
(2004) 12 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : CWP No. 550 of 2004

Deepa Ram

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 22-12-2004

Acts Referred:

Defence of India Rules, 1962 — Rule 81A
Limitation Act, 1963 — Article 137

Citation : (2005) 2 LLJ 1054

Hon'ble Judges : Deepak Gupta, J; Arun Kumar Goel, J

Bench : Division Bench

Advocate : Anil Chauhan and Yash Wardhan Chauhan, for the Appellant; M.S. Chandel, AG and D.C. Pathik, AAG, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Goel, J.—This writ petition is taken up at the joint request of learned counsel for the parties and also keeping in view the limited controversy involved in it.

2. Petitioner has challenged order dated February 24, 2003, Annexure P-1, passed by respondent No. 2. By means of impugned order, reference of dispute between the petitioner and Himachal Pradesh Public Works Department, Division Shillai, District Sirmaur, has been declined on the ground that the dispute was raised after 12 years without giving any proper justification of delay.

3. Facts in this case are by and large admitted. These are as under:

Petitioner was working as a daily-rated workman since 1984. According to him, his 10 services were terminated in the year 1990, without following the principles of either natural justice or the Industrial Disputes Act. He therefore, right from beginning was approaching the office of PWD at Shillai for his re-engagement, but despite assurance that he will be re-engaged, nothing was done.

4. In this background, he issued demand notice to the Executive Engineer, Shillai

Division. Matter went to the Conciliation Officer, who submitted failure report to the Government. This resulted in passing of impugned order Annexure P-1.

5. Another fact as set out in the writ petition is founded on the plea of discrimination. That in case of one Madan Lal, whose services were also dispensed with in the year 1987, reference was claimed by the said person. The dispute was referred and as a result of the order of Labour Court dated December 22, 2003, in Reference No. 108 of 1998, Madan Singh v. Executive Engineer, (Annexure P-2), said workman (Madan Lal), has been re-engaged.

6. When put to notice, respondents by and large admitted the fact of engagement of the petitioner but have disputed that he had not completed 240 days within 12 months prior to his disengagement. According to them, his claim was not only stale, but dispute had ceased to exist by lapse of time. So far plea based on the reference in the case of Madan Singh and the consequent order of the Labour Court in Reference No. 108 of 1998 (*supra*), is concerned, an attempt was made to justify it. Therefore, it was submitted that no fault can be found with the dispute having been not referred to Labour Court.

7. After having heard learned counsel for the parties and for the reasons to be recorded hereinafter, we feel that the impugned order Annexure P-1, cannot stand the test of judicial scrutiny.

8. In this behalf, it has to be noticed as to under what circumstances the Act was enacted and what were the objectives sought to be achieved by its legislation. It cannot be disputed that the Act was brought on the statute book with the object to ensure social justice to both the employers and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationship between the parties. It is a piece of legislation providing and regulating the service conditions of the workers. The object of the Act is to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life and by the process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The prosperity of the country in its turn, helps to improve the conditions of labour. *Hindustan Antibiotics Ltd. Vs. The Workmen and Others*, The Act is intended not only to make provision for investigation and settlement of industrial disputes but also to serve industrial peace so that it may result in more production and improve the national economy. In the present socio-political economic system, it is intended to achieve co-operation between the capital and labour which has been deemed to be essential for maintenance of increased production and industrial peace. The Act provides to ensure fair terms to workman and to prevent disputes between the employer and the employees so that the large interests of the public may not suffer. The provisions of the Act have to be interpreted in a manner which advances the object of the Legislature contemplated in the statement of objects and reasons. While interpreting different provisions of the Act, attempt should be made to avoid industrial unrest, secure industrial peace and to provide machinery to secure the end.

Conciliation is the most important and desirable way to secure that end. In dealing with industrial disputes, the Courts have always, emphasized doctrine of social justice, which is founded on basic ideal of socio-economic equality as enshrined in the Preamble of our Constitution. While construing the provisions of the Act, the Courts have to give them a construction which should help in achieving the object of the Act.

