
(2012) 12 DEL CK 0156
In the Delhi High Court
Case No : Writ Petition (C) No. 669 of 2012

Krishan Kumar

APPELLANT

Vs

Delhi Jal Board

RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 137 FLR 282 : (2013) LabIC 3135 : (2013) 1 LLJ 469

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Anuj Aggarwal and Mr. Saqib Ali, for the Appellant; Sumeet Pushkarna, CGSC with Mr. Gaurav Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Ms. Justice Mukta Gupta

1. By the present petition the Petitioner seeks setting aside of the award dated 6th September, 2011 passed by the learned Presiding Officer,

Industrial Tribunal, Delhi in industrial dispute (ID) No. 332/2011 wherein the learned Tribunal held that the punishment of withholding of promotion

of the workman for a period of 2 years as imposed by the Respondent was illegal and unjustified. However, it refused to grant him any relief on the

ground that the case was barred by delay and laches. Learned counsel for the Petitioner contends that the learned Tribunal erred in holding that the

claim of Petitioner was barred by delay and laches. Provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the

proceedings under the ID Act and the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay, if raised

by the employer, is required to be proved as a matter of fact by showing the real

prejudice and is not a mere hypothetical defence. Even in a case where delay in raising claim is shown to exist, the Industrial Adjudicator can appropriately mould the relief, however cannot decline the reference on the ground of delay and laches. Reliance is placed on *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, & *Kuldeep Singh Vs. G.M., Instrument Design Development and Facilities Centre and Another*, . It is further contended that the workman was continuously pursuing his case before the management by filing appeals dated 2nd July, 1996 and 7th September, 1998 and a demand notice dated 6th September, 2006 and even otherwise the non-promotion of the workman is a continuous cause of action hence, no time limit can be prescribed to raise the claim. Reliance is also placed on *Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others*, to contend that when the dispute remained alive, though not galvanized by the workmen on account of other justified reasons it does not cause the dispute to wane away into total eclipse.

2. Per contra learned counsel for the Respondent contends that the industrial dispute was raised by a workman after a delay of 12 years after imposition of penalty on him. Workman, further, has given no reasonable explanation for such a delay in raising his claim before the learned Tribunal. Although, the provisions of Limitation Act, 1963 are not applicable to the proceedings under the ID Act and the Court cannot import a period of limitation where the Statute does not prescribe the same, but it does not mean, that irrespective of the facts and circumstances of each case, a state claim must be entertained by the appropriate government while making reference or by the Tribunal in deciding the reference on merits when already made. Reliance is placed on *Haryana State Coop. Land Development Bank Vs. Neelam*, in support of this contention. It is further contended that the workman has not placed on record any proof or explanation to show the reason behind such a delay. It was for the Petitioner to show that he had raised dispute within a reasonable time, and that he was not responsible for any delay which in the present case the workman has failed to prove and thus, he was rightly denied any relief by the learned Tribunal. Reliance is placed on the judgment of *U.P. State Road Transport Corporation Vs. Babu Ram*, and *The Management of M/s. Indian*

Iron and Steel Co. Ltd. Vs. Prahlad, .

3. I have heard learned counsel for the parties.

4. Briefly the facts are that the Petitioner was appointed as a II class Electrician as a regular & permanent employee with the

management/Respondent on 14th February, 1990. Initially he was taken into job by the erstwhile Delhi Water Supply & Sewage Disposal

Undertaking now known as Delhi Jal Board, the Respondent herein. On 5th March, 1993 the Petitioner was issued a Memorandum wherein it

was alleged that on 30th August, 1992 he had left his duty at 9 PM and reported back at 11 PM, thereby he had acted in most negligent manner

and failed to perform his duty sincerely, contravening Rule 3(1)(ii) of CCS (Conduct) Rules, 1964. The said memorandum was replied by the

Petitioner vide reply dated 18th March, 1993. However, vide office order dated 22nd April, 1994 a penalty of stoppage of two increments was

proposed against the Petitioner and a reply was sought from him. The Petitioner gave a detailed reply dated 9th May, 2004. However, vide office

order dated 6th March, 1996 the management imposed a penalty of withholding 2 increment without cumulative effect upon the

Petitioner/workman. Against the said order, an appeal was filed by the Petitioner before the Additional Commissioner (Water) which was

disposed off vide office order dated 2nd July, 1996, modifying the penalty of withholding two increment to withholding of promotion of the

workman for a period of 2 years. Petitioner once again preferred an appeal which was rejected vide order dated 7th September, 1998.

