
(2015) 03 SHI CK 0057
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 3780 of 2012

Girdhari Lal

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Citation : (2015) 03 SHI CK 0057

Hon'ble Judges : Sanjay Karol, J.

Bench : Single Bench

Advocate : G.R. Palsra, for the Appellant; R.M. Bisht and Vikram Thakur, Dy. A.Gs., Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sanjay Karol, J.—It is the petitioner's grievance that vide impugned order (Annexure P-4 colly), respondents have wrongly rejected his claim on the ground of inordinate delay and latches.

2. Perusal of the impugned order reveals the solitary ground of rejection being delay. The apex Court in Raghbir Singh Vs. General Manager, Haryana Roadways, , has held as under:-

"13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services and Sapan

Kumar Pandit cases referred to supra. 14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High court was justified in denying relief to the appellants. We cannot agree In Ratan Chandra Sammanta and others Vs. Union of India and others, , it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief...."

In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay.

Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer. 42. It is an undisputed fact that the dispute was raised by the workman after he was acquitted in the criminal case which was initiated at the instance of the respondent. Raising the industrial dispute belatedly and getting the same referred from the State Government to the Labour Court is for justifiable reason and the same is supported by law laid down by this Court in Calcutta Dock Labour Board. Even assuming for the sake of the argument that there was a certain delay and laches on the part of the workman in raising the industrial dispute and getting the same referenced for adjudication, the Labour Court is statutorily duty bound to answer the points of dispute referred to it by adjudicating the same on merits of the case and it ought to have moulded the relief appropriately in favour of the workman. That has not been done at all by the Labour Court. Both the learned single judges as well as the Division Bench of the High Court in its Civil Writ Petition and the Letters Patent Appeal have failed to consider this important aspect of the matter. Therefore, we are of the view that the order of termination passed by the respondent, the award passed by the Labour Court and the judgment and order of the High Court are liable to be set

aside. When we arrive at the aforesaid conclusion, the next aspect is whether the workman is entitled for reinstatement, back wages and consequential benefits. We are of the view that the workman must be reinstated. However, due to delay in raising the industrial dispute, and getting it referred to the Labour Court from the State Government, the workman will be entitled in law for back wages and other consequential benefits from the date of raising the industrial dispute i.e. from 02.03.2005 till reinstatement with all consequential benefits."

3. In view of the settled position of law, the impugned order is thus legally not sustainable. Consequently, impugned order (Annexure P-4 colly), is quashed and set aside with the direction to respondent No. 3 to take appropriate action in accordance with law. Needful be positively done within a period of four weeks from the date of production of certified copy of the judgment.

With the aforesaid observations, present petition stands disposed of, so also pending application(s), if any.