9. The history of the legislation with respect to the industrial disputes would show that for the first time in the year 1920 the Trade Disputes Act was enacted which provides for Courts of Inquiry and Conciliation Boards and forbade strikes in public utility service without a statutory notice in writing. The Act did not make provision for any machinery for settling of industrial disputes. The said Act was repealed and replaced by the Trade Disputes Act, 1929 which started the State intervention in the settlement of industrial disputes and armed the Government with the power which could be used whenever considered fit to intervene in industrial disputes. This Act was amended in the year 1938 authorising the Central and Provincial Governments to appoint conciliation officers for mediating in or promoting the settlement of Industrial Disputes. Shortly thereafter the Government of India promulgated the Defence of India Rules to meet the exigency created by the Second World War. Rule 81-A gave powers to the Government to intervene in industrial disputes and was intended to provide speedy remedies for industrial disputes by referring them compulsorily to conciliation or adjudication by making the awards legally binding on the parties and by prohibiting strikes or lock-outs during the pendency of the conciliation or adjudication proceedings. Industrial Employment (Standing Orders) Act, 1946 was enacted which made provision for framing and certifying of standing orders covering various aspects of service conditions in the industry. The Industrial Disputes Bill was introduced in the Central Legislative Assembly on October 8, 1945 which embodied the essential principles of Rule 81-A of the Defence of India Rules and also certain provisions of Trade Disputes Act, 1929 concerning industrial disputes. The Bill was passed by the Assembly in March 1947 and became the law w.e.f. April 1, 1947. The present Act was enacted with the objects as referred to hereinabove and provided machinery and forum for the investigation of industrial disputes, their settlement for purposes of analogous and incidental thereto. The emergence of the concept of welfare State implies an end to the exploitation of workman and as a corollary to that collective bargaining came into its own. The Legislature have intended to protect workmen against victimisation and exploitation by the employer and to ensure termination of industrial disputes in a peaceful manner. The object of the Act, therefore, is to give succour to weaker Sections of the society which is a pre-requisite for a welfare State. To ensure industrial peace and pre-empt industrial tension, the Act further aims at enhancing the industrial production which is acknowledged to be lifeblood of a developing society. The Act provides a machinery for investigation and settlement of industrial disputes ignoring the legal technicalities with a view to avoid delays, by specially authorised Courts which are not supposed to deny

the relief on account of the procedural wrangles. The Act contemplates realistic and effective negotiations, conciliation and adjudication as per the need of the society keeping in view the fast changing social norms of the developing country like India. This Court cannot adopt an unusual approach in such matters apparently ignoring the purpose, aim and object of the Act.

10. In *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, a three Judge Bench while dealing with the effect of lapse of time in making the reference as also what is meant by "at any time" under the U.P. Industrial Disputes Act, negated the plea of the management that claim was belated and could not have been referred to.

11. In *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, this question was directly considered by the Hon"ble Supreme Court and what was observed and is relevant for the purpose of the present case, is extracted hereinbelow at p. 1261 of LLJ:

"4. It is not in dispute that the services of the workman were terminated on July 16, 1974 and he had issued the notice of demand only on December 8, 1981. It is also not disputed that no plea regarding delay appears to have been taken by the management before the Labour Court. It is also acknowledged that Article 137 of the Limitation Act has not been specifically made applicable to the proceedings under the Act seeking reference of industrial disputes to the Labour Court. This Court, in no case, has so far held that either Article 137 of the Limitation Act or the principle incorporated therein is applicable to the proceedings under the Act."

12. After following the decision in case of *Hindustan Antibiotics Limited (supra)*, Supreme Court in *Gurmail Singh Vs. Principal, Govt. College of Education and Others*, held as under at pp. 1080 & 1081 of LLJ:

"5. Having heard learned counsel for the parties we find that the Labour Court having held in case of the appellant whose services were terminated on September 30, 1981, that Section 25-F of the Industrial Disputes Act was violated, was in error in dismissing the reference on the ground of delay as the termination was of 1981 and the dispute was raised in 1989. Similarly, the High Court in the impugned judgment committed the same error in confirming the said decision. The reason is obvious. As laid down by this Court in the case of *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, if the order of dismissal is challenged belatedly, the dispute would still continue for adjudication, the only question would be to deprive back wages for the period for delay in raising such a dispute if on merits it is to succeed. Following, the said decision, therefore, the appeal is allowed. The judgment and order of the High Court as well as the Labour Court are set aside. The termination of the appellant on September 30, 1981 is held to be bad and set aside. The appellant is ordered to be reinstated in service as Junior Lecturer Assistant with continuity of service. But so far as the back wages are concerned,

he will not be entitled to any back wages from September 30, 1981 till February 27, 1989 as he had not raised any dispute during that time. Thereafter from March 1, 1989 till the date of reinstatement of the present appellant, on the facts and circumstances of the case, the respondents are directed to pay 50 per cent of the back wages towards full and final satisfaction of appellant's claim, regarding back wages. This amount shall be calculated and paid to the appellant by the respondents within eight weeks from today. He shall be reinstated with continuity in service also within that time. The appeal is allowed to the aforesaid extent with no order as to costs."

