
(1993) 12 MP CK 0012
In the Madhya Pradesh High Court
Case No : M.P. No. 4308 of 1992

M.P. State Road Transport Corporation	APPELLANT
Vs	
Jaiprakash Narayan Tiwari and Others	RESPONDENT

Date of Decision : 07-12-1993

Acts Referred:

Madhya Pradesh Industrial Relations Act, 1960 — Section 62

Citation : (1995) 1 LLJ 318 : (1994) 39 MPLJ 571 : (1994) MPLJ 571

Hon'ble Judges : R.C. Lahoti, J; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : A.G. Dhande, for the Appellant; R.N. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Dharmadhikari, J.

In this petition filed by the employer against the order of the Industrial Court, the attempt is made to rack up the legal issue of the applicability of the bar of limitation u/s 62 of the Madhya Pradesh Industrial Relations Act, 1960 (in short "the Act"). In the opinion of this Court, the point of the applicability of the bar of limitation u/s 62 of the Act, as it stands today and on the relevant date, is squarely covered by three Division Bench decisions of this Court, the first being in the case of Somsingh Onkar Singh v. M.P.S.R.T.C., Bhopal and Ors. 1980 MPLJ 211, followed by another Division Bench of this Court in the case of Dwarka Singh Thakur v. The Industrial Court, M.P. and Ors. 1989 M.P.S.L.R. 98 and the decision in the case of M.P.S.R.T.C. Vs. Meharban Singh and Others,

The learned counsel appearing for the employer submits that the Division Bench decisions of this Court deserve reconsideration by reference of the legal question of limitation for decision by a larger Bench of this Court, in the light of the decision of the Supreme Court in the case of C. Beepathumma and Others Vs. V.S. Kadambolihaya and Others, and the latest decision of the Supreme Court in the case of Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others,

Before we take up for consideration the legal question raised on behalf of the petitioner, a short legislative history of the provisions contained in Section 31 and Section 62 of the Act need to be reviewed. Prior to the amendment introduced to the Act by ordinance promulgated on July 30, 1976, provision of Section 31 (3) with the proviso thereunder read as under:-

"31. Notice of change-

(3) A representative of employees or an employee desiring a change in respect of an industrial matter specified in Schedule 11 or any other matter arising out of such change may make an application to the Labour Court in such manner as may be prescribed.

Provided that no such application shall lie unless the representative of employees or the employee, as the case may be, has in the prescribed manner approached the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period."

The provision for limitation at the relevant time i.e. prior to July 30, 1976 in Section 62(1) of the Act was as under:-

"62. Commencement of proceedings. - Proceedings before a Labour Court shall be commenced-

(1) in respect of dispute falling under (a) of paragraph (a) of Sub-section (1) of Section 61 within three months from the date of the last approach under Sub-section (3) of Section 31."

It may be seen from the above provisions that the employee could not approach the Labour Court for relief unless he has, in the prescribed manner, approached the employer with a request for change and there is consequent failure of arrival of any agreement between the parties. Prior to July 30, 1976, the limitation prescribed for filing an application to the Labour Court u/s 31 the Act was three months from the date of last approach made to the employer under the proviso to Sub-section (3) of Section 31. It is to be noticed that prior to the Ordinance of 1976, there was no limitation prescribed for making an approach to the employer under the aforesaid proviso and the limitation for filing case in the Labour Court commenced from last date of approach.

The proviso under Sub-section (3) of Section 31 of the Act, requiring an approach as a precondition for taking the dispute to the Labour Court, was deleted with effect from January 26, 1982 by M.P. Act No. 41 of 1981. By the same Act No. 41 of 1981, Section 62, providing limitation, was substituted by the following provision, the relevant part of which is reproduced below:-

"62. Commencement of proceedings - Proceedings before a Labour Court shall be commenced--

(1) in respect of a dispute falling under Clause (a) of paragraph (A) of Sub-section (1) of Section 61 within two years from the date of the dispute:

Provided that--

(a) if the dispute is connected with the termination of the services of the employee, such proceedings shall commence within a year from the date of termination of the services of the concerned employee:

(b) nothing contained in the foregoing provision shall apply if the concerned employee had made an approach before July 30, 1976 in accordance with the provisions contained in Sub-section (3) of Section 31 as it stood before the said date and in that case the provisions contained in Sub-section (3) of Section 31 and Clause (1) of this section shall be applicable as they had been before the said date."

