

KARAN SINGH
v.
M/S EXECUTIVE ENGINEER HARYANA STATE MARKETING
BOARD

SEPTEMBER 28, 2007

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Labour Laws:

Industrial Disputes Act, 1947—ss. 10(1) and 25F—Delayed raising of dispute by the workman—Challenging his termination as violative of s. 25F—Reference of Dispute—Claim rejected on the sole ground of delay despite holding that termination was violative of s. 25F—By Labour as well as High Court—On appeal, held: Reference wrongly invalidated on the sole ground of delay—As the Reference was made by the Government and the Labour Court held that termination was violative of s. 25F—The remedy available to the employer was to challenge the Reference itself by way of Writ Petition—In view of long lapse of time and in absence of explanation for delay, employer directed to pay Rs. 60,000 as full and final settlement.

Delay—In seeking reference to Industrial Tribunal—Determination of—Held: Would depend on the facts of each case.

Appellant-workman, made a claim after 6 years of termination of his service by the respondent—Board, on the ground that the termination was in violation of section 25-F of Industrial Disputes Act. State Government made the reference to Labour Court u/s 10(1) of the Act. Labour Court, though held that the termination was in violation of Section 25F, answered the reference in favour of the employer-Board on the ground that the claim was highly belated. The Writ Petition thereagainst was also dismissed confirming the order of Labour Court.

In appeal to this Court the question for consideration was whether

A the reference of the workman could be rejected on the sole ground of delay when Government itself made reference for adjudication of the dispute.

Allowing the appeal, the Court

B HELD: 1. The Industrial Tribunal under Section 10 of Industrial Disputes Act, 1947 gets its jurisdiction to decide an industrial dispute only upon a reference by the appropriate Government. The Industrial Tribunal cannot invalidate the reference on the ground of delay. If the employer says that the workman has made a stale claim then the
C employer must challenge the reference by way of Writ petition and say that since the claim is belated, there was no industrial dispute.

[Para 9] [429-D-E]

D *Management of Express Newspapers (Private) Ltd. v. The Workers and Ors.*, AIR (1963) SC 569 and *National Engineering Industries Ltd. v. State of Rajasthan and Ors.*, [2000] 1 SCC 371, referred to.

E 2. In the present case, the Industrial Tribunal has held that the employer has violated Section 25F. If so, the order of termination is bad in law. It has to be struck down. In the present case, it has been struck
down. However, the Tribunal had refused to grant any relief on the ground of delay. The Tribunal has no authority to invalidate the reference, particularly when it has found that the order of termination violates Section 25F of the Act. [Para 9] [429-F]

F 3. So far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case. [Para 11] [430-D]

G 4. In the background of the present case normally the award of the Labour Court and the High Court would have been set aside. But because of long passage of time, it would be inappropriate, particularly when appellant has not even offered any semblance of explanation for the delay. Accordingly it is directed that the respondent-Board shall pay a sum of Rs.60,000/- in full and final settlement of appellant's
H entitlements. [Paras 15 and 16] [432-F-G]

Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors., [2000] 2 SCC 455; *S.M. Nilajkar and Ors. v. Telecom District Manager, Karnataka*, [2003] 4 SCC 27; *Management of Sudamdih Colliery of M/s Bharat Coking Coal Ltd. v. Their Workmen represented by Rashtriya Colliery Mazdoor Sangh*, (2006) 1 Supreme 282 and *Chief Engineer, Ranjit Sagar Dam and Anr. v. Sham Lal*, [2006] 9 SCC 124, relied on.

Sapan Kumar Pandit v. U.P. State Electricity Board and Ors., [2001] 6 SCC 222, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4561 of 2007.

From the Judgment and Order dated 11.4.2005 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 5442/2005.

Jasbir Singh Malik and S.K. Sabharwal for the Appellant.

Ajay Siwach and T.V. George for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by the Division Bench of the Punjab and Haryana High Court dismissing the writ petition filed by the appellant questioning the correctness of the decision rendered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar.

3. The reference made to the Labour Court by the State Government of Haryana in terms of Section 10(1) of the Industrial Disputes Act, 1947 (in short the 'Act') was answered in favour of the respondent (hereinafter referred to as the 'Board') holding that the claim was highly belated and therefore dis-entitled the appellant from any relief.

