
(2008) 04 CHH CK 0009
In the Chhattisgarh High Court

Bharat Aluminium Company Ltd.

APPELLANT

Vs

Dashrath Singh

RESPONDENT

Date of Decision : 07-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5

Citation : (2009) 1 MPHT 43 : (2008) 4 MPJR 36

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—This petition, filed by the Bharat Aluminium Company Limited (for short 'BALCO') impugns the order dated 13.12.2007 (Annexure P/1) passed by the Industrial Court in Civil Appeal No. 33/CGIR Act/A-II/07, whereby the order dated 04.04.2007, passed by the Labour Court, Korba, rejecting the application of the respondent on the ground of delay, was set aside.

2. The brief facts necessary for disposal of this case are that the respondent working as Senior Attendant was terminated by order dated 14.08.2004 (Annexure P/2). The respondent preferred a writ petition being No. 2473/2005 on 13.6.2005 in this Court. This Court, on 20.6.2005 permitted the respondent to withdraw the petition with liberty to file an appeal before the Labour Court. The respondent, thereafter preferred an application u/s 31(3) of the Chhattisgarh Industrial Relations Act, 1960 (for short 'the Act, 1960'). The petitioner preferred a preliminary objection under provisions of Section 62 of the Act, 1960, the limitation period is one year from the date of termination of services. The Labour Court, after having considered the objection of the petitioner, held that the application of the respondent was filed beyond the period of limitation with delay of 9 months and dismissed the application of the respondent on 04.04.2007 (Annexure P/6).

3. Feeling aggrieved, respondent preferred an appeal being Civil Appeal No. No.

33/CGIR Act/A-II/07, before the State Industrial Court, Chhattisgarh, Bench at Bilaspur. The Industrial Court, after having considered the submissions of both the parties, vide order dated 13.12.2007 (Annexure P/1), set aside the order dated 04.04.2007 (Annexure P/6) passed by the Labour Court, and remanded back the matter for fresh decision on merit. Thus, this petition.

4. Shri P.S.Koshy, learned Counsel appearing for the petitioner submits that the respondent has not preferred an application for condonation of delay alongwith application impugning the termination order. Section 62 of the Act, 1960 provides that if the dispute is connected with termination of the service of an employee, such proceedings shall commence within a period of one year from the date of termination of the concerned employee. There is no provision or power with the Labour Court to condone the delay. It is clear from the reading of provisions of Section 62 and 65 of the Act, 1960 that wherever legislature intended to confer power on the Court to condone the delay, it is specifically provided. In case of the Industrial Court, second proviso to Section 65 of the Act, 1960 provides that the Industrial Court, for sufficient reasons, may admit any appeal after expiry of such period in respect of matters specified in Clause `c" of paragraph (A) of Section 61 of the Act, 1960. It was provided in second proviso to Section 62 of the Act, 1960 that the Labour Court may, for sufficient reasons admit any application for declaration that the change is illegal under Act, after expiry of three months after the date of which the change was made. But in case of limitation prescribed for making an application for initiating proceeding u/s 62 (i) (a), (b), (c) of the Act, 1960, one/two years period of limitation has been prescribed and there is no power vested in the Labour Court for condonation of delay.

5. Per contra, Shri Sanjay Patel, learned Counsel appearing for the respondent submits that since the respondent had preferred a writ petition being No. 2437 of 2005, which was dismissed as withdrawn on 20.06.2005 with liberty to file an appeal before the Labour Court, the limitation ought to have commenced from 20.06.2005. The respondent has preferred an application on 01.05.2006 and the application was preferred within a period of one year from the date of order of the High Court i.e. on 01.05.2006. Thus, the application was within time and the order passed by the Industrial Court is just, proper and in the interest of justice.

6. I have heard rival contentions of the learned Counsel appearing for the parties, perused the pleadings and documents appended thereto. It is clear that the impugned termination order was passed on 14.08.2004 (Annexure P/2). Thereafter, the petitioner preferred a writ petition, which was dismissed as withdrawn on 20.06.2005 with liberty to file an application before the Labour Court (Annexure P/3). The instant application was filed thereafter on 01.05.2006 within a period of one year. The Industrial Court, after having considered all the facts, came to the conclusion that the respondent should not be not thrown out on the ground of delay particularly in the present case, when the writ petition was filed and the High Court granted liberty to file application before the Labour

Court. Therefore, the technical ground of counting limitation from the date of termination is not proper. Accordingly, the Industrial Court set aside the order dated 04.04.2007 passed by the Labour Court and remanded back the matter to the Labour Court for decision on merit.

7. It is true that in normal circumstances, if the Labour Court has no power to condone the delay in preferring an application against the order of termination, the delay cannot be condoned. The Supreme Court, in the matter of Damodaran Pillai and Ors. v. South Indian Bank Ltd¹, observed that the civil court in absence of any express power cannot condone the delay. For the purpose of condonation of delay in absence of applicability of provisions of Section 5 of the Limitation Act, 1963, the Court cannot invoke its inherent powers under provisions of Rule 106(3), order XXI of the Civil Procedure Code, 1908.

8. In the matter of Babulal Nagar v. Shree Synthetics Ltd.², the Supreme Court observed as under:

20. Ordinarily, the courts exercising extraordinary jurisdiction are loathe to interfere with an order remanding the matter to the authority directed to investigate facts. The Industrial Court had made an order of remand. The High Court was not justified in interfering with the same. By this uncalled for interference, it has merely prolonged the agony of the unemployed workmen and permitted the jurisdiction of the High Court under Article 226 to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from court to court for adjudication of peripheral issue avoiding decision on issues more vital to them. D.P. Maheshwari Vs. Delhi Administration and Others,

9. In the matter of Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Anr.³, the Supreme Court has held as under:

10...the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.

10. A Full Bench of the High Court of Madhya Pradesh at Jabalpur, in the matter of Mohammad Sagir v. Bharat Heavy Electricals Ltd. and Ors.⁴, while considering the provisions for scope of condonation of delay under provisions of Section 62 of the Act, 1960, observed as under:

29...The MPIR Act is a benevolent and beneficial statute. In the absence of a categorical and unequivocal mandate the Legislature....

The M.P.I.R. Act has been adapted by the State of Chhattisgarh as it is and renamed as C.G.I.R. Act, 1960. I am in respectful agreement with the view taken by the learned Full Bench of the High Court of Madhya Pradesh.

11. Further, in the matter of N. Balakrishnan v. M. Krishnamurthy⁵, the Supreme Court has observed as under:

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situation is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litum* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. It is well settled that in the case of Industrial Court, remanding the matter for fresh decision, this Court, while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, should not interfere with the order passed by the Industrial Court.

13. In view of the above, the petition is accordingly dismissed. No order as to cost.