

(1986) 09 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1438 of 1986

State of Rajasthan and Others

APPELLANT

Vs

Shiv Lal and Another

RESPONDENT

Date of Decision : 29-09-1986

Acts Referred:

Constitution of India, 1950 — Article 22, 226
Industrial Disputes Act, 1947 — Section 33
Payment of Wages Act, 1936 — Section 15

Citation : (1986) WLN 534

Hon'ble Judges : Kanta Bhatnagar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kanta Bhatnagar, J.—In this writ petition under Article 226 of the Constitution of India, petitioners have prayed for quashing of the Award dated December 14, 1984 (Annexure-2) given by the Labour Court, Jodhpur in favour of non petitioner Shivilal.

2. Non-petitioner Shivilal had filed a claim petition u/s 33C(2) of the Industrial Disputes Act (for short "the Act") before the Labour Court, Jodhpur for Rs. 26040/- said to be due towards his salary for the post of Civil Mistry. Before the Labour Court the case of the non-petitioner was that he was appointed as Civil Mistry from February 1, 1967 and allowed to continue as such upto October 20, 1967 but thereafter, he was asked to work on a junior post and was paid lesser salary. According to him his reversion and payment of salary less than what he was entitled to was illegal. The initial claim of Rs. 26040/- was subsequently revised as Rs. 21094/-

3. Despite service of notice issued by the Labour Court nobody appeared on behalf of the opposite party before that Court. The proceedings were therefore, ordered to be ex-parte. On the basis of the documents filed by the non-petitioner Shivilal and the affidavit filed by him, the learned Labour Judge allowed the claim

vide Annexure-2 dated December 14, 1984. After waiting for about an year for the payment of the amount of the Award non-petitioner Shivilal on December 12, 1985 filed an application u/s 15(2) of the Payment of Wages Act before the Authority under that Act (for short "the Authority"). Notice was issued and reply was filed. The application of non-petitioner Shivilal was allowed by the Authority on July 22 1986 which has caused grievance to the petitioners and they have now invoked the extraordinary jurisdiction of this Court.

4. P.K. Lohra entered Caveat on behalf of non-petitioner Shivilal. He has filed a preliminary objection about the maintainability of the writ petition on the ground of delay of more than one and half year, after the passing of the Award.

5. At the request of the learned Counsel for the parties, petition was heard on the preliminary objection as well as on the merits for final disposal.

6. The objection regarding the entertainability of the writ petition on the ground of laches on the part of the petitioners is substantiated by referring to the various dates on which the petitioners had the information about the proceedings before the Labour Court and thereafter in the proceedings under the Payment of Wages Act.

7. Mr. Lohra, submitted that the notice issued by the Labour Court for the date of hearing of August 18, 1983 was duly served upon petitioner No. 3. He, however did not appear in response to the notice and the case was adjourned to September, 14, 1983. On that day also nobody appeared The matter was ordered to be proceeded ex parte. It has been strenuously contended that there is no explanation for the delay in filing the writ petition after 1-1/2 years on June 30, 1986. Reference has also been made by the learned Counsel to the proceedings before the Authority where the opposite party had appeared and filed the reply and participated in the proceedings.

8. Mr. Lohra referred to certain authorities laying down that inordinate, unexplained delay in filing the writ is in itself sufficient to dismiss the writ petition.

9. Notice of the application u/s 33C(2) of the Act was issued to the opposite party for the hearing of August 18, 1983. Record shows that this notice was served upon the Assistant Engineer, PHED, Pali but neither he nor any body on his behalf put in appearance before the Court The case was adjourned to September 14, 1983 and even on that date no body appeared on behalf of the opposite party there. The case of the petitioner is that there is explanation in the writ petition for the delay in filing the writ to the effect that the petitioners came to know of the Award in January 1986 and thereafter permission to file writ petition before this Court was obtained which took time.

10. Mr. Udawat, learned Additional Government Advocate, appearing on behalf of the petitioners admitted that notice was served but his argument is that the case number mentioned in the notice was wrong. The submission has no substance.

At the stage when the notice was served the person concerned could not have known about the number of ease being wrongly mentioned. It is no where the case of the petitioners that they appeared in response of the notice and were misguided because of the wrong number being mentioned in the notice.

11. If notice was served upon the concerned officer he should have contested the claim and should have kept watch over the proceedings When the application u/s 15(2) of the Payment of Wages Act was filed on December, 12, 1985, notice was issued to the Assistant Engineer, PHED, Pali. In the reply filed on February 26, 1986 he stated that the copy of the Award has not been received and that on receiving the same steps for the payment would be taken. The statement of the non-applicant before the Authority was recorded. He admitted there that he had not challenged the legality of the Award anywhere nor does he know about any one else having done so. Till then no writ petition was filed for getting the Award set aside. It was as late as on June 30, 1986 less than a month before the order of the Authority that the present petition was filed. This inordinate unexplained delay has rightly been taken to be a ground by the learned Counsel for the non-petitioner for getting the writ petition dismissed.