Meanwhile, the worker was promoted as Electrician-I Class/Shift Incharge in May, 1999. The Petitioner also sent a demand notice dated 6th

September, 2006 against the punishment imposed on him. However, the same was not replied by the management. Hence, the workman filed a

statement of claim before the conciliation officer. Since no amicable solution could be reached in the conciliation proceedings, the appropriate

government made a reference of this dispute to the Industrial Tribunal vide order dated 7th May, 2008 under the term of reference;

Whether penalty of withholding of promotion for a period of two years, imposed upon Shri Krishan Kumar S/o. Shri Ganesh Lal by the

management vide order dated 2nd July, 1996 is illegal and/or unjustified, and if

yes, to what relief is he entitled?

5. The short question for consideration involved in the present writ petition is whether the learned Industrial Tribunal was correct in dismissing the

claim of the workman/Petitioner on the ground of delay and laches after observing that the punishment of withholding two promotions of workman

by the Respondent/management was illegal and unjustified. It is contended on behalf of the Petitioner that the ID Act is a social welfare legislature

and time and again, in judgments of the Hon"ble Supreme Court and various High Courts it has been held that where a statute does not provide for

a period of limitation, no limitation can be imputed by the Courts to deny a relief to workman. In cases where delay is still shown to exist the

Courts can only mould the relief and cannot refuse to decide on a reference altogether. Reliance is placed on the judgment of Hon"ble Supreme

Court in Ajaib Singh (supra) and Kuldeep Singh (supra) in support of this contention. However, this contention of the Petitioner does not find

favour with me. Although, no period of limitation is prescribed under the Industrial Dispute Act, that by itself would not give claimant a right to raise

his claims as and when he fancies. The claimant cannot be allowed to remain idle for a long span of time and thereafter raise the dispute unless a

cause of action arose at a belated stage or there is a continuous cause of action. Further, the judgment in Ajaib Singh's case (supra) was

considered by the Hon"ble Supreme Court in Haryana State Co-op. Land Development Bank (supra) wherein it was observed that the decision in

Ajaib Singh must be held to have been rendered in the fact situation containing therein and no ratio of universal application can be culled out from

it. Their Lordships held:

13. In Ajaib Singh the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have

been in a position to show the circumstances which prevented him from approaching the court at an earlier stage or even to satisfy the court that

such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same

was denied to the workman only by the High Court. The Court referred to the purport and object of enacting the Industrial Disputes Act only with

a view to find out as to whether the provisions of Article 137 of the Schedule

appended to the Limitation Act, 1963 are applicable or not.

Although, the court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh but it does

not mean that irrespective of the facts and circumstances of each case, a state claim must be entertained by the appropriate Government while

making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court.

14. The decision of Ajaib Singh must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can

be culled out therefrom. A decision, as is well known, is an authority of what it decides and not what can logically be deduced therefrom (Bharat

Forge Co. Ltd. Vs. Uttam Manohar Nakate, and Kalyan Chandra Sarkar etc. Vs. Rajesh Ranjan @ Pappu Yadav and Another,).

15.

16.

17.

18. It is trite that the courts and tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim

and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of

his conduct a workman would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally

applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of acceptance sub silentio. The

respondent herein did not raise any industrial dispute questioning the termination of her services within a reasonable time. She even accepted an

alternative employment and has been continuing therein from 10-8-1988. In her replication filed before the Presiding Officer of the Labour Court

while traversing the plea raised by the appellant herein that she is gainfully employed in HUDA with effect from 10-8-1988 and her services had

been regularised therein, it was averred:

6. The applicant workman had already given replication to the ALC-cum-Conciliation Officer, stating therein that she was engaged by HUDA

from 10-8-1988 as clerk-cum-typist on daily-wage basis. The applicant workman has the right to come to the service of the management and she

is interested to join them.

6. In *Indian Iron & Steel Co. Ltd.* (supra) the Hon''ble Supreme Court held:

10. In our view on the facts of the case in hand the aforementioned two decisions were of no avail to support the case of the respondent. The

learned Single Judge also found fault with the Tribunal as to the finding that the claim of the respondent was too stale to grant any relief when

parties had not raised such a plea. When the Tribunal on proper and objective appreciation of the material on record found that the claim was

made by the respondent after 13 years, it was open to it to refuse relief to the respondent. Moreover, the Tribunal did not refuse relief merely on

the ground of delay and laches as is evident from para 25 of the order extracted above, inasmuch as the Tribunal has recorded that even without

considering the question of delay the respondent had lost his lien on his appointment.

