

Before Ajay Kumar Mittal, J.

PARHLAD SINGH,—Petitioner

versus

**PRESIDING OFFICER, LABOUR COURT, PATIALA AND
OTHERS,—Respondents**

C.W.P. No. 11795 of 1993

21st January, 2008

Constitution of India, 1950—Arts. 226—Industrial Disputes Act, 1947—Maintainability—Termination—Appeal dismissed—Order that no action on representation of petitioner could be taken communicated—Workman raising industrial dispute after one year and 9 months of communication—Labour Court holding reference not maintainable—Approach of Labour Court ignoring aims and objects sought to be achieved by legislation through 1947 Act—Reference could not have been refused to be entertained on ground of having been filed belatedly and in any case being a stale one—Petition allowed, reference held to be maintainable.

Held, that the services of the petitioner were terminated on 27th June, 1983 and his appeal against the said order was dismissed by the Assistant Registrar on 22nd August, 1983. The petitioner thereafter made a representation to the Deputy Registrar, Cooperative Societies, Sunam. The petitioner was however, informed by the Deputy Registrar only on 8th July, 1988 that no action could be taken on his representation. It was, thereafter only that the petitioner raised industrial dispute on 7th April, 1990 by serving a demand notice which was after less than a period of one year and nine months of the above communication. The Reference was thrown out by the Labour Court primarily on the ground that it suffered by delay and laches. Such an approach totally ignores the aims and objects sought to be achieved by the legislation through the Act. The Reference could not have been refused to be entertained or held to be not maintainable on the ground of having been filed belatedly and in any case, being a stale one.

(Para 14 & 15)

Constitution of India, 1950—Art 226—Industrial Disputes Act, 1947-S.10—*Res judicata*—Termination—Petitioner availing remedy of appeal under Cooperative Societies Act—Appeal of petitioner dismissed—Workman raising industrial dispute—Whether decision made by Assistant Registrar would operate as *res judicata* to reference u/s 10 of 1947 Act—Held, no—Petition allowed, award passed by Labour Court set aside and matter remitted for fresh decision on merits.

Held, that a Full Bench of this Court in **Ambala Central Coop. Bank Limited Ambala versus State of Haryana and others, 1993(2) SCT 310** held that if a workman has availed the remedy of a statutory appeal under the Haryana Cooperative Societies Act, any decision rendered therein would not operate as *res judicata* to Reference under Section 10 of the Act. In these circumstances and in the light of the decision of Full Bench the contention of petitioner deserves acceptance.

(Para 16)

V. B. Aggarwal, Advocate, *for the petitioner.*

B.M. Lal, Advocate, *for respondent nos. 2 and 3.*

AJAY KUMAR MITTAL, J.

(1) In this petition filed under Articles 226/227 of the Constitution of India, the petitioner-workman seeks invalidation of the award of the Labour Court dated 13th May, 1993, Annexure P-3, and prays for other consequential reliefs.

(2) The backdrop in which the prayer for setting aside the impugned award has been made deserves to be noticed first :

(3) As per averments made in the petition, the services of the petitioner who was working as Secretary with respondent No. 2 were terminated on 27th June, 1983 without serving a show cause notice conducting any enquiry or paying any retrenchment compensation. It was pointed out by the Assistant Registrar, Cooperative Societies, Sunam,—*vide* communication dated 21st July, 1983 that the resolution terminating the services of the petitioner was passed by the members of the Society not

competent to do so. Accordingly, the Managing Director of the respondent-society was directed to pass a fresh resolution.

(4) On 22nd August, 1983, the petitioner preferred an appeal before the Assistant Registrar Cooperative Societies, Sunam (respondent No. 3) against the order of termination. The appeal was dismissed on 22nd August, 1983 itself. The petitioner thereupon made a representation to the Deputy Registrar of the respondent-society. It was communicated to the petitioner by the Deputy Registrar through letter dated 8th July, 1988 that no action could be taken on his application as his appeal had already been dismissed by the Assistant Registrar.

(5) The petitioner raised industrial dispute by serving a demand notice and consequently the same was referred to the Labour Court for adjudication. The question seeking answer from the Labour Court was "Whether the termination of services of the petitioner is justified or not." The Labour Court answered the reference against the petitioner,—*vide* the impugned award dated 13th May, 1993, Annexure P-3.

(6) The petitioner challenges the award of the Labour Court and in particular, the finding recorded by it that once the petitioner-workman had preferred statutory appeal provided under the provisions of the Cooperative Societies Act for setting aside the order of termination of his service, it amounted to availing of the alternative remedy and hence, the reference made to the Labour Court was not maintainable. It was stated that the whole approach of the Labour Court in this regard was illegal, arbitrary and against the established principles of law. The petitioner endeavoured to make explicit that jurisdiction of the Labour Court would, of course, be barred when an action had been challenged by way of a writ petition or in the civil court.

(7) The petitioner is also aggrieved by the other finding of the Labour Court to the effect that the demand notice served by him suffered from delay and laches and the Labour Court was bound in law to decide the reference on merits.

(8) The last ground of challenge was that no opportunity was afforded to the petitioner to explain the delay, if any, in serving the demand

notice and the denial of opportunity to him in that regard sternly prejudiced his claim.

(9) Written statement was filed by respondent No. 3 only. It was stated that after the dismissal of the appeal preferred by the petitioner against the order of termination of his services, the proper course left with the petitioner was to challenge the order of the appellate court by invoking the jurisdiction of the High Court under Article 226 of the Constitution and not to raise industrial dispute for referring it to the Labour Court. In the context of petitioner's approaching the Deputy Registrar of the respondent-society, it was stated that no appeal or revision was competent before the Deputy Registrar against the order of the Assistant Registrar of the respondent-society and therefore, there was nothing wrong with the Deputy Registrar in declining to interfere with the matter. It was crystallized in other words that if two remedies are available under law, the aggrieved has to choose distinctly one of the remedies and once he avails the one he cannot avail the second.

