
(2006) 05 P&H CK 0220
In the Punjab And Haryana At Chandigarh

Puran Chand

APPELLANT

Vs

Presiding Officer and Others

RESPONDENT

Date of Decision : 16-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25H

Citation : (2007) 4 PLR 168

Hon'ble Judges : J.S. Narang, J;Arvind Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arvind Kumar, J.—Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing award dated 1.10.2001, Annexure P-5, vide which his claim statement has been dismissed and also a writ of mandamus for directing the respondents to reinstate him in service with continuity of service and full back wages.

2. In the writ petition, petitioner (in short the workman) has averred that he joined service as Peon on 18.10.1871 with respondent No. 2, namely, the Barara Co-op. Mar-keting-cum-Processing Society Limited, Barara, District Ambala (hereinafter referred to as the management). His services were illegally terminated on 1.7.1985. The matter was taken before the Labour Court which, vide its award dated 3.2.1988, held his termination to be illegal yet did not grant relief of reinstatement owing to poor financial condition of the respondent-management and in turn ordered for payment of Rs. 14,000/- as retrenchment compensation. The said award was challenged by the petitioner-workman by filing a writ petition before the High Court which, however, was dismissed and the impugned award upheld. His further case is that he came to know the respondent-management vide resolution dated 1.9.1988 gave appointment to one Rameshwar Dass on the post of Peon but just to deprive his legal right u/s

25H of the Industrial Disputes Act, 1947 (for brevity, the Act) intentionally designated him as Chowkidar. Petitioner also came to know that the respondent-management farther appointed two more persons, namely, Dharam Raj and Pardeep Kumar as Conductor and Clerk respectively. He then served a demand notice dated 20.1.1997 thereby requesting the management to appoint/re-employ him in service with effect from 1.9.1988, the date when Rameshwar Dass was appointed. On raising of an industrial dispute by the petitioner-workman, the matter finally came up before the Labour Court, where he presented his claim statement. Upon notice of claim application, the management filed its written statement. A preliminary objection was taken to the effect that the claim application is barred by time as cause of action arose to the workman on 1.9.1988 when Rameshwar Dass was allegedly appointed but the workman raised the dispute on 20.1.1997 i.e. after a long delay of eight years. On merits, the averments made in the claim application were denied. It was stated that the management did not appoint any fresh incumbent on the cost of Peon to which category the workman belonged at the time of retrenchment, as alleged by him. Replication was filed by petitioner to the written statement thereby denying the averments of the written statement and reiterating the one in the claim application.

3. The learned Labour Court on appreciation of oral as well as documentary evidence adduced by the parties before it, dismissed the claim application vide award dated 1.10.2001, Annexure P-5. This is how the present writ petition has come to be filed before this Court.

4. Petitioner-workman alleges violation of Section 25H of the Act on the plea that his preferential right had been ignored by the management when Rameshwar Dass was employed as Chowkidar on 1.9.1988. Then one Dharam Raj was appointed as Conductor and Pardeep Kumar as Clerk in the year 1992. There are legal hurdles in the case of the petitioner-workman. There is no dispute that Section 25H of the Act *ibid* gives a right to a retrenched workman to be re-employed; in the event a vacancy arises in the establishment. However, re-employment within the meaning of this section imports significance of taking back a retrenched workman in the same category to which he belonged. In the instant case, it is itself the case of the petitioner-workman that he was in the category of Peon, when he was previously retrenched. The stand of the Management is that Rameshwar Dass was appointed a Chowkidar. Petitioner-workman though has tried to build his case that the post of Peon and Chowkidar is of same category but there is no cogent evidence to prove this fact. Thus, it has to be held that the post of Chowkidar is of different category than that of Peon. Similarly, the alleged appointment of Dharam Raj and Pardeep Kumar as Conductor and Clerk respectively was also of different category than that of the present petitioner-workman. In this back-drop of facts, the appointment of Rameshwar Dass on the post of Chowkidar, which is a different category than that of a Peon, does not attract the provisions of Section 25H of the Act *ibid*.

5. There is a delay of more than 8-1/2 years in raising the industrial dispute. The act complained of had taken place on 1.9.1988 when Rameshwar Dass was employed by the management. The cause of action had arisen to the petitioner-workman at that very time but he raised the industrial dispute in January 1997. In this regard, the management has taken a categorical objection that the reference is hopelessly barred by time. The present petitioner-workman has not submitted any explanation for having raised the industrial dispute after more than 8-1/2 years. The issue of delay has been discussed by the Hon'ble Supreme Court in a recent decision rendered by it in Haryana State Co-op. Land Dev. Bank v. Neelam 2005 (2) R.S.J. 438, and it has been concluded that "the conduct of workman in approaching the Court after more than seven years had, therefore, been considered to be a relevant factor by the Labour Court for refusing to grant any relief to her. Such a consideration on the part of the Labour Court cannot be said to be an irrelevant one."

6. Similarly, in the instant case, such unexplained inordinate delay has rendered the dispute in question as patently stale.

7. Besides, this, the impugned award is dated 1.10.2001 whereas the present writ petition has been filed after 4-1/2 years and that too without furnishing any cogent and convincing explanation. Thus, the claim of the petitioner/workman suffers from delay and laches in this Court as well.

8. In view of what has been stated above we are of the considered view that the Labour Court has rightly declined the indulgence. We do not find any infirmity with the award passed by the Labour Court which is just and reasoned. Accordingly, the writ petition being devoid of any merit and also suffers from delay and laches, is hereby dismissed in limine.