

Before J. S. Narang & Arvind Kumar, JJ.

NATIONAL DAIRY RESEARCH INSTITUTE, KARNAL,—*Petitioner*

versus

YASH PAL AND ANOTHER,—*Respondents*

C. W. P. NO. 932 OF 2006

26th September, 2006

Industrial Disputes Act, 1947—S. 25 (F) (G) & (H)—Delay & laches—Workman worked on daily wage basis for about 2 years—Demand notice served after a period of more than 10 years—Government referring the industrial dispute for adjudication—Labour Court holding the delay not fatal to claim of workman as provisions of Limitation Act not applicable to the proceedings under the 1947 Act—Workman failing to explain reasons of delay of more than 10 years for sending demand notice claiming relief—Workman also failing to submit any reasonable explanation before High Court—Petition allowed, award passed by Labour Court quashed while holding the reference not sustainable.

Held, that the workman has not been able to explain the reasons for having sent the demand notice after a period of more than ten years under the provisions of the Act for claiming the relief accordingly. Even now while submitting written statement, the workman has not rendered any explanation in this regard whatsoever. It is obvious that the appropriate Government is also obligated to examine cautiously the raising of stale demand and that if the workman is able to render reasonable explanation for explaining the delay and is able to spell out the existence and subsistence of the industrial dispute, such reference for adjudication would be sustainable. If such explanation is not forthcoming and the industrial dispute does not remain in existence, such stale demand would not be entertainable. No explanation much less reasonable explanation is forthcoming as none was submitted before the appropriate Government nor any was submitted before the Labour Court and none has been pointed out before us. Nothing in this regard has been stated by the workman while submitting the written statement. Resultantly, we are of the opinion that the appropriate Government erred in making the reference

for adjudication of the stale demand after a period of ten years and further the Labour Court has also erred in entertaining the reference when the stale demand so raised did not subsist or exist between the parties.

(Para 10 & 11)

R. K. Sharma, Advocate, *for the petitioner.*

H. S. Saini, Advocate, *for respondent No. 1.*

JUDGMENT

J. S. NARANG, J.

(1) The petitioner-management is aggrieved of the award dated 12th July, 2005/ 10th October, 2005, copy Annexure P-3, made by the Labour Court, Chandigarh. The pivotal question putforth is that despite the plea of delay and laches raised against the workman for raising the non-existent industrial dispute, the reference has been answered in favour of the workman and against the management.

(2) The factual status is that the workman-respondent No. 1 had been engaged as casual worker on daily wage basis during the years 1979 to 1981 as per detail given as under :—

- (i) 63 days from March to May, 1979.
- (ii) 79 days from March to May, 1980.
- (iii) 75 days from September to December, 1980.
- (iv) 217 days from February to October, 1981.

(3) The workman had been engaged on need basis, therefore, did not acquire right against any post under the control of the management. It has been categorically averred that he had never been engaged after October, 1981. A demand notice was served upon the management in the year, 1991 i.e. after a period of more than ten years but without any explanation and much less reasonable explanation for explaining the delay and claiming that the industrial dispute subsisted. The proceedings before the Conciliation Officer had been contested by raising objection in regard to delay and laches as also the industrial dispute referable for adjudication. However, de hors the objection, the industrial dispute was referred by the appropriate government,—*vide* order dated 26th August, 1993.

(4) The workman submitted claim statement making the averment that he had been deployed as Beldar in the year 1979 and he worked upto March, 1982 and that his services had been terminated in utter violation of Section 25(F), (G) and (H) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The management contested all the pleadings by way of submitting detailed written statement and that the pleadings set out by the management had not been contested by way of filing replication. However, upon the pleadings of the parties, the issue as referred by the appropriate government has been adopted and the parties led ocular as well as documentary evidence. Apart from the existence and subsistence of the industrial dispute on account of unexplainable delay, plea has also been set up that the workman has not completed 240 days in 12 preceding months from the date of alleged termination.

(5) The Labour Court has opined that the workman did complete 240 days as is evident from the admission made by the management that the workman worked from February, 1979 to October, 1981. The admission was also made by the witness of the management, therefore, the finding was required to be returned in favour of the workman. Admittedly, no compliance of Section 25-F of the Act has been made. Therefore, the order of termination is violative of the aforesaid provision.

(6) So far as the delay is concerned, the Labour Court has opined that in view of the dicta of the Hon'ble Supreme Court rendered in re: **Ajaib Singh versus Sirhind Co-operative Society (1)**, the plea of delay is not sustainable, as the provisions of Limitation Act, are not applicable to the proceedings under the provisions of the Act and thus the proceedings initiated before the Labour Court are maintainable.