4. A brief reference to the factual aspects would suffice.

The appellant was appointed as DPL in August 1993 and worked upto October 1994. According to the appellant his services were terminated without any charge sheet or holding any enquiry though he had worked for more than 240 days. In that context it was contended that

- A provisions of Section 25-F of the Act were not complied with. He had prayed for re-instatement with full back wages alongwith all consequential benefits. The claimant who was examined as WW-1 had stated that he had joined the respondent-Board as DPL on 1.8.1993 and was getting Rs.1120/- p.m. and had worked till October 1994 continuously when his
- B services were terminated. Grievance was made that the workers junior to him had been regularized and a departure was made in his case.

- The respondent-Board took the stand that the services of the claimant were required as DPL as and when required and he had really not completed 240 days. A stand was taken that the claim was highly belated.
- C It is to be noted that in the cross examination appellant had admitted that he had no proof of having worked from August 1993 to October 1994. The claim petition was filed in the year 2000. The notice dated 6.6.2000 was the first one and on failure of conciliation, reference was made on 8.2.2001. The appellant should have explained inaction on his part. Labour
- D Court took the view that the claim was highly belated. If the appellant felt that the order of termination was illegal without following due procedure, he should have come up with demand notice within a reasonable time. It was held that though no limitation is prescribed, but it would be unequitable to re-open the closed chapter after a long time. The
- E appellant was therefore held not to be entitled to any relief.

Writ petition filed by the appellant was dismissed on the ground that the demand notice had been raised after six years.

- F 5. Learned counsel for the appellant has submitted that there being no period of limitation prescribed and at the most the relief could have been moulded instead of rejecting the claim.

6. Learned counsel for the respondent supported the order of the High Court.

- G 7. In the appeal the main issue which arises for determination is as follows:

- H “Whether the reference of the Petitioner/workman could be rejected on the sole ground of delay when Government itself made reference for adjudication of the issue/ dispute.”

8. In the case of *Management of Express Newspapers (Private) Ltd. v. The Workers and Ors.*, reported in AIR (1963) SC 569 it has been held that the jurisdiction of the Tribunal in dealing with industrial disputes is limited to the points mentioned in Section 10(4). A

9. In the case of *National Engineering Industries Ltd. v. State of Rajasthan and Ors.*, [2000] 1 SCC 371 it has been held vide para 24 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 Industrial Tribunal under Section 10. This is because existence of the industrial dispute is a jurisdictional fact. Absence of such jurisdictional fact results in the invalidation of the reference. For example, even under the Income Tax Act, 1961 as it stood earlier, the Income Tax Officer must have reason to believe escapement of income. This "reason to believe" is a jurisdictional fact, therefore, writ petitions were maintainable in cases where the High found absence of basic facts for reopening the assessment. The industrial Tribunal under Section 10 gets its jurisdiction to decide an industrial dispute only upon a reference by the appropriate government. The Industrial Tribunal cannot invalidate the reference on the ground of delay. If the employer says that the workman has made a stale claim then the employer must challenge the reference by way of Writ petition and say that since the claim is belated, there was no industrial dispute. The Industrial Tribunal cannot strike down the reference on this ground. In the present case, the Industrial Tribunal has held that the employer has violated Section 25F. If so, the order of termination is bad in law. It has to be struck down. In the present case, it has been struck down. However, the Tribunal had refused to grant any relief on the ground of delay. The Tribunal has no authority to invalidate the reference, particularly when it has found that the order of termination violates Section 25F of the Industrial Disputes Act, 1947. B
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10. In *Sapan Kumar Pandit v. U.P. State Electricity Board and Ors.*, [2001] 6 SCC 222, it has been held, vide para 15, as follows: G

"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 H

A the long interval, it is reasonably possible to conclude 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. In this case, when the
B Government have chosen to refer the dispute for adjudication under
Section 4-K of the U.P. Act the High Court should not have
quashed the reference merely on the ground of delay. Of course,
the long delay for making the adjudication could be considered by
the adjudicating authorities while moulding its reliefs. That is a
C different matter altogether. The High Court has obviously gone
wrong in axing down the order of reference made by the
Government for adjudication. Let the adjudicatory process reach
its legal culmination.”

