
(2012) 10 AHC CK 0222

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18838 of 1999

U.P. State Road Transport Corporation

APPELLANT

Vs

Ashok Kumar Singh and Others

RESPONDENT

Date of Decision : 12-10-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2013) 136 FLR 588

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Samir Sharma and Ajay Kumar Srivastava, for the Appellant; Shashi Kumar, for the Respondent

Final Decision : Allowed

Judgement

B. Amit Sthalekar, J.—In this writ petition, the petitioner is assailing the award of the Labour Court dated 15-12.1997. Facts of the case, in brief, are that the respondent No. 1 claimed that he was appointed as Conductor and worked as such from 15.11.1978 to 25.6.1986. Thereafter he is stated to have worked on the post of Office Assistant Grade II. He claimed the post of Assistant Grade II as well as salary thereof and when the same was denied by the petitioner department, the respondent No. 1 raised an industrial dispute which was referred to the Labour Court by the reference letter dated 20.9.1995 u/s 4-K of the U.P. Industrial Disputes Act, 1947 (the Act of 1947). The question referred was "as to whether the non payment of salary as well as designation and seniority of the post of Office Assistant Grade II by the employer petitioner to Shri Ashok Kumar Singh-respondent No. 2 for the period from 15.11.1978 to 26.6.1986 is valid in law and if not what relief he is entitled to".

2. On this reference an Adjudication Case No. 356 of 1995 was registered. The contention of the petitioner before the Labour Court was that the respondent No. 1 worked as Conductor from 1.9.1979 to 25.6.1986 and thereafter he worked continuously on the post of Office Assistant II, therefore, he was not entitled to

the salary of the post of Office Assistant II for the period from 15.11.1978 to 26.6.1986. However, from a perusal of the impugned award dated 15.12.1997 it will be seen that in paragraph 5 thereof, the Labour Court has himself recorded a finding that the workman in his cross examination has admitted that from 11.11.1978 till 31.8.1979 he worked as a daily wager Conductor. The Labour Court has also noted that in February, 1980 he has worked and then worked from 1981 to 1983 in the months of July and August, but in the year 1984 and 1985 he has not worked. The Labour Court by its award dated 15.12.1997 has, however, held that the respondent No. 1 has worked on the post of Office Assistant II and that he is entitled to the salary as well as designation and seniority of the said post.

3. Hence the present writ petition.

4. I have heard Shri Ajay Kumar Srivastava, holding brief of Shri Sameer Sharma, learned Counsel for the petitioner and learned standing Counsel for the respondent Nos. 2 and 3, No one appeared on behalf of the respondent No. 1 although the case is marked as peremptorily and has been taken up in the revised list.

5. Learned Counsel for the petitioner has raised a preliminary objection that the respondent No. 1 raised the industrial dispute in the year 1995 although he is claiming the benefit of the post of Office Assistant II for the period from 15.11.1978 till 25.6.1986. He, therefore, submits that his claim petition was itself grossly barred by laches. He further submits that from a reading of the award it is clear that it is nowhere stated that the respondent No. 1 has explained in any manner the delay in raising the industrial dispute. It is submitted that even if it is assumed for the sake of argument without admitting that the respondent No. 1 worked as Office Assistant II from 15.11.1978 to 25.6.1986 there was no legitimate ground for him to have raised this dispute in the year 1995 and, therefore, in the circumstances he was not entitled for any relief. He has further referred to certain contradictions which are evident from the reading of the award itself, wherein it is stated that according to the respondent No. 1 he has worked as Office Assistant II from 15.11.1978 to 25.6.1986 but in his rejoinder reply he stated that he has worked as Conductor from 1.9.1979 to 25.6.1986. The submission is that the respondent No. 1 could not be said to be working on two posts namely, Conductor and Office Assistant II during the same period of time and therefore, it is clear that a false case has been set up by the respondent No. 1.