(7) Learned counsel for the petitioner has argued that the appropriate government as also the Labour Court fell into error and did not examine the sustainability of the industrial dispute between the parties. In fact the workman was required to give the explanation/justification for having staked the claim under the provisions of the Act, after a gap of almost ten years. Learned counsel for the petitioner has placed reliance upon the dicta of the Hon'ble Supreme Court rendered in re : **Nedungadi Bank Limited versus K. P. Madhavankutty, (2)** and Division Bench judgment of this Court

(1) 1999 LLR 529

(2) 2000 (2) S.C.C. 455

rendered in re : **Amar Singh versus State of Haryana and another, CWP No. 5870 of 2006**, decided on 20th April, 2006. It is contended that the workman has not been able to make out any ground before the appropriate government or before the Labour Court that after a period of ten years, the industrial dispute continued to subsist and exist between the parties. In the absence thereof, reference could not have been made and that the same could not have been entertained by the Labour Court.

(8) Notice of motion had been issued,—vide order dated 20th January, 2006 by a Division Bench of this Court. The workman has submitted detailed written statement and has taken preliminary objection that the management is not entitled to invoke the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, as the finding of fact returned by the Labour Court cannot be gone into under the aforesaid jurisdiction. Further, there is no appropriate and legal authorisation made in favour of the Director by the institute, for filing the instant petition. Therefore, the same deserves to be dismissed. It is contended that the Labour Court has rightly and correctly placed reliance upon the dicta of the Hon'ble Supreme Court rendered in re : Ajaib Singh's case (*supra*),—vide which it has been specifically held that Article 137 of the Limitation Act, would not be applicable to the reference made under the Act and that only the relief claimed can be moulded. In the instant case, the plea of delay is not maintainable/sustainable against the workman, resultantly, the petition deserves to be dismissed.

(9) We have heard learned counsel for the parties at length and have also perused the paper book as also the award dated 12th July, 2005/10th October, 2005, copy Annexure P3, which is the subject matter of challenge in the instant petition.

(10) We are of the considered opinion that the Labour Court has not correctly appreciated the question raised in regard to stale demand having been put forth/claimed by the workman. Admittedly, the workman had ceased to work with effect from October, 1981. He had for the first time served the demand notice in the year 1991 i.e. almost after ten years. The management had taken the objection in the conciliation proceedings in regard to delay and laches and resultantly the maintainability and sustainability of the industrial dispute between the parties. The appropriate Government did not opine upon this issue and decided to refer the industrial dispute for adjudication to the Labour Court,—vide order dated 26th August, 1993. The management raised

this issue once all over again before the Labour Court as well. This plea has been rejected by the Labour Court on the ground that in view of the dicta of the Hon'ble Supreme Court in re : Ajaib Singh's case (*supra*), the delay is not fatal to the claim of the workman. This approach of the Labour Court is not at all correct. The Hon'ble Supreme Court has opined on a number of occasions that the stale demand would not be sustainable if the gap/delay on the part of the workman is not explainable by submitting reasonable explanation, which may involve the management as well, meaning thereby that the delay was caused at the instance of the management coupled with the approach of the workman and resultantly, the industrial dispute did subsist. In this regard the reference may be made to the dicta of the Hon'ble Supreme Court rendered in Nedungadi Bank's case (*supra*) as also the Division Bench judgment of this Court rendered in re : Amar Singh's case (*supra*), whereby, the matter has been dealt with in this regard. In the instant case, the workman has not been able to explain the reasons for having sent the demand notice under the provisions of the Act for claiming the relief accordingly. Even now while submitting written statement, the workman has not rendered any explanation in this regard whatsoever. It is obvious that the appropriate Government is also obligated to examine cautiously the raising of stale demand and that if the workman is able to render reasonable explanation for explaining the delay and is also able to spell out the existence and subsistence of the industrial dispute, such reference for adjudication would be sustainable. If such explanation is not forthcoming and the industrial dispute does not remain in existence, such stale demand would not be entertainable.

(11) In the instant case, no explanation much less reasonable explanation is forthcoming as none was submitted before the appropriate Government nor any was submitted before the Labour Court and none has been pointed out before us. Nothing in this regard has been stated before us by the workman while submitting the written statement. Resultantly, we are of the opinion that the appropriate Government erred in making the reference for adjudication of the stale demand after a period of ten years and further the Labour Court has also erred in entertaining the reference when the stale demand so raised did not subsist or exist between the parties. Consequently, the petition is allowed, the award dated 12th July, 2005/10th October, 2005, copy Annexure P3 is quashed. It is held that the reference is not sustainable and that the claim statement of the workman is dismissed.