Ajaib Singh vs Sirhind Coop. ... on 8 April, 1999

Equivalent citations: AIR 1999 SUPREME COURT 1351, 1999 (6) SCC 82, 1999 AIR SCW 1051, 1999 LAB. I. C. 1435, 1999 (3) SERVLJ 219 SC, 1999 (3) LRI 296, 1999 (2) SCALE 508, 1999 (3) ADSC 293, 1999 LAB LR 529, (1999) 3 SERVLJ 219, 1999 ADSC 3 293, (2001) 2 CGLJ 240, 1999 (5) SRJ 230, (1999) 3 JT 38 (SC), (1999) 4 SUPREME 51, (1999) 95 FJR 72, (1999) 82 FACLR 137, (1999) 1 LABLJ 1260, (1999) 2 LAB LN 674, (1999) 2 MAD LJ 89, (1999) 2 MAHLR 428, (1999) 2 SCT 667, (1999) 2 SCALE 508, (1999) 2 ALL WC 1649, (1999) 1 CURLR 1068, (1999) 3 MAD LW 413, (1999) 3 SCJ 87, 1999 SCC (L&S) 1054

Bench: S. Saghir Ahmad, R.P. Sethi

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           CASE NO.:
Appeal (civil)  2157 of 1999

PETITIONER:
AJAIB SINGH

RESPONDENT:
SIRHIND COOP. MARKETING-CUM-PROCESSING SERVICE SOCIETY LTD. AND ANR.

DATE OF JUDGMENT: 08/04/1999

BENCH:
S. SAGHIR AHMAD & R.P. SETHI

JUDGMENT:
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JUDGMENT 1999 (2) SCR 505 The Judgment of the Court was delivered by SETHI, J, Leave granted.

The services of the appellant-workman were terminated by the respondent- management allegedly without compliance of the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as `the Act). The dispute regarding his termination of services was referred to the Labour Court by the appropriate government oh 19;3.1982. The management justified their action on the ground that as the workman, being a salesman, had embezzled thousands of rupees, the termination of his services was justified. The jurisdiction of the Labour Court to entertain and adjudicate the reference was also disputed. However, after the evidence of the parties, the labour court vide its award dated 16.4.1986 directed reinstatement of the workman with full back wages from 8.12.1981. it may be worth noticing that the issue regarding jurisdiction of the labour court to entertain the reference was not pressed by the management. Not satisfied with the award of the labour court, the management filed a writ petition in the High Court praying for quashing the award of the labour

court mainly on the ground of the workman having approached the court for the grant of the relief after a prolonged delay. The learned single Judge of the High Court held that the workman was not entitled to any relief as he was allegedly shown to have slept over the matter for 7 years and confronted with the management at a belated stage when it might have been difficult for the employer to prove the guilt of the workman. The judgment of the learned Single Judge was upheld by the Division Bench vide the judgment impugned in.this appeal.

Supporting the impugned judgment, the learned counsel appearing for the management-respondent has contended that the principle incorporated under Article 137 of the Limitation Act though not specifically made applicable yet would be deemed to be applicable in a case under the Act for the purpose of making a reference in terms of Section 10 thereof. In support of his contentions, he has referred to different judgments under various enactments. The learned counsel appearing for the workman has, however, submitted that the principles incorporated under article 137 of the Limitation Act cannot be held to be applicable under the Act for the purposes of making a reference of the dispute to the labour court and that the reliance of the learned counsel on different judgments was miseonceived for reasons of not taking note of the special provision of the Act admittedly is a social welfare legislation intended to protect the interests of the workmen employed in various industries.

It is not in dispute that the services of the workman were terminated on 16.7.1974 and he had issued the notice of demand only on 8.12.1981. It is also not disputed that no plea regarding delay appears to have been taken by the management before the labour court, it is also acknowledged that Article 137 of the Limitation Act has not been specifically made applicable to the proceedings under the Act seeking reference of industrial disputes to the labour court. This Court, in no case, has so far held that either Article J37 of the Limitation Act or the principle incorporated therein is applicable to the proceedings under the Act.

