

(2010) 07 P&H CK 0239
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 744 of 2010

East India Cotton Manufacturing Company Ltd.	APPELLANT
Vs	
Parsu Ram Singh and Another	RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(3), 17(1), 18(1), 18(3)
Limitation Act, 1963 — Article 137

Citation : (2010) 4 LLJ 603

Hon'ble Judges : M.M. Kumar, J;A.N. Jindal, J

Bench : Division Bench

Advocate : Pawan Kumar Mutneja, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This is an appeal filed under Clause X of the Letters Patent directed against the judgment dated April 1, 2010, passed by the learned single Judge dismissing the writ petition filed by the Appellant East India Cotton Manufacturing Company Ltd., upholding the order dated July 29, 2009 (P-11), passed by the Labour Court, Faridabad. The award, dated March 3, 2000 (P-5), has also been upheld.

2. Brief facts of the case are that the workman-Respondent No. 1 was appointed by the Appellant-Management in January 1991 and his last drawn pay was Rs. 1,250/- per month. His work and conduct was found satisfactory during the tenure of his service. The workman-Respondent No. 1 claimed that the Appellant-Management terminated his service in August 1995 illegally without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947 (for brevity, "the Act"). The workman-Respondent No. 1 after exhausting the reconciliation mechanism sought a reference under Sub-section (1) of Section 10 of the Act as to whether his services were lawfully terminated and if it is found to be unlawful then whether he was entitled to reinstatement and what amount of back wages was to be paid to him.

3. After receipt of the reference on April 15, 1998, the Labour Court, Faridabad, issued notices to the workman-Respondent No. 1 as well as the Appellant-Management. The workman-Respondent No. 1 filed his claim statement. However, after initial appearance the Appellant-Management did not appear before the Labour Court and ex parte award was passed.

Accordingly, the workman-Respondent No. 1 was ordered to be reinstated in service with full back wages, vide award dated March 3, 2000 (P-5). The award has been duly published by the State of Haryana. In order to seek implementation of the award, the workman-Respondent No. 1 approached the Labour Inspector vide letter dated June 6, 2000, which was well within the period of one year from the passing of the award. He also issued letter dated August 30, 2000 to the Appellant-Management for the aforesaid purpose.

4. After waiting for the implementation of the award, the workman-Respondent No. 1 filed an application dated October 16, 2006 u/s 33C(2) of the Act. The application has been allowed by the Labour Court vide order dated July 29, 2009 (P-11). The Labour Court, Faridabad, held that the workman-Respondent No. 1 was entitled for the amount claimed, which included wages for the month of June 1996 till the year 2006. The Labour Court after appreciating evidence has concluded in para 12 that the workman-Respondent No. 1 submitted a demand notice and the Appellant-Management appeared before Conciliation Officer. However, conciliation proceedings failed and eventually a reference No. 44/1999 was sent by the appropriate Government to the Labour Court, Faridabad. It was held that the Appellant-Management appeared on notice issued by the Court but later on proceeded as ex parte. The ex parte award was passed in favour of the workman-Respondent No. 1 on March 3, 2000, which attained finality between the parties as no appeal or writ petition was preferred against the award.

5. The plea of the Appellant-Management that it has been closed down and the services of the workman were retrenched after seeking permission from the competent authority did not find favour with the Labour Court. It also rejected the other ground that a settlement had taken place on February 23, 2005 between the Appellant-Management and the Workmen Union u/s 12(3) of the Act and on account of clauses "A" and "C" of the settlement the application filed by the workman-Respondent No. 1 was not maintainable. The reason for rejection for the aforesaid plea was that the workman-Respondent No. 1 was not a signatory to the settlement. There was no specific stipulation in the settlement that all the awards passed by the Labour Court were to be treated as cancelled. It was, however, stipulated that there would be individual settlement of the individual workman and after receiving full and final amount the workers will not be entitled to the benefit of the order or award passed by the Court. The Appellant-Management did not produce any evidence showing that the workman-Respondent No. 1 has received his full and final claim as per the settlement dated February 23, 2005 and, therefore, the plea raised on behalf of the Appellant-Management was rejected. The Labour Court further opined that the

