
(2001) 07 MAD CK 0080

In the Madras High Court

Case No : Writ Petition No. 17695 of 1994

E.E., Construction Division 2 and Another

APPELLANT

Vs

M. Gajapathy and Another

RESPONDENT

Date of Decision : 04-07-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 2
Limitation Act, 1963 — Article 137

Citation : (2002) 1 LLJ 204 : (2001) 3 MLJ 71

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : S.V. Dorai Solaimalai, for the Appellant; D. hariparanthaman, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The petitioners are the Executive Engineer and Assistant Executive Engineer respectively of Co-operative Department

(Construction Division-2) Government of Tamil Nadu. The 1st respondent was appointed as watchman in the writ petitioners Office on February

6, 1978. His services were terminated on May 15, 1981. Aggrieved by the same, the 1st respondent raised I.D. No. 581 of 1992 before the 2nd

respondent and the 2nd respondent by award dated April 19, 1994 directed reinstatement of the 1st respondent. However, the 1st respondent

was removed on May 15, 1981. He approached the Labour Court only on August 10, 1992. The Labour Court ordered reinstatement of the 1st

respondent into service but without back wages. Aggrieved by the above award, the present writ petition has been filed.

2. The only argument advanced before this Court by the learned Government Advocate is that the 1st respondent was terminated on May 15,

1981 and he filed a petition under the Industrial Disputes Act only on August 10, 1992. The Labour Court viz., the 2nd respondent ought to have

rejected the said petition on the ground of laches. However, the judgment relied upon by the petitioners reported in 1991 1 L.W. 72 was not

accepted by the Labour Court on the ground that the said judgment was applicable only to the civil proceedings and the Labour Court had been

relying upon a judgment reported in *The Cooperative Store Limited Vs. K.S. Khurana and Others*, wherein the Delhi High Court has held that the

provisions of Limitation Act are not applicable to the claim petition brought u/s 33-C(2) of the Industrial Disputes Act. Therefore, the learned

Government Advocate submitted that the award has to be set aside on the ground of laches.

3. Mr. D. Hariparanthaman, learned counsel appearing for the 1st respondent on the other hand would contend that the 1st respondent joined on

February 6, 1978 and he was removed from service on May 15, 1981. No charges were framed and the 1st respondent was not called for any

explanation and no enquiry conducted. Hence, ex facie the order of termination is bad. However, the provisions of Limitation Act are not

applicable to the proceedings under the Industrial Disputes Act as has been held by the Delhi High Court in the judgment reported in *Co-operative*

Stores Ltd. v. K.S. Khurana (supra) and the judgment of the Supreme Court reported in *Ajaib Singh Vs. The Sirhind Co-Operative Marketing*

Cum-Processing Service Society Limited and Another, : Hence, the learned counsel submitted that the Labour Court is not debarred from

entertaining an application u/s 2(a) of the Industrial Disputes Act on the ground of laches.

4. In view of the limited submission, the only question that arises for consideration before this Court is as to whether the petition filed by the 1st

respondent before the 2nd respondent in I.D. No.581 of 1992 is liable to be rejected on the ground of laches. The 1st respondent was terminated

on May 15, 1981. However, he raised industrial dispute only on August 19, 1992. In the judgment reported in *Co-operative Stores Ltd. v. K.S.*

Khurana (supra), the High Court, Delhi had an occasion to consider the application of the provisions of Limitation Act, 1963 to the proceedings

initiated under the Industrial Disputes Act and observed as follows:

The provisions of the Limitation Act, 1963 are not applicable to the claim brought u/s 33-C(2) of the Industrial Disputes Act. Though Article 137

of the Limitation Act would apply to all petitions or applications made under any statute and not merely to the application arising under the Code of

Civil Procedure, the said Article 137 of the Limitation Act would apply only to applications moved in a Court and not before any Tribunal like the

Labour Court constituted under the Industrial Disputes Act.

The Supreme Court also had an occasion to consider a similar question in the judgment reported in *Ajaib Singh v. Sirhind Co-operative*

Marketing-cum-Processing Service Society Ltd., (supra) the relevant paragraph of the said judgment is extracted as under:

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 merely a 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.

5. A reading of the above judgments would clearly indicate that the provisions of Article 137 of the schedule to Limitation Act are not applicable to

the proceedings under the Industrial Disputes Act and the relief cannot be denied to the workman merely on the ground of delay. However, as

rightly pointed out by the Supreme Court while granting the relief the Labour Court has to exercise its discretion for grant of appropriate relief.

Admittedly, in this case even though the Labour Court has directed the reinstatement of the 1st respondent has not rightly ordered the back wages

for the period of time May 15, 1981 till the date of the award presumably that the 1st respondent was not entitled to wages for the period which

was contended to be the delay on the part of the 1st respondent. Therefore, I do

not find any merit in the submission of the learned Government

Advocate that the 2nd respondent ought to have rejected the petition filed by the 1st respondent in I.D. No. 581 of 1992 on the ground of laches

and also I do not find any merit to interfere in the award passed by the 2nd respondent. Accordingly, the writ petition fails and the same is

dismissed. No costs.