6. So far as the factual contradictions are concerned, they are evident from the reading of paragraph 2 of the award itself. On the question of the claim being barred by time, Shri Ajay Kumar Srivastava has referred to a judgment of the Supreme Court in *UPSRTC v. Babu Ram*, 2006 (110) FLR 540 (SC) wherein the Supreme Court has held that although the Industrial Disputes Act does not provide any period of limitation for approaching the Court and nevertheless it is expected that a workman should raise an industrial dispute within a reasonable

time or he should explain that he was not responsible for the delay. In the case of Babu Ram (Supra), the Supreme Court in paragraph 7 has held as under:

So far as delay in seeking a reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.

7. However, the Supreme Court has relied upon certain decisions of Supreme Court itself, which are referred to in paragraph 8 and 9 of the judgment, wherein it has been held that if the claim has been raised after 7-9 years, the employee must explain the reasons for delay. Paragraph 8 and 9 of the judgment read as under:

8. However, certain observations made by this Court need to be noted. In The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, it was noted at paragraph 6 as follows:

6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers u/s 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference u/s 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made u/s 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex-facie bad and incompetent.

In S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, the position was reiterated as follows: (at para 17)

17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in Shalimar Works Limited Vs. Their Workmen, , that merely because the Industrial Disputes 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 therefor. 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 particularly so when disputes relate to discharge of workmen wholesale. A

delay of 4 years in raising the dispute after even reemployment of the most of the old workmen was held to be fatal in *Shalimar Works Limited Vs. Their Workmen*, , In *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, , a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In *Ratan Chandra Sammanta and others Vs. Union of India and others*, , it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in *Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, , the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16.1.1990 they were refused to be accommodated in the scheme. On 28.12.1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal cum-Labour Court. We do not think that the appellants deserve to be non suited on the ground of delay.

The above position was highlighted recently in *Employers in relation to the Employers in relation to the Management of Sudamdih Colliery of Bharat Coking Coal Ltd. Vs. Their workmen represented by Rashtriya Colliery Mazdoor Sangh*,

8. In the present case it has nowhere been explained by the respondent No. 1 as to why he has raised the industrial dispute only in the year 1995. The plea relating to limitation has been taken by the petitioner in paragraph 3 of the writ petition also and the reply thereto has been given in paragraph 5 of the counter affidavit, filed by the respondent No. 1, which reads as under:

5. That the contents of para No. 3 of the writ petition are denied it is stated that the claim of the respondent No. 1 was state representation claim denied by Department Industrial Disputes was raised and reference was made and referred to the Labour Court was correctly made.

9. Thus the fact that there was delay in raising the industrial dispute has not been specifically denied by the respondent No. 1 nor he has given any reasonable explanation as to the cause of delay in raising the industrial dispute.

10. In the circumstances, in my opinion, on fact as well as on the point of law the award of the Labour Court dated 15.12.1997 cannot survive and deserves to be quashed.

11. The writ petition is allowed. The award dated 15.12.1997 is quashed. Interim order granted on 7.5.1999 is vacated.

12. At the time of admission, this Court had passed the following order on 7.5.1999:

Heard Shri Samir Sharma, learned Counsel for the petitioner.

Issue notice to respondent No. 1 who may file counter affidavit within six weeks.

List thereafter.

In the meantime operation of the award dated 15.12.1997, Annexure-1 to the writ petition shall remain stayed provided the difference of the amount payable under the award to the respondent No. 1 is deposited within two months with respondent No. 2. If the amount is so deposit within the time allowed, it shall be invested in a fixed term deposit of some Nationalized Bank initially for a period of one year subject to further renewal so that it may earn interest. This deposit shall be held subject to the ultimate decision of the present petition. In the event of failure of the petitioner to deposit the amount aforesaid within the time allowed, this stay order shall stand discharged ipso facto and the amount shall become recoverable all at once.

Since this writ petition has been allowed, it is provided that it will be open for the petitioner-department to apply before the Labour Court for realization of the amount which has been deposited in terms of the order dated 7.5.1999.