
(2018) 07 UK CK 0160

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1831 of 2018

Rajendra Sharma

APPELLANT

Vs

Uttarakhand Transport Corporation, Dehradun

RESPONDENT

Date of Decision : 31-07-2018

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2018) 07 UK CK 0160

Hon'ble Judges : MANOJ K. TIWARI, J

Bench : Single Bench

Advocate : Pankaj Miglani, Ashish Joshi

Final Decision : Disposed Of

Judgement

MANOJ K. TIWARI, J. (ORAL)

1. Heard learned counsel for the parties.
2. This is workman's petition under Article 227 of the Constitution against the award dated 07.04.2018 passed by Presiding Officer, Labour Court, Haridwar, whereby the dispute referred by the State Government for adjudication vide order dated 20.07.2015 was decided against petitioner only on the ground of delay.
3. Learned counsel for the petitioner submits that the view taken by learned Labour Court is contrary to the law laid down by Hon'ble Supreme Court in the case of Ajaib Singh Vs. Sirhind Cooperative Marketing Cum-Processing Service Society Limited And Another reported in (1999) 6 SCC 83, which has been followed in subsequent judgments namely Raghubir Singh Vs. General Manager, Haryana Roadways, Hisar reported in (2014) 10 SCC 301 and Jasmer Singh Vs. State of Haryana And Another reported in (2015)

4 SCC 458.

4. In case of Ajaib Singh Vs. Sirhind Cooperative Marketing Cum-Processing Service Society Limited And Another (Supra), Honâ??ble Supreme

Court after considering aims and objects of Industrial Disputes Act has held that Limitation Act does not apply to proceedings under the Act,

therefore, relief cannot be denied to a workman merely on the ground of delay. Paragraph Nos.10 and 12 of the said judgment are extracted below:-

10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act

and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to

be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be

generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing

with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his

illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full

back wages. Reliance of the learned counsel for the respondent- management on the full bench judgment of the Punjab and Haryana High Court in

Ram Chander Morya v. State of Haryana, (1999) 1 SCT 141 is also of no help to him. In that case the High Court nowhere held that the provisions of

Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held ""neither any limitation has been

provided nor any guidelines to determine as to what shall be the period of limitation in such cases."" However, it went on further to say that ""reasonable

time in the cases of labour for demand of reference or dispute by appropriate government to labour tribunals will be five years after which the

government can refuse to make a reference on the ground of delay and latches if there is no explanation to the delay."" We are of the opinion that the

Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application under Section 37-C of

the Act to be adjudicated. It is not the function of the court to prescribe the limitation where the Legislature in its wisdom had, though if fit not to

prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the Judges presiding the court cannot be stretched

to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the Legislature. The judgment of the

Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncements of this Court as noted

hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purposes of invoking the jurisdiction of the

courts/boards and tribunal under the Act.

12. We are, however, of the opinion that on account of the admitted delay, the labour court ought to have appropriately moulded the relief by denying

the appellant-workman some part of the back wages. In the circumstances, the appeal is allowed, the impugned judgment is set aside by upholding the

award of the labour court with modification that upon his reinstatement the appellant would be entitled to continuity of service, but back wages to the

extent of 60 per cent with effect from 8.12.1981 when he raised the demand for Justice till the date of award of the labour court i.e 16.4.1986 and full

back wages thereafter till his reinstatement would be payable to him. The appellant is also held entitled to the costs of litigation assessed at Rs. 5.000

to be paid by the respondent-management.â??

5. In the case of Raghubir Singh Vs. General Manager, Haryana Roadways, Hisar (Supra), paragraph Nos.11 and 21 of the judgment are extracted

below:-

â??11. In our view of the facts and circumstances of the case on hand, the reference was made by the State Government to the Labour Court for

adjudication of the existing industrial dispute; it has erroneously held it to be barred by limitation. This award was further erroneously affirmed by the

High Court, which is bad in law and therefore the same is liable to be set aside. According to Section 10(1) of the Act, the appropriate government at

any time may refer an industrial dispute for adjudication, if it is of the opinion that such an industrial dispute between the workman & the employer

exists or is apprehended. Section 10(1) reads as follows:

10. Reference of disputes to Boards, Courts or Tribunals. â?

(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)

refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a court for inquiry; 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)

refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second

Schedule or the Third Schedule, to a Tribunal for adjudication.

Thus, it is necessary for us to carefully observe the phrase at any time used in this section. Therefore, there arises an issue whether the question of

limitation is applicable to the reference of the existing industrial dispute that would be made by the State Government either to the Labour Court or

Industrial Tribunal for adjudication at the instance of the appellant.

21. The Labour Court has failed to exercise its statutory power coupled with duty by not going into the merits of the case and adjudicating the points

of dispute referred to it while answering the additional Issue 2 framed by it regarding limitation. Therefore, it is a fit case for us to exercise the

jurisdiction of this Court for the reason of non-adjudication of dispute on merits between the parties with regard to the justifiability of the order of

dismissal passed by the respondent.â??

6. In the case of Jasmer Singh Vs. State of Haryana And Another (Supra), paragraph No.14 of the judgment is extracted below:-

â??14. On Issue 3, after adverting to the case of State of Punjab V. Kali Das, wherein the High Court has observed that the workman cannot be

allowed to approach the Labour Court after 3 years of termination of his services, upon which reliance placed by the respondent employer with

reference to the said plea, the Labour Court has rightly placed reliance upon the judgment of this Court in Ajaib Singh v. Sirhind Coop. Mktg.-cum-

Processing Service Society Ltd. in which it is observed by this Court that there is no period of limitation to the proceedings in the Act.â??

7. A bare perusal of the written statement filed by the employer reveals that objection regarding delay was not taken. Thus, deciding the reference

against the workman only on the ground of delay is clearly unsustainable. In the absence of any plea regarding delay and the prejudice, if any, due to

the delay, to employer, learned Labour Court was not justified in rejecting the

claim petition on the ground of delay without recording any evidence.

Even otherwise also, in view of the judgment rendered by Honâ??ble Supreme Court in the case of Ajaib Singh Vs. Sirhind Cooperative Marketing

Cum-Processing Service Society Limited And Another (Supra), disputes have to be adjudicated on merits and not on technicalities.

8. In such view of the matter, impugned award dated 7.04.2018 is set aside. The matter is remitted back to the Labour Court for reconsideration on

merits, as early as possible, preferably within a period of one year.

9. With above observations and directions, the writ petition stands disposed of.