

(2012) 11 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 10923 of 2010 (O and M)

Assistant General Manager (Admn.)	Vs	APPELLANT
Presiding Officer and another		RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Citation : (2013) 1 LLN 268 : (2013) LLR 317

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Vikas Chatrath, for the Appellant; V.D. Sharma, Advocate, for the Respondent

Judgement

Rajesh Bindal, J.—The award of Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court-1, Chandigarh (for short, "the

Tribunal") dated 9.2.2010 has been impugned in the present petition filed by the management. It is a case in which the respondent-workman

worked for a period of about 181 days during the period from October, 1989 to March, 1991 on daily wages as Messenger. A demand notice

was got issued by him on 19.9.1997. As the dispute could not be resolved during re-conciliation, the matter was referred to the Tribunal, where

the award was passed against the petitioner-management, which has been impugned in the present petition.

2. Learned counsel for the petitioner submitted that the question referred to the Tribunal was as to whether the action of the management in

terminating the services of the workman, a daily rated messenger in Indri Branch, was justified, but deviating therefrom and rejecting the objection

raised by learned counsel for the management before the Tribunal, it had proceeded to deal with the case as if it had some inherent power under

the Constitution of India and could pass any order. A circular of the bank dated 1.5.1991, the cut-off date in which was extended up to 2.8.1991,

was considered and placing reliance thereupon, while not dealing with the issue referred, the Tribunal directed the management to absorb the

workman into service in terms of policy dated 2.8.1991 and further awarded him full back wages and consequential relief. The submission is that

the aforesaid award passed by the Tribunal is totally without jurisdiction. In support of the arguments, reliance was placed upon a judgment of

Hon''ble the Supreme Court in State Bank of Bikaner and Jaipur Vs. Om Prakash Sharma, . Second submission made by learned counsel for the

management is that in the case in hand, the workman had admittedly worked only for 180 days way back in 1989 to 91. The demand notice was

got issued only on 19.9.1997, i.e., after a delay of more than six years. The industrial dispute was not subsisting at that time. The workman having

abandoned the job did not think it appropriate to raise the dispute immediately in March or April, 1991 when his services were allegedly

terminated. He kept quiet for a long period. In such circumstances, the workman was not entitled to any relief whatsoever. In support of the

submission, reliance was placed upon a judgment of Hon''ble the Supreme Court in The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and

Others,

3. On the other hand, learned counsel for the workman submitted that there was no delay in raising the demand notice. Initially, the workman

raised demand notice on 19.9.1997, the same was rejected by the appropriate government on account of delay. The workman had to approach

this court and it was only after a direction was issued by this court that the dispute was referred to the Tribunal. In case, the question referred was

wrong, the respondent-workman cannot be made to suffer for the same. Once there was a circular issued by the bank providing for absorption of

the workers, who had worked in the bank, the workman was also entitled to the same relief. The persons, who had worked merely for 75 days,

had been absorbed, though the workman who worked for 180 days was not granted the same relief. The technicalities should not come in the way

of substantial justice. The Tribunal, while granting relief to the respondent-workman, has done complete justice considering the fact that the

workman herein is entitled to the relief in terms of the policy of the bank. The case of the workman deserves to be considered on humanitarian grounds.

4. Heard learned counsel for the parties and perused the paper book.

5. The facts which are not in dispute are that the respondent-workman in the present case worked for a period of 180 days during the period from

October, 1989 to March, 1991. The demand notice was got issued on 19.9.1997, i.e., after a delay of more than 6 years. After the workman

raised the demand notice and on failure of re-conciliation proceedings, the question referred to the Tribunal for decision was as follows:

Whether the action of the management of Zonal Office, State Bank of India, Haryana, Chandigarh in terminating the services of Shri Karam

Chand, daily rated messenger in the Indri Branch is justified? If not, what relief he is entitled?

6. The workman was satisfied with the question referred and continued with the proceedings before the Tribunal. The Tribunal, while not even

dealing with the issue referred, misdirected itself while referring to some policy of the bank regarding absorption of the employees, who had worked

with the bank for certain period. The Tribunal, while rejecting the objection raised by the management regarding going beyond the question

referred, answered the reference in favour of the workman while directing the bank to absorb the workman in service in terms of its policy,

whereas the question referred was merely as to whether services of the workman had been illegally terminated.

