3. In view of the aforesaid position, the only issue, which survives for consideration is, as to whether, the impugned reference made by the State Government is legally sustainable or not?

4. Learned senior counsel for the petitioner-management, in an attempt to throw challenge to the reference order dated 08.02.2010, submits that the competent authority, before making reference has not taken into consideration that the earlier reference as made on the same dispute, already stood dismissed on account of failure of respondent no.4-workman to pursue the same. Consequently, the earlier reference culminated in an Award, and the same has attained finality as per Section



16 of the Act of 1947. It is, therefore, contended that a fresh reference on the same cause of action is barred by the principle of *res judicata*.

5. The impugned reference order has also been challenged by the petitioner-management, on the ground that it suffers from delay and latches, inasmuch as, the workman remained silent for about more than 5 ½ years before raising the dispute. In order to lend vigor to this arguments, he also placed reliance upon a judgment rendered by the Hon'ble Supreme Court in **“UP State Road Transport Corporation vs. Ram Singh and Another”, (2008) 17 SC 627**, wherein, it was held that where there is an unreasonable delay, the Labour Court ought not to entertain the industrial dispute.

6. He, further, while referring to the judgment rendered in **“Nedungadi Bank Ltd. vs. K.P. Madhavankutty and others”, (2000) 2 SCC 455**, submits that the Hon'ble Supreme Court held therein, that the power of making reference should be exercised reasonably, and in a rational manner, and not in a mechanical manner.

7. The aforementioned submissions made on behalf of the petitioner-management, were vehemently opposed by the learned State counsel, as well as, learned counsel representing respondent no.4-workman.

8. Learned State counsel submitted that the earlier reference had been dismissed merely for want of prosecution, vide order dated 13.06.2002 (Annexure P-4), and therefore, it does not amount to an adjudication on merits. Consequently, such dismissal order, could neither

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be construed as an Award, nor could it can operate as a bar to a subsequent reference on the same dispute.

9. He further submits that this issue is no more *res integra*, in view of the judgment of Hon'ble Supreme Court in “**Virendra Bhandari vs. Rajasthan State Board Transport Corporation and others**”, 2002 (9) SCC 200, wherein, it was categorically held that in absence of matter being adjudicated on merits on earlier occasion, a subsequent reference in respect of the same dispute would be maintainable.

10. He, finally, submits that in the instant case, the services of respondent no.4-workman, were terminated way back on 16.09.1994. Since the industrial dispute related to certain demands raised by the workmen of petitioner-establishment was already pending before the Industrial Tribunal, Punjab, under Reference No.15 of 1993, the petitioner-management, moved an application under Section 33-2(b) of the Industrial Disputes Act, 1947, seeking approval of its action of imposition of punishment of dismissal from service upon respondent no.4-workman, and the same was allowed only on 11.11.1997, and thereupon, respondent no.4-workman preferred a demand notice on 08.05.1998, i.e. within 06 months. It is, therefore, contended that there was no delay, whatsoever, on the part of respondent no.4-workman in initially raising the industrial dispute before the competent authority.

11. This Court has considered the rival submissions as made by learned counsel for the parties concerned, and has perused the entire case file.

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12. As discussed above, the only issue that now survives for consideration before this Court pertains to the legality, and validity of the reference order dated 08.02.2010.

13. The challenge to the reference (*supra*), was made by the petitioner-management, primarily, on two grounds, namely; (i) it is barred by the principle of *res judicata*; and, (ii) it is vitiated on account of delay and laches.

14. For better adjudication of the issue involved in the instant matter, let's have a glimpse upon certain relevant facts, *qua* which there is no wrangle amongst the parties concerned.

i. The petitioner-management, appointed respondent no.4-workman, through an appointment letter dated 28.11.1983 and he joined the services on 13.12.1983.

ii. On account of the alleged misconduct of respondent no.4-workman, a charge-sheet was served upon him on 09.08.1993. After conducting a domestic inquiry, he was dismissed from service vide order dated 16.09.1994.

iii. Since an industrial dispute regarding certain general demands was already pending between the workmen and the petitioner-management, before the Industrial Tribunal concerned, the petitioner-management was required to seek approval of its action under Section 33(2)(b) of the Act of 1947, of imposing the punishment of dismissal from service upon respondent no.4-workman. Accordingly, an application

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seeking such approval was moved, which ultimately came to be allowed by the Industrial Tribunal vide order dated 11.11.1997. Thereupon, respondent no.4-workman preferred a demand notice on 08.05.1998, i.e. within a period of six months from the date of grant of approval.

iv. Pursuant to the above demand notice, the Additional Labour Commissioner concerned, made a reference to the Industrial Tribunal concerned, on 24.03.1999 (Annexure P-3). However, the said reference was dismissed for want prosecution vide Award dated 13.06.2002 (Annexure P-4). The relevant is extracted hereinafter:-

“When the case was taken up today, none came present on behalf of the workman. Even the workman himself did not come present. It appears that the workman is not interested in pursuing his case. The reference fails and is dismissed for want of prosecution. No order as to costs.”

