

(2000) 02 MP CK 0020

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 60, 61-64 and 104 of 2000

Vijay Kumar Sharma and Others

APPELLANT

Vs

The Executive Engineer, Public Health and Others

RESPONDENT

Date of Decision : 28-02-2000

Acts Referred:

Land Acquisition (Amendment) Act, 1984 — Section 11, 4, 6

Limitation Act, 1963 — Section 18, 18(1), 18(2), 29(2), 5

Madhya Pradesh Industrial Relations Act, 1960 — Section 31, 31(3), 51, 52, 61

Citation : (2001) ILR (MP) 1304 : (2000) 3 MPHT 498 : (2001) 1 MPLJ 104

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Alok Aradhe, for the Appellant; V.K. Shukla, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

As the factual matrix and questions of law are common this batch of writ petitions was heard analogously and is disposed of by this common order. For the sake of clarity and convenience the facts in Writ Petition No. 60/2000 herein are adumbrated.

The facts as have been uncurtained are that the Public Health Engineering Department required services of certain Pump Operators and accordingly a requisition was sent to the Project Commandant. In the process of selection the petitioner was found suitable for appointment against the vacant sanctioned post of a Pump Operator. He joined the post in Sub-Division No. 29 which was managed and controlled by the Sub-Divisional Officer, Public Health Department, Ambikapur, the respondent No. 2 herein. While he was performing his duties there was no complaint whatsoever, against him. However, his services were orally terminated with effect from 30-4-1992. Before termination of his services no opportunity of hearing was afforded to the petitioner and no enquiry was held.

In this background the petitioner filed an application u/s 31 (3) of the M.P. Industrial Relations Act, 1960 (hereinafter referred to as "the Act"). Along with the said application an application u/s 5 of the Limitation Act was also filed.

The respondents No. 1 and 2 resisted the claim of the petitioner contending, inter alia, that the petitioner was employed on daily wage basis by way of adhoc arrangement and he was never appointed against any permanent vacancy. It was also set forth that there was no relationship of employer and employee between the parties. It was also highlighted that the salary of the petitioner was being paid by the Project Commandant. It was also stated that as the petitioner was a daily wage employee there was no necessity for holding of an enquiry. An objection was also raised that the application preferred by the petitioner u/s 31 (3) of the Act was barred by limitation.

The Labour Court framed issues and parties adduced evidence. Thereafter, by Order dated 30-4-1996, Annexure P-3, the Labour Court partly allowed the appeal and directed reinstatement of the petitioner in his services without back wages. Being dissatisfied with the aforesaid Order the respondents No. 1 and 2 preferred an appeal before the respondent No. 3, namely, the Industrial Court, Raipur. The Appellate Court by Order dated 12-12-1999, Annexure P-4, allowed the appeal holding that the provisions of the Limitation Act are not applicable to the proceeding under the Act and, therefore, the workmen could not have been given the benefit of the Limitation Act. It was also observed that the application filed for condonation of delay was a vague one and without any material particulars. On the basis of the aforesaid foundation, the appellate Court came to hold that the Labour Court has no jurisdiction to entertain an application u/s 31 (3) of the Act and accordingly allowed the appeal.

It is averred in the writ petition that the Order passed by the Appellate Court is erroneous and illegal inasmuch as it has exceeded to its jurisdiction while interfering with the reasoned Order passed by the Labour Court. It is also put forth that the Limitation Act applies and the Labour Court has correctly applied the provisions of the Limitation Act and the findings recorded by it did not warrant interference, but the Appellate Court has erroneously interfered with the same.

I have heard Mr. Alok Aradhe, learned counsel for the petitioner and Mr. V.K. Shukla, learned Government Advocate for the respondents-State.

Mr. Aradhe, learned counsel for the petitioner has raised a singular contention that the appellate authority has misdirected itself in coming to hold that the delay in filing the application u/s 31 (3) of the Act was not condonable.

Combating the aforesaid submissions learned Government Advocate has contended that in absence of any provision for condonation of delay the same could not have been condoned by the Lower Court as it is not a Court as understood in the eye of law.

To appreciate the rival submissions raised at the Bar, it is apposite to refer to Section 31 of the Act. It reads as under :

"31. Notice of Change.-- (1) An employee intending to effect any change in respect of an industrial matter specified in Schedule I shall give notice of such intention in the prescribed form and manner to the representative of employees and to such other persons as may be prescribed.

(2) A representative of employees desiring a change in respect of an industrial matter, which is neither covered by standing orders nor is specified in Schedule II, shall give notice thereof in the prescribed manner to the employers concerned and to such other persons as may be prescribed.

(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 Labour Court in such manner as may be prescribed."

