
(1988) 08 MP CK 0076
In the Madhya Pradesh High Court
Case No : M.P. No. 923 of 1982 (J)

Dwarka Singh Thakur

APPELLANT

Vs

The Industrial Court, M.P., Indore and 2 others

RESPONDENT

Date of Decision : 01-08-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Industrial Relations Act, 1960 — Section 31(2)

Citation : (1989) MPJR 209

Hon'ble Judges : S. Awasthy, J; B.C. Varma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.C. Varma, J.

Petitioner Dwarka Singh Thakur entered into the services of the Madhya Pradesh State Road Transport Corporation as a conductor. On certain charges of misconduct, domestic enquiry was held against him and his services were terminated with effect from 6-7-1976. He then served an approach notice on 2-1-1980 upon his master u/s 31 (2) of the Madhya Pradesh Industrial Relations Act, 1960 and then on 19-1-1980 filed an application before the Labour Court challenging termination of his services. The Labour Court held that the domestic enquiry was vitiated because of certain illegalities. Then after permitting the parties to adduce evidence, allowed the Petitioner's application, vide order dated 6-12-1980. The dismissal was set aside and a direction was issued to reinstate the Petitioner with full back wages. The employer Madhya Pradesh State Road Transport Corporation filed appeal before the Industrial Court which by its order dated 29-5-1982 (Annexure-D), held the Petitioner's application before the Labour Court as barred by time. It was held that the Labour Court should have been approached within one year of the termination of services. The appeal was consequently allowed, the labour Court's order setting aside the Petitioner dismissal from service was reversed and the Petitioner's application was

dismissed. Aggrieved by this order Annexure-D passed by the Industrial Court, the Petitioner has filed this petition under Article 226 of the Constitution of India contending that the view taken by the Industrial Court is entirely erroneous and flows from misconception of relevant legal provisions. It may be mentioned that the Industrial Court after holding the Petitioner's application as barred by time, did not choose to give any finding on the merits of the case. The only question, therefore, for decision by this Court is whether the Petitioner's application before the Labour Court was barred by limitation.

According to Sub-section (3) of Section 31 of the Madhya Pradesh Industrial Relations Act, 1960, an employee or a representative of employees desiring a change in respect of an industrial matter specified in Schedule II or any other matter arising out of such change is permitted to make an application to the Labour Court in such manner as may be prescribed. Before, however, taking such matter to the Labour Court, the employee or the representative of the employees are required by force of the proviso to that Sub-section to approach the employer in the manner prescribed with a request for the change. It is on failure of any agreement between the employer and the employee in respect of the change within the prescribed period that approach to the Labour Court may be made. Period of limitation for approaching the Labour Court is provided in Section 62. The relevant part of this section, as it stood prior to its amendment vide M. P. Industrial Relations (Amendment) Act 1976, was as follows:

Commencement of proceedings.-Proceedings before a Labour Court shall be commenced -

(i) in respect of a dispute falling under Clause (a) of paragraph (A) of Sub-section (1) of Section 61 within three months from the date of last approach under Sub-section (3) of Section 31.

Clause (a) of Paragraph (A) of Section 61 covers disputes regarding which application has to be made under Sub-section (3) of Section 31 of the Act.

The Governor of Madhya Pradesh issued an Ordinance on 30th July, 1976 by which Section 62 of the Act was amended by adding a further proviso to that section as under:

Provided that if the dispute is connected with the dispensing with the services of an employee, such proceedings shall commence within a year from the date of the dispensation of services of the concerned employee.

By this Ordinance Sub-section (3) of Section 31 was also amended. The following proviso was added thereto:

Provided further that the provisions of the proceeding proviso shall not apply where such an application is in respect of dispensing with the services of an employee.

The Ordinance aforesaid was replaced by the M. P. Industrial Relations

(Amendment) Act, 1976 with effect from 6th October, 1976. Further change was made touching this question of limitation prescribed for approaching, the Labour Court, vide M. P. Industrial Relations (Amendment) Act, 1981 (Act No. 41 of 1981). The relevant part of Section 62, as it now stands after Act No. 41 of 1981, is as follows:

62 Commencement of Proceedings.-Proceedings before a Labour Court shall be commenced-

(i) in respect of a dispute falling under Clause (a) of paragraph (a) of Sub-section (1) of Section 61 within two years from the date of the dispute:

Provided that-

(a) if the dispute is connected with the termination of the services of an employee, such proceedings shall commence within a year from the date of termination of the services of the concerned employee;

(b) nothing contained in the foregoing provision shall apply if the concerned employee had made an approach before the 30th day of July, 1976 in accordance with the provisions contained in Sub-section (3) of Section 31 as it stood before the said date and in that case the provisions contained in Sub-section (3) of Section 31 and Clause (1) of this section shall be applicable as they had been before the said date:

