

(1962) 03 MP CK 0001
In the Madhya Pradesh High Court

Gayaprasad

APPELLANT

Vs

Burhanpur Tapti Mills Ltd.

RESPONDENT

Date of Decision : 12-03-1962

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1963) ILR (MP) 665 : (1962) JLJ 440 : (1962) 2 LLJ 247 : (1962) 7 MPLJ 817

Hon'ble Judges : P.V. Dixit, C.J.;K.L. Pandey, J

Bench : Division Bench

Judgement

P.V. Dixit, C.J.

This is an application under Articles 226 and 227 of the Constitution for quashing a decision of the labour court, Indore, rejecting an application filed by the petitioner u/s 31 of the Madhya Pradesh Industrial Relations Act, 1960 (hereinafter referred to as the Act; for reinstatement on the ground that it was incompetent and the petitioner should have filed an application u/s 16 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, before the appropriate authority. This Act was repealed by the Madhya Pradesh Industrial Relations Act, 1960, and will hereinafter be referred to as the repealed Act. The decision of the labour court was affirmed in revision by the Industrial court. A writ is also sought for quashing the decision of the industrial court.

The petitioner was in the employment of the respondent 1, the Burhanpur Tapti Mills, Ltd., Burhanpur. He was dismissed from service on 4 November 1960 while the repealed Act was in force. The new Act came into force from 31 December 1960. After the coming into force of the Act, the petitioner approached his employer with a request for reinstatement as required by proviso to Sub-section (3) of Section 31 of the Act before filing the application which was rejected by the labour court. Both the labour court and the industrial court took the view that as the applicant was dismissed on 4 November 1960 before the coming into force of the new Act he had a right of applying u/s 16 of the repealed Act for an

order of reinstatement and that right was preserved by proviso (b) to Section 112 of the new Act, and that consequently the petitioner could not be granted any relief u/s 31 of the Act.

In our judgment, the view taken by the labour court and the industrial court is altogether erroneous. It is quite true that the applicant was dismissed on 4 November 1960 and had u/s 16 of the repealed Act a right of making an application to the Labour Commissioner for reinstatement and payment of compensation for loss of wages. But this right was available to him only until the coming into force of the new Act. The petitioner, however, made no application u/s 16 of the repealed Act before the new Act came into force. It was after the Act of 1960 came into force that he made two applications, one u/s 16 of the repealed Act and another u/s 31 of the new Act, for reinstatement and other relief. Now, proviso (b) to Section 112 of the new Act on which the labour court and the Industrial court based their decision runs as follows:

Provided that

(a) * * *

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed shall not be affected and any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability shall, so far as it is not inconsistent with the provisions of this Act, be made, instituted, continued or enforced as if the said Acts had not been repealed and continue in operation.

It is clear from the wording of the proviso (b) that what is preserved thereunder is a right acquired or accrued and not every right. The applicant had no doubt a right of applying u/s 16 of the repealed Act after the order of his dismissal was passed. But this right did not become an accrued right of his within the meaning of the saving provision as he had not made any application u/s 16 before the new Act came into force. It is well settled that a mere right existing at the date of the repealing statute

to take advantage of the provisions of the repealed statute is not a right accrued within the meaning of the usual saving clause providing that all rights accrued by virtue of the statute repealed are to be unaffected by such repeal.

Unless an individual does something towards availing himself of that right, it does not become a right accrued [see *Abbott v. Minister for Lands* 1895 A.C. 426 : and *Craies on Statute Law*, 5th Edn., p. 324. That being so, the petitioner's application u/s 31 of the new Act could not be thrown out on the ground that under proviso (b) to Section 112 of the new Act his right of applying u/s 16 of the repealed Act had been preserved. The labour court should have entertained the petitioner's application u/s 31 of the Act and determined whether the applicant's dismissal amounted to a "change" as defined in the Act and whether he was entitled to any relief under the Act.

For these reasons, this petition is allowed and the decisions of the industrial court and the labour court of 22 August 1961 and 4 July 1961 respectively are quashed. The labour court is directed to entertain the petitioner's application u/s 31 of the Act and to determine it in conformity with the provisions of the Act. The petitioner shall have costs of this application. Counsel's fee is fixed at Rs. 50. The outstanding amount of security deposit shall be refunded to the petitioner.