
(2013) 05 P&H CK 0112

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16451 of 1995

General Manager, Punjab Roadways and Another

APPELLANT

Vs

Amrik Singh and Another

RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10

Citation : (2013) 138 FLR 912 : (2013) 4 LLN 393 : (2013) LLR 919 : (2013) 171 PLR 290

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Aman Bahri, A.A.G., Punjab, for the Appellant; B.R. Mahajan, for the Respondent

Final Decision : Allowed

Judgement

Gurmeet Singh Sandhawalia, J.—The present petition has been filed under Articles 226 /227 of the Constitution of India for quashing the award dated 16.2.1994 whereby the Presiding Officer, Industrial Tribunal, Punjab, Chandigarh set aside the orders dated 18.5.1974 and 28.5.1974 and directed that the arrears would be paid to the respondent-workman from the date of demand notice dated 25.10.1990. It was further directed that the pay shall be fixed after ignoring the order of stoppage of increments set aside and taking final pay into consideration. The arrears from 25.10.1990 would be calculated and paid to the respondent-workman. The legal issue which arises for consideration is whether once the matter had been adjudicated upon by the Civil Court against the respondent-workman and upheld in appeal, whether the industrial dispute could be raised by him and whether findings of the Civil Court could have been ignored by the Industrial Tribunal.

2. In order to settle the above said issue, reference to the factual matrix would

be necessary which is as under:-

3. On 13.9.1986, respondent-workman filed a suit for declaration that he was in continuous service since 1967 as a Conductor with the management and entitled to all the annual increments and arrears by length of service irrespective of any order passed by any authority and was further entitled to be fixed in the pay scale according to rules. The defence taken was that the suit was not maintainable as no specific order had been challenged and the respondent-workman was not entitled for increments as so many increments had been stopped by way of punishment imposed upon the respondent-workman by passing various orders from time to time and the suit was barred by limitation. The Civil Court found that for inflicting minor penalty no enquiry was required and, however, the authority had taken into consideration all the norms of law by holding enquiry against the respondent-workman at different dates right from 1968. The respondent-workman had not challenged the orders passed in 1969, 1972, 1974, 1979 and so on and never asserted his right for increment after it was due in the year 1969 and the suit was held to be time barred. Accordingly, the Civil Court dismissed the suit on 5.2.1988.

4. Thereafter, the respondent-workman issued a demand notice dated 25.10.1990, which was referred by the State Government u/s 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") on 26.4.1991 for adjudication to the Industrial Tribunal. In reply to the claim statement, the management-petitioner took objections that the civil suit filed by the workman had been dismissed on 5.2.1988 and appeal had also been dismissed by the Addl. District Judge, Amritsar. Accordingly, it was pleaded that the workman was not entitled for any pay and allowances of the suspension period and the same had been forfeited by passing punishment orders and all the orders mentioned in the statement of claim had been passed after adopting the proper procedure.

5. In replication, the respondent-workman though denied the said fact but took the plea that the management-petitioner had not attached the certified copies of the orders of the Civil Court and the Court of Addl. District Judge, Amritsar.

6. The Tribunal considered the record and came to the conclusion that three increments without cumulative effect had been stopped in May, 1969, one increment without cumulative effect vide order dated 12.1.1970 and another increment vide order dated 21.5.1973 had been stopped and held that there was no necessity to hold domestic enquiry since these were minor punishments. However, punishment orders dated 18.5.1974 and 28.5.1974 whereby increments had been stopped with cumulative effect and no regular enquiry was held, therefore, the stoppage of increments was bad and against the principle of natural justice. Punishment orders dated 6.10.1983 and 22.4.1987 whereby increments had been stopped after holding proper regular enquiry were held legal and justified. Accordingly, the punishment orders dated 18.5.1974 and 28.5.1974 were set aside and directions were issued that the arrears would be paid from the date of demand notice. On the issue whether reference was not

maintainable, it was held that the same was not pressed.

7. The writ petition was admitted on 15.11.1995 and the operation of the award was stayed.

8. Counsel for the State has challenged the said award on the ground that there was a delay of more than 15 years in raising the demand notice and approaching the State Government for adjudication of the dispute and, therefore, the Industrial Tribunal should have restrained itself from deciding the reference in favour of the workman. Secondly, it was submitted that the Civil Court had earlier decided against the workman himself on merits, therefore, on the question of res judicata, the Industrial Tribunal ought not to have allowed the reference.

9. Counsel for the respondent-workman on the other hand took the plea that it was recurring cause of action and placed reliance upon the judgments in State of Punjab v. Mohan Singh, 2007(3) S.C.T. 751, Yog Raj Mittal, since deceased through his Yog Raj Mittal, since deceased through his legal representatives Vs. State of Punjab and Others and Swaran Singh v. The State of Punjab, (2010-3)159 P.L.R. 465.

