

(2006) 11 MP CK 0088
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2357 of 2001

Prabhu Lal

APPELLANT

Vs

M.P. Electricity Board and another

RESPONDENT

Date of Decision : 15-11-2006

Acts Referred:

Madhya Pradesh Industrial Relations Act, 1960 — Section 31(3), 61, 62

Citation : (2007) 1 MPLJ 309

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Advocate : A.K. Sethi, assisted by Anand Singh, for the Appellant; Surjeet Singh, assisted by S.S. Chouhan, for the Respondent

Final Decision : Allowed

Judgement

J.K. Maheshwari, J.

This petition has been filed challenging the order passed by the learned Industrial Court dated 26-9-2001 Annexure P/7 in Appeal No. 72/MPIR/2001, by which the application filed by the Petitioner under Sections 61, 62 and 31(3) of the M.P. Industrial Relations Act, 1960 has been ordered to be rejected as barred by limitation in view of the provisions as contained u/s 62(i) of the M.P.I.R. Act.

It is the case of the Petitioner that he was engaged on 18-6-1982 as a permanent employee of the Respondent Board. The name of Petitioner was found place at serial No. 353 in the gradation list dated 30-11-1983 and at serial No. 131 in the gradation list of the year 1983-84 issued by the Divisional Office of the M.P. State Electricity Board, Garoth. Without termination of his services, he was not allowed to perform the duties. On reaching to the office by Petitioner to perform the duties on 16-10-1983, the Assistant Engineer Shri B.D. Fookwal has not allowed him to work, on the pretext that work is not available, he may come after two or four days. The Petitioner has again reached to the office to perform his duties but not permitted to join and to perform work and the salary was also

not paid to him. It is further a case of the Petitioner that he had moved some applications to the higher authorities but no action was taken by them. Thereafter, Petitioner has filed the case before Labour Court, under Sections 61, 62 and 31(3) stating the aforesaid facts, the prayer was made, to direct the Respondents, to join him on duty, and to take work with him. It was also prayed to pay wages to him from due date.

Respondents have filed the reply of application, before the Labour Court. In the reply it is said that Petitioner is not the permanent employee of the Board. It is further said that he has not come to the office to perform his duties on 16-10-1983. It is denied that the Assistant Engineer Shri B.D. Fookwal has said, that he may come after two or four days then work may assign to him. The appearance of Petitioner on any other further date has also been denied by the Respondents. In the special pleas it was said, that Petitioner was a muster roll employee and not the permanent employee of the Board. The Board was in occupation to get engage him on daily wages as and when work is available. Thus, question of termination of his service does not require. Respondents have also raised the plea of limitation, that the application preferred before the Labour Court is after inordinate delay, however, it is time barred, and not entertainable.

The Labour Court has framed as many as three issues, wherein the issue No. 2 was framed towards belated filing of the application before the Labour Court. Issues Nos. 1 and 3, relating to relief claimed on merit. In the award Labour Court first discussed the merit of the case by dealing issues Nos. 1 and 3, thereafter, finding has been recorded in paragraph 4 towards issue No. 2 and held that filing of the application before the Labour Court is within the limitation. However, Labour Court has passed the award on 29-1-2001, directing the Respondents to take him back on duty, and pay salary to him according to law.

Respondent employer had preferred an appeal before the Industrial Court, which was decided vide order dated 26-9-2001. While deciding such appeal learned Industrial Court has discussed the arguments advanced on the limitation, in paras 4, 5, 6 and the finding has been recorded in paras 7 and 8. Whereby, it is held that the application filed by the Petitioner before learned Labour Court is barred by time as per Section 62(i) of the M.P.I.R. Act, 1960. In that view of the matter Industrial Court, has not entertained the application of Petitioner, and the award passed by the Labour Court has been set aside.

Shri A.K. Sethi, learned senior counsel appearing on behalf of the Petitioner straneously urged that since no refusal for joining the duty was made to him by the Respondents, however, dispute was not arose to him, to file an application before Labour Court, for its decision. It is further urged that, till filing of the application, he was not allowed to perform the duties, therefore, he is having recurring cause of action, for the relief, prayed for in its application. However, it is submitted by him that the application preferred before the Labour Court even after eight years under Sections 61, 62 and 31(3) of the M.P.I.R. Act is within the limitation. It is urged that without considering this aspect, Industrial Court has

dismissed the application as time barred; such findings are not in accordance with the provisions of law. Therefore, award passed by Industrial Court is liable to be set aside and the order passed by the Labour Court deserves to be upheld.

Per contra learned senior counsel Shri Surjeet Singh appearing on behalf of the Respondents submits, that Petitioner was engaged on daily wages. As per his version, he had appeared in the office on 16-10-1983 to allow him to join duty but not permitted to work by the Respondents. Thereafter he further went to the office, but again not permitted to work, without any reason or rhyme. In such circumstances the cause to file dispute arose to him on 16-10-1983 i.e. date on which, he was not allowed to perform the work. Therefore, he should have filed the application before the Labour Court within two years from that date on which, he was not permitted to join. The application filed by Petitioner, after about eight years is not entertainable in view of the legislative embargo u/s 62(i) of the M.P.I.R. Act, 1960. Learned senior counsel Shri Surjeet Singh has placed reliance on the judgment of the Supreme Court in the case of Raja Ram Maize Products etc. etc. Vs. Industrial Court of M.P. and Others, . However, it is urged that the finding as recorded by the Industrial Court dismissing the application on the ground of the limitation is in conformity with the provisions of law as well as the judgment of the Supreme Court. However, interference by this Court in exercise of powers conferred under Article 227 of the Constitution while exercising the supervisory jurisdiction is not permissible.

