
(2004) 08 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1380 of 2004

Mahabir alias Bhira

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 05-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 10(1), 25F

Citation : (2005) 2 LLJ 391

Hon'ble Judges : Swantanter Kumar, J; S.S. Saron, J

Bench : Division Bench

Advocate : R.S. Sangwan, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Saron, J.—The petitioner Mahabir alias Bhira in this petition under Articles 226/227 of the Constitution of India seeks quashing of the order dated May 17, 2001 (Annexure P-2) and order dated June 30, 2003 (Annexure P-4) passed by the Special Secretary, Government of Haryana, Labour Department (respondent No. 2) in pursuance of which reference of the Industrial dispute sought by the petitioner for adjudication by the Labour Court has been declined and the demand notice rejected on the ground of delay and laches. The petitioner also seeks directions to refer the industrial dispute to the Labour Court for adjudication.

2. The petitioner was appointed as Beldar in the office of Executive Engineer, P.W.D. (B & R), Provincial Division, Kaithal (respondent No. 4) as Class IV employee on daily wages basis on the salary paid at the Deputy Commissioner's rates from time to time. The petitioner joined his duties on June 1, 1989 and he worked continuously, however, in the muster roll his attendance was marked upto October 1991 and he has been shown as absent in between. This gap, it is, however, stated, is not more than a continuous month. The details of the muster roll attendance marked in respect of the petitioner has been appended as

Annexure P-1. The petitioner, it is stated, worked continuously, sincerely and diligently and without any complaint. No notice or charge-sheet was ever served upon him. However, his services were terminated without any reason even though he had worked continuously for more than 240 days in a calendar year. While dispensing with his services, no retrenchment compensation was paid and the principle of last come first go was not followed. Besides the provisions of the Industrial Disputes Act, 1947 ("Act" for short) were not followed while dispensing with his services, which it is stated, amounts to unfair labour practice.

3. The petitioner submitted representations to the respondents but the respondents failed to take back the petitioner on duty. Lastly he served a demand notice on November 16, 2002 through the Labour Conciliation Officer upon respondent No. 4. The conciliation between the parties could not be effected and the matter was recommended to the Labour Commissioner respondent No. 3 for making a reference for the adjudication of the dispute by the Labour Court. However, the Special Secretary, Government of Haryana, Labour Department-I (respondent No. 2) vide his impugned order dated May 17, 2001 (Annexure P-2) rejected the reference on the ground that the demand notice had been served late. Aggrieved against the said rejection, the petitioner preferred an appeal/representation dated July 10, 2001 to the Special Secretary, Government of Haryana, Labour Department (respondent No. 2), which was rejected vide order dated March 19, 2002. Thereafter, the petitioner preferred an appeal/application dated April 10, 2003 (Annexure P-3). In this the petitioner referred to the Supreme Court decisions stating that rejection of the demand notice on the ground of delay is illegal and not sustainable in the eyes of law, however, this was also rejected vide impugned order dated June 30, 2003 (Annexure P-4) on the ground of delay only. The petitioner has accordingly filed the present petition assailing the aforesaid rejection order dated May 17, 2001 (Annexure P-2) and June 30, 2003 (Annexure P-4).

4. Shri R.S. Sangwan, learned counsel appearing for the petitioner has contended that the sole ground for rejection of the demand notice of the petitioner for making a reference to the Labour Court is that the demand had been raised after seven years and for the delay no satisfactory reason had been given. This according to the learned counsel is unsustainable in law inasmuch as the delay in raising the dispute can well be taken care of by the Labour Court by not awarding full back wages but only 50% of the back wages from the date of termination till reinstatement. Therefore, it is contended that even though the petitioner has a good case on merit inasmuch as no retrenchment compensation was paid to the petitioner-workman, the order declining to make a reference to the Labour Court on the ground of mere delay is not sustainable in law. In support of his contentions, he has placed reliance on the judgments of the Hon'ble Supreme Court in Gurmail Singh Vs. Principal, Govt. College of Education and Others, ; Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, ; Mahavir Singh Vs. U.P. State Electricity Board and Others, .

5. We have given our thoughtful considerations to the contentions of the learned counsel for the petitioner. The sole question that has been contended and which requires consideration is whether the orders of the authorities declining to make reference of the industrial disputes to the Labour Court on account of delay can be said to be justified. To put it in other words whether despite long delay is it incumbent upon the "appropriate Government" to refer the dispute for adjudication to the Labour Court. Section 10(1)(c) of the Act, which provides for reference of disputes may be noticed, the same reads as under:

"10. Reference of disputes to Boards, Courts or Tribunals. - (1) where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing. -

(a) xxx xxx xxx xxx

or

(b) xxx xxx xxx xxx

or

(c) refer the dispute or any matter appearing to be connected with, or relevant to the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication: or

(d) xxx xxx xxx xxx

Provided xxx xxx xxx"

6. In terms of the above, it is provided that where the appropriate Government, which in the present case, is the State Government, is of the opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication. The Second Schedule provides for matters within the jurisdiction of the Labour Court and entry 3 thereof relates to discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed.