13. To similar effect is the decision of Supreme Court in Sapan Kumar Pandit Vs. U.P. State Electricity Borad and Others,

14. Faced with the above situation, learned Advocate General placed reliance on a decision of the Supreme Court in The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, and a decision of this Court in Ramesh Kumar and Anr. v. State of H.P. CWP No. 287 of 2003, decided on April 29, 2003.

15. So far decision of the Supreme Court in Nedungadi Bank Limited (supra) is concerned, in our view, in the face of three Judge Bench decision in the case of Hindustan Antibiotics Ltd. (supra) and subsequent decisions of the said Court, no benefit can be derived by the respondents from this decision.

16. We may reiterate here in the light of the aforesaid decisions of the Supreme Court that delay by itself cannot be a ground to deny the matter being referred to the Labour Court as has been done in the present case. However, depending upon facts of each case, it will be a material and relevant circumstance while moulding the relief including grant of back wages, if any after conclusion of the matter before the Labour Court.

17. So far decision of this Court in case of Ramesh Kumar and another (supra) is concerned, we are of the view that it cannot be cited as a precedent so as to favourably consider the plea of Mr. Chandel to refer the matter to a Larger Bench. It cannot be said to be a precedent under the law of precedents. In this case, writ petition was summarily dismissed without having examined the effect of the decisions of the Supreme Court as noted hereinabove. Thus, we feel that no benefit can be derived by the respondents from this decision either for dismissal of this writ petition or for referring the matter to a Larger Bench, as was urged by Mr. Chandel.

18. In CWP No. 1201 of 2001, Himachal Pradesh State Electricity Board and Anr. v. Multan Singh and Ors., identical plea was raised on behalf of the Employer Board. After taking note of the facts, this Court rejected the writ petition. Order passed while disposing of the writ petition was in the following terms:

"Reply has been filed by respondent No. 2. Reliance also placed on a judgment of the Supreme Court in the case of Sapan Kumar Pandit Vs. U.P. State Electricity Borad and Others, in which their Lordships of the Supreme Court have clearly

taken a view that even if it is the contention of the employer that the Reference is suffering from inordinate delay because of the fact that either there is no industrial dispute or that the dispute has become very stale, the High Court should: not quash the order of Reference and leave it to the Labour Court/Industrial Tribunal to consider the delay aspect while moulding the relief.

In view of the aforesaid specific law laid down by their Lordships of the Supreme Court, in my considered opinion, this petition deserves to be dismissed, but with absolute liberty to the petitioner to urge and raise the question of delay of Reference and: staleness of the claim of the workman before the Labour Court/Industrial Tribunal. I also direct the Labour Court/Industrial Tribunal to consider the petitioner's plea regarding the delay, etc. on its merits and take into account the same while finally disposing of the Reference.

The petition is dismissed."

19. To similar effect is the decision of this Court in *Ramesh Chand v. Union of India* Latest HLJ 2004 (HP) 1317.

20. So far plea of respondents that petitioner had not completed 240 days within 12 months preceding his termination is. concerned, prima facie it is wholly misconceived. Along with reply, respondents have attached Annexure R-II. Admittedly services of the petitioner were terminated in the month of June, 1990. When period from July 1989 to June 1990 is worked out, petitioner as per this document had worked for 271 days. As such, this plea appears to have been raised simply to be rejected.

21. Therefore, it is clear that Annexure P-1 in the circumstances of this case is liable to be quashed and set aside. In this behalf, it may also be observed that when in identical circumstances reference was made in the case of *Madan Lal* which resulted in passing of order Annexure P-2 by the Labour Court. It is not understood as to how and on what legitimate basis claim of the petitioner was declined on the ground of delay.

22. Another reason to allow this writ petition is that it is not the case of the respondents that petitioner is not a workman, and/or no dispute subsists. Therefore, subject to what is stated in the preceding paras of this judgment, impugned order Annexure P-1, cannot be upheld.

23. No other point is urged.

24. In view of the aforesaid discussion, this petition deserves to be allowed and it is ordered accordingly. As a result of it, Annexure P-1 is quashed and set aside. Consequently, respondent No. 2 is now directed to refer the matter for adjudication by the Labour Court, of course in accordance with law within four weeks of the receipt of a certified copy of this judgment. It is however, clarified that respondents will be free to contest the claim of the petitioner before the Labour Court on all available pleas including that of claim being belated, as well as petitioner having not completed 240 days in a year. As and when these and

other pleas open to the petitioner are raised before the Labour Court, it shall decide all those on the basis of materials those may be produced by the parties before it, as well as without being influenced by anything said in this judgment, because it is meant purely for the limited purpose of disposal of this writ petition. Costs on the parties.