Section 31 (3) of the Act clearly stipulates that an application has to be filed before the Labour Court in such a manner as may be prescribed. Section 61 of the Act deals with the powers of Labour Court. As per the said Section the Labour Court has power to decide the disputes regarding which an application has been made to it under Sub-section (3) of the Act. Section 61 of the Act reads as under:

"61. Power of Labour Court.-- (1) In addition to powers conferred under other provisions of this Act, Labour Court shall have power to---

(A) decide--

(a) disputes regarding which applications has been made to it under Sub-section (3) of Section 31 of the Act;

(b) industrial disputes--

(i) referred to it u/s 51 or 52; (ii) in respect of which it is appointed as the Arbitrator by a submission;

(c) whether a strike, lock-out, stoppage, closure or any change is illegal under this Act;

(B) require any employer--

(a) to withdraw any change or lock-out which is held by it to be illegal; or

(b) to carry out any change provided such change is a matter in issue in any proceeding before it under this Act;

(C) require any employee to withdraw a strike which is held by it to be illegal;

(D) and where the payment of compensation on conviction for an offence is provided for, determine the compensation and Order its payment.

(2) For the purposes of deciding a dispute under paragraphs (A) and (B) of Sub-section (1) it shall be lawful for the Labour Court to determine questions of fact relevant to the dispute."

Section 62 of the Act deals with commencement of the proceeding. It reads as under:--

"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 two years from the date of the dispute:

Provided that--

(a) if the dispute is connected with the termination of the services of an employee, such proceedings shall commence within a year from the date of termination of the services of the concerned employee;

(b) nothing contained in the foregoing provision shall apply if the concerned employee had made an approach before the 30th day of July, 1976 in accordance with the provisions contained in Sub-section (3) of Section 31 as it stood before the said date and in that case the provisions contained in Sub-section (3) of Section 31 and Clause (I) of this Section shall be applicable as they had been before the said date;

(c) where an employee has preferred an appeal or representation against an order of termination under any rule, regulation or standing orders to the competent authority within the period prescribed for such appeal or representation or where no such period is prescribed within three months of the order of termination, such proceedings may be commenced within one year from the date of the disposal of the appeal or representation, as the case may be;

(ii) in respect of matters specified in Clause (c) of paragraph (A) of Sub-section (I) of Section 61, within three months of the commencement of the strike, lockout, stoppage, closure or of the making of the change on an application made by the employer, the representative of employees, any employee directly affected thereby or by the Labour Officer :

Provided that the Labour Court may, for sufficient reasons, admit any application for a declaration that change is illegal under the Act, after the expiry of three months from the date on which change was made."

On a bare reading of the aforesaid sections, it transpires that the proceedings before the Labour Court shall commence in relation to disputes falling under Clause (a) in Paragraph A of Sub-section 61 within two years from the date of dispute. In the case at hand, as has been reflected in the order passed by the Appellate Court services of the workman were put to an end to on 30-4-1992 whereas he approached the Labour Court on 30-11-1994 which is beyond the prescribed period. If the proviso (a) is read in proper perspective the proceeding

was squarely time-barred. If the provisions are read conjointly it would become graphically clear that an employee who seeks to challenge the validity of the order he has to approach the Labour Court within the prescribed period of limitation. After the statutory time limit expires the Labour Court cannot give declaration sought for.

Quite apart from the above, it is to be kept in mind that the Labour Court is not a Court as the meaning of the Court is understood in the eye of law. The Labour Court functions within the confines of a special statute called M.P. Industrial Relations Act, 1960. The said statute does not confer any power to condone delay. In absence of such a power flowing from the statute, I am of the considered opinion, the Labour Court could not have condoned the delay and entertained the prayer of the petitioner. In this context, I may profitably refer to the decision rendered in the case of Officer on Special Duty (Land Acquisition) and Anr. v. Shah Manilal Chandulal etc. 1996 AIR SCW 941, wherein the Apex Court held as under :--

"17. It is to be remembered that the Land Acquisition (Amendment) Act (68 of 1984) was enacted prescribing the limitation to exercise the power under Sections 4, 6 and 11 and also excluded the time occupied due to stay granted by the Courts. Taking cognizance of the limitation prescribed in the proviso to Sub-section (2) of Section 18 the provisions of the Limitation Act were not expressly extended. Though Section 29(2) of the Limitation Act is available and the limitation in proviso to Sub-section (2) of Section may be treated to be special law, in the absence of such an application by Land Acquisition (Amendment) Act (68 of 1984), the Act specifically maintains distinction between the Collector and the Court and the Collector/LAO performs only statutory duties under the Act, including one while making reference u/s 18, as Statutory authority still acts as a Court for the purpose of Section 5 of the Limitation Act.

Though hard it may be, in view of the specific limitation provided under proviso to Section 18(2) of the Act, we are of the considered view that Sub-section (2) of Section 29 cannot be applied to the proviso to Sub-section (2) of Section 18. The Collector/LAO, therefore, is not a Court when he acts as a statutory authority u/s 18(1). Therefore, Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to Sub-section (2) of Section 18. The High Court, therefore, was not right in its finding that the Collector is a Court u/s 5 of the Limitation Act."

In view of my preceding analysis, I find the reasonings given by the Appellate Court, are cogent and he has rightly held that the original proceeding, being initiated after the prescribed period, before the Labour Court, was not tenable.

Resultantly, this batch of writ petitions does not succeed and is hereby dismissed. However, there shall be no Order as to costs.