Haryana State Coop. Land Dev. Bank vs Neelam on 28 February, 2005

Equivalent citations: AIR 2005 SUPREME COURT 1843, 2005 (5) SCC 91, 2005 AIR SCW 1439, 2005 (2) UJ (SC) 798, (2005) 2 JCR 108 (SC), 2005 (105) FACLR 114.2, (2005) 2 JT 600 (SC), (2005) 31 ALLINDCAS 727 (SC), 2005 (4) SRJ 37, 2005 UJ(SC) 2 798, 2005 (2) SERVLJ 218 SC, 2005 (2) SCALE 434, 2005 LAB LR 483, 2005 (2) JT 600, 2005 (2) SLT 718, 2005 SCC (L&S) 601, (2005) 2 ESC 192, (2006) 1 CURLJ(CCR) 265, (2005) 2 CURLR 45, (2005) 105 FACLR 114(2), (2005) 1 LABLJ 1153, (2005) 2 ALL WC 1245, (2005) 2 LAB LN 653, (2005) 2 SCT 113, (2005) 2 SCJ 487, (2005) 2 SERVLR 784, (2005) 2 SUPREME 314, (2005) 2 SCALE 434, (2005) 2 BANKCLR 267

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Bench: N. Santosh Hegde, S.B. Sinha

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           CASE NO.:
Appeal (civil)  1672 of 2002

PETITIONER:
Haryana State Coop. Land Dev. Bank

RESPONDENT:
Neelam

DATE OF JUDGMENT: 28/02/2005

BENCH:
N. Santosh Hegde & S.B. Sinha

JUDGMENT:
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J U D G M E N T S.B. SINHA, J :

This appeal is directed against a judgment and order passed by the Punjab and Haryana High Court in C.W.P. No.14525 of 1998 whereby and whereunder the writ petition filed by the Respondent herein questioning an award dated 24.2.1998 passed by the Presiding Officer, Labour Court, U.T. Chandigarh was allowed. The Respondent herein applied for appointment as a Typist having come to learn from reliable sources that a post of Typist was lying vacant in the Appellant-Bank. For filling up the said post, neither any advertisement was issued nor the Employment Exchange was notified. She even did not possess the requisite qualification. Only on the basis of her application she was appointed as a Typist on an ad hoc basis for a

> period of 89 days from 6.1.1985. The said appointment was, however, subject to the approval of the Registrar, Cooperative Societies, Haryana. Relaxation in respect of the qualification was given to her by the Registrar, Cooperative Societies on 23.12.1985. She had been given extensions of 89 days from time to time from 6.1.1985. The said period of 89 days eventually came to an end on 30.5.1986. Her services were not continued thereafter. No order of termination, however, was issued. She allegedly made a representation to the appropriate authority for continuing her in service. Indisputably, she thereafter joined the services of Haryana Urban Development Authority (HUDA) on or about 10.8.1988. Some other employees similarly situated raised an industrial dispute which was referred by the Appropriate Government for adjudication before an Industrial Court. The said employees got some relief in the said industrial adjudication. It stands admitted that the Appellant-Bank did not succeed in the High Court in the writ petition questioning the said award whereupon the concerned employees were reinstated.

Presumably, because reliefs were granted in its award by the Industrial Court to the other workmen, a writ petition was filed by the Respondent herein before the High Court on 15.5.1989. The said writ petition was permitted to be withdrawn on 11.5.1993 stating :

> "Learned counsel for the petitioner prays that this petition be dismissed as withdrawn so that the petitioner may approach the Labour Court.
>
> Dismissed as withdrawn."

Only on 30.9.1993, a demand notice was issued by the Respondent praying for a reference of the industrial dispute by the State. It is furthermore not in dispute that the in the year 1996, the Appellant-Bank issued advertisement for making appointments in the vacant posts but the Respondent did not apply therefor. The appointments had been made by the Bank pursuant to or in furtherance of the said advertisement and the selection process carried out in that behalf. Before the Labour Court, the Appellant herein raised a contention that the entry in the services by the Respondent being a back-door one, her appointment was a nullity and in any event on the expiry of the contractual period on 30.5.1986 her services automatically came to an end.

