
(2016) 05 SHI CK 0047
In the High Court Of Himachal Pradesh
Case No : CWP No. 2095 of 2008

Biri Singh

APPELLANT

Vs

State of H.P. and others

RESPONDENT

Date of Decision : 24-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1), 25G, 25H

Citation : (2016) 2 CLR 951 : (2016) 151 FLR 319 : (2016) ILRHP 1423 :
(2016) 4 LLN 408

Hon'ble Judges : Mr. Vivek Singh Thakur, J.

Bench : Single Bench

Advocate : Mr. Surinder K. Saklani, Advocate, for the Appellant; Mr. Rajat Chauhan, Law Officer, for the Respondent

Final Decision : Allowed

Judgement

Mr. Vivek Singh Thakur, J.—Present petition has been filed assailing communication dated 8th August, 2007 (Annexure P-4) conveying refusal by Labour Commissioner to refer the dispute to Labour Court under provisions of Industrial Disputes Act, 1947 (hereinafter referred to the Act) stating therein that the dispute had faded away and there was no justification of making reference to Labour Court in view of the judgment of this Court passed in CWP No. 398 of 2001 titled as M.C. Poanta Sahib v. State of H.P. and others and also for reason that petitioner had not completed 240 days in a calendar year.

2. The factual matrix of this case is that petitioner was engaged by respondent No. 3 as electric Coolie in March, 1995 against work of repair and maintenance of electrical installation in Government buildings under Electrical Sub Division, H.P.P.W.D., Mandi, on muster roll. Petitioner was disengaged after 30.04.1995.

3. Petitioner had submitted demand notice to the respondent No. 3 vide application dated 17.08.2005 giving reference of his representations dated 7.11.1995, 22.12.1997 and 8.01.2001, and name of 14 incumbents engaged

during the years 1998-2000 i.e. after the engagement and termination of petitioner. Petitioner had requested for reinstatement of his services.

4. Respondent No. 3 had replied to this demand notice vide letter dated 13.10.2005 (Annexure P-2). Engagement of petitioner in March, 1995 and disengagement after 30.04.1995 was admitted but it was stated that petitioner had not completed 240 days in calendar preceding year and therefore, no notice was required to be served upon him and it was also stated that petitioner had left the job in his own will and had not approached respondent No. 3 for re-engagement. The fact engaging more than 20 Beldars during the year 1998-2000 in continuation of those persons has not been specifically denied. However, it has been raised after period of more than 10 years.

5. Petitioner had filed rejoinder (Annexure-P-3) to the reply of respondent department to demand notice. In rejoinder, it has been specifically stated that at the time of disengagement respondent No. 3 had assured to call him as and when work will be available. It was also pointed out in this rejoinder that respondent No. 3 had not responded to the fact of fresh engagement of persons without calling the applicant and those juniors are being continued in the Department.

6. Demand notice was rejected and refusal to make reference has been conveyed vide communication dated 8.08.2007 (Annexure-P-4). This order is under challenge in present petition.

7. Petitioner has reiterated his claim and besides impugned communication (Annexure P-4), has placed on record Demand Notice dated 17.08.2005 (Annexure P-1). Reply and rejoinder thereto (Annexure P-2 and P-3) and representations dated 7.11.1995, 22.12.1997 and 8.01.2001 (Annexure P-5) and has sought direction to Labour Commissioner to make reference to Labour Court.

8. Petition has been resisted by respondents by filing replies. Reply to petition on behalf of respondents No. 1 and 2 has been filed purporting the said reply as reply on behalf of respondents No. 1 to 3. Another reply through respondent No. 3 has also been filed. Labour Court Commissioner in his reply has reiterated the stand taken in communication dated 8.08.2007 (Annexure P-4) and has justified refusal to make reference stating that appropriate government, acting under Section 12 (5) of the Act, did not find it proper to refer the case to Labour Court in view of the judgment of Division Bench of this Court in CWP No. 398 of 2001 titled as M.C. Paonta Sahib v. State of H.P. and others.

9. In reply filed by respondent No. 3 it has been stated that petitioner had not approached the department for re-engagement and had served only his demand notice in the year 2005 after more than 10 years and the claim of the petitioner is barred by limitation and further stated that respondent No. 2 has rightly refused to make the reference to Labour Court. It has been further stated that petitioner had worked only 47 days and had not completed 240 days in preceding calendar year and therefore no notice was given to him. Lastly, it has been

prayed that petition being devoid of merits be dismissed.

