DIRECTOR, FOOD AND SUPPLIES, PUNJAB AND ANR. A

v.

GURMIT SINGH

APRIL 17, 2007

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.] B

Labour Laws:

Industrial Disputes Act, 1947:

C

s.10--Reference to Labour Court—Labour Court, without deciding pleas of non-applicability of the Act and 9 years delay in making the claim, directing reinstatement of workman—High Court declining to interfere—Held, Labour Court having not adjudicated on the jurisdictional aspect and delay, orders of Labour Court and High Court set aside—Matter remitted to Labour Court for adjudication on these aspects—Jurisdiction of Labour Court—Delay/Laches. D

Respondent in Civil Appeal No. 7637/2004 was engaged as Chowkidar by the appellants on 1.6.1985 on monthly wages of Rs. 400/-. His services were terminated on 25.8.1986. On reference under s.10(4) of the Industrial Disputes Act, 1947, the Labour Court held that the workman had worked for more than 240 days and directed his reinstatement with continuity of service. The writ petition of the employers having been dismissed by the High Court, they filed the appeal. Civil Appeal nos. 6766/2004 and 2608/2004 were also filed on similar facts. E

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It was contended for the appellants that both the Labour Court and the High Court failed to decide the please of non-applicability of the Industrial Disputes Act, 1947, and 9 years delay in making the claim.

Allowing the appeals and remitting the matters to Labour Court, the Court G

HELD: In the instant case apart from the fact that the long delay aspect has not been considered by the Labour Court, it is also did not decide the jurisdictional fact about the applicability of the Industrial Disputes Act, 1947.

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A **That being so, the order of the Labour Court as affirmed by the High Court, cannot be sustained and stands quashed. The Labour court would adjudicate on these aspects. [Paras 6 and 8] [264-G-H; 265-B]**

National Engineering Industries Ltd. **v.** *State of Rajasthan and Ors.*, **[2000] 1 SCC 371 and** *Sapan Kumar Pandit* **v.** *U.P. State Electricity Board*
B *and Ors.*, **[2001] 6 SCC 222, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7637 of 2004.

From the Judgment and Order dated 11.11.2002 of the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No. 17879 of 2002.
C

WITH

C.A. Nos. 6766/2004 & 2608/2004.

Kuldip Singh, R.K. Pandey, Sanjay Katyal, T.P. Mishra and Arun K.
D Sinha for the Appellants.

Suresh Kumari, Dinesh Verma and A.P. Mohanty for the Respondent.

The Judgment of the Court was delivered by

E **Dr. ARIJIT PASAYAT, J.** 1. Challenge in these appeals is to the judgment of the Division Bench of the Punjab and Haryana High Court dismissing the writ petitions filed by the present appellants. Challenge in the writ petitions was to the order passed by the Presiding Officer, Labour Court, Patiala (in short the 'Labour Court'). Background facts in a nutshell are as follows:

F 2. The dispute in three appeals being common, factual position in Civil Appeal No. 7637 of 2004 is noted.

Civil Appeal No.7637/2004

3. Reference was made to the Labour Court under Section 10(1)(c) of the
G Industrial Disputes Act, 1947 (in short the 'ID Act') of the following purported dispute:

> "Whether termination of services of Gurmit Singh-Workman is justified and in order? If not, to what relief is he entitled?"

