

(2002) 05 DEL CK 0056
In the Delhi High Court
Case No : CWP 450 of 2001

Jagdish Prasad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-05-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21
Limitation Act, 1963 — Section 5

Citation : (2002) 6 AD 299 : (2002) 98 DLT 837 : (2002) 63 DRJ 512 : (2002) 3 LLJ 661 : (2002) 3 UPLBEC 2760

Hon'ble Judges : S.B. Sinha, C.J.; S.K. Mahajan, J.; A.K. Sikri, J

Bench : Full Bench

Advocate : G.D. Bhandari, for the Appellant; Jagjit Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—Doubting the correctness an observation made by a Division Bench of this court in Shish Pal Singh and Ors. v. UOI in CWP 5071/99 disposed of on 23rd August 1999 to the effect that in the matter of maintenance of a live casual labour register, cause of action is a continuous one a Division Bench of this court referred the matter to Full Bench by an order dated 7th February 2002 and that is how the matter has been placed before us.

FACTS

The petitioner allegedly was appointed as a Hot Weather Waterman during summer season under Station Superintendent, Bangarmau in the District of Morabad of Northern Railway Administration on 29th May 1983. He was disengaged at the end of the summer season. He was again appointed in the summer seasons of 1984, 1985 and 1986 at different stations within the same Division. He last performed his duty from 16th April 1986 to 14th July 1986.

By reason of a Circular dated 28th August 1987, a provision has been made for maintenance of Live Casual Labour Register, inter alia, on the ground that

complaints had been received that those who had worked earlier were not being engaged as and when subsequent requirements arose.

The petitioner on or about 24th September 1987 made a request for placing his name on the said Register. He did not receive any reply. He did not carry the matter further and made a further representation only on or about 20th May 1998.

Finding no response from the respondents, he filed an Original Application No. 444/2000 before the Tribunal. Before the learned Tribunal, reliance was placed on the decision of this court in Shish Pal Singh (supra).

The learned Tribunal, however, referred to a Full Bench decision with regard to the question of limitation in an identical case and held:

"4. The question of limitation has to be first addressed before entering into the merits of the case. An identical question of placing casual labourer in the Live Casual Labour Register was the subject matter of the Full Bench cases (supra). The Full Bench after an elaborate discussion held as under:-

"In the light of the foregoing discussion we answer the aforesaid issue (a) as under:

Provisions of the relevant Railway Board's circular dated 25.4.1986 followed by the circular dated 28.8.87 issued by General Manager, Northern Railway for placing the names of casual labour, on the live casual labour register do not give rise to a continuous cause of limitation contained in Section 21 of the Administrative Tribunals Act, 1985 would apply."

Shish Pal Singh (supra), however, was distinguished on the ground that therein a cause of action arose in 1997-98.

2. Mr. Bhandari, the learned counsel appearing on behalf of the petitioner would submit that keeping in view the fact that name of a Casual Labour is to be recorded in the said Register only on his completion of 120 days in service, there does not appear any reason why the learned Tribunal rejected the petitioner's application despite the fact that the petitioner had existing right in this court in terms of 1987 circular.

3. The Learned counsel would submit that in a case of this nature, the learned Tribunal ought to have condoned the delay in filing the Original Application.

4. Mr. Jagjit Singh, learned counsel appearing on behalf of the respondent on the other hand, would support the decision of the learned Tribunal.

5. Admittedly, the petitioner herein worked only up to July 1986. Even before the learned Tribunal, he does not appear to have stated that he made a representation in the year 1987. He appears to have made a representation in the year 1998 only after the Tribunal had issued a direction in the case of Jai Bhagwan OA 108/93 disposed of by a judgment dated 7th April 1995.

6. It is not a case where an employee is entitled to a salary or pension so that the cause of action for filing the Original Application would be a continuous one. The petitioner filed the Original Application on the ground that his name be directed to be placed in the Live Casual Labour Register.

7. Even if his contention is accepted to be correct that he made a representation in this behalf as far back as on 24th September 1987, he should have approached the Tribunal within the period of limitation. Section 21 of the Administrative Tribunal Act provides a period of one year as the period of limitation for filing an Original Application before the Tribunal. The question how the period of limitation should be counted after an employee has filed a representation came up for consideration before the apex court in *S.S. Rathore Vs. State of Madhya Pradesh*, wherein the apex court in no uncertain terms held that he may await an answer or a reply to his representation for a period of six months where after he should file an appropriate application, in the following terms:

"22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action of cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation.

8. In that view of the matter, the petitioner ought to have filed an application within a period of 18 months from the date of filing of the said representation. He did not do it and as such his application has rightly been held to be barred by limitation.

9. This aspect of the matter is squarely covered by a decision of the apex court in *Ratan Chandra Sammanta and others Vs. Union of India and others*, wherein it was held:

"5. The representation does not give any detail. It is not mentioned if the scheme was given due publicity or not. No Explanation is given as to why the petitioners did not approach till 1990. Nor it is stated if any of the casual labourer of the project were reemployed or not. It is vague and was lacking in material particulars.

6. Two questions arise, one if the petitioners are entitled as a matter of law for re-employment and other if they have lost their right, if any, due to delay. Right of casual labourer employed in projects, to be re-employed in railways has been recognized both by the Railways and this Court. But unfortunately the petitioners did not take any step to enforce their claim before the Railways except sending a vague representation nor did they even care to produce any material to satisfy this Court that they were covered in the scheme framed by the Railways. It was

urged by the learned Counsel for petitioners that they may be permitted to produce their identity cards etc., before opposite parties who may accept or reject the same after verification. We are afraid it would be too dangerous to permit this exercise. A Writ is issued by this Court in favor of a person who has some right. And not for sake of roving enquiry leaving scope for manoeuvring. Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well. From the date of retrenchment if it is assumed to be correct a period of more than 15 years has expired and in case we accept the prayer of petitioner we would be depriving a host of others who in the meantime have become eligible and are entitled to claim to be employed. We would have been persuaded to take a sympathetic view but in absence of any positive material to establish that these petitioners were in fact appointed and working as alleged by them it would not be proper exercise of discretion to direct opposite parties to verify the correctness of the statement made by the petitioners that they were employed between 1964 to 1969 and retrenched between 1975 to 1979."

10. In *Sonerao Sadashivrao Patil and Another Vs. Godawaribai Gahirewar and Others*, , whereupon Mr. Bhandari placed reliance, a learned Single Judge of the Bombay High Court was dealing with a question as to what would constitute "sufficient cause" within section 5 of the Limitation Act, 1963. Such a question does not arise for consideration of this court.

11. Keeping in view the decisions of the apex court, we are of the opinion that in a case of this nature, the cause of action could not be a continuous one.

12. To the afore-mentioned extent, the decision in *Shish Pal Singh (supra)* must be held not to have been correctly rendered and it is over-ruled accordingly.

13. There is thus no merit in this writ petition which is accordingly dismissed. In the facts and circumstances of this case, there would be no order as to costs.