Before appreciating the rival contentions urged on behalf of the parties, it has to be noticed as to under what circumstances the act was enacted and what was the objectives sought to be achieved by its legislation. If cannot be disputed that the act was brought on the statute book with the object to ensure social justice to both the employers and employees arid advance the progress of industry by bringing about the existence of harmony and cordial relationship between the patties. It is a piece of legislation providing and regulating the service conditions of the workers. The object of the Act is to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life and by the process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The prosperity of the country in its turn, helps to improve the conditions of labour Hindustan Antibiotics Ltd v. The Workman, AIR (1967) SC 948. The Act is intended not only to make provision for investigation and settlement of industrial disputes but also to serve industrial peace so that it may result in more production and improve the national economy. In the present sociopolitical economic system, it is intended to achieve co-operation between the capital and labour which has been deemed to be essential for maintenance of increased production and industrial peace. The Act provides to ensure fair terms to workman and to prevent disputes between the employer and the employees so that the large interests of the public may not suffer. The provisions of the Act have to be interpreted in a manner which advances the

object of the Legislature contemplated in the statement of objects and reasons. While interpreting different provisions of the Act attempt should be made to avoid industrial un-rest, secure industrial peace and to provide machinery to secure the end. Conciliation is most important and desirable way to secure that end. In dealing with industrial disputes, the courts have always, emphasized doctrine of social justice, which is founded on basic ideal of socio-economic equality as enshrined in the Preamble of bur Constitution. While construing the provisions of the Act, the Courts have to give them a construction which should help in achieving the object of the Act.

The- history of the legislation with respect to the industrial disputes would show that for the first time in the year (920 the Trade Disputes Act Was enacted which provided for Courts of Inquiry and Conciliation Boards and forbade strikes in public utility service without a statutory notice in writing. The Act did not make provision for any machinery for setting of industrial disputes. The said Act was repealed and replaced by the trade Disputes Act, 1962 which started the state intervention in the settlement of industrial disputes and armed the Government with the power which could be Used whenever considered fit to intervene in industrial disputes. This Act was amended in the year 1938 authorising the Central and Provincial Governments to appoint conciliation officers for mediating in or promoting the Settlement of industrial disputes. Shortly thereafter the Government of India promulgated the Defence of India Rules to meet the exigency created by the Second World War. Rule 81 -A gave powers to the Government to intervene in industrial disputes and was intended to provide speedy remedies for industrial disputes by referring them compulsorily to conciliation or adjudication by making the awards legally binding on the parties and by prohibiting strikes or lock-outs miring the pendency of the conciliation or adjudication proceedings. Industrial Employment (Standing Orders) Act, 1945 was enacted which made provision for framing and certifying of standing orders covering various aspects of service conditions in the industry. The Industrial Disputes Bill was introduced in the Central Legislative Assembly on 8.10.1945 which embodied the essential principles of Rule 81-A of the Defence of India Rules and also certain provisions of Trade Disputes Act, 1929 concerning industrial disputes. The Bill was passed by the Assembly in March 19$7 and became the law w.e.f. 1.4. 1947, The present Act was enacted with the objects as referred to hereinabove and provided machinery and forum for the investigation of industrial disputes, their settlement for purposes of analogous and incidental thereto. The emergence of the concept of welfare state implies an end to exploitation of workman and as a corollary to that collective bargaining came into its own. The Legislature had intended to protect workmen against victimisation and exploitation by the employer and to ensure termination of industrial disputes in peaceful manner.