It is further urged that while deciding the application filed by the Petitioner, learned Labour Court, is required to consider the issue of limitation first, thereafter Petitioner's case may be considered on merit, by narrating the evidence adduced before it. Learned Labour Court while passing the award dated 29-1-2001 Annexure P/6 has proceeded to discuss the entire case on merit and thereafter without assigning reasons finding is recorded on issue No. 2 that the application filed by him before the Labour Court is within limitation.

Refuting the aforesaid submission made by the Respondents, Learned senior counsel Shri A.K. Sethi submits that in the facts and circumstances of the present case judgment as relied upon by the Respondents in the case of Rajaram Maize Products (supra) having no application because in the present case there was no refusal on the part of the Respondents to join the duty, therefore, the dispute as specified u/s 62 of the M.P.I.R. Act has not arisen. Petitioner has not yet allowed to join the duties, therefore, it is recurring cause of action to him and the findings recorded by the Industrial Court, to dismiss the petition, only on the issue of limitation is illegal.

I have heard learned senior counsels appearing for the parties and perused the record. On perusal of the record, it is apparent that Petitioner has filed an application on 15-1-1992 before Labour Court stating the fact that on 16-10-1983 when he had appeared before Shri B.D. Fookwal, Assistant Engineer to join the duty and to allow him to work, but he had not taken action to join him. The same incidence was repeated, even thereafter he was not allowed to

join and permitted to work and the salary was also not paid to him. In lieu thereof Petitioner has proceeded to file petition before Labour Court, and prayed, for the direction against Respondents to allow him to join on duty and to pay salary. In this context and to determine the core question involved in the present case, towards commencement of proceedings by filing the application before learned Labour Court within limitation from the date of dispute, it is necessary to refer the relevant provisions of M.P.I.R. Act.

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

(i) 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 an 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 the 30th day of July, 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 (i) of this section shall be applicable as they had been before the said date;

(c) where an employee has preferred an appeal or representation against an order of termination under any rule, regulation or standing orders to the competent authority within the period prescribed for such appeal or representation or where no such period is prescribed within three months of the order of termination, such proceedings may be commenced within one year from the date of the disposal of the appeal or representation, as the case may be;

(ii) in respect of matters specified in Clause (c) of paragraph (A) of Sub-Section 61, within three months of the commencement of the strike, lock-out, stoppage, closure or of the making of the change on an application made by the employer, the representative of employees, any employee directly affected thereby or by the Labour Officer:

Provided that the Labour Court may, for sufficient reasons, admit any application for a declaration that a change is illegal under the Act, after the expiry of three months from the date on which such change was made.

In the facts of the present case neither provisions of Sub-section (ii) of Section 62 is applicable nor proviso. However, to deal the legal position as emerges by Sub-section (i) of Section 62, Clause (a) of Para (A) of Sub-section (i) of Section 61 is also required to be reproduced hereinbelow:

Powers of Labour Court. - (1) In addition to powers conferred under other

provisions of this Act, a Labour Court shall have power to -

(A) decide -

(a) disputes regarding which application has been made to it under Sub-section (3) of Section 31 of the Act;

The combined reading of Section 62(i) and Clause (a) of para (A) of Sub-section (i) of Section 61 of M.P.I.R. Act indicates that the proceedings may commence before the Labour Court for a dispute arises between the parties. But the Legislature has put an embargo for commencement of such proceeding, before the Court, prescribing limitation to file it, within two years from the date of such dispute. The Labour Court cannot pass the award, on the proceedings, which was filed after two years from the date of dispute. However, in the facts of the present case it is to be determined that what is the date of dispute arose to Petitioner for commencement of such proceeding for its decision before the Labour Court. Thus, in view of the facts of the case in hand it is to be seen that what would be the date of dispute and with effect from which date, the proceedings have commenced within the period of two years or not.

Because under the statute commencement of the proceedings for a dispute must be within two years for its decision by the Labour Court, however, relevant facts are required to take note of. In the facts of the present case and as per the averments made by the Petitioner himself in the application, that on 16-10-1983 he had reached to the office and appeared before Shri B.D. Fookwal, Assistant Engineer, asking, joining and to take work from him, it is said by him that today no work is available, you may come after two or four days. The same thing was repeated but Respondent had not allowed him to join the duty and to pay salary to him. Indicating this cause of action prayer was made in the application "to direct the Respondents to allow him on duty and pay wages with retrospective date." However, in view of the language of Section 62(i) of the Act as well as the factual averments made in the application the date of dispute is to be determined.