10. In rejoinder averments made in petition has been reiterated by petitioner and it has been also stated that respondents were not responding to representation made by petitioner in 1997 and 2001 which have been placed on record as Annexure P-5 and have engaged and continuing favourites who are junior to petitioner.

11. Section 25-F of the Act, deals with condition precedent to retrenchment of workmen. Section 25-G deals with procedure for retrenchment. Section 25-H contains provision for Re-employment of retrenched workmen. As per Section 25 a workman, having continuous service for not less than one year under the employer, shall not be retrenched unless one month notice as prescribed in Section 25-F is given, workman has been paid and notice is served to the appropriate Government or such authority as prescribed in the Section 25-F. Admittedly, petitioner had not served for one year and had also not completed 240 days in a calendar year. Section 25-G provides that employer shall ordinarily retrench the workman who was the last person employed in that category. Section 25-H provides that after retrenchment of workman if employer proposes to engage any persons later on then employer shall give opportunity to the retrenched workman for re-employment in preference to other persons. So far as provisions of Section 25-G and Section 25-H are concerned there is no condition precedent of continuous service of one year under an employer.

12. The Apex Court in case titled as Central Bank of India v. S. Satyam and Others, (1996) 5 Supreme Court Cases 419 has held as under:-

"9. The plain language of Section 25- H speaks only of re-employment of retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of ?retrenchment? given in Section 2 (oo). Section 25-F also uses the word ?retrenchment? but qualifies it by use of the further words "workman....who has been in continuous service for not less than one year".

Thus, Section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman....who has been in continuous service for not less than one year". It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service

for not less than one year, covered by Section 25-F".

10. The next provision is Section 25-H which is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25-F. It does not require curtailment of the ordinarily meaning of the word 'retrenchment' used therein. The provision for reemployment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman.

11. Chapter V-A providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25-F applies but for all cases of retrenchment and, therefore, there is no reason to restrict application of Section 25-H therein only to one category of retrenched workmen. We are, therefore, unable to accept the contention of Shri Pai that a restricted meaning should be given to the word 'retrenchment' in Section 25-H. This contention is, therefore, rejected".

13. In present case there is no specific denial to the fact that respondent No. 3 had engaged persons during the year 1998-2000, who are being continued, without giving opportunity and offering re-employment to petitioner. Petitioner had not completed 240 days, in a calendar year and was not in service of the respondent No. 3 for continuous one year. Therefore, protection of section 25-F may not be available to petitioner. However, petitioner has right to be considered for reemployment in preference to others who were engaged in subsequent years after retrenchment of petitioner. Therefore, there is violation of Section 25-H of Industrial Disputes Act, 1947 in present case.

14. Second ground for refusal to make reference to Labour Court by Labour Commissioner is 10 years delay in raising demand/dispute by petitioner.

15. The Apex Court in case titled as Sapan Kumar Pandit v. U.P. State Electricity Board and others, (2001) 6 Supreme Court Cases 222, has held as under:-

"10. In considering the factual position whether the dispute did exist on the date of reference the Government could take into account factors, inter alia, such as the subsistence of conciliation proceedings. It is of no consequence that conciliation proceedings were commenced after a long period. But such conciliation proceedings are evidence of the existence of the industrial dispute".

"15. 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 in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanised by the workmen or the Union on account of other justified reasons it does not cause the dispute to wane into total eclipse".

16. The Apex Court in case titled as S.M. Nilajkar and others v. Telecom District

Manager, Karnataka (2003) 4 Supreme Court Cases 27, has held as under:-

"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 true, as held in *Shalimar works Ltd. v. Workmen* 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 without regard to the delay and reasons therefore. There is no 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 raising the dispute after even re-employment of the most of the old workmen was held to be fatal in *Shalimar Works Ltd. v. Workmen*. In *Nedungadi Bank Ltd. v. K.P. Madhavankutty* a delay of 7 years was held to be fatal and dis entitled the workmen to any relief. In *Ratan Chandra Sammanta v. Union of India* 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 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* 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".