With a view to avoid litigation in Court and to maintain industrial peace, Section 31 of the Act has been enacted requiring an approach to be made to the employer by an employee, in respect of the change. Such approach begins with the service of notice. Such a notice of change obviously contemplates negotiations and it is only upon failure of such negotiations that the dispute can be raised before the Labour Court. The use of the words "the date of last approach" appearing in Section 62 (i) before its amendment in 1976, means the date when approach has ended. The period of limitation prescribed thereunder would commence only after the approach has thus ceased. Thus, an employee desiring the change could continue making "approaches" and could file an action before the Labour Court within three months of the last approach. The effect of amendment of Section 62 and 31 (3) in the year 1976 is to fix the period of limitation in respect of dispute relating to dispensing with the services of the employee. A fixed period of one year from the date of dispensation of service was provided. A Division Bench of this Court in *Somsingh v. M. P. S. R. T. C.*, Bhopal 1980 MPLJ 211 considered the effect of this amendment in cases where services of an employee were dispensed with prior to the promulgation of the Ordinance amending Section 62 (1) of the Act with effect from 30th July, 1976. The Division Bench noticed the observations of Sulaiman, Ag. C. J. (as he then was), in *Hazari Tewari Vs. Mt. Maktula Chaubain and Another*, that there is a vested right in a litigant to wait for a particular period of limitation before instituting the action. However, when a new statute which prescribes a period of limitation, has the effect of destroying vested rights as no provision is made to

safeguard them, Courts have struggled against the acceptance of the proposition that the law of limitation is a matter of procedure only. The Court also made a reference to a decision of the Supreme Court, in *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult, ,* to the effect that though by and large the law of limitation is a procedural law, there are exceptions to that principle. The exceptions are that the new law of limitation providing a longer period could not revive a dead remedy, nor could it suddenly extinguish a vested right of action by providing for a shorter period of limitation. It was, therefore, ruled that the law of limitation can be classified as a law of procedure only when it does not have the effect of destroying vested rights or has the effect of reviving barred rights. The Court on the strength of these decisions concluded that the provisions of Ordinance and the M. P. Industrial Relations (Amendment) Act 1976, prescribing the period of limitation would be applicable to action connect with the dispensing of the services of the employee where such dispensation has taken place after the coming into force of the Ordinance. The Court further held that it was immaterial that the employee whose services were dispensed with prior to the enforcement of the Ordinance, had or had not given any approach notice. This is so because the right of an employee arose when the services were terminated. Giving of approach notice was only a condition precedent for the exercise of much right. As no period was prescribed for giving last approach notice, the employee could not be penalised for his failure to "approach" prior to the coming into force the Ordinance. It was, therefore, held that the right of an employee whose services were dispensed with to serve an approach notice at any time and then to approach the Labour Court was not destroyed on enforcement of the Ordinance irrespective of the fact that the employee had or had not given any approach notice prior to the enforcement of the Ordinance. With respect we agree with the view taken by the Division Bench in *Somsingh's case (supra)*. Learned counsel for the respondent also did not dispute the correctness of that decision.

The our mind the proviso (b) added to Section 62 (i) by Amending Act No. 41 of 1981 does not have the effect of modifying the aforesaid decision in *Somsingh's case (supra)* at all. Once it is conceded as has been held by the Division Bench in *Somsingh's case*, with which decision we have fully agreed, that the amendment made in the year 1976 in Section 62 (i) providing for a fixed period of limitation to approach the Labour Court commencing from the date of dispensation of service, irrespective of the fact whether the concerned employee has or has not given any approach notice in terms of Section 31 (3), we fail to see how the proviso (b) to Section 62 (i) added by Amending Act No. 41 of 1981 can take away the vested rights. It is difficult to agree with the view taken by the Industrial Court that it has to be impliedly inferred in view of the aforesaid proviso that right to approach the Labour Court is saved after the amendment of 1976 only in cases where the employee has given the approach notice prior to 30th July, 1976. To us there appears to be no room for drawing such inference. Even without that clause in the proviso the right to approach the Labour Court

remained unaffected in cases where the services of the employee were dispensed with prior to 30th July, 1976. The amendment, therefore, has at best the effect of just declaring what the law otherwise had been as exposed by the Division Bench in Somsingh's case (supra). The vested right of action during certain period cannot be taken away by any implication. We are, therefore, of opinion that the Industrial Court has gone wrong in thinking that by necessary implication that proviso takes away the vested right of an employee to approach the Labour Court in the manner provided and during the time prescribed prior to 30th July, 1976 when Ordinance effecting a change in Section 62 was introduced. The Industrial Court has laboured under misconception that the addition of Clause (b) of proviso to Section 62 (i) has an effect of destroying the rule laid down in Somsingh's case (supra) to any extent whatever. We are, therefore, of the opinion that the Industrial Court is wrong in holding that the application of the Petitioner was barred by limitation.

The petition succeeds and is allowed. The Order of the Industrial Court (Annexure-D) dated 22-5-1982 is hereby quashed. The matter shall go back to Industrial Court for a decision on the merits of the case. Hearing fee Rs. 100/-. Costs shall abide the ultimate decision.

Before parting, we may observe that the Industrial Court ought as an appellate Court to have also given a decision on merits so that we could have with us its finding in that regard as well and could have examined the legality of those findings. Had that been done, the remand could have been avoided and the delay minimised.