7. The issue as to whether the industrial court could travel beyond the question referred is well-settled. It derives its jurisdiction from the question

referred. Reference for the purpose can be made to *Mukand Ltd. Vs. Mukand Staff and Officers' Association*, .

8. In *State Bank of Bikaner and Jaipur's case (supra)*, Hon'ble the Supreme Court opined that jurisdiction of the Labour Court emanates from the

order of reference. It could not pass the award going beyond the terms of reference. That would amount to exceeding its jurisdiction. Any award

passed beyond the terms of reference would suffer from jurisdictional error. The error has to be corrected by the High Court in exercise of its

power of judicial review. The same was followed by Delhi High Court in *W.P.(C)*

No. 11346 of 2009--Municipal Corporation of Delhi v. Ram

Kishan, decided on 13.5.2011.

9. Considering the enunciation of law, as referred to above, it can safely be opined that the award of the Tribunal, while granting relief to the

workman placing reliance on some policy of the bank, is totally beyond its jurisdiction considering the fact that the question referred was merely as

to whether termination of service of the workman is illegal, hence, the same deserves to be set aside on that ground alone. However, still in this

situation as to what relief the parties are entitled to, namely, whether the case deserves to be remanded back for fresh consideration on the

question referred or is to be dealt with by this court will depend on the findings on the second contention raised by learned counsel for the

management that the dispute raised by the workman was highly belated. As already noticed above, the workman in the present case had merely

worked for a period of 180 days during the period from October, 1989 to March, 1991 and the demand notice was raised on 19.9.1997, i.e.,

more than 6-1/2 years later.

10. The issue as to whether a workman is entitled to the relief in case of a belated demand notice has been considered by Hon"ble the Supreme

Court and this Court time and again.

11. Hon"ble the Supreme Court in State of Karnataka and Another Vs. Ravi Kumar, , wherein the respondent did not choose to challenge the

termination for 14 years. Hon"ble the Supreme Court therein held that since reference was stale, it ought to have been rejected on that ground

alone. The relevant para has been reproduced hereunder:-

6. This Court has repeatedly held that stale claims should not be referred- vide The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others,

and Assistant Executive Engineer, Karnataka v. Shivalinga, (2002) 1 LLJ 457SC . We may also refer to the decision of Regl. Regional Provident

Fund Commissioner Vs. M/s. K.T. Rolling Mills Pvt. Ltd., . wherein this Court observed that: (SCC p. 182, para 4)

4..... 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

reasonableness.

12. In Haryana State Coop. Land Development Bank Vs. Neelam, , Hon''ble the Supreme Court held that the conduct of the respondents in

approaching the Labour Court after more than seven years was rightly considered a relevant factor by it in refusing to grant relief to them. It further

held that though Court cannot import limitation period when statute does not prescribe but at the same it does not mean that irrespective of facts

and circumstances of a case, stale claim should be entertained and relief granted by the authority concerned under the Act. This Court also had the

occasion to consider the issue in CWP No. 1301 of 2003, titled as Director, Food and Supplies Punjab and another Vs. Ashwani Kumar and

another, decided on 24.02.2004, CWP No. 932 of 2006, titled as National Dairy Research Institute, Karnal Vs. Yash Pal and another, decided

on 26.09.2006 and CWP No. 545 of 1986, titled as Management of M/s Dalmia Cement (Bharat) Ltd. Vs. State of Haryana and others, decided

on 27.01.2009, wherein it has been held that demand notice issued by the workman by raising an industrial dispute after a delay of more than

seven years is ex-facie bad and incompetent and therefore, the reference was held to be not maintainable before the Labour Court. It was further

held that appropriate Government should also examine cautiously raising of stale demand and only if the workman is able to render reasonable

explanation for the delay and is able to spell out existence and subsistence of industrial dispute, such reference for adjudication would be

sustainable. If such explanation is not forthcoming and the industrial dispute does not remain in existence, such stale demand should not be

entertained.

13. Considering the aforesaid principles of law, in my opinion, on account of dispute having been raised belated by the workman, he will not be

entitled to any relief.

14. As even on merits, the workman may not be entitled to any relief, merely because the Tribunal had gone beyond jurisdiction while dealing with

the question referred, it would be an exercise in futility to remand the matter back to the Tribunal, hence, the impugned award is set aside. The

petition stands disposed of.