
(2001) 08 RAJ CK 0092
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1645 of 2001

Divisional Forest Officer

APPELLANT

Vs

Raghuvar and Another

RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 25

Citation : (2002) 93 FLR 82 : (2002) 3 RLW 1374 : (2002) 1 WLC 501

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : M. Rafiq, A.A.G, for the Appellant; Anil Upman, for Respondent
Workman No. 1, for the Respondent

Final Decision : Allowed

Judgement

S.K. Keshote, J.—Heard learned counsel for the parties.

2. By this petition under Article 227 of the Constitution of India, the petitioner-Divisional Forest Officer, Forest Department, Bharatpur is challenging the legality, propriety and correctness of the award of the Labour Court, Bharatpur dt. 10.7.2000 passed in L.C.R. Case No. 150/92 (Raghuvar v. Divisional Forest Officer, Bharatpur) and prayer has been made for quashing and setting aside the same.

3. The facts of the case are that respondent-workman No. 1 has raised an industrial dispute re termination of his services by the petitioner vide its order dt. 24.6.1982.

4. This industrial dispute raised by the workman has been referred by the State Govt. for adjudication to the Labour Court Bharatpur, under impugned award dt. 10.7.2000 the Labour Court Bharatpur declared the action of the petitioner to terminate the services of the workman unreasonable and illegal and directions were given for his reinstatement in service with 25% of backwages.

5. The case of respondent workman before the Labour Court was that he was appointed as Cattle Guard in the Shelter Belt Plantation Range, Bharatpur. Initially he was engaged in the plantation work of both the sides of canal passing through Simco Labour Colony and for watering the plants. Thereafter, he was posted to Babula Chowki for the work of plantation and Cattle Guard work. On 24.6.1982 the petitioner has terminated his services without any cogent reason. It is stated that during this period he (workman) has worked for 395 days and before terminating his services, the petitioner have not complied with the provisions of Section 25F of the Industrial i Disputes Act, 1947.

6. The reference was contested by the petitioner. A detailed reply to the statement of claim has been filed by the petitioner. The petitioner has come up with the case that the case of respondent workman based on uncorrect facts. It is submitted that the workman had never worked on CFCD side and Babula Chowki nor his name is there in the muster roll. When in the muster roll the name of the workman is not there, no question does arise to work at these two sides.

7. The second point raised is that the respondent No. 1 has raised this industrial dispute before the Conciliation Officer after eight years of termination of his services to which he has not furnished any explanation.

8. The petitioner next grievanced that he published a notice in the news papers on 21.1.1992 inviting claim from the workman but he has not submitted any claim. The petitioner contended that when the workman has not been appointed and worked in the office of the petitioner, no question does arise for termination of his services.

9. Aggrieved by, this award, the petitioner has filed this petition. Mr. M. Rafiq, learned Additional Advocate General appearing on behalf of the petitioner placing reliance on the decision of the Apex Court in the matter of Balbir Singh v. Punjab Roadways and Anr. (1), submitted that the Labour Court has committed a serious error of jurisdiction in not considering this important aspect of the matter that the workman has raised the industrial dispute after eight years of termination of his services and passed the award reinstating the workman with full back wages.

10. Mr. Rafiq, submits that the Labour Court should not have been granted any relief to the workman as this industrial dispute has been raised by him after eight years of the termination of his services.

11. Next, it is contended that the question of delay in raising the industrial dispute has not been given due weightage and consideration by the Labour Court. It is submitted that the Labour Court has committed a serious jurisdictional error in holding that this industrial dispute comes within the purview of violation of the provisions of Sections 25F, 25G and 25H of the Industrial Disputes Act, 1947.

12. Lastly it is urged that even if the case of the workman is accepted as he was

appointed on daily wages and worked for short period, no relief of reinstatement with backwages should have been ordered.

13. On the other hand, Mr. Anil Upman, learned counsel appearing for respondent No. 1, workman submitted that the delay in raising the industrial dispute has relevance for the purpose of awarding backwages to the workman when the termination of his services were held to illegal and unjustified. In support of his contention, he placed reliance on the decision of the Apex Court in the case of Gurmain Singh v. Principal Govt. College of Education and Ors. (2).

14. It is next contended that delay in raising the industrial dispute has been given due weightage by the Labour Court and the respondent No. 1 workman has not been awarded full backwages. It is submitted that when the delay in raising the industrial dispute has been given due consideration and weightage and the Labour Court has not found it to be a case where no relief is to be granted to the workman on this ground, this Court may not interfere in this case.

15. On being put by the court, learned counsel appearing for the respondent No. 1 workman has very frankly conceded that in reply to the petition no explanation whatsoever has been furnished by him for this inordinate delay in raising the industrial dispute by respondent No. 1. He further conceded that in statement of claim also, respondent No. 1 has not furnished any explanation whatsoever for this inordinate delay in raising the industrial dispute.