H The case of the workman was that he joined the present appellants as

Chowkidar and worked therein from 1.6.1985 to 24.8.1986. His services were terminated on 25.8.1986 by the Management without service of any notice, holding of any enquiry or payment of any compensation. He was getting Rs.400/-p.m. at that time as wages. He is covered under the Industrial Employment (Standing Orders) Act, 1946 (in short the 'Standing Orders Act'). The Management did not comply with the principles of natural justice while terminating his services. The notice of reference was given to the present appellants. It was stated in the written statement inter alia that the claimant was working as Chowkidar on daily wages. His services ended with the end of each working day. The claim of the claimant that he had worked from 1.6.1986 to 24.8.1986 is not correct. The services of the claimant were dispensed with as he was surplus. No notice or enquiry or compensation was required as the claimant was a worker on daily wages. He was working in the department on daily wages as fixed by the Deputy Commissioner, Sangrur from time to time. It was also pleaded in the preliminary objections that there are three categories of Chowkidars in the Food and Supplies Department to safeguard the food grains stocks. The first category consists of regular Chowkidars according to the sanctioned strength drawing regular pay scale. The second category consists of temporary Chowkidars. They are recruited through employment exchange and draw emoluments equal to the regular Chowkidars. The third category consists of daily wages Chowkidars who draw fixed daily wage from time to time fixed by the department of concerned districts. The services of the Chowkidars on daily wages end with the end of each working day. Their strength increased/decreased with the increase/decrease of the food grains stocks. The services of the daily wages Chowkidars were dispensed with on becoming surplus. The workman in the present case belonged to the third category i.e. daily wages Chowkidar. His services were dispensed with on becoming surplus alongwith others. It was also stated that the present appellants cannot be treated as an industry and the ID Act has no application. The Labour Court relied on certain documents and concluded that the workman had worked for more than 240 days. Unfortunately, the Labour Court did not record any finding about the non applicability of the ID Act. It was noted that the workman was gainfully employed after the termination of his services. Accordingly, direction was given for re-instatement with continuity of service. This finding was recorded primarily on the ground that he had worked for more than 240 days. No finding was recorded on the plea taken by the present appellants that the claim was made after 9 years without explaining the belated approach.

4. The High Court dismissed the writ petitions filed by the present

A appellants on the ground that even if there was belated approach, the Court could not decline to grant relief but it could mould the relief.

5. In support of the appeals, learned counsel for the appellants submitted that both the trial court and the High Court did not notice the basic challenge of the appellants about the non-applicability of the ID Act. Apparently, the B Labour court had not considered the plea about non applicability of the ID Act. This was specifically pleaded. It is true that the Labour court could not have declined to answer the reference. The jurisdiction of the Tribunal and the Labour court as the case may be in dealing with an industrial dispute is limited. The point was mentioned in Section 10(4) of the ID Act in *National* C *Engineering Industries Ltd.* v. *State of Rajasthan and Ors.*, [2000] 1 SCC 371. It was held that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute which could be the subject matter of reference for adjudication to the Tribunal under Section 10 of the ID Act. Thus the existence of the industrial dispute is a jurisdictional factor. Absence of jurisdictional fact results in invalidation of the reference. D The Tribunal or the Labour Court under Section 10 gets jurisdiction to decide an industrial dispute only upon a reference by the appropriate government. The Tribunal or the Labour Court cannot invalidate the reference on the ground of delay. If the employer makes a grievance that the workman has made a stale claim then an employer can challenge the reference by way of E a writ petition and contend that since the claim is belated there was no industrial dispute. The Tribunal or the Labour Court cannot strike down the reference on this ground. As observed in *Sapan Kumar Pandit* v. *U.P. State Electricity Board and Ors.*, [2001] 6 SCC 222 there are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval, it is reasonably possible to conclude F in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons it does not cause the dispute to wane into total eclipse. The long delay for making the adjudication could be considered by the Adjudicating Authority while moulding the reliefs. That is a different matter altogether.

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6. In the instant case apart from the fact that the long delay aspect has not been considered by the Labour Court it also did not decide the jurisdictional fact about the applicability of the ID Act. That being so, the order of the Labour court as affirmed by the High Court cannot be sustained and stands H quashed. The appeal is allowed without any order as to costs.

7. In view of our conclusions in Civil Appeal No.7637/2004, Civil Appeal Nos. 6766 of 2004 and 2608 of 2004 are also allowed on the same terms with no order as to costs. A

8. The matter is remitted to the Labour court to adjudicate on these aspects. Since the matter is pending since long the Labour court would do well to dispose of the matter within four months from the date of receipt of this order. B

R.P. Appeals allowed.