From the facts of the present case, it is apparent that Petitioner was not allowed to perform the work in department with effect from 16-10-1983, however, application ought to have filed by him seeking direction for joining and to pay the wages with the retrospective date, within two years, from the date on which he was not permitted to join i.e. 16-10-1983. On account of not permitting him to join the duty, dispute arose, in between the parties on that date itself. In spite of it Petitioner has filed the application before the Labour Court on 15-1-1992 after about more than eight years. The argument of Learned Counsel Shri Sethi, that, because of refusal was not made to him, therefore, no dispute arose or on account of non-joining till today, he is having recurring cause of action; is of no substance. In this respect, it is suffice to say that with effect from 16-10-1983 he was not permitted to join by the Respondents. Under the Act, two years limitation is prescribed, for commencement of proceedings. Thus Petitioner may

file the case before Labour Court asking relief of such joining and salary, during that period. But he has not chosen to file the petition before Labour Court, and taken eight years time to awake. During that period also Petitioner has not approached to the Respondents for his joining. Moreso, nothing is pleaded indicating the day and date thereof in the application filed before Labour Court. Thus, filing of application on 15-1-1992 for the dispute arose to him on 16-10-1983, for its decision by Labour Court is belated. In that view of the matter, and as per Sub-clause (i) of Section 62 of the M.P.I.R. Act, application, filed by the Petitioner after two years from the dispute, is not entertainable, before Labour Court for its decision. However, the award passed by the Labour Court is nullity.

The argument of the learned senior counsel Shri A.K. Sethi that the case of the Rajaram Maize Products (supra) having no application in the facts of the present case cannot be accepted. Hon"ble Apex Court while dealing with the provisions of Section 62, in the case of Rajaram Maize Products (supra) observed as under:

Now we have to see as to whether the case put forth before the Courts falls under which of the clause provided u/s 62 of the Act. The largest period of limitation prescribed therein is two years and in cases of termination of services and other incidental matters lesser period of limitation has been prescribed. Therefore, even taking that two years period from the date of the dispute either taking the date on which when they were refused work when they made a demand that they should be allowed to do work with Dushyant Kumar or when they made a demand after the order made by the Labour Court on an interim application directing them to resume work or calling of the strike, the applications filed are beyond the period of limitation prescribed u/s 62 of the Act.

The concept of recurring cause of action arising in matter of this nature is difficult to comprehend. In Balkrishna Savalram Pujari and Others Vs. Shree Dnyaneshwar Maharaj Sansthan and Others, , it was noticed that a cause of action which is complete cannot be recurring cause of action as in the present case. When the workers demanded that they should be allowed to resume work and they were not allowed to resume work, the cause of action was complete. In such a case the workers going on demanding each day to resume work would not arise at all. The question of demanding to allow to do work even on refusal does not stand to reason.

In that view of the matter, we think that the High Court and the Labour Court fell into an error in analysing and understanding the matter. In this view, we think the view taken by the Industrial Court to the extent that the cause of action had commenced at any rate on 1-3-1986 is correct. Reckoning from that date, the period of limitation of two years had been over by the time the applications were filed.

C.A. Nos. 89-90/99, C.A. Nos. 92-93/99 and C.A. Nos. 100-101/99, therefore, stand allowed and the order made by the High Court setting aside the order of

the Industrial Court and restoring that of the Labour Court and the application filed by the workmen before the Labour Court, shall stand dismissed. Consequentially, C.A. Nos. 91/99 and 94/99 shall stand dismissed and the question of entertaining the special leave petitions or giving any reliefs in those cases will not arise in these proceedings. SLP(C) Nos. 14115/2000 and 14116/2000 shall stand disposed of as they have become unnecessary. In the circumstances of the case, the party shall bear their own costs.

Order accordingly.

In view of the Supreme Court judgment as well as the language of the Section 62(i), it is apparent that maximum period for commencement of the proceedings is two years from the date of dispute u/s 62(i) of the Act. As discussed above, in the present case for the relief prayed by the Petitioner in the application filed before the learned Labour Court, the cause of dispute arose to him on 16-10-1983. In such circumstances, the argument as advanced by learned senior counsel Shri A.K. Sethi that because of Petitioner has not been allowed to work till filing of the application, therefore, he is having recurring cause of action, cannot be accepted. In the facts of the present case, and the discussion made hereinabove, it cannot be held that Petitioner may have recurring cause of action.

Considering the overall facts and discussion made hereinabove it is to be held that finding recorded by the learned Industrial Court is in conformity with the provisions of law and the award passed by the learned Labour Court is nullity because the proceedings on an application moved by the Petitioner cannot be commenced if its decision until and unless filed within the period of two years from the date of dispute arose. However, no award can be passed by the Labour Court.

Consequently, the order passed by the learned Industrial Court dated 26-9-2001 in Civil Appeal No. 72/MPIR/2001 Annexure P/7 is upheld and the award passed by the learned Labour Court dated 29-1-2001 in MPIR Case No. 13/95 Annexure P/6 is hereby set aside as nullity because the proceedings itself cannot be commenced. In the facts and circumstances of the case, there is no order as to costs.