Karan Singh vs M/S Executive Engineer Haryana State ... on 28 September, 2007

Equivalent citations: 2007 AIR SCW 6293, 2007 (14) SCC 291, AIR 2007 SC (SUPP) 989, (2007) 4 ALL WC 4111, (2007) 11 SCALE 577, (2007) 4 LAB LN 960, (2007) 7 SUPREME 13, (2007) 4 SCT 328, (2007) 6 SERVLR 674, (2007) 3 CURLR 898

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Bench: Arijit Pasayat, S.H. Kapadia

CASE NO.:
Appeal (civil) 4561 of 2007

PETITIONER:
Karan Singh

RESPONDENT:
M/s Executive Engineer Haryana State Marketing Board

DATE OF JUDGMENT: 28/09/2007

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:

J U D G M E N T CIVIL APEPAL NO. 4561 OF 2007 (Arising out of SLP (C) No. 26379 of 2005) Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by the Division Bench of the Punjab and Haryana High Court dismissing the writ petition filed by the appellant questioning the correctness of the decision rendered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar.

3. The reference made to the Labour Court by the State Government of Haryana in terms of Section 10 (1) of the Industrial Disputes Act, 1947 (in short the 'Act') was answered in favour of the respondent (hereinafter referred to as the 'Board') holding that the claim was highly belated and therefore dis-entitled the appellant from any relief.

4. A brief reference to the factual aspects would suffice.

The appellant was appointed as DPL in August 1993 and worked upto October 1994. According to the appellant his services were terminated without any charge sheet or holding any enquiry though he had worked for more than 240 days. In that context it was contended that provisions of Section 25-F of the Act were not complied with. He had prayed for re- instatement with full back wages alongwith all consequential benefits. The claimant who was examined as WW-1 had stated that he had joined the respondent-Board as DPL on 1.8.1993 and was getting Rs.1120/- p.m. and had worked till October 1994 continuously when his services were terminated. Grievance was made that the workers junior to him had been regularized and a departure was made in his case.

The respondent-Board took the stand that the services of the claimant were required as DPL as and when required and he had really not completed 240 days. A stand was taken that the claim was highly belated. It is to be noted that in the cross examination appellant had admitted that he had no proof of having worked from August 1993 to October 1994. The claim petition was filed in the year 2000. The notice dated 6.6.2000 was the first one and on failure of conciliation, reference was made on 8.2.2001. The appellant should have explained inaction on his part. Labour Court took the view that the claim was highly belated. If the appellant felt that the order of termination was illegal without following due procedure, he should have come up with demand notice within a reasonable time. It was held that though no limitation is prescribed, but it would be unequitable to re-open the closed chapter after a long time. The appellant was therefore held not to be entitled to any relief.

Writ petition filed by the appellant was dismissed on the ground that the demand notice had been raised after six years.

5. Learned counsel for the appellant has submitted that there being no period of limitation prescribed and at the most the relief could have been moulded instead of rejecting the claim.

6. Learned counsel for the respondent supported the order of the High Court.

7. In the appeal the main issue which arises for determination is as follows:

> "Whether the reference of the Petitioner/workman could be rejected on the sole ground of delay when Government itself made reference for adjudication of the issue/ dispute."

8. In the case of Management of Express Newspapers (Private) Ltd. v. The Workers and Ors. reported in (AIR 1963 SC 569) it has been held that the jurisdiction of the Tribunal in dealing with industrial disputes is limited to the points mentioned in Section 10(4).

9. In the case of National Engineering Industries Ltd. v. State of Rajasthan and Ors. (2000) 1 SCC 371) it has been held vide para 24 that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute which could be the subject-matter of reference for adjudication to the Industrial Tribunal under Section 10. This is because existence of the industrial dispute is a jurisdictional fact. Absence of such jurisdictional fact results in the invalidation of the reference. For example, even under the Income Tax Act, 1961 as it stood earlier,

the Income Tax Officer must have reason to believe escapement of income. This "reason to believe" is a jurisdictional fact, therefore, writ petitions were maintainable in cases where the High found absence of basic facts for reopening the assessment. The industrial Tribunal under Section 10 gets its jurisdiction to decide an industrial dispute only upon a reference by the appropriate government. The Industrial Tribunal cannot invalidate the reference on the ground of delay. If the employer says that the workman has made a stale claim then the employer must challenge the reference by way of Writ petition and say that since the claim is belated, there was no industrial dispute. The Industrial Tribunal cannot strike down the reference on this ground. In the present case, the Industrial Tribunal has held that the employer has violated Section 25F. If so, the order of termination is bad in law. It has to be struck down. In the present case, it has been struck down. However, the Tribunal had refused to grant any relief on the ground of delay. The Tribunal has no authority to invalidate the reference, particularly when it has found that the order of termination violates Section 25F of the Industrial Disputes Act, 1947.

10. In Sapan Kumar Pandit v. U.P. State Electricity Board and Ors. (2001) 6 SCC 222), it has been held, vide para 15, as follows:

> "There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval, it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons, it does not cause the dispute to wane into total eclipse. In this case, when the Government have chosen to refer the dispute for adjudication under Section 4-K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination."

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

12. However, certain observations made by this Court need to be noted. In Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors. (2000 (2) SCC 455) it was noted at paragraph 6 as follows:

> "6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 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

> under Section 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 under Section 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."

13. In S.M. Nilajkar and Ors. v. Telecom District Manager, Karnataka (2003 (4) SCC 27) 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 M/s. Shalimar Works Ltd. v. Their Workmen (supra) (AIR 1959 SC 1217), 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 M/s. Shalimar Works Limited v. Their Workmen (supra) (AIR 1959 SC 1217), In Nedungadi Bank Ltd. v. K.P. Madhavankutty and others (supra) AIR 2000 SC 839, a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In Ratan Chandra Sammanta and others v.

Union of India and others (supra) (1993 AIR SCW 2214, 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 Employees Under P&T Department v. Union of India (supra) (AIR 1987 SC 2342), 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."

14. The above position was highlighted recently in Employers in relation to the Management of Sudamdih Colliery of M/s Bharat Coking Coal Ltd. v. Their Workmen represented by Rashtriya

Colliery Mazdoor Sangh (2006 (1) Supreme 282) and Chief Engineer, Ranjit Sagar Dam & Anr. v. Sham Lal (2006(9) SCC 124).

15. In the aforesaid background, we would have normally set aside the award of the Labour Court and the High Court. But because of long passage of time, it would be inappropriate, particularly when appellant has not even offered any semblance of explanation for the delay.

16. Accordingly we direct that the respondent-Board shall pay a sum of Rs.60,000/- within a period of six weeks in full and final settlement of appellant's entitlements.

17. The appeal is allowed to the aforesaid extent. There will be no order as to costs.