17. The Apex Court in case titled as *Raghubir Singh v. General Manager, Haryana Roadways, Hissar* (2014) 10 Supreme Court Cases 301 has held as under:-

"15. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate Government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted

by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

16. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, it was held by this Court as follows-(SCC pp. 39-40, 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..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors.(supra) [JT 1993(3) SC 418], 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 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....."

(Emphasis laid by the Court)

17. In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

.....

45. It is an undisputed fact that the dispute was raised by the workman after he was acquitted in the criminal case which was initiated at the instance of the respondent. Raising the industrial dispute belatedly and getting the same referred from the State Government to the Labour Court is for justifiable reason and the same is supported by law laid down by this Court in Calcutta Dock Labour Board(supra). Even assuming for the sake of the argument that there was a certain delay and laches on the part of the workman in raising the industrial dispute and getting the same referenced for adjudication, the Labour Court is statutorily duty bound to answer the points of dispute referred to it by

adjudicating the same on merits of the case and it ought to have moulded the relief appropriately in favour of the workman. That has not been done at all by the Labour Court. Both the learned single Judge as well as the Division Bench of the High Court in its Civil Writ Petition and the Letters Patent Appeal have failed to consider this important aspect of the matter. Therefore, we are of the view that the order of termination passed by the respondent, the award passed by the Labour Court and the judgment & order of the High Court are liable to be set aside. When we arrive at the aforesaid conclusion, the next aspect is whether the workman is entitled for reinstatement, back wages and consequential benefits. We are of the view that the workman must be reinstated. However, due to delay in raising the industrial dispute, and getting it referred to the Labour Court from the State Government, the workman will be entitled in law for back wages and other consequential benefits from the date of raising the industrial dispute i.e. from 02.03.2005 till reinstatement with all consequential benefits."

18. Dealing with the limitation period to the proceedings in the Industrial Disputes Act, 1947, the Apex Court in case titled as *Jasmer Singh v. State of Haryana and another* (2015) 4 Supreme Court Cases 458, has held as under:-

"14. On issue No. 3, after adverting to the case of *State of Punjab v. Kali Dass*, wherein the High Court has observed that the workman cannot be allowed to approach the Labour Court after 3 years of termination of his services, upon which reliance placed by the respondent-employer with reference to the said plea the Labour Court has rightly placed reliance upon the judgment of this Court in *Ajaib Singh v. Sirhind Co-operative Marketing-cum-Processing Service Society Ltd.* in which it is observed by this Court that there is no period of limitation to the proceedings in the Act.

15. Accordingly, Issue No. 3 is answered against the respondent-management. The relevant paragraph from *Ajaib Singh*'s case is extracted herein below: (SCC p.90 para 10)

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to 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."

19. On the same issue in similar cases, Division Benches of this Court in CWP No. 6687 of 2014 decided on 24.09.2014, CWP No. 9467 of 2014 decided on

30.12.2014 and LPA No. 152 of 2015 decided on 28.09.2015 have relied upon ratio laid down by Hon"ble Supreme Court, in case titled as Raghbir Singh v. General Manager, Haryana Roadways, Hissar (2014) 10 Supreme Court Cases 301, and allowing the petition have directed Labour Commissioner to make reference to the Labour Court.

20. In the instant case the respondent No. 3 had engaged workman after disengagement of petitioner without giving opportunity to the petitioner by offering re-engagement to him. Employment and continuation of juniors in employment without offering re-employment is also cause of action to petitioner to raise Industrial Disputes under the Act. Petitioner was continuously pursuing the matter and asking for his re-engagement by submitting representations. The respondents have not bothered to rebut allegation of the petitioner engaging and continuing juniors to the petitioner during years subsequent to disengagement of petitioner.

21. In given circumstances of the case, it cannot be considered that there was delay in raising the industrial disputes on the part of petitioner. Besides, as held by Apex Court, Labour Court can always mould the relief according to the facts and circumstances in each case.

22. In view of the facts and circumstances of the case and ratio laid down by the Apex Court, present petition is allowed and impugned refusal to refer the matter to Labour Court conveyed vide communication dated 8.08.2007 (Annexure P-4) is quashed and Labour Commissioner is directed to make reference to the Industrial Disputes-cum-Labour Court within eight weeks from today. Pending application(s) if any stand disposed of. No order as cost.