Appellant-Management has failed to prove that the services of the workman-Respondent No. 1 were retrenched after seeking permission from the competent authority, as it failed to produce the list of workers who were allowed to be retrenched and there was no evidence on record that the name of the workman-Respondent No. 1 figure in the list of retrenched workers, which has been approved by the specified authority of the Government of Haryana. Accordingly, the Labour Court held that the workman-Respondent No. 1 was entitled to computation of amount worth Rs. 2,71,469/-against the Appellant-Management (P-11).

6. The order dated July 29, 2009 (P-11), passed by the Labour Court, Faridabad, was challenged before the learned single Judge in the aforesaid writ petition. The learned single Judge dismissed the writ petition by rejecting the contention that the application u/s 33C(2) of the Act filed by the workman-Respondent No. 1 suffered from delay and laches as it was filed after a period of more than six years. The other contention that without preferring an application u/s 33C(1) of the Act, the application u/s 33C(2) of the Act, in any case was not maintainable before the Labour Court because of prescription of period of limitation u/s 19(3) of the Act. Another contention which failed to find favour with the learned single Judge was that the Appellant-Management has retrenched the services of the workman-Respondent No. 1 after seeking permission from the competent authority u/s 25N of the Act. A cheque amounting to Rs. 6,396/- was allegedly offered to the workman-Respondent No. 1, who refused to accept the same. It was further asserted that a letter of retrenchment along with the cheque was sent at his home address available with the Appellant-Management through Registered A.D. post but the same was returned undelivered. The learned single Judge also rejected the contention that the settlement dated February 23, 2005 between the Union/ workmen and the Appellant-Management would be binding on the workman-Respondent No. 1.

7. While rejecting the first contention concerning the bar of limitation, learned single Judge has held that "there is no limitation provided under the Act for approaching the Labour Court under the provisions of Section 33C(2) of the Act". Learned single Judge also rejected the contention of the Appellant-Management that no application u/s 33C(1) of the Act was filed by treating the applications Exhibit W-2 and W-3 filed before the Labour Inspector and the Appellant-Management for implementation of the award as sufficient compliance of the provisions of Section 33C(1) of the Act. In support of his view that no period of limitation has been provided and nor such a period of limitation under the Limitation Act would be introduced, learned single Judge has placed reliance on two judgments of Hon"ble the Supreme Court in the case of Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, and The Management of State Bank of Hyderabad Vs. Vasudev Anant Bhide etc., .

8. While rejecting the other contention concerning the retrenchment of the workman-Respondent No. I after seeking permission of the competent authority,

learned single Judge held that the Appellant-Management was required to prove before the Labour Court the aforesaid fact. The competent authority no doubt allowed the retrenchment of 500 workers out of 991 workers working with the Appellant-Management but no list of workers who were permitted to be retrenched u/s 25N of the Act, by the competent authority, was produced showing that the name of the workman-Respondent No. 1 was included in that list. Likewise, the contention with regard to settlement dated February 23, 2005 was rejected by observing as under:

...The next contention of the counsel for the Petitioner that a settlement dated February 23, 2005 Exhibit M-6 had been entered into between the Petitioner-Management and the workers' Union and, therefore, the workman- Respondent would not be entitled to any claim u/s 33C(2) of the Act as the said settlement u/s 12(3) of the Act provided that no wages were payable for the period of closure and the calculations for payment shall be made considering September 11, 1996 as the last working day again cannot be accepted. There is no specific term in the agreement that all orders/Awards passed by the Court shall be treated as cancelled or settled but what is mentioned therein is that there would be individual settlement in case of individual workman and whoever accepts the settlement and receives full and final amount, would not be entitled to receive the benefit of the orders or Awards passed by the Courts. Clause (c) of the settlement dated February 23, 2005 (Exhibit M-6 and Annexure P-7 herein) reads as follows:

