

(2015) 01 RAJ CK 0202
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1308 of 2013

Gopal Purviya

APPELLANT

Vs

The Judge, Labour Court and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 10(1)(c), 25(F)

Citation : (2015) 01 RAJ CK 0202

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : Sunil Kumar Singodiya, for the Appellant

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.—The petitioner-workman in the instant writ application, has challenged the award dated 29th May, 2012, passed by the Labour Court, Bharatpur, wherein the reference made by the State Government has been answered in negative against the petitioner-workman for the dispute was raised after 19 years.

2. Briefly, the indispensable skeletal material facts necessary for appreciation of the controversy raised are that the petitioner-workman was engaged on daily wages basis in the year 1986, until his employment was terminated on 31st August, 1988. It is pleaded case of the petitioner that preceding the date of his termination w.e.f. 31st August, 1988, he had completed more than 240 days in the preceding 12 calendar months. Therefore, termination of his services, in violation of the mandate of Section 25(F) of the Industrial Disputes Act, 1947 (hereinafter referred to as "Rules of 1947", for short).

On a reference made by the State Government on 11th March, 2008, in exercise of powers under Section 10(1)(c) of the Act of 1947, the petitioner-workman was called upon to submit his statement of claim, which was filed on 28th March,

2008. The respondent-employer filed reply to the statement of claim on 28th May, 2009, resisting the claim and specifically pleaded that the petitioner-workman was never in the employment of the respondent-employer. Moreover, the petitioner-workman did not complete 240 or more days in the employment of the respondent-employer, and thus, there was no violation of any of the provisions of Act of 1947.

3. The Labour Court, taking into consideration pleadings of the parties, evidence tendered and upon hearing the representatives of the parties, dismissed the claim of the petitioner-workman. While answering the reference in negative and against the petitioner-workman for raising the industrial dispute after a delay of 19 years, the Labour Court further recorded a finding to the effect that the petitioner-workman failed to prove the fact that he had been in the employment for 240 or more days in the calendar year preceding the termination of employment.

4. I have heard the learned counsel for the petitioner-workman and with his assistance perused the materials available on record as well as carefully considered the impugned award dated 29th May, 2012.

5. Indisputably, the petitioner-workman raised the industrial dispute, after a lapse of 19 years and he did not furnish any explanation for the undue and inordinate delay of 19 years. For the delay, in raising the industrial dispute, all that has been pleaded is for the assurance of the respondent-employer held out to re-engage him and that he being an illiterate person. The petitioner-workman in his evidence before the Labour Court deposed that he was engaged @ Rs. 7 to 8 per day, but even those wages were never paid to him. He has further stated that he continued to work without receipt of any payment on the assurance that the payment would be released after 6 to 7 months and his services will be regularized. Neither any payment was made nor he was regularized by the respondent-employer. Thus, the petitioner suffered on account of his illiteracy.

6. The Labour Court after careful consideration and analysis of the evidence tendered by the petitioner-workman concluded that the petitioner-workman could not prove the fact of his employment for 240 or more days with the respondent-employer in the preceding calendar year with reference to the alleged date of his termination i.e. 31st August, 1988. Further, the pleadings and evidence of the petitioner-workman itself proved that he did not work at all.

7. The relevant record was not produced by the respondent-employer in spite of an application preferred by the petitioner-workman therefore, the Labour Court, on the basis of adverse inference, concluded that the petitioner-workman did work for 240 or more days in the preceding 12 calendar months to his retrenchment.

8. Learned counsel for the petitioner relying upon the opinion of the Hon'ble Supreme Court in the case of Mahavir Singh Vs. U.P. State Electricity Board and Others, (1999) 82 FLR 169 : (1999) 2 LLJ 482 : (1999) 9 SCC 178 : (1999)

SCC(L&S) 945 ; argued that once the termination of the services of the petitioner was held to be illegal, the entire claim and relief prayed could not have been rejected.

9. In the case of Assistant Engineer, C.A.D., Kota Vs. Dhan Kunwar, AIR 2006 SC 2670 : (2006) 111 FLR 792 : (2006) 6 JT 142 : (2006) 3 LLJ 12 : (2006) 6 SCALE 571 : (2006) 5 SCC 481 : (2006) SCC(L&S) 1142 : (2006) 3 SCR 274 Supp : (2006) AIRSCW 3571 : (2006) 5 Supreme 271 ; the Hon''ble Supreme Court dealing with the issue of delay of 8 years in raising industrial disputes, held that a delay of 7 to 9 years in raising the dispute before the forum may be fatal and would disentitle the workman to any relief.

10. In the case of Jasmer Singh v. State of Haryana and Anr. (Civil Appeal No. 346/2015, decided on 13th January, 2015, the Hon''ble Supreme Court dealt with the issue of limitation and delay of 3 years in raising the industrial disputes. Thus, the case has no application to the facts of the instant case at hand wherein the delay in of 19 years.

