

(2010) 10 MP CK 0085
In the Madhya Pradesh High Court
Case No : Writ Petition No. 738 of 2006

Nand Kishore

APPELLANT

Vs

M.P. Road Transport Corporation and Another

RESPONDENT

Date of Decision : 08-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 5

Citation : (2011) 128 FLR 192

Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J

Bench : Division Bench

Advocate : Ashok Shrivastava, for the Appellant; P.K. Mishra, for the Respondent

Final Decision : Allowed

Judgement

Ajit Singh and Sanjay Yadav, JJ.—Shri Ashok Shrivastava, learned Counsel for the petitioner.

Shri P.K. Mishra, learned Counsel for the respondents.

With the consent of learned Counsel for the parties the matter is heard finally.

Challenge put forth in the present petition under Article 226/227 of the Constitution of India is to an order dated 8.9.2005 "passed by, the Industrial Court, Bhopal whereby while dismissing the appeal preferred by the petitioner u/s 65 of the Madhya Pradesh Industrial Relations Act, 1960 (hereinafter referred to as the Act of 1960), has affirmed the order dated 12.10.2004 passed by the Labour Court, Bhopal, whereby the application preferred by the petitioner u/s 31 read with sections 61 and 107 of the Act of 1960 was rejected on the ground of delay.

The petitioner while engaged as Conductor with the respondents/Corporation was removed from service by order dated 28.2.1994 passed on the basis of charges of misconduct proved in a departmental enquiry. The petitioner aggrieved of his

removal preferred an application u/s 31 (3) read with sections 61 and 107 of the Act of 1960 before the Labour Court, Bhopal. The application was opposed by the respondents/Corporation on the ground that the same was barred by limitation as the petitioner who was removed from service by order dated 28.2.1994 filed the application before the Labour Court on 5.3.1994, wherein, by virtue of amendment sought on 18.9.1996, the said order of dismissal was questioned. It was also contended that the application for condonation of delay u/s 64-A of the Act of 1960 read with section 5 of the Limitation Act, 1963 did not disclose any sufficient cause for delay. The respondents/Corporation relied upon the judgment rendered in the case of Mohammad Sagir Vs. Bharat Heavy Electricals and Others, , wherein it was held that the delay can be condoned by the Labour Court on sufficient grounds.

2. The Labour Court found favour with the objections raised by the respondents/Corporation and dismissed the application filed by the petitioner. Aggrieved of the said order, the petitioner preferred an appeal u/s 65 of the Act of 1960. The said appeal was also dismissed by the Industrial Court, Bhopal, by order dated 8.9.2005. Being aggrieved, whereof, the petitioner has preferred this petition seeking quashment of the order passed by the Labour Court and affirmed by the Industrial Court.

3. The facts on record reveal that the application u/s 31 (3) read with sections 61 and 107 of the Act of 1960 was filed by the petitioner on 5.3.1994 whereby he sought quashment of the departmental enquiry initiated against him vide charge-sheet dated 28.9.1993. And though, the petitioner on the basis of the said departmental enquiry was removed from service on 28.2.1994, but the said order was challenged by way of amendment dated 18.9.1996. This action on the part of the petitioner lead to raising of preliminary objection on the part of the respondents/Corporation that the challenge to removal order was barred by time and though an application u/s 64-A of the Act of 1960 was filed by the petitioner, the same was rejected by the Labour Court and affirmed by the Industrial Court on the ground that it does not contain sufficient ground for condonation of delay.

4. Admittedly, a dispute in connection with the termination of an employee could be raised within a year from the date of termination of services. Proviso (a) to clause (i) of section 62 of the Act of 1960 provides for such a limitation. Section 64-A however empowers the Industrial Court and the Labour Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of other Courts. In the case at hand the petitioner though was removed from service by order dated 28.2.1994, filed an application u/s 31(3) read with sections 61 and 107 of the Act of 1960 on 5.3.1994 whereby he sought quashment of a departmental proceedings. In respect of removal the challenge was put forth by way of an amendment in 1996. Thus, admittedly" there was a delay on the part of the petitioner in questioning his removal order which admittedly was not within one year as stipulated u/s 62(i) proviso (a).

5. But could the same be the ground for non-suiting the petitioner/workman

from getting his grievance adjudicated by the Labour Court is the issue which crops up for consideration in the present petition.

6. Indisputably the Act of 1960 was enacted to regulate relations of employer and employees in certain matters, to make provision for settlement of industrial disputes and to provide for certain other matters connected therewith and is a benevolent and beneficial statutes, as observed by the Full Bench in Mohammad Sagir (supra). The question is whether the petitioner/workman could be deprived for seeking a remedy merely on the ground of limitation.

7. True it is that in Mohammad Sagir (supra) it has been observed that a provision relating to limitation is a technical one and has to be technically construed and there cannot be a liberal interpretation. However, as held in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, that the liberal approach should be adopted while dealing with an application for condonation of delay. It was observed therein that "when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay." (Paragraphs 3 (4) of the report).

8. In this regard reference can be had of the judgment in Shakuntala Devi Jain Vs. Kuntal Kumari and Others, , wherein it was observed by their Lordships:

7. The next question is whether the delay in filing the certified copy or, to put it differently, the delay in re-filing the appeal with the certified copy should be condoned u/s 5 of the Limitation Act, if the appellant makes out sufficient cause for the delay, the Court may in its discretion condone the delay. As laid down in Krishna v. Chathappan "section 5 gives the Courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words "sufficient cause" receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bonafides is importable to the appellant.

9. In view of above we are of the considered opinion that the Courts below were not justified in rejecting the application preferred by the petitioner on the ground of delay and fell into patent error by not condoning the same.

10. In the result the petition succeeds, the order passed by the Labour Court rejecting the application preferred by the petitioner on the ground of delay is hereby set aside. Consequent whereof the Appellate Court's order dated 8.9.2005 also crumbles. The matter is remitted to the Labour Court, Bhopal for decision of the case on merit. Since the matter is pending since 1994, it is expected of the Labour Court to expeditiously decide the same and preferably within a period of nine months from the date of communication of this order.

The petition is allowed to the extent above. However, no costs.