16. I have given my thoughtful consideration to the submissions advanced by the learned counsel for the parties.

17. Before the Labour Court I find from the document Annexure-2 at page 21 that in para No. 11 thereof the petitioner has raised an objection re-inordinate delay of 8 years made by the respondent workman to raise the industrial dispute. It is submitted that the respondent workman has not furnished any explanation whatsoever for this long inordinate delay in raising of the industrial dispute. Concluding this objection it is stated that in view of this inordinate delay made by the respondent workman to raise the industrial dispute no relief whatsoever may be granted in his favour. The respondent workman has not filed any rejoinder to this reply of the statement of claim filed by the petitioner.

18. Learned counsel for the respondent workman has frankly conceded that in the Labour Court, the respondent workman has not furnished any explanation whatsoever for this inordinate delay in raising industrial dispute. He also conceded that in reply to the petition also the respondent workman has not furnished any explanation whatsoever for this inordinate delay made by the respondent workman in raising the industrial dispute. In view of this undisputed position of the fact it is a case where this delay made in raising of the industrial dispute by the respondent workman has not been controverted by the workman nor any explanation has been furnished for the same.

19. From the award of the Labour Court I find that it has noticed the objection

raised by the petitioner re-inordinate delay of 8 years made by the respondent work-man in raising the industrial dispute. The Labour Court in para No. 8 of its award made reference to this delay of 8 years made by the respondent in raising the industrial dispute. It is not correct on the part of the learned counsel for the respondent workman that this delay of 8 years made by the respondent workman in raising the industrial dispute was given due weightage and consideration. The Labour Court no doubt under its impugned award not awarded 100% back wages to the respondent workman but a mere perusal thereof given out that 75% back wages was not denied to the respondent workman only on the ground of raising of the industrial dispute by him after 8 years. This 75% back wages has been denied to the respondent workman on the ground that in his statement made on affidavit in the cross examination thereof he admitted that he is earning by farming. The delay in raising the industrial dispute had been made only a passing reference and not only a ground for denial thereof.

20. Dispute is not raised by the learned counsel for the respondent workman on the facts (1) that the respondent workman was engaged by the petitioner as per his own case on 23.5.81 (wrongly mentioned as 88 in the award) as Cattle Guard at the site i.e. canal in between Simco Labour Colony and New Industrial Area, (2) from 11.11.81 he was posted as per his own case at Babula Choki site, (3) his services were brought to an end from 24.6.82, (4) he raised this industrial dispute after 8 years of his alleged termination of service, and (5) it is not the case of the petitioner that he was appointed on regular basis i.e. after selection in the regular pay scale of the post.

21. From these undisputed facts it is a case where the respondent workman has worked for 295 days only with the petitioner. The respondent workman has not produced any documentary evidence whatsoever to show and establish that he was appointed on regular basis on the regular pay scale of the post of Cattle Guard. He was appointed as per his own case on muster roll and in the absence of any evidence produced by the petitioner of his regular appointment in regular pay scale it was a case of his appointment as a daily wager. A daily wager has no right to hold post nor he has acquired any right to continue in the employment. The respondent workman has not discharged his burden to prove his case. The Labour Court has taken his case only on the basis of his oral statement made on affidavit coupled with the drawing of adverse inference against the petitioner for non production of the muster roll, payment voucher etc. The workman could not stand to the cross examination made by the petitioner. From his cross examination it is very difficult to accept that he was ever engaged by the petitioner at the site where he stated to work. I Consider it to be appropriate here to make the reference to the cross examination of the respondent workman. In the cross examination he admitted that on which nala he worked he does not know. He stated to work at CFCD site. It may be correct but he admitted that from which period to which period he worked at that site he does not know. He admitted that he was maintaining a diary for his work which he has not produced in the Labour Court. He further admitted that he filed his claim on

the basis of his entry made in the diary. He has shown this diary to his advocate. He further admitted that the diary is available with him at his residence. From these statements of the workman it is case based on his own document which he has not produced. The Labour Court has not proceeded in this matter fairly and reasonably but it has proceeded in the case with a pre determination and pre conception that when the workman has approached to it, relief has to be granted to him.

22. In this case heavy burden lies upon the respondent workman to prove his case and when he has not produced the document on which his case has been made, the Labour Court has acted arbitrarily not drawing an adverse inference against him. The Labour Court has not dealt with the case of the petitioner fairly, reasonably and impartially. For non production of the document by the petitioner an adverse inference has been drawn but the same treatment has not been given in the case of respondent workman. It was the case of the petitioner that the respondent workman has never worked with them. This case of the petitioner stands proved from the respondent workman's own case as he has not produced that diary on which his claim is based before the Labour Court or before this Court though admittedly it was with him. The finding given by the Labour Court re- appointment of the respondent workman is wholly perverse and it cannot be allowed to stand.