11. In the case of Dhan Kunawar (supra), the observations made by the Hon''ble Supreme Court have been made in the back drop of the singular facts of that case whereas in the instant case at hand, the petitioner-workman has failed to prove even the factum of having worked for 240 or more days in the employment of the employer in the preceding 12 calendar months before the alleged termination of the employment.

12. In the case of Mahavir Singh (supra), what was challenged before the Hon''ble Supreme Court was the order of the High Court passed in exercise of writ jurisdiction under Article 226 of the Constitution of India, interfering with the award wherein 50% back wages were directed to be granted to the workman therein and the matter had lingered on for a number of year, the relief was allowed. The facts of the instant case at hand are entirely different and distinguishable, and therefore, the opinion referred to and relied upon is not attracted to the case of the petitioner.

13. Be that as it may, even in the case of Mahavir Singh (supra), the date of alleged termination was 12th November, 1976, and the industrial dispute raised, though belatedly was raised in the month of March 1983, a little over six years whereas in the instant case at hand, there is an inordinate and unexplained long delay of 19 years, therefore, in my opinion, the judgment referred to and relied upon by the learned counsel for the petitioner is of no help in view of attending facts in the instant case at hand.

14. In the case of Haryana Land Reclamation and Development Corporation Ltd. v. Nirmal Kumar:

Haryana Land Reclamation and Development Corporation Ltd. Vs. Nirmal Kumar, (2008) 1 CLT 636 : (2008) 116 FLR 366 : (2008) 1 LLJ 864 : (2007) 14 SCALE 34 : (2008) 2 SCC 366 : (2008) 1 SCC(L&S) 951 ; the Hon''ble Supreme Court

observed that for delay in seeking the reference, no formula of universal application can be laid down and it would depend on the facts of each individual case. After a survey of several earlier precedents on the issue the Hon'ble Supreme Court observed thus:

"However, certain observations made by this Court need to be noted. In *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, AIR 2000 SC 839 : (2000) 84 FLR 673 : (2000) 1 JT 388 : (2000) 1 LLJ 561 : (2000) 1 SCALE 306 : (2000) 2 SCC 455 : (2000) SCC(L&S) 283 : (2000) 1 SCR 459 : (2000) 3 SLJ 22 : (2000) AIRSCW 397 : (2000) AIRSCW 1592 : (2000) 3 Supreme 729 : (2000) 1 Supreme 359 it was noted at paragraph 6 as follows:

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 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 a lapse of about seven years of the 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 under Section 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 under Section 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 an industrial dispute was ex-facie bad and incompetent."

In *S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka*, AIR 2003 SC 3553 : (2003) 97 FLR 608 : (2003) 3 JT 436 : (2003) 2 LLJ 359 : (2003) 3 SCALE 533 : (2003) 4 SCC 27 : (2003) SCC(L&S) 380 : (2003) 3 SCR 156 : (2003) AIRSCW 2196 : (2003) 3 Supreme 53 the position was reiterated as follows:

(at para 17) "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. It is true, as held in *Shalimar Works Limited Vs. Their Workmen*, AIR 1959 SC 1217 : (1959) 2 LLJ 26 : (1960) 1 SCR 150, that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable that the disputes should be referred as soon as possible

after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even reemployment of the most of the old workmen was held to be fatal in *Shalimar Works Limited Vs. Their Workmen*, AIR 1959 SC 1217 : (1959) 2 LLJ 26 : (1960) 1 SCR 150 , in *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, AIR 2000 SC 839 : (2000) 84 FLR 673 : (2000) 1 JT 388 : (2000) 1 LLJ 561 : (2000) 1 SCALE 306 : (2000) 2 SCC 455 : (2000) SCC(L&S) 283 : (2000) 1 SCR 459 : (2000) 3 SLJ 22 : (2000) AIRSCW 397 : (2000) AIRSCW 1592 : (2000) 3 Supreme 729 : (2000) 1 Supreme 359 , a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In *Ratan Chandra Sammanta and others Vs. Union of India and others*, AIR 1993 SC 2276 : (1993) 3 JT 418 : (1993) LabIC 1672 : (1993) 2 LLJ 676 : (1993) 2 SCALE 974 : (1993) 4 SCC 67 Supp : (1993) 3 SCR 751 , 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. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in *Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, AIR 1987 SC 2342 : (1987) 4 JT 164 : (1988) LabIC 37 : (1988) 1 LLJ 370 : (1987) 2 SCALE 844 : (1988) 1 SCC 122 : (1988) 1 SCR 598 : (1988) 2 SLJ 31 , the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal cum-Labour Court. We do not think that the appellants deserve to be non suited on the ground of delay."

15. For the reasons and discussions herein above, the writ petition is devoid of any substance and lacks in merit, and therefore, deserves to be dismissed.

16. There is no illegality in the award dated 29th May, 2012, passed by the Labour Court, Bharatpur, declining any relief to the petitioner-workman for having raised the industrial dispute after an unexplained delay of 19 years.

17. The writ petition is hereby dismissed.

18. No costs.