By reason of an award dated 24.2.1998, the Labour Court answered the reference against the Respondent on the premise that (i) her claim is belated; and (ii) she having withdrawn her writ petition without obtaining any leave from the High Court, the reference was barred by the principles of res judicata.

Aggrieved by and dissatisfied with the said award, the Respondent filed a writ petition before the Punjab and Haryana High Court, which was marked as C.W.P. No. 14525 of 1998. By reason of the impugned judgment dated 3.2.2000, the said writ petition was allowed and the Respondent was directed to be reinstated with continuity of service on her post, relying on or on the basis of this Court decision in Ajaib Singh vs. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Another [(1999) 6 SCC 82] . However, she was held not to be entitled to any back

wages. The High Court further held that the industrial dispute raised by the Respondent was not barred under the principles of res judicata.

Mr. Sanjay R. Hegde, the learned counsel appearing on behalf of the Appellant, would contend that although there does not exist any prescribed period of limitation for raising an industrial dispute, the same has to be done within a reasonable period and what would constitute a reasonable period will depend upon the facts of each case. The learned counsel would urge that Ajaib Singh (supra) was rendered on its own facts and did not constitute a binding precedent.

Our attention was drawn to a decision of this Court in Nedungadi Bank Ltd. vs. K.P. Madhavankutty and Others [(2000) 2 SCC 455] wherein a different view is said to have been taken. The learned counsel would submit that the High Court committed a manifest error in interfering with the discretionary jurisdiction exercised by the Presiding Officer, Labour Court, insofar as it failed to take into consideration that apart from the ground of delay, the Respondent having worked only for about one year and three months and as in the meanwhile third party right had been created, the direction to reinstate her in the services of the Appellant was wholly unwarranted. Reliance, in this connection, was placed on Central Bank of India vs. S. Satyam and Others [(1996) 5 SCC 419]. The learned counsel would further contend that as the Respondent while withdrawing the writ petition did not seek for any leave of the High Court to take recourse to another remedy, the proceeding before the Labour Court was not maintainable. Reliance, in this behalf, was placed on Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P., Gwalior and Others [(1987) 1 SCC 5].

Mr. Keshav Kaushik, the learned counsel appearing on behalf of the Respondent, on the other hand, would contend that the provisions of the Limitation Act are not attracted to proceedings under the Industrial Disputes Act and the question as to whether a workman would be denied any relief because of the claim being a belated one or not must be considered having regard to purport and object for which it was enacted as in terms thereof the courts are required to impart social justice to the workmen. The learned counsel would contend that in any event in the instant case the writ petition was filed only after a period of three years and as prior thereto the Respondent made representations, the Labour Court committed illegality in refusing to grant any relief to the workman. According to the learned counsel although the Respondent was gainfully employed with HUDA since 10.8.1988 but the same being not of a permanent nature, she would like to join the services of the Appellant.

RES JUDICATA :

> The writ petition filed by the Respondent concededly was not adjudicated on merit. Apparently, she did not avail the alternative remedy which was more efficacious. Before the Labour Court even disputed questions of fact could be gone into and adjudicated upon which would ordinarily not be permissible in a writ proceeding. If the Respondent had made a prayer for withdrawal of a writ petition on the said ground, she cannot be denied the remedy available to her in another jurisdiction in terms of the provisions of the statute. The principles embodied in Order 23 Rule 1 of

the Code of Civil Procedure laying down a public policy is not applicable to a case of this nature. A writ petition filed by the Respondent could have been dismissed even on the ground that another alternative remedy which was more efficacious was available and furthermore on the ground that the writ court would not go into the disputed question of fact. Even in such an event, it was open to the Respondent herein to approach the Labour Court or to take recourse to other remedies which were otherwise available to her.