23. The workman has admitted that he has not filed any objection in response to invitation made by the petitioner in the newspaper Sandhya Jyoti. The fact that the respondent workman has not filed his objection in response to that invitation thereof by the petitioner goes to show that he was not interested in the work. It is also clear from this conduct of the petitioner that he has no grievance whatsoever against the termination of his services. This is also clearly borne out from his own statement. In the cross-examination he submitted that his services were brought to an end by one Gulab Guard. He further admitted that he has not made any complaint against this action of the Gulab guard to terminate his services. From this statement of the respondent workman it is clear that he has no objection whatsoever against the termination of his services. After this long inordinate delay for the reasons best known to him this claim has been lodged. This delay in raising of the industrial dispute is fatal to his case and in fact the State Government should not have made reference of the same to the Labour Court. In the facts of this case I am satisfied that it is a case of non existence of an industrial dispute. This aspect of the matter has not been considered by the State Government. The Labour Court has also not considered this aspect of inordinate delay made in raising of the industrial dispute by the workman and it has proceed with pre determination and conception that the Labour has been approached, the relief has to be granted in his favour.

24. Learned counsel for the respondent workman has placed reliance on the decision of the Apex Court in the case of Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Anr. (3), in support of his

contention that this delay in raising the industrial dispute is not fatal to his case as it is relevant only for the purpose of denial of back wages to the respondent workman. I have gone through this judgment of the Hon^{ble} Supreme Court and I am of the opinion that it is of little help to the respondent workman in this case. In that judgment, their Lordships of the Supreme Court has not laid down any general principle as what contended by the learned counsel for the respondent workman. The decision was rendered on its own facts and circumstances particularly the fact that the plea of delay was not taken by the employer/management in the proceedings before the Industrial Tribunal. In this case undisputedly this plea of the delay in raising the industrial dispute has been raised by the petitioner before the Labour Court but the same has not been given due weightage and consideration. This is clearly a distinguishable feature in this case with the case on which the reliance has been placed by the learned counsel for the respondent workman.

25. The matter has been considered by their Lordships of the Supreme Court in the case of *Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors.* (4), re-the effect of delay in raising the industrial dispute by the workman on the merits of the matter. Their Lordships of the Supreme Court held as under:-

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers u/s 10 of the Act. It is not that this power can be exercised at any point of time and to receive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to 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 said to have been apprehended. A dispute which is state could not be the subject-matter of reference u/s 10 of the Act. As to when a dispute can be said to be state 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 reference be made u/s 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at this 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 subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was *ex facie* bad and incompetent."

"7. In the present appeal it is not the case of the respondent that the disciplinary proceedings, which resulted in his dismissal, were in any way illegal or there was even any irregularity. He availed his remedy of appeal under the rules governing his conditions of service. It could not be said that in the circumstances an industrial dispute did arise or was even apprehended after a lapse of about seven years of the dismissal of the respondent. Whenever a workman raises some dispute it does not become an industrial dispute and the appropriate Government

cannot in a mechanical fashion make the reference of the alleged dispute terming it as an industrial dispute. The Central Government lacked power to make reference both on the ground of delay in invoking the power u/s 10 of the Act and there being no industrial dispute existing or even apprehended. The purpose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace and defeats the very object and purpose of the Act. The Bank was justified in thus moving the High Court seeking an order to quash the reference in question."

26. The reference may have to another decision of the Apex Court in the case of Balbir Singh v. Punjab Roadways and Anr. (supra), therein their Lordships after considering the case of Ajaib Singh (supra) relied by the learned counsel for the respondent workman held as under:-

"5. The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd."

"6. We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially. The High Court on consideration of the matter held that there was no ground to interfere with the discretion exercised by the Tribunal. We are not satisfied that the award of the Tribunal declining relief to the petitioner, which was confirmed by the High Court suffered from any serious illegality which warrants interference by this Court. Accordingly, the SLP is dismissed."

27. It is no more *res Integra* that in the appropriate case even if where the Labour Court or the Tribunal reached to the conclusion that the termination of the services of workman has been made in-violation of the provisions of the Industrial Disputes Act, 1947 it may decline to grant any relief whatsoever to the concerned workman. Even if it is taken that the respondent workman was in the service of the petitioner, he has completed 240 days services in one calendar year and his services were terminated in violation of the provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947, still on this ground of inordinate

delay made in raising the industrial dispute no relief deserves to be granted to him. The respondent workman was only a daily wager with the petitioner as per his case for 395 days only. He was not appointed after selection. Possibly it may be a case of obligatory nature in the service.

28. Taking into consideration the fact that he was a daily wager, worked for a short period, he has not made any complaint against the termination of services, he has the agriculture land, engaged himself in his own work, raised this industrial dispute after 8 years, this delay in raising the industrial dispute has not been explained and he has not filed any objection in response to invitation of the petitioner vide notification of the year 1992, it is not a fit case where any relief has to be granted to the respondent workman. The Labour Court has not given due weightage and the consideration to this plea raised by the petitioner of the delay in raising the industrial dispute by the respondent workman. This is being a case where the plea of delay has been raised by the petitioner in reply to the statement of claim and which has been accepted by the respondent workman as he has not filed any rejoinder to it as well as he has not furnished any explanation whatsoever for this delay either before the Labour Court or even before this Court, the impugned award of the Labour Court cannot be allowed to stand.

29. In the result, this petition succeeds and the same is allowed. The award of the Labour Court, Bharatpur in LCR No. 150/92 is quashed and set aside. However, in the facts of this case, no order as to costs.