D 11. So far as delay in seeking the reference is concerned, no formula
of universal application can be laid down. It would depend on facts of
each individual case.

12. However, certain observations made by this Court need to be
noted. In *Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors.*,
E [2000] 2 SCC 455 it was noted at paragraph 6 as follows:

“6. Law does not prescribe any time-limit for the appropriate
Government to exercise its powers under Section 10 of the Act.
It is not that this power can be exercised at any point of time and
to revive matters which had since been settled. Power is to be
exercised reasonably and in a rational manner. There appears to
F us to be no rational basis on which the Central Government has
exercised powers in this case after a lapse of about seven years
of the order dismissing the respondent from service. At the time
reference was made no industrial dispute existed or could be even
G said to have been apprehended. A dispute which is stale could not
be the subject-matter of reference under Section 10 of the Act.
As to when a dispute can be said to be stale would depend on
the facts and circumstances of each case. When the matter has
become final, it appears to us to be rather incongruous that the
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reference be made under Section 10 of the Act in the A
circumstances like the present one. In fact it could be said that there
was no dispute pending at the time when the reference in question
was made. The only ground advanced by the respondent was that
two other employees who were dismissed from service were
reinstated. Under what circumstances they were dismissed and B
subsequently reinstated is nowhere mentioned. Demand raised by
the respondent for raising an industrial dispute was *ex-facie* bad
and incompetent.”

13. In *S.M. Nilajkar and Ors. v. Telecom District Manager,* C
Karnataka, [2003] 4 SCC 27 the position was reiterated as follows: (at
para 17)

“17. It was submitted on behalf of the respondent that on account
of delay in raising the dispute by the appellants the High Court was
justified in denying relief to the appellants. We cannot agree. It is D
true, as held in *M/s. Shalimar Works Ltd. v. Their Workmen*
(supra) AIR (1959) SC 1217, that merely because the Industrial
Disputes Act does not provide for a limitation for raising the dispute
it does not mean that the dispute can be raised at any time and
without regard to the delay and reasons therefor. There is no E
limitation prescribed for reference of disputes to an industrial
tribunal, even so it is only reasonable that the disputes should be
referred as soon as possible after they have arisen and after
conciliation proceedings have failed particularly so when disputes
relate to discharge of workmen wholesale. A delay of 4 years in F
raising the dispute after even reemployment of the most of the old
workmen was held to be fatal in *M/s. Shalimar Works Limited*
v. Their Workmen (supra) AIR (1959) SC 1217, In *Nedungadi*
Bank Ltd. v. K.P. Madhavankutty and Ors. (supra) AIR (2000)
SC 839, a delay of 7 years was held to be fatal and disentitled to G
workmen to any relief. In *Ratan Chandra Sammanta and Ors.*
v. Union of India and Ors. (supra) (1993) AIR SCW 2214, it
was held that a casual labourer retrenched by the employer deprives
himself of remedy available in law by delay itself, lapse of time
results in losing the remedy and the right as well. The delay would H

A certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in *Daily Rated Casual Employees Under P&T Department v. Union of India*, (supra) AIR (1987) SC 2342, the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal cum-Labour Court. We do not think that the appellants deserve to be non suited on the ground of delay.”

E 14. The above position was highlighted recently in *Employers in relation to the Management of Sudamdih Colliery of M/s Bharat Coking Coal Ltd. v. Their Workmen represented by Rashtriya Colliery Mazdoor Sangh*, (2006) 1 Supreme 282 and *Chief Engineer, Ranjit Sagar Dam & Anr. v. Sham Lal*, [2006] 9 SCC 124.

F 15. In the aforesaid background, we would have normally set aside the award of the Labour Court and the High Court. But because of long passage of time, it would be inappropriate, particularly when appellant has not even offered any semblance of explanation for the delay.

G 16. Accordingly we direct that the respondent-Board shall pay a sum of Rs.60,000/- within a period of six weeks in full and final settlement of appellant's entitlements.

17. The appeal is allowed to the aforesaid extent. There will be no order as to costs.