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(2014) 12 P&H CK 0152

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 24590 of 2014

Surinder Kumar Sharma — APPELLANT

Vs

Presiding Officer, Industrial Tribunal Bathinda and Others — RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:
Constitution of India, 1950 — Article 226 — Industrial Disputes Act, 1947 - Section 10(1), 10(1)(c)

Citation : (2015) 178 PLR 469 : (2015) 2 SCT 374

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Sharad Aggarwal, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.?Indisputably, the petitioner had served in the office of the SDO, Public Health, Jal Supply and Sanitation Wing, Abohar as a Chowkidar for about 4 years from 1.6.1984 to 25.8.1988 when his services were dispensed with. Aggrieved, he raised an industrial dispute for the first time by serving a demand notice of justice on the Department after 16 years. The dispute was referred for adjudication before the Presiding Officer, Labour Court, Bathinda who by his impugned award dated 2.12.2013 declined the reference on the ground of delay and laches and in reaching this conclusion applied the law laid down by the Supreme Court in The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, , Management of Dalmia Cement (Bharat) Ltd. Vs. State of Haryana and Others, and Priti Pal v. The Presiding Officer and others; 2008 (1) S.C.T. 753 : 2008 (2) RSJ 413. The principle reason for rejecting is that a stale claim ought not to be entertained and reinstatement to service and in such circumstances it would be inappropriate to grant relief at this distance of time. Even though no limitation is prescribed in invoking the jurisdiction under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short, the "ID Act"), yet the Supreme Court have carved out practical exceptions to the general principle by introducing the concept of

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delay where it is culpable and considerable by lapse of time. It is well settled that when no limitation is prescribed in the Statute, the Courts will remain guided by a reasonable period in approaching the Court for vindication of a grievance or for redressing a perceived wrong committed by the employer. Where bar of limitation or delay and laches operates, it does not mean that the right is taken away but the remedy is shut. In Ratan Chandra Sammanta and others Vs. Union of India and others, the Supreme Court observed that a worker deprives himself of remedy available in law by delay itself; lapse of time results in losing the remedy and the right as well. Where the Labour Court exercises its discretion in a judicious manner by declining the reference, as in this case, it is not for the writ Court under Article 226 of the Constitution of India to interfere with the discretion exercised to reach a different conclusion or for court to try and mould the relief as suggested by the learned counsel to award either reinstatement and back wages or decline reinstatement but mould the relief to order payment of a lump sum compensation in lieu of reinstatement. This is a matter which could have been considered had he approached the Labour Court within a reasonable time but the petitioner slept over his rights for sixteen years which is prima facie proof enough that he neither felt aggrieved nor remained interested in claiming the job. This is an appropriate case for a court to hold even without evidence of fact on record that the workman had abandoned his job with no intention to return with his claim lying dormant for four years less than a score. It is also noteworthy that the award has been passed on 2nd December 2013 and it is exactly one year today that he has approached this Court to challenge it. This is an additional reason why I decline to interfere in the matter.

2. It would be only fair to deal with the case law cited by the Learned counsel as he relies on a decision of the Supreme Court in Raghubir Singh Vs. General Manager,Haryana Roadways, . The Supreme Court has ruled out that Article 137 of the Limitation Act has no application to the I.D. Act when the expression used in Section 10(1) is that reference can be made ''at any time''. It is well embedded principle of law that in case, there is a delay in raising an industrial dispute the Labour Court can always mould the relief accordingly to meet the ends of justice. The facts of the case were that the workman was involved in misappropriation while working as a Conductor in Haryana Roadways. A criminal prosecution was also launched against him which led to trial and acquittal by the Judicial Magistrate, 1st Class, Hissar. Since the judicial proceedings took substantial time to culminate, the delay itself offered an opportunity for the first time to Raghubir Singh to agitate the matter and seek reinstatement to service upon acquittal by applying for an industrial reference from the appropriate Government to the labour court for adjudication. In these circumstances, the Court took the view that the delay alone was not sufficient to non-suit the workman and the relief could have been moulded and was so done by the Supreme Court but restricted from the date of raising the industrial dispute till reinstatement by limiting relief to payment of back wages with all consequential benefits. The present is not a case of disciplinary proceedings or a criminal trial

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which may explain the delay in approaching the appropriate Government for a reference. Therefore, the facts of the case are distinguishable from the facts of the present case.

3. Counsel next relies on a decision of the Supreme Court in Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, . This is also a case of delay in approaching the industrial adjudicator. The Court reiterated the principle that there is no limitation prescribed in raising a demand by the workman and seeking reference under the Act. In Ajaib Singh''s case, the Supreme Court had set aside the Full Bench decision of this Court which held that Article 137 of the Limitation Act applies to proceedings before the Labour Court and delay, laches and limitation are alone sufficient to constitute a valid hard and fast ground to decline relief. This legal principle continues to operate but several rational inroads have been made in various pronouncements of the Supreme Court largely starting from Shalimar Works Limited Vs. Their Workmen, wherein it held that merely because the ID Act does not provide for a limitation for raising the dispute, it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefore. There is no limitation prescribed for reference of disputes to an Industrial Tribunal; even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particular so when disputes relate to discharge of workmen. Then again the Final Court had occasion to deal with the question of delay in The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, ; The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others, ; Executive Engineer v. Shivalinga, (2002) 10 SCC 167 ; Haryana State Coop. Land Development Bank Vs. Neelam, , State of Karnataka and Another Vs. Ravi Kumar, and observed in the affirmative that inordinate delay can be fatal to the action.

4. In U.P. State Road Transport Corporation Vs. Babu Ram, , the Supreme Court held that so far as delay in seeking reference is concerned, no formula of universal application can be laid down for determining the said question which would depend on the facts of each individual case. While on the question of delay it would be apposite to quote from Regional Provident Fund Commissioner Vs. M/ s. K.T. Rolling Mills Pvt. Ltd., :-

"When a power is conferred by statute without mentioning the period within which it could be invoked, the same has to be done within reasonable period, as all powers must be exercised reasonably, and exercise of the same within reasonable period would be a facet of reasonableness"

5. Thus, the Tribunal would have to see the entire bundle of facts and circumstances of the case before it ventures to mould the relief to suit those facts. It cannot be gainsaid that in appropriate cases, such relief can be granted where delay was not occasioned by acts of the workman and he remained under legal disability as in the two cases relied upon by the petitioner. However, I do not find much substance in this case for an interference with the discretionary

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dispensation handed down by the Labour Court and would endorse the award as one which is clearly sustainable in law and in fact. The scope of interference in the orders passed by the Tribunals has been explained by the Supreme Court in the Constitution Bench decision in Syed Yakoob Vs. K.S. Radhakrishnan and Others, . Examining the issue from the parameters set in this decision, it can hardly be said that the award is arbitrary or perverse or that no reasonable man would have taken the decision on the given facts. For the above reasons, I find no ground to interfere in the award. Accordingly, the petition fails and is dismissed with no order as to costs.

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