After giving a brief legislative history of the relevant provisions of the Act, the only fact necessary for deciding the question of limitation in this case is, that the services of the employee were terminated with effect from January 5, 1973 i.e. much before July 30, 1976 when the Ordinance was brought into force, introducing the proviso to Sub-section (3) of Section 31. It was a case, therefore, where on the date of termination of the services of the employee, he was not required by any provision of law to make an approach to the employer for settlement of the dispute regarding his services. It is also a case where, even after introduction of the proviso to Sub-section (3) of Section 31, there was no prescribed period of limitation for giving an approach notice to the employer. The employee approached the Labour Court by way of an application u/s 31 of the Act only on January 5, 1986. The question before us is whether his application would be barred by the provisions contained in Section 62, as they stand today, by virtue of the substitution of that section with effect from January 26, 1982, providing for limitation of period of one year from the date of termination of his services.

The first case, which came for decision before a Division Bench of this Court, on the retrospective operation of the provision of limitation prescribed under the Act, was of Somsingh (supra). That was a case where the employee was terminated from services on September 24, 1975 and he approached the Labour Court on May 26, 1977 i.e. after July 30, 1976 when the proviso under Sub-section (3) of Section 31 of the Act required service of an approach notice on the employer before making a grievance in the Labour Court. It is on those facts and in that situation and the state of law existing then, that the Division Bench in Somsingh's case (supra), held that the amendment to Section 62 of the Act, prescribing a period of limitation, cannot be given retrospective operation, so as to destroy the vested right of the employee to approach the Labour Court under the unamended provision. The Division Bench in Somsingh's case (supra) placed reliance on the decision of the Supreme Court in the case of New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult, and restated and applied the principle that by and large the law of limitation was a procedural law, but there were exceptions to that principle. The exceptions were that the new law of limitation providing a longer period could not revive a dead remedy, nor could it suddenly

extinguish a vested right of action by providing for a shorter period of limitation". The Division Bench, therefore, held that the provisions of the Ordinance and the Amending Act, prescribing the period of limitation, would be applicable to actions connected with the dispensing with the services of an employee where such dispensation has taken place after the coming into force of the Ordinance."

Somsingh's case (supra) came for consideration in the subsequent decision of another Division Bench of this Court in the case of Dwarka Singh Thakur (supra), where the services of the employee were terminated with effect from July 6, 1976 i.e. prior to July 30, 1976. he had served an approach notice on January 2, 1980 to the employer in terms of the proviso to Sub-section (3) of Section 31, introduced after July 30, 1976 and then he filed an application before the Labour Court on January 19, 1980. It is on the above facts in the case of Dwarka Singh Thakur (supra), the contention advanced by the employer was that the approach notice having not been served on the employer before July 30, 1976, in terms of proviso (b) of Section 62(1) of the Act, the application filed before the Labour Court beyond the period of one year was barred by limitation. The argument advanced was that under proviso (b) to Section 62(1) of the Act, the limitation of one year would not apply only to such previous termination where an approach notice to the employer had been given prior to July 30, 1976. The Division Bench in the case of Dwarka Singh Thakur (supra) relied on the ratio of the decision in Somsingh 's case (supra) and held that the proviso (b) to Section 62(1) added by the Amending Act No. 41 of 1981 cannot take away the vested right of the employee to approach the Labour Court against his termination when at that time there was no prescribed period of limitation for approaching the employer as a precondition for filing the application in the Labour Court. The Division Bench in the case of Dwarka Singh Thakur (supra), held that the law of limitation as existing on the date of dispensation would apply to the case irrespective of the fact whether any approach was made to the employer or not, prior or after July 30, 1976.

The learned counsel appearing for the employer very strongly placed reliance on the decision of the Supreme Court in the case of Vinod Gurudas Raikar (supra) to support his submission that the above mentioned three decisions of this Court need re-consideration by reference to a larger Bench.

