

(2001) 07 MAD CK 0106

In the Madras High Court

Case No : Writ Petition No. 17695 of 1994

Executive Engineer, Construction Division-2, Co-operative
Department, No. 10 and The 'Assistant Executive Engineer,
Construction Sub Division, Co-operative Department

APPELLANT

Vs

V. Gajapathi and The Presiding Officer

RESPONDENT

Date of Decision : 04-07-2001

Acts Referred:

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

Citation : (2001) 07 MAD CK 0106

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : S.V. Durai Solaimalai, G.A, 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 Petitioner's office on 6.2.78. His services were terminated on 15.5.81. Aggrieved by the same, the 1st Respondent raised I. D. No. 581/92 before the 2nd Respondent and the 2nd Respondent by award dated 19.4.94 directed reinstatement of the 1st Respondent. However, the 1st Respondent was removed on 15.5.81. He approached the Labour Court only on 10.8.92. The Labour Court ordered reinstatement of the 1st Respondent into service but without backwages. 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 15.5.81 and he filed a petition under the I.A. Act only on 10.8.92. 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 I.D. 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 6.2.78 and he was removed from service on 15.5.81. 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 I. D. Act as has been held by the Delhi High Court in the judgment reported in The Cooperative Store Limited Vs. K.S. Khurana and Others, " and the judgment of the Supreme Court reported in Bidyadhar Mohapatra and Others Vs. District Labour Officer-cum-Conciliation Officer and Others, ." Hence, the Learned Counsel submitted that the Labour Court is not debarred from entertaining an application u/s 2 (a) of the I.D. 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. 581/92 is liable to be rejected on the ground of laches. The 1st Respondent was terminated on 15.5.81. However, he raised Industrial Dispute only on 10.8.92. In the judgment reported in The Cooperative Store Limited Vs. K.S. Khurana and Others, " the High Court of Delhi had an occasion to consider the application of the provisions of Limitation Act 1963 to the proceedings initiated under the I.D. 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 the similar question in the judgment reported in Bidyadhar Mohapatra and Others Vs. District Labour Officer-cum-Conciliation Officer and Others, " and 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 a merely 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 I.D. 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 backwages for the period from 15.5.81 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. 581/92 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.