(c) That as per the above terms and conditions the workers will receive their full and final amount. After this payment the mutual relation of worker and management will be terminated and in the personal disputes of the workers personal compromises are also going/will be done and after receiving the above final amount as per order/award passed in all that cases, the workers will not be entitled for any benefit and at personal level also all the pending disputes which are going on in Labour Court, Civil Court, High Court, Labour Department and whatever decree/order have been passed by any Court or Labour Department will be deemed as dismissed.

9. Mr. P.K. Mutneja, learned Counsel for the Appellant-Management has raised all the three issues which were raised and did not find favour with the learned single Judge. The first contention concerning delay and laches raised by Mr. Mutneja that although the period of limitation prescribed under the Limitation Act may not be invoked, yet delay and laches would necessarily hit the application filed by the workman-Respondent No. 1 u/s 33C(2) of the Act. According to the learned Counsel, admittedly the award was passed on March 3, 2000 (P-5) and the application for implementation of the award u/s 33C(2) of the Act was preferred on November 6, 2006 being Application No. 35/2006. It has been insisted that there is delay of six years in seeking implementation of the award. In support of his submission learned Counsel has placed reliance on a judgment of Hon'ble the Supreme Court rendered in the case of Mahabir Auto Stores and others Vs.

Indian Oil Corporation and others, and S.K. Kapur v. New Delhi Municipal Council (2004) 10 SCC 679 : 2005 I LLJ 1075.

However, we are unable to accept the contention raised by Mr. Mutneja because there are categorical findings recorded by the Labour Court as well as the learned single Judge to the effect that after the announcement of award and within a period of one year, the workman-Respondent No. 1 firstly approached the Labour Inspector vide letter dated June 6, 2000 (Exhibit W-2) seeking implementation of the award and then also addressed letter dated August 30, 2000 (Exhibit W-3) to the Appellant-Management. The workman-Respondent No. 1 was not sleeping over his rights so as to apply the principles of delay and laches. It may be true that the aforesaid letter dated June 6, 2000 (Exhibit W-2) sent to the Labour Inspector and letter dated August 30, 2000 (Exhibit W-3) addressed to the Appellant-Management may not necessarily be a remedy availed u/s 33C(1) of the Act, yet this correspondence would show that the workman-Respondent No. 1 was asserting his rights and was not sleeping over the same.

Therefore, the application filed u/s 33C(2) of the Act cannot be considered having been hit by delay and laches. Therefore, the judgments of Hon'ble the Supreme Court on which reliance has been placed are clearly not applicable. In Nanoo Ram v. Mahesh Chandra (supra) the workman had filed the application for the first time in the year 1978 seeking benefit consequent upon re-instatement and the second application was filed in the year 1979 for allowances and other benefits. However, no application seeking implementation of the award within a period of one year was filed in that case. Similar is the position in S.K. Kapur v. New Delhi Municipal Council (supra) where delay of 14 years has been taken into account to reject the claim made by the workman. Therefore, we find no parity of reasoning to apply the aforesaid law to the facts of the present case.

10. Moreover, Hon'ble the Supreme Court in the case of Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, , had held that the provisions of Article 137 of the Limitation Act, 1963 are not applicable to the proceedings under the Act. The relief under the Act 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 made to the Labour Court could 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. While holding so, their Lordships" of Hon'ble the Supreme Court have partially overruled a Full Bench judgment of this Court in the case of Ram Chander Morya v. State of Haryana (1999) 1 SCT 141 (P&H)

wherein a period of limitation of five year was prescribed for getting the reference made or for filing an application u/s 33C of the Act. It has further been held that it is not the function of the Court to prescribe the limitation where the legislature in its wisdom had thought it fit not to prescribe any period. The Courts admittedly interpret law and do not make laws. In this regard reliance may also be placed on another judgment of Hon"ble the Supreme Court rendered in the case of Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others, .