15. A perusal of the aforesaid Award clearly reflects that the Industrial Tribunal has not adjudicated the issue on merits. Rather, the reference was dismissed, solely on account of the non-appearance of the respondent no.4-workman, and his failure to prosecute the proceedings.

16. Subsequently, on the same cause of action, the Assistant Labour Commissioner made a fresh reference vide order dated 08.02.2010. Now, the legality and validity of the said reference order, is under challenge through the instant writ petition.

17. This issue is no more *res integra*. The Hon'ble Supreme Court, in its judgement rendered in **Virendra Bhandari's** case (*supra*),



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has categorically, held that in absence of adjudication of a matter on its merits on earlier occasion, second reference is maintainable. The relevant observation is extracted hereinafter:-

“3. However, the Government by another order dated 20.12.1988 made a reference of a dispute to the Tribunal on the same questions on which earlier reference had been made. On this occasion, the Tribunal adjudicated the matter and made an award which was challenged before the High Court by the respondents. The High Court found that the Tribunal had given a finding on the earlier occasion that no industrial dispute exists which is in itself a determination of the question relating to the industrial dispute and would fall within the definition of term 'award' under the Industrial Disputes Act and, therefore, second reference was incompetent. Inasmuch as no claim petition had been filed by the appellant on the earlier occasion when the reference was made, it is not permissible for them to agitate the matter any further. We fail to appreciate neither the manner in which the Tribunal disposed of the matter on the first occasion nor the manner of approach made by the High Court.

4. A perusal of the award made on the earlier occasion will clearly indicate that there is no adjudication of the dispute at all. All that was stated was that the concerned parties had not appeared before the Tribunal and in such an event, the Tribunal should have noted its inability to record the finding on the issue referred to it not that the dispute itself does not exist. When there is no adjudication of the matter of merits, it cannot be said that the industrial dispute does not exist. If the industrial dispute still exists as is opined by the Government such a matter can be referred under Section 10 of the Industrial Disputes Act. What is to be borne in mind in proceedings of this nature is that the industrial-disputes are referred to the Labour Court or the Industrial Tribunal for maintenance of industrial peace and not merely for adjudication of the dispute between two private parties. That aspect seems to have been lost sight of by the Tribunal on the first occasion and by the High Court in the order under appeal. In this background, it was certainly permissible for the Government to have made the second reference on which occasion after inquiring into the matter, the Tribunal adjudicated the matter finally.”

18. This Court, in **“Bhim Sen Sharma vs. Presiding Officer, Labour Court, Patiala, and others” 2009 (4) SCT 597**, while following the ratio laid down in **Virendra Bhandari's** case (*supra*), held that simpliciter withdrawal without obtaining an adjudication cannot be bar



for a fresh reference. The relevant is extracted hereinafter:-

“9. Although not of a similar situation but an issue akin to it was dealt with in **Jorki Andewali Co-op. Agriculture Service Society Limited v. Presiding Officer, Labour Court, Bhatinda, 1994(3) SCT 391: 1994(4) RSJ 570**, where this Court held that when a civil suit was filed by a workman and when the same was dismissed as withdrawn with permission to file a fresh suit on the same cause of action, there involved no determination on the rights of the workman on merits of the case and a fresh reference would not be barred. In the above case, the earlier litigation was one of a civil suit and in this case, the earlier proceeding between the same parties was a reference before the Labour Court itself. In that case, there was a reference to the fact that the petitioner had sought for permission to file a fresh suit on the same cause of action. It is not seen from the judgment whether the Civil Court had indeed granted such permission. Even without such particulars, this Court had held that since no determination of rights had taken place on the merits, a fresh reference was not barred. In this case also, it is not possible to secure any definite information as to whether any permission had been granted. The only thing that is certain and which is not disputed by either party was that the previous reference was withdrawn without an adjudication on merits. That, in my view, is sufficient for holding that the mere withdrawal without obtaining an adjudication cannot bar a fresh reference.”

19. Similarly, the Andhra Pradesh High Court in “**Danala Apparao and ors. vs. Presiding Officer, Labour Court, Guntur and others.**” Law Finder Doc.Id #1578732, has taken a similar view. The relevant observation is extracted hereinafter:-

“8. In **Bombay Gas Co. v. Jagannath Pandurang (1975) 4 SCC 690**, relied upon by the learned counsel for the employer, it was held that the principles of res judicata apply to adjudications by the Labour Tribunals. On the basis of this decision, it is alleged that the award in L.D.No.148 of 1997 is hit by res judicata. However, in **Mathuraprasad Bajoo Jaiswal v. Dosibhai NB Jeejebhoy (1970) 1 SCC 613**, it was observed that a 2nd reference as well as a 2nd industrial dispute would be maintainable when the 1st industrial dispute was not decided on merits.”

