

(1979) 09 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Petri. No. 141 of 1978

Som Singh Onkar Singh

APPELLANT

Vs

M.P.S.R.T.C., Bhopal and others

RESPONDENT

Date of Decision : 15-09-1979

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1979) MPLJ 750

Hon'ble Judges : R.K. Vijayvargiya, J;G.G.Sohani, J

Bench : Division Bench

Advocate : V.S. Kokje, for the Appellant; B.P. Jhanjriya, for the Respondent

Final Decision : Allowed

Judgement

G.G. Sohani, J.—This is a petition under Articles 226 and 227 of the Constitution.

2. The material facts giving rise to this petition briefly are as follows: The petitioner was employed by respondent No. 1 as a driver. The petitioner was removed from service on 24th September 1975. He submitted an application before the Labour Court on 26th May 1977 u/s 31 (3) of the M.P. Industrial Relations Act, 1960, hereinafter called the Act, and prayed for reinstatement. The Labour Court, by its order dated 9th September 1977, allowed the application and directed reinstatement of the petitioner with full back wages. Aggrieved by the decision given by the Labour Court, respondent No. 1 preferred a revision petition before the Industrial Court. The Industrial Court, by its impugned order, allowed the revision petition on the ground that the application submitted by the petitioner u/s 31(3) of the Act before the Labour Court was filed beyond the period of limitation prescribed therefor, and hence the Labour Court had no jurisdiction to entertain the application. The Industrial Court relied on its decision reported in *Natru Ram v. M. P. S. R. T. C.* 1978 M P I L C 1. Aggrieved by this order of the Industrial Court, the petitioner has filed this petition.

3. Shri Kokje, learned counsel for the petitioner, contended that on the date

when the petitioner was dismissed from service, there was no period of limitation prescribed for submitting an application by a dismissed employee u/s 31 (3) of the Act. It was urged that a vested right had accrued to the petitioner to file an application under sub-section (3) of section 31 of the Act whenever he desired and this right could not be taken away by the M.P. Industrial Relations (Amendment) Ordinance, 1976, hereinafter called the Ordinance, which came into force on 30th July 1976 prescribing a period of limitation for raising a dispute in connection with dispensing with the services of an employee. It was further contended that the Industrial Court had erred in holding that when no approach notice had been served by an employee before the promulgation of the Ordinance, the limitation for an application under sub-section (3) of section 31 of the Act would be governed by the provisions of the Act, as amended by the Ordinance, and an application would be barred by time if it was filed more than one year after the date of the dismissal. In reply, it was contended on behalf of respondent No. 1 that no one had a vested right to bring any action within a specified period and the law of limitation being procedural was retrospective in nature. It was, therefore contended that the provisions of the Ordinance, which came into force on 30th July 1976, became applicable to all actions which were not commenced before the Labour Court prior to that day.

4. To appreciate the contentions raised on behalf of the parties, it is necessary to refer to the relevant provisions of the Act prior to its amendment by the Ordinance promulgated on 30th July 1976. Section 62 (i) of the Act provided as follows:

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

(i) in respect of dispute falling under clause (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;

The relevant provisions of section 31 (3) of the Act were as follows:

31. Notice of change--

* * * *

(3) A representative of employees or an employee desiring a change in respect of an industrial matter specified in Schedule II 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.

A claim for reinstatement and the propriety or legality of an order passed or

action taken by an employer acting or purporting to act under the Standing Orders are industrial matters covered by Schedule II to the Act. Thus an employee, who was dismissed from service, could file an application before the Labour Court u/s 31 (3) of the Act praying for the relief of reinstatement within three months from the date of the last approach made by an employee u/s 31 (3) of the Act. There was no period of limitation prescribed for making an approach u/s 31 (3) of the Act. The use of the expression "last approach" in section 62 (i) indicated that there could be more than one approach. The period of three months prescribed in section 62 (i) of the Act was to be reckoned from the date of the last approach which could be made at any time. Thus, in effect, under the provisions of the Act as unamended, there was no period of limitation prescribed for raising a dispute before the Labour Court by an employee who was dismissed from service. Learned counsel for the employer contended that even though there was no specific period of limitation prescribed for commencing an action by an employee assailing the order of dismissal, there was an implied period of limitation barring actions, commenced after the lapse of a reasonable time from the date of the order of dismissal. The contention cannot be upheld. In this connection, we may refer to the following observations of the Supreme Court in *Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others*,