The object of the Act, therefore, is to give succour to weaker sections of the society which is a pre-requisite for a welfare State. To ensure industrial peace and pre-empt industrial tension, the Act further aims at enhancing the industrial production which is acknowledged to be life-blood of a developing society. The Act provides a machinery for investigation and settlement of industrial disputes ignoring the legal technicalities with a view to avoid delays, by specially authorised courts which are not supposed to deny the relief on account of the procedural wrangles. The Act contemplates realistic and effective negotiations, conciliation and adjudication as per the need of the society keeping in view the fast changing social norms of the developing country like India. It appears to us that the High Court has adopted a casual approach in deciding the matter apparently

ignoring the purpose, aim and .object of the Act.

This Court in Bombay Gas Co. Ltd. v. Gopal Bhiva and Ors.,[1964] 3 SCR 709 held that the provisions of Article 181 (now Article 137) of the Limitation Act apply only to applications which were made under the Code of Civil Procedure and its extension to applications under Section 33-C(2) Of the Act was not: justified. This position was further reiterated and explained by this Court in Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubili and Ors., [1970] 1 SCR 51 ;-

> "It appears to us that the view expressed by this Court in those cases must be held to be applicable, even when considering the scope and applicability of Article 137 in the new Limitation Act of 1963. We language of Article 137 is only slightly different from that of the earlier Article 181 inasmuch as, when prescribing the three years' period of limitation, the first column giving the description of the application reads as "any other application for which no period of limitation is provided elsewhere in this division' In fact, the addition of the word "other" between the words "any"

and "application" would indicate that the legislature wanted to make it clear that the principle of interpretation of Article 181 on the basis of eiusdem generis should be applied when interpreting the new Article 137. This word "ether" implies a reference to earlier articles, arid, consequently, in interpreting this article, regard must be had to the provisions contained in all the earlier articles. The other articles in the third division to the schedule refer to applications under the Code of Civil Procedure, with the exception of applications under the Arbitration Act and also in two cases applications under the Code of Criminal Procedure, the effect of introduction in the third division of the schedule of reference to applications under the Arbitration Act in the old Limitation Act has already been considered by this Court in the case of Sha Mulchand & Co. Ltd., [1953] SCR 709 = AIR (1953) SC 98 (supra). We think that, on the same principle it must be held that even the further alteration made in the articles contained in the third division of the schedule to the new Limitation Act containing references to applications under the Code of Criminal Procedure cannot be held to have materially altered the scope of the residuary. Article 137 which deals with other applications. It is not possible to hold that the intention of the Legislature was to drastically alter the scope of this article so as to include within it all applications, irrespective of the fact whether they had any reference to the Code of Civil Procedure.

This Point, in our opinion, may be looked at from another angle also. When this Court earlier held that all the articles in the third division to the schedule, including Article 181 of the Limitation Act of 1908 governed applications under the Code of Civil Procedure only, it clearly implied that the applications must be presented to a Court governed by the Code of Civil procedure. Even the applications under the Arbitration Act that were included within the third division by amendment of Articles 158 and 178 were to be presented to Courts whose proceedings were governed by the Code of Civil Procedure. At best the further amendment now made enlarges the scope of the third division of the schedule so as also to include some applications presented to courts governed by the Code of Criminal Procedure. One factor at least remains constant and that is that the applications must be to courts to be governed by the Articles in this division; The scope of the various articles in this division

cannot be held to have been so enlarged as to include within them applications to bodies other than Courts, such as a quasi-judicial tribunal, or even an executive authority: An industrial tribunal or a Labour Court dealing with applications or references under the Act are not courts an they are in no way governed either by the Code of Civil Procedure or the code of Criminal Procedure. We cannot, therefore, accept the submission made that this article will apply even to applications made to an Industrial Tribunal or a Labour Court. The alterations made in the Article and in the new Act cannot, in our opinion, justify the interpretation that even applications presented to bodies, other than courts, are how to be governed for purposes of limitation by Art. 137."