11.

12. Whether relief can be declined on the ground of delay and laches, depends on the facts and circumstances of each case. In this case the claim

was made almost after a period of 13 years without any reasonable or justifying ground and there was nothing on record to explain this delay as

held by the Tribunal. When the respondent did not make claim for 13 years without any justification and on merits also he had no case, the

Tribunal did not rightly grant him any relief. Even otherwise the findings of facts recorded by the Tribunal in the light of the Standing Orders

aforementioned cannot be said to be untenable or perverse.

7. Further, the Hon''ble Supreme Court in *U.P. State Road Transport Corporation* (supra) held:

10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that

he had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision, if any, in the conciliation proceedings. It

was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a

hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalised

for delay in finalising the conciliation proceedings and the reference. But neither

the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures.

8. In the present case, the penalty of stoppage of two increments was imposed on the workman 6th March, 1996 against which an appeal was

preferred by him. Vide order dated 2nd July, 1996 this penalty was modified to that of withholding his promotion for 2 years. The Petitioner

preferred another appeal which was dismissed on 7th September, 1998. Thereafter, the workman made no representation up to 6th September,

2006 on which date a demand notice was sent by him through a union to the management against the penalty imposed on him on 2nd July, 1996.

Since no reply was received from the management, statement of claims was filed by the Petitioner before the conciliation officer culminating finally

into a reference dated 7th May 2008 to the Industrial Tribunal of his dispute on failure of the conciliation proceedings. The workman made no

representation or claims from the year 1998 till 2006 and even in October, 1996 when the workman claims that his juniors were promoted or in

the May, 1999 when he himself was promoted as an Electrician Class I/Shift Incharge. Due to inaction on the part of the Petitioner during the

aforesaid period, rights may have accrued to a number of other people who would have been promoted. Thus, the claim of the Petitioner raised

belatedly deserves to be rejected. The Hon''ble Supreme Court in P.S. Sadasivaswamy Vs. State of Tamil Nadu, has held:

2. The main grievance of the appellant is that the second respondent who was junior to him as Assistant Engineer was promoted as Divisional

Engineer in 1957 by relaxing the relevant rules regarding the length of service necessary for promotion as Divisional Engineer and that his claim for

a similar relaxation was not considered at that time. The learned Judge of the Madras High Court who heard the writ petition was of the view that

the relaxation of the rules in favour of the second respondent without considering the appellant's case was arbitrary. In view of the statement on

behalf of the Government that such relaxation was given only in the case of overseas scholars, which statement was not controverted, it is not

possible to agree with the view of the learned Judge. Be that as it may, if the appellant was aggrieved by it he should have approached the Court

even in the year 1957, after the two representations made by him had failed to

produce any result. One cannot sleep over the matter and come to the Court questioning that relaxation in the year 1971. There is the further fact that even after Respondents 3 and 4 were promoted as Divisional Engineers over the head of the appellant he did not come to the Court questioning it. There was a third opportunity for him to have come to the Court when Respondents 2 to 4 were again promoted as Superintending Engineers over the head of the appellant. After fourteen long years because of the tempting prospect of the Chief Engineership he has come to the Court. In effect he wants to unscramble a scrambled egg. It is very difficult for the Government to consider whether any relaxation of the rules should have been made in favour of the appellant in the year 1957. The conditions that were prevalent in 1957, cannot be reproduced now. In any case as the Government had decided as a matter of policy, as they were entitled to do, not to relax the rules in favour of any except overseas scholars it will be wholly pointless to direct them to consider the appellant's case as if nothing had happened after 1957. Not only Respondent 2 but also Respondents 3 and 4 who were the appellant's juniors became Divisional Engineers in 1957, apparently on the ground that their merits deserved their promotion over the head of the appellant. He did not question it. Nor did he question the promotion of his juniors as Superintending Engineers over his head. He could have come to the Court on every one of these three occasions. A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward state claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its

normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal.

10. The Petitioner has failed to give any reasons for delay in agitating his claim after 1998 and for raising the industrial dispute in the year 2008

before the Industrial Tribunal after a lapse of almost 8 years when the penalty of withholding his promotion had attained finality. Clearly, the

workman cannot agitate a state claim as and when he desires. The Petitioner has not been able to show sufficient cause in agitating the claim at a

highly belated stage or that there was a continuous cause of action. 11. In light of the above discussion, the writ petition is dismissed.