11. The other contention of the learned Counsel for the Appellant-Management that reinstatement was not possible on account of closure of the industry would also not be acceptable in view of the binding award, which is the basis of the impugned order dated July 29, 2009 (P-11) passed u/s 33C(2) of the Act. Once the award has attained finality and the rights of the workman-Respondent No. 1 has been determined, it must be regarded as existing right within the meaning of Section 33C(2) of the Act and the wages are liable to be computed accordingly.

12. The last contention by Mr. Mutneja has also failed to impress us. He has argued that according to Clause 1(C) of the terms of settlement dated February 23, 2005 between the Appellant-Management and the Union/workmen it is stipulated that the workers were not entitled for any benefit. He has argued that at personal level also all the pending disputes which are going on in the Labour Court, Civil Court, High Court and whatever decree/order have been passed by any Court or Labour Department will be deemed as dismissed. In support of his submission, learned Counsel has placed reliance on para 8 of the judgment rendered in the case of The Sirsilk Ltd. and Others Vs. Government of Andhra Pradesh and Another, . However, a perusal of para 8 of the judgment would show that a settlement could govern an award which is yet to be published but has been forwarded by the Labour Court to the Government for the purposes of publication. Thus, an award, which has attained finality not only by virtue of pronouncement by the Labour Court, but by virtue of publication as well, the settlement is held not to be applicable as per the view expressed in the case of Sirsilk Ltd. v. Government of Andhra Pradesh (supra). The aforesaid expression of opinion is discernible from the following extracts which reads thus The Sirsilk Ltd. and Others Vs. Government of Andhra Pradesh and Another,

8. ...The settlement having thus become binding and in many cases having already come into operation, there is no scope for any inquiry by the Government as to the bona fides of the settlement. In such a case in view of the possibility of conflict between the settlement in view of its binding nature u/s 18(1) and an award which might become binding on publication u/s 18(3), the proper course for the Government is to withhold the award from publication to avoid this conflict. If any dispute of the nature referred to above arises as to a settlement, that would be another industrial dispute, which the Government may refer for adjudication and if on such an adjudication the settlement is found not to be binding u/s 18(1) of the Act it will always be open to the Government then to publish the award which it had withheld, though we do not think that such

instances are likely to be anything but extremely rare. We are, therefore, of opinion that though Section 17(1) is mandatory and the Government is bound to publish the award received by it from an Industrial Tribunal, the situation arising in a case like the present is of an exceptional nature and requires reconciliation between Section 18(1) and Section 18(3), and in such a situation the only way to reconcile the two provisions is to withhold the publication of the award, as a binding settlement has already come into force in order to avoid possible conflict between a binding settlement u/s 18(1) and a binding award u/s 18(3). In such a situation we are of opinion that the Government ought not to publish the award u/s 17(1) and in cases where Government is going to publish it, it can be directed not to publish the award in view of the binding settlement arrived at between the parties u/s 18(1) with respect to the very matters which were the subject-matter of adjudication under the award. We therefore allow the appeals and direct the Government not to publish the awards sent to it by the Industrial Tribunal in these cases in view of the binding nature of the settlements arrival at between the parties u/s 18(1) of the Act. In the circumstances we order the parties to bear their own costs.

13. In the present case, the award was announced on March 3, 2000 (P-5) and it was also published thereafter. However, the settlement was reached on February 23, 2005. There is no stipulation in the settlement which may nullify the award between individual workers.

14. In view of the above, we are of the considered view that the judgment of the learned single Judge does not suffer from any legal infirmity warranting interference of this Court. The appeal is wholly without merit and we are not persuaded to admit the same. Accordingly, the appeal fails and the same is dismissed.