In Sakura v. Tanaji AIR., (1985) SC 127? it was held that the provisions of the Limitation Act applied only to proceedings in courts and not to appeals or applications before the bodies other than courts such as quasi-judicial tribunal of executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure. The view taken by this Court in case Municipal Council Athani (supra) and Nityanand M. Joshi v. LIC of India, [1970] 1 SCR 396 was reiterated with approval.

In Jai Bhagwan v. Management of the Ambala Central Co-operative Bank Ltd. And Anr. AIR, (1984) SC 286 this Court declined to set aside the order of reinstatement of the workman who was shown to have approached the court after a prolonged delay. However, in the circumstances of the case, the court directed the workman to be reinstated in service with continuity from the date on which his services were terminated.but having regard to the fact that he had raised the industrial dispute after considerable delay without doing anything ia the meanwhile, he was not awarded the back wages. The grant of half back wages from the date of termination of service until the date of order and full back wages from that date till his reinstatement was found in the circumstances to meet the ends of justice. In H.M.T, Ltd. v. Labour Court, Ernakulam and Ors,, (1994) LLR 720 SC where there was a delay of 14 years in invoking the jurisdiction of the Court, this Court found that instead of full back wages, the grand of 60 percent of the back wages upon the reinstatement of the workman would meet the ends of justice.

It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and hot as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned counsel for the respondent- management on the full bench judgment of the Punjab and Haryana High Court in Ram Chander Morya v. State of Haryana, (1999) 1 SCT 141 is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held "neither any limitation has been provided nor any guidelines to determine as to what shall be the period of limitation in such cases." However, it went on further to say that "reasonable time in the

cases of labour for demand of reference or dispute by appropriate government to labour tribunals will be five years after which the government can refuse to make a reference on the ground of delay and latches if there is no explanation to the delay." We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application under Section 37-C of the Act to be adjudicated. It is not the function of the court to prescribe the limitation where the Legislature in its wisdom had, though if fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the Judges presiding the court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the Legislature. The judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purposes of invoking the jurisdiction of the courts/boards and tribunal under the Act.

ln the instant case, the respondent-management is not shown to have taken any plea regarding delay as is evident from the issues framed by the labour court. The only plea raised in defence was that the labour court had not jurisdiction to adjudicate the reference and the termination of the services of the workman was justified. Had this plea been raised, the workman would have been in a position to show the circumstances preventing him in approaching the Court at an earlier stage or even to satisfy the court that such a plea was not sustainable after the reference was made by the government. The learned Judges of the High Court, therefore, were not justified in holding that the workman had not given any explanation as to why the demand notice had been issued after a long period. The findings of facts returned by High Court in writ proceedings, even without pleadings were, therefore, unjustified. The high Court was also not justified in holding that the courts were bound to render an even handed justice by keeping balance between the two different parties. Such an approach totally ignores the aims and object and the social object sought to be achieved by the Act. Even after noticing mat "it is true that a fight between the workman and the management is not a just fight between equals," the court was not justified to make them equals while returning the findings, which if allowed to prevail, would result in frustration of the purpose of the enactment The workman appears to be justified in complaining that in the absence of any plea on behalf of the management and any evidence, regarding delay, he could not be deprived of the benefits under the Act merely on technicalities of law. The High Court appears to have substituted its opinion for the opinion of the labour court which was not permissible in proceedings under Articles 226/227 of the Constitution.

We are, however, of the opinion that on account of the admitted delay, the labour court ought to have appropriately moulded the relief by denying the appellant-workman some part of the back wages. In the circumstances, the appeal is allowed, the impugned judgment is set aside by upholding the award of the labour court with modification that upon his reinstatement the appellant would be entitled to continuity of service, but back wages to the extent of 60 per cent with effect from 8.12,1981 when he raised the demand for Justice till the date of award of the labour court i.e 16.4.1986 and full back wages thereafter till his reinstatement would be payable to him. The appellant is also held entitled to the costs of litigation assessed at Rs. 5.000 to be paid by the respondent-management