7. It is appropriate to note that admittedly there is no time limit indicated in the above provision for raising an Industrial dispute. In the case in hand, the petitioner was appointed as Beldar and he joined his duties on June 1, 1989. As per the statement Annexure P-1 regarding the various periods on which he was marked present in the muster roll, it is mentioned that he had worked till October 10, 1991. After that though it is stated that he made various representations to the respondents, however, no material has been placed on record to show that he made any such representation and neither are any material particulars with regard to the dates of making the representations been indicated. It is, however, stated that he last served a demand notice on November 16, 2000. Therefore, from the date of his discharge i.e. October 10,

1991 till the making of demand notice on November 16, 2000 , it is not shown whether there was any effective step taken by the petitioner to agitate his rights. The Special Secretary, Government of Haryana, Labour Department (respondent No. 2) vide his order dated May 17, 2001 (Annexure P-2) informed the petitioner that the appropriate Government does not think his case fit for adjudication by the Labour Court because after enquiry it came to know that demand had been raised after seven years of delay and for which no satisfactory reason had been given. Therefore, his demand notice was rejected. In the second impugned order dated June 30, 2003 (Annexure P-4) the petitioner was informed that his representation was enquired into and after consideration the Government had already rejected his claim and there was no need to change the earlier decision. In the circumstances of the case apparently there has been complete inaction on the part of the petitioner-workman in not raising his demand for adjudication of his dispute to the Labour Court for a period of seven years and the demand raised after his discharge from service on October 10, 1991 was raised on November 16, 2000 when the demand notice was made.

8. In *Gurmail Singh v. Principal, Govt. College of Education* (supra) cited by learned counsel for the petitioner, the Hon"ble Supreme Court relied upon an earlier decision in the case of *Ajaib Singh v. Sirhind Co-operative Marketing-cum-Processing Services Ltd.* (supra) and held that if the order of dismissal is challenged belatedly, the dispute would still continue for adjudication and the only question would be to provide back wages for the period of delay in raising the dispute if on merits it is to succeed. In *Gurmail Singh's* case (supra), the Labour Court held that the services of the appellant therein were terminated on September 30, 1981 and that Section 25F of the Act was violated and, therefore, the Labour Court was in error in dismissing the reference on the ground of delay as the dispute was raised in 1989. It is appropriate to note that in *Gurmail Singh's* case (supra), the reference had been made by the appropriate Government and the reference was declined by the Labour Court. In the case in hand, the appropriate Government has itself declined to make the reference on the ground of delay. Even otherwise, the Hon"ble Supreme Court referred to its earlier judgment in *Ajaib Singh's* case (supra) in which case it may appropriately be noted that the services of the workman therein were terminated on July 16, 1974 and he issued the notice of demand on December 8, 1981. However, no plea regarding delay was taken by the Management at the first instance. No writ petition was filed assailing the order making a reference. Therefore, it was a case where plea of delay had not been taken in the first instance.

9. In *Mahabir Singh's* case (supra) relied upon by the learned counsel for the petitioner the services of the appellant, who was a Chowkidar with the U.P. State Electricity Board were terminated by the said Board on November 11, 1975 and he raised an industrial dispute in March, 1983, which was referred for adjudication by the appropriate Government on April 17, 1984. The Labour Court after adjudication of the reference took the view that the termination was illegal but considering the delay in raising the dispute a package of 50 % back wages

were directed to be granted to the workman therein. The Electricity Board agitated the matter before the High Court under Article 226 of the Constitution of India, which took the view that as the dispute was raised belatedly, the reference itself was incompetent though it agreed with the Labour Court that on merits the termination order could not be sustained. The Hon''ble Supreme Court held that once termination was illegal, the reference was not liable to be rejected. It was observed that the dispute lingered on for number of years and that would not mean that it had ceased to exist. Besides, the dispute having been raised belatedly was taken care of by the Labour Court by not awarding full back wages but only 50 % of the back wages. Therefore, in Mahabir Singh's case (supra) a reference had been made of the dispute to the Labour Court. Though the same was belated, however, the Labour Court had found that the termination of the workman therein itself to be illegal. In the case in hand, as already noticed the appropriate Government at the first instance has declined to make a reference of the dispute to the Labour Court.