10. After hearing counsel for the parties, this Court is of the opinion that the stale claim could not have been adjudicated upon by the Industrial Tribunal and there was inordinate delay in raising the demand notice dated 25.10.1990 as the orders which have been set aside were dated 18.5.1974 and 28.5.1974. Demand dated 25.10.1990 pertaining to the orders dated 18.5.1974 and 28.5.1974 was raised after a period of 16 years and said stale could not have been raised by the workman. The Hon'ble Apex Court in The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, held that the purpose of Act is to keep industrial peace and by referring such a belated claim would defeat the very purpose of the Act. In the said case, the dispute had been raised after seven years of the dismissal of the respondent. Accordingly, the Hon'ble Apex Court upheld the order of the Single Judge which had quashed the order of reference on the ground of delay. Accordingly, it was held that though there is no time limit prescribed but stale disputes cannot be referred to u/s 10 of the Act. The relevant paragraphs of the judgment reads as under:-

6. Law does not prescribe any time limit for the appropriate Government to exercise its powers u/s 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference u/s 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the

matter has become final, it appears to us to be rather incongruous that the reference be made u/s 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was *ex facie* bad and incompetent.

7. In the present appeal, it is not the case of the respondent that the disciplinary proceedings, which resulted in his dismissal, were in any way illegal or there was even any irregularity. He availed his remedy of appeal under the rules governing his conditions of service. It could not be said that in the circumstances industrial dispute did arise or was even apprehended after lapse of about seven years of the dismissal of the respondent. Whenever a workman raises some dispute it does not become industrial dispute and appropriate Government cannot in a mechanical fashion make the reference of the alleged dispute terming as industrial dispute. Central Government lacked power to make reference both on the ground of delay in invoking the power u/s 10 of the Act and there being no industrial dispute existing or even apprehended. The purpose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace and defects the very object and purposes of the Act. Bank was justified in thus moving the High Court seeking an order to quash the reference in question.

11. Another issue which has to be considered is that the workman had himself filed a Civil Suit which was dismissed on 5.2.1988 and finding had been recorded that the orders under challenge were barred by time. As per the written statement filed before the Industrial Tribunal, it had been specifically mentioned that the said order had been upheld by the Addl. District Judge, Amritsar and the only plea taken was that the certified copies of the judgments of the Civil Court and the Addl. District Judge had not been attached. The said issue was a preliminary issue and was brushed aside on the ground that the same was not pressed before the Tribunal. Once the workman had chosen to invoke the jurisdiction of the Civil Court and availed his remedy unsuccessfully then he could not have thereafter approached the Industrial Tribunal as the principle of *res judicata* which would bind the parties. It was for the respondent-workman to challenge the order of the Addl. District Judge, before this Court and once the findings of the Civil Court were there that the claim itself was barred by limitation, the Industrial Tribunal was in error in not deciding the issue on merits and holding that it was not pressed. As noticed above, the issue of delay has already been decided against the respondent-workman. A Division Bench of this Court in *The Punjab State Co-operative Bank Ltd. Vs. Presiding Officer, Labour Court and Others*, has held that the Labour Court could not entertain a reference once a writ petition had been dismissed between the parties on the ground of principle of *res judicata* as the same would be applicable as enunciated

in Section 11 of the Code of Civil Procedure. The same principle would apply in the present case also. It was also held that different remedies were available and once the workman had chosen to avail his remedy and failed on merits then he was debarred from approaching the Labour Court on the same cause of action for the same relief. Accordingly, order of the Labour Court was set aside. The relevant portion of the judgment reads as under:-

7. The Labour Court in the impugned Award-Annexure P-1 further observed that the writ petition was dismissed in limine and otherwise also the dispute was an industrial issue which could be raised by the workman by separate proceedings which she did i.e. by getting the dispute referred to the Labour Court for adjudication u/s 10 of the Act. If the High Court had simply dismissed the writ petition in limine without giving any reasons, it could be argued that the order was not passed on merits and the workman could have approached the Labour Court, even if no such direction was given by the High Court. There is no dispute that such a matter relating to adjudication of dispute of termination of services of a workman could be referred to the Labour Court u/s 10 of the Act. However, when different remedies were available and the workman chose to avail the remedy of the writ petition under Article 226 of the Constitution and failed on merits, she was debarred from approaching the Labour Court again on the same cause of action and for the same relief. The principle of *res judicata* as enunciated in Section 11 of the Code of Civil Procedure, would be applicable. The order passed by the High Court dismissing the writ petition while dealing with the merits of the case giving reasons thus could not be ignored by the Labour Court, especially on the grounds as set out in the order of the Labour Court, which is impugned.

12. The said principle would also be applicable in the facts and circumstances of the present case. Accordingly, the above framed question is decided in favour of the petitioner-management and against the respondent-workman and it is held that the industrial dispute raised itself was time barred and the workman was guilty of delay and laches and could not have raised a fresh dispute by approaching the State Government for redressal of his grievances through the Industrial Tribunal once he chose to approach the Civil Court and got findings on the issue itself on merits.

13. The judgments referred by the counsel for the respondent-workman in Mohan Singh's case (*supra*), Yog Raj Mittal's case (*supra*) and Swaran Singh's case (*supra*) to contend that the claim of increments is a recurring cause of action and a void order can be set aside at any time are not applicable to the facts of the present case since in the said cases, the workman had not got findings against him from the Civil Court. From the facts of the present case, it would be clear that workman having approached the Civil Court himself which had become final inter se parties cannot wriggle out himself from the findings of the Civil Court and approach the Industrial Tribunal. Accordingly, the writ petition is allowed and the award dated 16.2.1994 passed by the Industrial Tribunal is set

aside.