20. Similarly, the Gujarat High Court has also taken a similar view in “**Amreli Municipality vs. Shantibhai Dhyabhai Jethva and**



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others”, Law Finder Doc. Id #2721407. The relevant is extracted hereinafter:-

“11. Considering the above decisions, it is settled position of law that if the matter is previously heard and finally decided by the Court, then in the subsequent proceedings, principle of res-judicata operates. Here in the present case, undisputably the order was not on merits but due to absence of the workman the reference was rejected. In that event in the opinion of this Court, the principle of res-judicata would not have applicability.”

21. The Division Bench of this Court in “**Gurbhej Singh vs. State of Punjab and another**” (2003) 3 SCT 399, has also laid down the same principle, and held that the reference which has not been adjudicated on merits, the second reference cannot be held as barred by *res judicata*. The relevant is extracted hereinafter:-

“13. In the Sight of the afore-mentioned judgments of Bombay, Madhya Pradesh and Mysore High Courts and the Supreme Court, we shall now consider whether award dated 11.10.1984 passed by respondent No. 2 can be treated as an award within the meaning of Section 2(b) of the Act and, therefore, the second reference made by the State Government was barred by resjudicata. A reading of Annexure P. 16 shows that first reference made by the State Government was dismissed by respondent No.2 for non-prosecution. He passed that order because representative of the appellant gave out that his client does not want to pursue the reference and would avail remedy elsewhere. This shows that respondent No.2 did not make any adjudication on the merits of the dispute referred by the government. He did not even decide the issue relating to maintainability of the reference. It is, thus, clear that respondent No. 2 did not decide the *lis* between the parties. To put it differently, respondent No.2 did not make any determination of the industrial dispute raised by the appellant. Therefore, even though respondent No. 2 had described his order (Annexure P16) as an award, the same cannot be treated as an award in the eye of law and the reference made by the State Government vide notification dated 17.9.1989 cannot be held as barred by res judicata.”

22. On the anvil of the principles laid down in the above judgements, this Court examined the facts of the instant case. In the case

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in hand, the earlier reference was dismissed for want of prosecution, therefore, there exists no legal bar to a subsequent reference being made for adjudication on merits.

23. So far as, the second issue raised by learned senior counsel for the petitioner-management, with regard to delay and laches, is concerned, it is pertinent to note that the petitioner-management, moved an application under Section 33-2(b) of the Industrial Disputes Act, 1947, seeking approval of its action of imposition of punishment of dismissal from service upon respondent no.4-workman, and the same was allowed only on 11.11.1997, and thereafter, respondent no.4-workman served a demand notice on 08.05.1998. Thus, the demand notice was served within a period of 06 months. Therefore, it cannot be said that it suffers from delay or laches.

24. However, it is noticed that the second demand notice on the same cause of action was preferred by respondent No. 4-workman after a lapse of about 5½ years, i.e. on 25.03.2008.

25. In **UP State Road Transport's** case (*supra*), the Hon'ble Supreme Court has considered this issue and held that the Labour Court, should not have entertained the industrial dispute if there is an enormous delay. It was also observed, that this Court in its catena of judgments, has held that delay cannot by itself be sufficient reason to reject the industrial disputes, nevertheless, the delay cannot be unreasonable. The relevant is extracted hereinafter:-

“7. We are of the view that in the facts and circumstances of the



case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court should not have entertained the industrial dispute given the enormous delay. This Court has in several decisions held that while delay cannot by itself be sufficient reason to reject an industrial dispute, nevertheless the delay cannot be unreasonable. The decision in *Prakash Chandra Sahu*² has reaffirmed this principle. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent.”

26. Following the ratio laid down in the aforesaid judgment, this Court can safely conclude that the delay cannot by itself be a sufficient ground to reject an industrial dispute, nevertheless, the delay must not be unreasonable, and in the said case, delay of 13 years was held to be unreasonable.

27. In the instant case, as explained above, the respondent no.4-workman, at first instance, preferred the demand notice dated 08.05.1998, i.e. within a period of 06 months from the date of grant of approval of imposition of punishment of dismissal from service by the Industrial Tribunal vide order dated 11.11.1997. However, the second demand was raised on the same cause on 25.03.2008, i.e. after a lapse of about 5 ½ years of dismissal of earlier reference on 13.06.2002, for want of prosecution, which is already held to be an Award, but, not on merits.



28. The question, as to whether, there exists any unreasonable delay on the part of respondent no.4-workman in raising demand for second time for the same cause would be a mixed question of fact and law, which can appropriately be examined by the Industrial Tribunal concerned, at the relevant stage, while adjudicating the impugned reference. Therefore, this Court refrains itself from making any observation on the said issue, leaving it open for consideration by the Industrial Tribunal, at an appropriate stage.

29. *In suma*, this Court does not find any merit in the submissions as made on behalf of the petitioner-management, requiring this Court, to set aside the reference order dated 08.02.2010, at its initial threshold. Accordingly, the instant petition is hereby, **dismissed**.

30. All pending application(s), if any, also stand **disposed** of accordingly.

June 25, 2026
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes
Whether Reportable.	:	Yes