We have looked into the above referred Supreme Court case relied upon on behalf of the employer and we find that the said decision of the Supreme Court completely affirms the view taken by the Division Benches of this Court in the matter of retrospective operation of the law of limitation. Vinod Gurudas Raikar's case(supra) was concerning the provisions of Section 217(1) read with Section 166(3) of the Motor Vehicles Act of 1988. The question raised there was somewhat different as to whether the provision in the new Act providing for condonation of delay, for a period longer than six months, could be made applicable in relation to an accident which took place when the repealed Act of 1939 was in force, although the application for condonation of delay came for

consideration under the new Act. It is on those facts and in that context that the Supreme Court held that "the right or privilege to claim benefit of a provision for condonation of delay can be governed only by the law in force at the time of delay..... ."Sufficient cause" as a ground of condonation of delay in filing the claim is distinct from "cause of action" for the claim itself." The Supreme Court also made a distinction between an application claiming compensation and a prayer to condone the delay in filing such an application. The view taken is that liberty to apply for a right is not in itself an accrued right or privilege, so as to claim that it is saved irrespective of the repeal of the old Act and substitution thereof by the new Act. The Supreme Court, therefore, held that the right or privilege to claim benefit of a provision for condonation of delay can be governed only by the law in force at the time of delay. The above ratio, therefore, does not at all apply to the facts of this case and is of no assistance to support argument advanced on behalf of the employer.

It is to be noted that in the case of. Vinod Gurudas Raikar (supra), the Supreme Court has also taken the same legal view as has been taken by the Division Benches of this Court that a vested right of approaching a Court or forum for redressal without bar of limitation cannot be taken away by a new enactment providing for a longer or shorter period of limitation. The following observations of the Supreme Court fully support the view taken by the three Division Benches of this Court, mentioned above:-

"7. It is true that the appellant earlier could file an application even more than six months after the expiry of the period of limitation, but can this be treated to be a right which the appellant had acquired. The answer is in the negative. The claim to compensation which the appellant was entitled to by reason of the accident was certainly enforceable as a right. So far the period of limitation for commencing a legal proceeding is concerned, it is adjectival in nature, and has to be governed by the new Act - subject to two conditions. If under the repealing Act, the remedy suddenly stands barred as a result of a shorter period of limitation, the same cannot be held to govern the case, otherwise the result will be to deprive the suitor of an accrued right. The second exception is whether the new enactment leaves the claimant with such a short period for commencing the legal proceeding so as to make it unpractical for him to avail of the remedy. This principle has been followed by this Court in many cases and by way of illustration we would like to mention New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult, The husband of the respondent in that case died in an accident in 1966. A period of two years was available to the respondent for instituting a suit for recovery of damages. In March 1967, the Claims Tribunal u/s 110 of the Motor Vehicles Act. 1939 was constituted, barring the jurisdiction of the Civil Court and prescribing sixty days as the period of limitation. The respondent filed the application in July 1967. It was held that not having filed a suit before March 1967, the only remedy of the respondent was by way of an application before the Tribunal. So far the period of limitation was concerned, it was observed that a new law of limitation providing for a shorter period cannot certainly extinguish a

vested right of action. In view of the change of the law it was held that the application could be filed within a reasonable time after the constitution of the Tribunal; and, that the time of about four months taken by the respondent in approaching the Tribunal after its constitution could be held to be either reasonable time or the delay of about two months could be condoned under the proviso to Section 110A (3)".

The other decision of the Supreme Court in the case of C. Beepathuma and others (supra) is of no help in deciding the legal issue raised; before us. There, only the general principle has been stated that the law of limitation is a procedural law and the provisions existing on the date of suit apply to it. The exceptions to such settled rule on the question of limitation which have been taken note of and mentioned in the decisions of the Supreme Court and of this Court, mentioned above, have not at all been discussed.

In view of the discussion aforesaid, since the services of the employee were terminated in the year 1973, when there was no prescribed period of limitation for approaching the employer or the Labour Court, his application to the Labour Court filed on January 5, 1986 cannot be dismissed as barred by time. It cannot also be held as barred for the failure on the part of the employee to approach the employer in terms of proviso to Sub-section(b) of Section 62(1) of the Act.

It is true that in this case, the application to the Labour Court has been made almost after thirteen years from the date of termination and it is an unduly long period. There is no express bar of limitation; but since the application was not made to the Labour Court within a reasonable time it is for the Labour Court to consider the question of granting or not granting full or partial relief to the employee. That is a matter to be decided by the Labour Court, on the basis of evidence led by the parties and the circumstances of the case.

In the result, the petition stands dismissed with the above observation. In the circumstances, we make no order as to costs.