Assistant Engineer, C.A.D., Kota vs Dhan Kunwar on 5 July, 2006

Equivalent citations: AIR 2006 SUPREME COURT 2670, 2006 (5) SCC 481, 2006 AIR SCW 3571, 2006 LAB. I. C. 3046, 2006 (5) AIR KANT HCR 261, (2006) 3 UPLBEC 2369, 2006 (8) SRJ 93, 2006 LAB LR 885, (2006) 3 JCR 254 (SC), 2006 (6) SCALE 571, (2006) 3 LAB LN 716, (2006) 5 SUPREME 271, (2006) 3 LABLJ 12, (2006) 3 PAT LJR 322, (2006) 3 SCT 481, (2006) 5 SCJ 808, (2006) 6 SCALE 571, (2006) 3 ESC 273, (2006) 111 FACLR 792

Author: Arijit Pasayat

Bench: Arijit Pasayat, C.K. Thakker

CASE NO.:
Appeal (civil) 6473 of 2005

PETITIONER:
Assistant Engineer, C.A.D., Kota

RESPONDENT:
Dhan Kunwar

DATE OF JUDGMENT: 05/07/2006

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:

J U D G M E N T ARIJIT PASAYAT, J.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Rajasthan High Court, Jaipur Bench, dismissing the appeal filed by the appellant- State questioning correctness of the judgment rendered by a learned Single Judge.

A brief reference to the factual aspects as highlighted by the appellant would suffice:

> The respondent (hereinafter referred to as the 'workman') was appointed on 1.1.1978 as work-charged employee on temporary basis. Subsequently, she was declared quasi- permanent in service and worked up to 30.5.1983. Appellant terminated her service after paying one month's salary in terms of Rule 26 of Rajasthan Public Works Department (Buildings and Roads) including Gardens, Irrigation, Water-Works and Ayurvedic Departments, Work-charged Employees Service Rules, 1964

(in short the 'Rules'). After about eight years dispute was raised by the respondent-workman. Initially no reference was made by the State Government. Subsequently, a reference was made to the Labour Court, Kota, Rajasthan, under Section 10(1) of the Industrial Disputes Act, 1947 (in short the 'Act'). The reference was to the effect as to whether the employer was justified in retrenching the respondent. Several points were urged by the present appellant questioning legality of the reference. Primary stand related to the closure of the section of the Irrigation Department where the respondent was working. It was emphasized that the reference was sought for after a very long period of time i.e. about eight years. On both counts, it was submitted, that reference has to be answered against the workman and in favour of the employer. The Labour Court was of the view that though the claim was delayed, and so was the reference, yet the respondent-workman was not to be denied the benefits. It was held that Rule 26 of the Rules was similar in terms to Section 25F(a) of the Act. Even if the said provision of the Act is complied with, there was no compliance with the requirement of Section 25F(b), therefore, the reference was held maintainable and direction for payment of 30% back wages was given, along with direction for reinstatement.

Questioning correctness of the award a writ petition was filed before the High Court. Learned Single Judge dismissed the same holding that merely because the claim was raised after about eight years, that did not disentitle the workman to get relief and the Labour Court was justified in awarding only 30% back wages. The orders of the Labour Court and the learned Single Judge were questioned by filing appeal before the Division Bench. By the impugned order the same was dismissed.

In support of the appeal, learned counsel for the appellant submitted that highly belated claim should not have been entertained by the Labour Court, particularly when the concerned section of the Irrigation Department has been abolished and there was no post for reinstating the respondent-workman.

Per contra, learned counsel for the respondent-workman submitted that even if it is held that the claim was after long lapse of time, that cannot disentitle the workman from his legitimate entitlements. The right view has been taken by the Labour Court by awarding only 30%.

It may be noted that 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.

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 heel) 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."

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."

In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons.

Above being the position, the appeal is bound to succeed and we direct accordingly. No costs. 27824