12. The question of delay in filing the writ petition and its effect came for consideration before this Court in the case of *State of Rajasthan and Ors. v. Abdul Rouf and Ors.* S.B. Civil Writ Petition No. 1061/85 decided on 4-7-1985. After about five months of the order of the Authority under the Payment of Wages Act the State had challenged the order in this Court by filing a petition under Article 226 of the Constitution of India. The delay in the given circumstances of the case was considered to be inordinate and the writ petition was dismissed.

13. Mr. Lohra referred to the case of *Shiv Prakash and Ors. v. State and Ors.* 1978 WLN 139 wherein a case of the termination of the services of the workers employed in famine relief operation, filing of writ petition after 1-1/2 years was taken to suffer from the vice of laches and disentitled the petitioner from obtaining any relief from this Court.

14. In the case of *Hans Raj etc. Vs. Board of Revenue*, (in which I was a party), while meeting the objection regarding delay in filing a petition under Article 226 of the Constitution of India it was argued that it cannot be said to be a delayed one so long as filed within the period of limitation prescribed for a suit in respect of the same subject-matter. We did not accede to this proposition and observed that no doubt it depends upon the facts and circumstances of each case whether delay in filing of a particular petition under Article 226 of the Constitution is justified and should be condoned and that no such hard and fast rule can be laid down that a petition under Article 226 which is within the period of limitation prescribed for a suit in respect of the same subject matter, should be entertained. In that case the impugned order by the Board of Revenue was passed on February 1, 1977 and the writ petition was filed after one year and ten months. The reason given for this delay was that the petitioner did not receive

any information about the dismissal of the revision nor did the authorities take any proceedings till the month of October 1978 and hence he remained under the impression that his revision petition was pending. It was not considered to be a sufficient ground for entertaining the writ petition after such an inordinate delay because the petition was decided in the presence of the counsel for the petitioner as was apparent from the order of the Board of Revenue.

15. In the case of Ramcharan Goel v. State of Rajasthan 1977 SLJ 601 a Member of the Rajasthan Higher Judicial Service filed the petition under Article 226 of the Constitution after a period of one year from the grievance caused to him. In the absence of explanation for this delay by the delinquent officer, the petition was rejected on the ground of delay alone.

16. True it is that there is no specific period of limitation for invoking the extraordinary jurisdiction of the Court for a writ of Certiorari. The facts and circumstances of the given case and the conduct of the parties are the guiding factors to be taken note of in considering the point of delay in filing the petition. There may be cases where lapse of years may not affect the right of party to seek relief in a writ petition, whereas in some matters delay even of a few days may prove fatal for the petitioner for various reasons such as, the other person being put in an advantageous position because of the inaction of the petitioner or the position of the matter having changed because of the petitioner not raising points before the appropriate authority and so on and so forth.

17. There is no hard and fast rule for fixing the period of limitation in writ matters. Each case is to be decided according to its own circumstance. There is no absolute bar for entertaining the writ petition filed after inordinate delay if there is any explanation which may be called reasonable. Writ jurisdiction is equity jurisdiction. The party seeking equity from the Court should be vigilant for its rights. If the delay in filing the writ petition is undersigned and the explanation is appealing the vice of laches would not come in the way of entertaining the writ petition. However, if on account of the laches, the party aggrieved against has been put in an advantageous position and the petitioner fails to point out his vigilance in the matter, the consensus of opinion expressed in the various decisions on the point is that the petitioner should suffer for the inaction on his part.

18. Keeping this principle in view, when I look to the facts and circumstances of the present case, I am inclined to agree with the learned Counsel for the non-petitioner Shivilal that the petitioners have failed to explain the inordinate delay of about 1-1/2 years in filing the writ petition As stated earlier, despite notice of the proceedings before the Labour Court being served on petitioner No. 3 no step to contest the claim was taken. Assuming for the sake of argument that because of the exparte proceedings the petitioners did not have the knowledge of the Award, still when the notice of the application u/s 15(2) of the Payment of Wages Act was served upon petitioner No. 3, there was information, which according to the petitioners was in the month of January 1986. Despite that, six months were

allowed to pass and during this period instead of challenging the Award assurance for payment was given. As stated earlier petitioner No. 3 in the reply filed before the Authority had stated that when the copy of the Award will be received steps for the payment of Award would be taken. In this connection reference may also be made to the order sheet dated March 18, 1986, in the proceedings before the Authority where adjournment was sought on the ground that the proceedings for making the payment are going on. Even taking the version of the petitioners, that they knew about the Award in the month of January 1986, to be true, it can be said that there was no intention to challenge the Award on any ground nor was there any grudge for *exparte* proceedings before the labour Court.

19. In these circumstance, it can be said to be a case of designed inordinate delay on the part of the petitioners in filing the writ petition. The preliminary objection therefore holds goods and the writ petition is liable to be dismissed on this count. However, I heard the learned Counsel for the parties on the merits of the case also in order to ascertain whether there is any error regarding the jurisdiction of the Court, cutting at the root of the matter which may oblige this Court to overlook the inordinate, unexplained delay in filing the writ petition.

