

(2019) 05 RAJ CK 0121

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 706 Of 2019, Civil Misc. Stay Application No. 7895 Of 2019 In Civil Writ Petition No. 16877 Of 2015

Kehari Singh

APPELLANT

Vs

Divisional Forest Officer And Ors

RESPONDENT

Date of Decision : 14-05-2019

Acts Referred:

Limitation Act, 1963 — Section 5

Industrial Disputes Act, 1947 — Section 9A, 25F, 25G, 25H

Citation : (2019) 05 RAJ CK 0121

Hon'ble Judges : Mohammad Rafiq, J; Narendra Singh Dhaddha, J

Bench : Division Bench

Advocate : G.S. Gill, Soni Bajaj

Final Decision : Dismissed

Judgement

The appeal, preferred by writ-petitioner/appellant against judgment dated 09.02.2017 of learned Single Judge dismissing the writ petition, has been filed with inordinate delay of 752 days. Challenge in this writ petitioner is made to the award dated 07.04.2015 of the Labour Court in LCR No.181/1989. The writpetitioner/appellant has also filed an application under Section 5 of the Limitation Act for condonation of the delay on the ground that after his removal from service he was living in grave conditions of poverty and that in the meantime his first son died on 22.04.2015 and second son got seriously injured in an accident took place on 27.11.2017, on whose treatment he had to spend a huge money and it also took long time and therefore he could not contact his Advocate looking after his matter in this Court and he was not aware of the decision of the Single Bench and he came thereabout only in the month of January, 2019. We are not convinced with the grounds taken by the writ-petitioner/appellant for condonation of inordinate delay in filing this appeal, even then we have looked into the facts as also merits of the case.

Mr. G.S. Gill, learned counsel for the writpetitioner/appellant, argued that learned

Single Judge has erred in law in confining the challenge only to examine the award with regard to Section 25F of the Industrial Disputes Act, 1947 (for short, 'the ID Act') and did not examine the award on the question whether or not Section 25G of the ID Act has been complied with.

Learned counsel for the writ-petitioner/appellant argued that the provisions enumerated in Sections 9A, 25G and 25H of the ID Act, which have not been considered by the learned Labour Court and the learned Single Judge also committed the same illegality in the impugned order. Reliance is placed on the judgment of this court in *Oriental Bank of Commerce Vs. P.O., Central Government Industrial and Another* - 1994 (2) LLJ 770 (Raj.), to argue that Sections 25G and 25H of the ID Act are attracted even in cases where workman has worked not less than 240 days. He also relied on the judgment of this court in *Surya Prakash Sharma Vs. Rajasthan Text Board, Jaipur and Others* - 1994 (69) FLR 22 (Raj.), wherein it was held that continuous service for the prescribed period was not necessary for the applicability of Sections 25G and 25H of the ID Act. He also relied on the judgment of Delhi High Court in *Government of N.C.T. of Delhi Vs. Balbir Singh* - 1997 (76) FLR 569.

We have gone through the judgment passed by the learned Single Judge. The learned Single Judge has relied on the judgment of the Supreme Court in *Oshiar Prasad Vs. Sudamdih Coal Washery* - (2015) 4 SCC 71, wherein it is held that the Tribunal only gets jurisdiction to the extent of reference is made to it by the Government. Reference is also made to the judgment of the Supreme Court in *Tata Iron and Steel Company Limited Vs. State of Jharkhand* - (2014) 1 SCC 536, wherein it has been held that the High Court, in proceedings arising before it from an award of a Labour Court, could not extend the scope of reference made to the Labour Court. Learned Single Judge has held that reference in the present case was limited to the question of writpetitioner/appellant workman's alleged illegal termination and consequent relief if so found and that necessarily related to determining whether Section 25F of the ID Act had been contravened or not. The reference made to the Labour Court by the appropriate Government required the court to determine whether removal of Kehari Singh S/o Shri Babu Lal from service by the Divisional Forest Officer, Bharatpur, and the Regional Forest Officer, Bharatpur was legally justified and if so what relief was he entitled to? Even if we presume that this should also cover provisions of Section 25G and 25H of the ID Act, we find that no such plea was set up by the writ-petitioner/appellant workman in the statement of claim. Learned counsel for the writpetitioner/appellant has taken the court to the statement of claim, in which he has singularly raised the issue with regard to noncompliance of the provisions of Section 25F of the ID Act. The management therefore could not be expected to meet the cause which was not specifically set up by the workman. As regards Section 25F of the ID Act is concerned, the finding of fact has been recorded by the learned Labour Court and the same was not found to have been violated because the writ-petitioner/appellant failed to prove his working for 240 days in a calendar year immediately preceding the date of his alleged removal from the

service. We find no case for interference.

The appeal is accordingly dismissed. This also disposes of the stay application. The application under Section 5 of the Limitation Act is also dismissed.