In Sarguja Transport (supra), it was observed :

" While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission..

The Labour Court, therefore, in our opinion, wrongly applied the principles of res judicata.

BELATED CLAIM :

The Industrial Courts like any other court must be held to have some discretion in the matter of grant of relief. There is no proposition of law that once an order of termination is held to be bad in law, irrespective of any other consideration the Labour Court would be bound to grant relief to the workman. The Industrial Disputes Act does not contain any provision which mandates the Industrial Court to grant relief in every case to the workman. The extent to which a relief can be moulded will inevitably depend upon the facts and circumstances obtaining in each case. In absence of any express provision contained in the statute in this behalf, it is not for the court to lay down a law which will have a universal application.

In Ajaib Singh (supra), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented 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. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (supra), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate

Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court.

The decision of Ajaib Singh (supra) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr. para 42

- (2005) 1 SCALE 385].

In Balbir Singh vs. Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (supra), this Court observed : "5. The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd. ((1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38).

6. We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially "

Yet again in Assistant Executive Engineer, Karnataka vs. Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the

> Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand "

In Nedungadi Bank Ltd. (supra), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (supra) , opined :

> "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 "

It is trite that the courts and tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of Acceptance Sub silentio. The Respondent herein did not raise any industrial dispute questioning the termination of her services within a reasonable time. She even accepted an alternative employment and has been continuing therein from 10.8.1988. In her replication filed before the Presiding Officer of the Labour Court while traversing the plea raised by the Appellant herein that she is gainfully employed in HUDA with effect from 10.8.1988 and her services had been regularized therein, it was averred :

> "6. The applicant workman had already given replication to the A.L.C. cum Conciliation Officer, stating therein that she was engaged by HUDA from 10.8.1988 as Clerk-cum-Typist on daily wage basis. The applicant workman has the right to come to the service of the management and she is interested to join them."

She, therefore, did not deny or dispute that she had been regularly employed or her services had been regularized. She merely exercised her right to join the service of the Appellant.

It is true that the Respondent had filed a writ petition within a period of three years but indisputably the same was filed only after the other workmen obtained same relief from the Labour Court in a reference made in that behalf by the State. Evidently in the writ petition she was not in a position to establish her legal right so as to obtain a writ of or in the nature of mandamus directing the Appellant herein to reinstate her in service. She was advised to withdraw the writ petition presumably because she would not have obtained any relief in the said proceeding. Even the High Court could have dismissed the writ petition on the ground of delay or could have otherwise refused to exercise its discretionary jurisdiction. The conduct of the Appellant in approaching the Labour Court after more than seven years had, therefore, been considered to be a relevant factor by the Labour Court for refusing to grant any relief to her. Such a consideration on the part of the Labour Court cannot be said to be an irrelevant one. The Labour Court in the aforementioned situation cannot be said to have exercised its discretionary jurisdiction injudiciously, arbitrarily and capriciously warranting interference at the hands of the High Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution.

The matter might have been different had the Respondent been appointed by the Appellant in a permanent vacancy.

Both HUDA and the Appellant are statutory organizations. The service of the Respondent with the Appellant was an ad hoc one. She served the Appellant only for a period of one year three months; whereas she had been serving the HUDA for more than sixteen years. Even if she is directed to be reinstated in the services of the Appellant without back wages as was directed by the High Court, the same would remain an ad hoc one and, thus, her services can be terminated upon compliance of the provisions of the Industrial Disputes Act. It is also relevant to note that there may or may not now be any regular vacancy with the Appellant-Bank. We have noticed hereinbefore that in the year 1996, the vacancies had been filled up and a third party right had been created. It has not been pointed out to us that there exists a vacancy. Having considered the equities between the parties, we are of the opinion that it was not a fit case where the High Court should have interfered with the discretionary jurisdiction exercised by the Labour Court.

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. This appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.