10. The question as regards belated reference of a dispute has been considered by the Hon''ble Supreme Court in *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, . The primary question that was considered by the Hon''ble Supreme Court was whether while deciding the question as to whether a reference should be made or not to an Industrial Tribunal, the State Government could consider the merits of the dispute. It was held that when the appropriate Government considers the question as to whether a reference should be made it has to act u/s 10(1) of the Act, which confers discretion on the appropriate Government either to refer the dispute or not to refer it for industrial adjudication. Relying on an earlier decision in the case *State of Bombay Vs. K.P. Krishnan and Others*, , it was held that when the appropriate Government considers the question as to whether an industrial dispute should be referred for adjudication or not, it may consider, prima facie the merits of the dispute and take into account other relevant considerations, which would help it to decide whether making a reference would be expedient or not. It was held that it would not be possible to accept the plea that the appropriate Government was precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised or not. It was further held that if the claim was patently frivolous or was clearly belated the appropriate Government may refuse to make a reference. Therefore, a dispute being belated was held as a sufficient ground for the appropriate Government not to make a reference.

11. In *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, , the Hon''ble Supreme Court held as follows at p. 563 of LLJ:

"6. Law does not prescribe any time limit for the appropriate Government to exercise its powers u/s 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 lapse of about seven years of 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 u/s 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 u/s 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 industrial dispute was ex facie bad and incompetent."

12. Therefore, it is apparent that in case of belated demand for reference of a dispute for adjudication by Labour Court, it is not that the same has always to be referred for adjudication. Besides Ajaib Singh's case (supra) on which reliance has been placed by learned counsel for the petitioner was considered in a later decision of the Hon'ble Supreme Court in the case of Assistant Executive Engineer, Karnataka v. Shivalinga, (2002) 1 LLJ 457SC wherein there was a delay of almost nine years on the part of the workman in approaching the Labour Officer. The Labour Court observed that it would be impossible to maintain records for such a long period and place them before it. In the circumstances, it was held by the Labour Court that delay of nine years was fatal to the case and on that basis the reference of the dispute was rejected against which a writ petition was filed before the High Court. A learned single Judge of the High Court held that delay in approaching the Labour Court would not be fatal to the case and the ends of justice would be met by reinstatement with continuity of service and 50% back wages. The matter was carried in appeal by the employer and that appeal was partly allowed by stating that though the order regarding reinstatement was to be maintained, that portion of the order which granted back wages was to be deleted. Against the said order of the High Court, the matter was taken to the Hon'ble Supreme Court by the employer. The Hon'ble Supreme Court referred to the decision in Ajaib Singh's case (supra) and another decision in Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others, which were urged to contend that there was no period prescribed under the Act to raise the dispute and that it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It was observed that it was no doubt true that in appropriate cases, as held in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute as to relationship between the parties as employer and employee. However, in cases where there is a serious dispute, or doubt in such relationship and records of the

employer become relevant, the long delay would come in the way of the maintenance of the same. In such circumstances to make them available to a Labour Court or an Industrial Tribunal to adjudicate the dispute appropriately would be impossible. A situation of that nature, it was held, would render the claim to have become stale. Therefore, in the circumstances the question of delay in making a reference in terms of Section 10 of the Act is a factor to be considered in the facts and circumstances of each case.

13. In *Management of Indian Iron and Steel Company Ltd. v. Prahlad Singh* AIR 2001 SC 69 at the instance of the sponsoring Union, an industrial dispute was referred for adjudication to the Industrial Tribunal. The dispute was to the effect whether the Management was justified vide letter dated October 8, 1974 in terminating the services of the respondent (workman) therein, who was a Magazine Clerk and if not to what relief the workman concerned was entitled. The Tribunal took note of the fact that the claim of the workman therein in raising the dispute after a period of about 13 years from the date of termination was too stale to grant any relief. In this view, the Tribunal held that the order of the termination of service of the said workman was justified and he was not entitled to any relief. The said award was assailed by the workman before the High Court by way of a writ petition. A learned single Judge of the High Court allowed the writ petition and directed the management to reinstate the workman in service with full back wages from the date when the dispute was referred by the appropriate Government to the Tribunal for adjudication. The Management unsuccessfully challenged the order of the single Judge before a Division Bench of the High Court. Thereafter, the matter was taken by the Management by way of SLP to the Hon'ble Supreme Court. It was noticed by the Hon'ble Supreme Court that the workman therein overstayed his leave granted from July 1, 1974 to September 20, 1974. After waiting for more than two weeks, the appellant therein issued notice dated October 8, 1974 terminating the services of the workman with effect from September 21, 1974 i.e. a day after the expiry of his leave. The workman then slept over the matter for a period of about 13 years and it was only in April, 1987 that he wrote letters to the appellant and that too without making reference to his alleged illness. The Hon'ble Supreme Court with regard to delay in making the reference held as follows:

"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."

