

(2009) 04 DEL CK 0242

In the Delhi High Court

Case No : Writ Petition (C) No. 88 of 2007

Iron and Steel Mazdoor Morcha (Regd.)

APPELLANT

Vs

Kumar Industries

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2009) ILR Delhi 502 Supp

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Puneet Saini, for the Appellant; K.K. Sabharwal, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By way of this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the impugned award dated 8.12.2002 whereby the claim of the petitioner was rejected.

2. Brief facts relevant for deciding the present petition are as under:

The case of the petitioner union is that on 10.6.1999 a resolution was passed by the workmen for the grant of certain legal benefits. It was the grievance of the petitioner union that employees of the respondent management were not getting legal benefits so they demanded minimum wages, bonus, PF, ESI uniforms, House Rent Allowance, pair of shoes, safety shoes and gloves, over time, annual festival holiday, casual leave, appointment letter, etc. Before the Tribunal the management stopped appearing and was proceeded ex-parte. The statements of workmen were recorded but all of them stated that they were entitled for two sets of uniform, house rent allowance and pairs of shoes but without specifically mentioning any legal right to claim these benefits. In the background of this, the Tribunal held that the workmen were not entitled for any relief and answered the award against the workmen. Hence the present petition.

3. Counsel for the petitioner submits that all the workmen who are members of

the petitioner union are entitled for two sets of uniform, house rent allowance and pairs of shoes and the tribunal without appreciating the case set up by the petitioners declined the said relief.

4. Opposing the present petition of the petitioner, Mr. K.K. Sabharwal, counsel for the respondent at the outset submits that the present petition is bad on account of delay and laches as the impugned award has been challenged after a lapse of more than four years. Counsel further submits that nowhere in the entire petition the petitioner has offered any explanation for such a long delay in filing the present petition. Counsel further submits that the petitioner failed to prove and establish their case before the Tribunal and therefore the claim of the petitioner was rejected even though, the respondent/management was proceeded ex-parte. Counsel thus submits that petitioner has no merits to succeed in the present petition.

5. I have heard counsel for the parties and perused the record.

6. No doubt that no limitation has been prescribed under the Industrial Disputes Act to challenge the impugned award but that would not mean that any party can choose to assail the award of the Tribunal at any time so likes. The cardinal principle of law is that a party who feels aggrieved with the order of any adjudicatory authority must approach the superior court at the earliest possible time and if such a party is prevented to approach the higher court within a reasonable time then sufficient explanation should be offered in the petition as to what prevented the petitioner to approach the court within a reasonable time. In this regard, the honorable Apex Court in U.P. Jal Nigam v. Jaswant Singh (2006) 2 SCC 464 observed as under:

9. Similarly in Jagdish Lal v. State of Haryana⁵ this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the court, then such person cannot stand to benefit. In that case it was observed as follows: (SCC p. 542)

The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Virpal Singh Chauhan case⁶. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage.

10. In Union of India v. C.K. Dharagupta it was observed as follows: (SCC p. 398, para 9)

9. We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi⁸ gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case⁸. In view of our finding that the benefit of the judgment of the Tribunal dated 17-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any

relief.

11. In Govt. of W.B. v. Tarun K. Roy their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows: (SCC pp. 359-60, para 34)

34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in Debdas Kumar¹⁰. The plea of delay, which Mr Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law.

12. The statement of law has also been summarised in Halsbury's Laws of England, para 911, p. 395 as follows: "In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

(i) acquiescence on the claimant's part; and

(ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.

7. Perusal of the petition shows that no such explanation has been given by the petitioner as to why the award was not challenged for such a long spell of four years. I, therefore, find that the present petition is bad on account of delay and laches. Even otherwise on merits as well I do not find there is any irrationality or perversity in the impugned award as the Tribunal has clearly held that none of the witnesses produced by the petitioner were able to establish their case for their entitlement of two sets of uniform, house rent allowance or pairs of shoes. With the said findings of facts arrived at by the Tribunal and the Tribunal being a final adjudicator of facts, I refrain myself to interfere with the same. Even

otherwise, the petitioners have failed to advance any reason to point out as to how the said findings are perverse or irrational. There is no merit in the present petition, the same is hereby dismissed.