These applications were made in 1962 though they related to claims for the years commencing from 1948 and onwards. The contention therefore was that part of these claims, at any rate, must be held to be barred either by limitation or by reason of laches on the part of the workmen. The answer to this contention is clearly provided in the case of *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, where a distinction was drawn between considerations which would prevail in an industrial adjudication and those which must prevail in a case filed under a statutory provision such as section 33C (2). This Court pointed out there that whereas an industrial dispute is entertained on grounds of social justice and, therefore, a Tribunal would in such a case take into consideration factors such as delay or laches, such considerations are irrelevant to claims made under a statutory provision unless such provision lays down any period of limitation. The Court held that there is no justification in inducting a period of limitation provided in the Limitation Act into the provisions of section 33C (2) which do not lay down any limitation and that such a provision can only be made by Legislature if it thought fit and not by the Court on an analogy or any other such consideration

Under the provisions of the Act as unamended, the employee had a right to approach the Labour Court and raise a dispute with regard to his dismissal, subject to the fulfilment of certain conditions. The Courts cannot induct a period of limitation or put any other fetter on the right of an employee when no period of limitation was provided by the Legislature.

5. On 30th July 1976, the Governor of Madhya Pradesh issued an Ordinance, which amended section 62 (i) of the Act by adding the following proviso to that

section--

Provided that if the dispute is connected with the dispensing with the services of an employee, such proceedings shall commence within a year from the date of the dispensation of services of the concerned employee.

The Ordinance also amended sub-section (3) of section 31 of the Act by adding the following proviso--

Provided further that the provisions of the preceding proviso shall not apply where such application is in respect of dispensing with the services of an employee.

The Ordinance was subsequently replaced by the M.P. Industrial Relations (Amendment) Act, 1976, which came into force on 6th October 1976. The consequence of the amendment so effected is that for the first time a period of limitation for filing an application by an employee under sub-section (3) of section 31 of the Act for raising a dispute in connection with the termination of his services has been introduced. It is one year from the date of the termination of services of the employee concerned. There is no provision in the Act laying down that an employee, whose services were dispensed with before the Ordinance came into force and who had not filed an application u/s 31 (3) of the Act before the Labour Court for reinstatement, could, within a particular period, file the application. The question for consideration is whether, in these circumstances, the amendment to section 62 of the Act prescribing a period of limitation should be given prospective or retrospective operation.

6. Now, the law of limitation is a law relating to procedure. Salmond, in his authoritative work on Jurisprudence, has put the matter thus--

Whether I have a right to recover certain property is a question of substantive law, for the determination and the protection of such rights are among the ends of the administration of justice; but in what Courts and within what time I must institute proceedings are questions of procedural law for they relate merely to the modes in which the Courts fulfil their functions.

As observed by Sulaiman Ag. C. J. as he then was, in *Hazari Tewari Vs. Mt. Maktula Chaubain and Another*, it cannot be said that there is a vested right in a litigant to wait for a particular period of limitation before instituting his suit. However, when a new statute which prescribes a period of limitation, has the effect of destroying vested rights as no provision is made to safeguard them, Courts have struggled against the acceptance of the proposition that the law of limitation is a matter of procedure only. In *Manjuri Bibi v. Akkel Mahmud* 19 I C 793, Sir Asutosh Mookerjee, to whom a case was referred on difference of opinion, surveyed the entire case law on the subject and observed as follows:

In the present case, the Eastern Bengal and Assam Tenancy Amendment Act of 1908 became law on the 10th June 1908 and came into operation on that very date. It is contended on the one hand that the Legislature could never have

intended the new provision of limitation to apply to causes of action which had accrued before the new statute became law, because the effect would be to extinguish forthwith all causes of action in existence and enforceable in a Court of Justice at the time when the statute came into operation. It is argued, on the other hand, that the language of the statute is explicit and covers all causes of action whether antecedent or subsequent to the commencement of the statute. To determine which of these contentions is well-founded, we must remember that the statute as amended provides that the suit to recover possession of land claimed by the plaintiff as an under-ryot must be brought within two years from the date of dispossession. To hold that this amended provision applies to suits in respect of dispossession which has taken place more than two years before the enactment of the new law, is to maintain the position that the Legislature intended the litigant to accomplish what is impossible in the nature of things for him to do, in other words, to prescribe that his rights are forthwith extinguished, without previous notice and without opportunity afforded to him to escape the operation of the new law. To put the matter briefly, if this view is to be supported, we must hold that the Legislature acted in a most unreasonable manner, i.e., that the Legislature intended to penalise all under-ryots who had been dispossessed by their landlords more than two years before the commencement of the new statute, merely because they had waited to enforce their rights in a Court of Justice within the period of limitation allowed at the time by the Legislature. There is, in my opinion, considerable force in the contention that the Legislature may be deemed to act as a body of reasonable men and that the presumption is that they did not intend to inflict needless and unjustifiable hardship upon a large body of innocent litigants.