14. A Division Bench of this Court to which one of us (SWANTANTER KUMAR, J.) was a member in the case of *Rohtash v. State of Haryana* in CWP No. 2936 of 2002 decided on March 7, 2002 (reported in 2002 (4) SCT 945) after discussing the law on the point regarding delay in raising a demand and relying on the

judgments of the Hon''ble Apex Court held as under:

"The appropriate Government must act judiciously and fairly. The principle of fairness inevitably require the authority to act upon due application of mind. Existence of Industrial dispute is the condition precedent for an authority to make reference to the Labour Court/Tribunal, as the case may be. Disappearance of this essential ingredient may be for the dispute being patently stale one, would take away the basis for a valid reference. The Hon''ble Apex Court has repeatedly held that a reference or invoking of the provisions u/s 10(1)(c) of the Industrial Disputes Act should be within a reasonable time despite the fact that there was no period of limitation prescribed under the statute. Reference in this regard can be made to the case of Gram Panchayat, Kakran Vs. Addl. Director of Consolidation and Another, .

It is equally true that no strait-jacket formula or hard and fast rule can be specified for adjudication the expression reasonable period or reasonable time. This must be decided in context of the facts of each case, but it emerges to be the view of the more recent judgment of the Hon''ble Apex Court that the appropriate Government is not debarred from declining a reference of Industrial dispute on the ground that the same was patently stale or non-existent. It is not possible to hold that the appropriate Government while exercising such powers lacks inherent or substantive jurisdiction.

The workmen in all these cases before us have intentionally slept over their rights and have rendered no reasons much less sufficient reasons for sending the demand notice after such long period varying from 8-14 years. In the demand notice it had not been averred as to what steps were taken by the workmen for all this long period. Such unexplained inordinate delay has rendered the dispute in question as patently stale. In these circumstances we are of the considered view that the order passed by the appropriate Government for considering the above industrial dispute as totally stale one in the light of the case of The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, does not suffer from any error which would call for interference by this Court in exercise of its writ jurisdiction."

15. Keeping in view the above principle, it is evident that though the Act does not provide for limitation for raising an industrial dispute, however, this does not mean that the dispute can be raised at any time and without there being any regard to the delay and reasons therefor. It is but appropriate that disputes affecting the rights of the workmen should be raised as soon as possible after they have arisen so that the appropriate Government refers them for adjudication in the event of failure of the conciliation proceedings, but it is equally true that delay in raising a dispute would be a circumstance, which is liable to be taken into consideration and in case no reasons are given in support of the delay it would have a bearing on the rights of the workman concerned and he is liable to be non-suited on the ground of delay. However where reasons are given and there is explanation, for the delay in raising the dispute, the same

would be a factor for consideration by the appropriate Government.

16. In the case in hand, no reason whatsoever has been given by the petitioner for raising the dispute at a belated stage. The reference petition shows that after the petitioner was not assigned work or as the petitioner puts it, he was not marked present on October 10, 1991, he kept silent and slept over the matter till he issued the demand notice on November 16, 2000. There is no material on record to show whether the petitioner had made any representation earlier to this. Consequently this resulted in rejection of the reference of his dispute to the Labour Court vide order dated May 17, 2001 (Annexure P-2). The petitioner filed an appeal/representation dated July 10, 2001 to the Special Secretary, Government of Haryana, Labour Department (respondent No. 2), which was rejected on March 19, 2002. The petitioner then filed an appeal /application dated April 10, 2003 (Annexure P-3) against the said rejection order in which apart from referring to the judgments of the Hon"ble Apex Court, he did not give any reason for the delay in raising the dispute, even though vide order dated May 17, 2001 (Annexure P-2) the petitioner was informed that the appropriate Government did not think his case fit for adjudication by the Labour Court because after enquiry it came out that the demand had been raised after seven years and for the delay no satisfactory reasons have been given. In the circumstances, no fault can be found with the action of the respondents in declining to refer the dispute of the petitioner to the Labour Court for adjudication.

17. For the foregoing reasons, we find no error of law or otherwise in the impugned orders and the same are in consonance with the settled principles of law. Consequently, this writ petition is without merit and is dismissed. However, there shall be no order as to costs.