20. It has been vehemently argued by Mr. Udawat that the non-petitioner did not challenge the alleged illegality committed by the Department to pay him less than what he was entitled to, for a long time. That, he was in service from 1967 and upto 1983 he felt content by whatever he was getting and as such the delay in ventilating the grievance should have been taken into consideration by the learned Labour Judge and the claim should have been disallowed.

21. Another ground raised by Mr. Udawat is that the proceedings in the Labour Court were without jurisdiction because in dealing with the matter it travelled beyond the scope of Section 33C(2) of the Act. It has also been stressed that the document produced by the non-petitioner before the Labour Court did not show that he was ever appointed or allowed to work as Civil Mistry and therefore, the finding of that Court in that regard and passing the Award is an error apparent on the face of the record.

22. Mr. Chaudhary, learned Counsel for the non-petitioner controverted these contentions and submitted that despite service petitioner No. 3 allowed the proceedings to go *exparte* and as such the learned Judge was right in placing reliance on the material on record including the affidavit filed by the petitioner.

23. It has been stressed by Mr. Chaudhary that a party not controverting the contentions of the aggrieved party in the Labour Court has no right to raise new points in the proceedings before this Court, because the scope under Article 22 of the Constitution is limited.

24. The question of delay in filing the application u/s 33C(2) of the Act has no substance in view of the principle enunciated in the case of *East India Coal Co. v. Rameshwar* AIR 1968 SC 211 wherein it has" been observed as under:

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 such a provision can only be made by legislature if it thought fit and not the court on an analogy or any other such consideration. It is a matter of some significance that though the legislature amended Section 33C by Act 36 of 1964 and introduced limitation in the section, it did so by means of a proviso only in respect of claims made under Sub-section (1) but did not provide any limitation for claims under Sub-section (2). Hence applications made in 1962 though they related to claims for years commencing from 1948 onwards could not be held as barred by limitation laches.

25. This authority has also been referred to by Mr. Udawat to substantiate his case that the jurisdiction of the Labour Court proceeding u/s 33C(2) is only for the existing right and it should not act as an adjudicating Court. It was observed by their Lordships of the Supreme Court that, the right of the benefit which is sought to be computed must be an existing one. that is to say, already adjudicated upon or provided for and must arise in the course of, and in relation to the relationship between an industrial workman and his employer. Reliance has also been placed on the case of Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, . Reiterating the principle enunciated in the above referred case, their Lordships observed that a proceeding u/s 33(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit in view of its being previously adjudged, or otherwise, duly provided for.

26. It is important to consider that the non-petitioner had gone to the Labour Court with the assertion that the money due to him was not paid to him. The contention of Mr. Udawat that from the material placed before the Labour Court it was not proved that the non-petitioner was ever appointed as a Civil Mistry, requires no consideration for the reason that there was no rebuttal of the assertion of the non-petitioner in his affidavit filed before the Labour Court. The argument of the learned Additional Government Advocate on this point also falls flat by the inconsistent stand taken in the writ petition. Whereas the petitioners have come with a case that non-petitioner Shivilal was never appointed as Civil Mistry, in para No. 4 of the Writ the submission is different and reads as under:

That it is not out of place to submit that non-petitioner No. 1 was appointed as Civil Mistry for 2 months. He was transferred and posted as Helper-I on work charge with effect from 21-10-67 on his own request because the term of temporary post of Civil Mistry was not extended.

27. Mr. Udawat wanted me to look to certain documents filed along with writ petition and to deal with them in the light of the documents filed before the

Labour Court. I decline to proceed in the line for the reason that the documents produced were not before the Labour Court. The contents of the documents filed there were not controverted. The scope of the Court in dealing with the petition under Article 226 of the Constitution is limited. A writ of Certiorari should be issued only when inferior courts or tribunals have travelled beyond the jurisdiction vested. In other words they have committed an error apparent on the face of the record.

28. In the case of Sawarn Singh and Another Vs. State of Punjab and Others, discussing the limitations of the Court in the matters relating to Writ of Certiorari it was as under:

It is well settled that Certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of Certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate Court.

29. In view of the settled principle of law enunciated by the Apex Court of the country, there cannot be any justification for this Court to act as an appellate Court in the matter where the petitioner had not raised the points before the Labour Court and led that Court to arrive at a finding on the basis of the material produced there.

30. The finding of fact of Labour Court about the petitioner being entitled to the amount claimed for and awarded was not even challenged by the petitioners before the authority under the Payment of Wages Act. As stated earlier the only submission made there was the steps were being taken for making the payment of the Award. In such circumstances there is no scope for any interference even on the merits of the case.

31. Consequently, the petition is dismissed on the ground of delay as well as on merits, in the circumstances of the case, cost are made easy.