The aforesaid decision has been followed in *Ajit Singh Vs. Bhagabati Charan Mukerjee, Jethmal v. Ambsingh* A I R 1955 Raj. 97 and *Government of Rajasthan and Another Vs. Sangram Singh and Others*, . In *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, , the Supreme Court held that though by and large the law of limitation was a procedural law, 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. It, therefore appears to be well settled that the law of limitation can be classified as a law of procedure only when it does not have the effect of destroying vested rights or has the effect of reviving barred rights. Where, however, the new law of limitation has the effect of destroying vested rights, then the Court, when invited to hold that the new statute has retrospective operation, will struggle against the acceptance of such interpretation unless there is a clearest indication that the Legislature intended to destroy existing rights without notice, thus penalising innocent litigants.

7. Two questions, therefore, arise for our consideration; first, whether an employee had a vested right to commence an action in a Labour Court and claim the relief of reinstatement; secondly, if he had such a vested right, whether it is

destroyed by the Ordinance, which for the first time laid down a period of limitation for commencing such action. Now, it cannot be disputed that under the provisions of the Act, prior to its amendment by the Ordinance, the Legislature had conferred a right on an employee to approach a Labour Court if he desired change in any industrial matter specified in Schedule-II to the Act. The exercise of this right was undoubtedly dependant on the condition that before filing an application before the Labour Court, the employee had approached the employer in the prescribed manner and no agreement was arrived at within the prescribed period. But the right to commence an action in a Labour Court u/s 31 (3) of the Act vested in an employee. As a result of the promulgation of the Ordinance, those employees who had not commenced action within a year from the date of the dispensation of their services, would be debarred from exercising their rights u/s 31 (3) of the Act. The Ordinance came into operation forthwith and did not allow a reasonable time for the enforcement of existing rights. The conclusion is thus inescapable that the vested rights of certain employees are destroyed by the Ordinance. There is no indication in the Ordinance or the Amending Act that the Legislature intended to destroy existing rights without notice and thus penalise innocent litigants. We have, therefore, no hesitation in holding 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.

8. The Industrial Court has in *Natru Ram v. M. P. S. R. T. C.* recognised the principle of prospective operation, but it has held that where an employee had not served an approach notice before the promulgation of the Ordinance, no cause of action had accrued to him and, as such, the provisions of the Ordinance relating to limitation would be attracted to an application made by such an employee, even though his services were terminated before the Ordinance came into force. With respect, we do not agree with this view. The construction placed upon the Ordinance by the Industrial Court would have the effect of penalising an employee who had failed to serve an approach notice before the Ordinance came into force even though in the Act, as unamended, there was no period prescribed within which such a notice had to be given to the employer by an employee to enable him to exercise the right conferred upon him by section 31 (3) of the Act. The Industrial Court has held that unless an approach notice was served by an employee, no industrial dispute arose and consequently there was no right to move the Labour Court u/s 31 (3) of the Act. Now, the right to move the Labour Court arose u/s 31 (3) of the Act as soon as an employee desired a change in respect of an industrial matter specified in Schedule-11 to the Act, The right of an employee to claim reinstatement arose when his services were terminated. The giving of an approach notice was merely a condition precedent for the exercise of such a right. This notice could be given by an employee under the unamended Act whenever he desired to do so. There was no period of limitation prescribed therefore. An employee cannot be penalised if he failed to serve

approach notice before the Ordinance came into force as there is no indication in the Ordinance or the amending Act that the Legislature intended to penalise such employees.

9. In our opinion, therefore, it must be held in the circumstances that the provisions of the Ordinance and the amending Act prescribing the period of limitation for filing an application u/s 31 (3) of the Act in connection with the dispensing with the services of an employee would be attracted to applications arising out of dispensation of services of an employee after the Ordinance came into force.

10. In the instant case, it is not disputed that the services of the petitioner were terminated before the Ordinance came into force. The Industrial Court, therefore, erred in holding that the Labour Court had no jurisdiction to entertain the application as it was filed beyond a period of one year from the date of termination of the petitioner's services.

11. For all these reasons, this petition is allowed. The order dated 10th March 1978 passed by the Industrial Court is set aside. The Industrial Court is directed to decide the revision petition afresh in accordance with law, after hearing the parties. In the circumstances of the case, parties shall bear their own costs of this petition. The outstanding amount of security deposit shall be refunded to the petitioner.