(10) Learned counsel appearing for the petitioner stoutly aired his submissions in terms of the grounds of challenge noticed above whereas the counsel appearing on behalf of respondent Nos. 2 and 3 supported the impugned award and made serious efforts to justify the stand taken in the written statement. In support of the plea of delay and laches, counsel for the petitioner placed reliance on a Supreme Courts judgment in **Ajaib Singh versus The Sirhind Cooperative Marketing-cum-Processing Service Society Ltd. and another, (1)** whereas in support of the submission that if a workman has chosen to avail the remedy under the Cooperative Societies Act, it will still have right to invoke the provisions of the Industrial Disputes Act, 1947 (for short the Act), the counsel relied upon a Full Bench decision of this Court in **Ambala Central Co-op. Bank Limited Ambala versus State of Haryana and others, (2)**.

(11) I have heard learned counsel for the parties and perused the record.

(12) A perusal of the impugned award would show that the Labour Court had declined to interfere on two counts. The first ground for declining

(1) 1999(2) RSJ 407

(2) 1993(2) S.C.T. 310

the relief was that the Reference was belated and stale in nature and such reference could not be sent to it for adjudication. While coming to this conclusion, the Labour Court was influenced by a fact that the services of the petitioner were terminated on 27th June, 1983 and he made the demand notice only on 7th April, 1990 which was almost 6-1/2 years after the termination of his service. For the conclusion, the Labour court drew support from a judgment of this Court in **Punjab State Electricity Board versus Presiding Officer, Labour Court, Bathinda and others**, (3) wherein it was observed that it was not open to the workman to raise an industrial dispute at any time nor was it open to the State Government also to refer such dispute for adjudication at any time. While observing to the above effect, this Court in the reported case had observed that the State Government must see, whether the claim put forth by a workman was belated and stale and, whether there was some reasonable explanation for workman's raising industrial dispute belatedly. It was reminded that regard must be had to the fact that even the limitation for filing a civil suit was three years.

(13) The second ground on which the Labour Court had declined to interfere was that once a workman resort to a remedy by way of filing an appeal against the order of termination of his services he could not seek to reopen the matter by invoking provisions of the Act upon his failure to get any relief from the appellate authority under the Cooperative Societies Act. For recording this finding, the Labour Court relied upon a Division Bench judgment of this Court in **Kapurthala Central Cooperative Bank Ltd. versus State Punjab and others** (4) wherein it was clearly laid down that the decision of the authorities under the Cooperative Societies Act would operate as *res judicata*.

(14) Upon consideration of first submission, it deserves to be noticed that there is no dispute with regard to the date of termination of services of the petitioner and the date of dismissal of his appeal filed against the order of termination. Undisputedly, the services of the petitioner were terminated on 27th June, 1983 and his appeal against the said order was dismissed by the Assistant Registrar on 22nd August, 1983. The petitioner thereafter made a representation to the Deputy Registrar, Cooperative

(3) 1991(2) R.S.J. 560

(4) (1991-1) 99 PLR 674

Societies. Sunam. The petitioner was, however, informed by the Deputy Registrar only on 8th July, 1988 that no action could be taken on his representation, as is apparent from Annexure P-2 and which has not been disputed by the other side as well. It was thereafter only that the petitioner raised industrial dispute on 7th April, 1990 by serving a demand notice which was after less than a period of one year and nine months of the above communication. In this behalf, the observations of the Supreme Court in **Ajaib Singh's case** (*supra*), present a clear answer to the issue. All that was succinctly laid down was that relief under the Act cannot be denied to the workman merely on the ground of delay and also that no reference can generally be questioned on the ground of delay alone. The exact observations made by the Apex Court in the context are as under :

“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 not 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 is 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 versus 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 laches if there is no explanation to the delay.”

(15) A perusal of the award of the Labour Court shows that the Reference was thrown out primarily on the ground that it suffered by delay and laches. Such an approach totally ignores the aims and objects sought to be achieved by the legislation through the Act. In the light of the position noticed above, the Reference could not have been refused to be entertained or held to be not maintainable on the ground of having been filed belatedly and in any case, being a stale one.

(16) Adverting to the second submission, it may be noticed that the matter is not *res integra*. A Full Bench of this Court in **Ambala Central Co-op. Bank Limited Ambala's case** (*supra*) while over-ruling a Division Bench judgment in **Kapurthala Central Cooperative Bank Ltd's case** (*supra*) held that if a workman has availed the remedy of a statutory appeal under the Haryana Cooperative Societies Act, any decision rendered therein would not operate as *res judicata* to Reference under Section 10 of the Act. A Single Bench of this Court in **Central Co-op. Consumers Store Ltd. (Super Bazar), Chandigarh versus Home Secretary, U.T., Chandigarh (5)** following the Full Bench judgment in **Ambala Central Co-op. Bank Limited Ambala's case** (*supra*), had set aside the award of the Labour Court and held that after the Registrar decides the matter between an employee and the employer of a Co-operative Society with regard to the termination of his service, the matter could be referred under Section 10 of the Act as an industrial dispute to the Labour Court for adjudication and that such a decision made by the Registrar would not operate as *res judicata* in proceedings initiated on reference under Section 10 of the Act in the Labour Court. In these circumstances and in the light of the decision of the Full Bench referred to above, the contention of counsel for the petitioner deserves acceptance.

(17) For the reasons aforesaid, writ petition is allowed. The impugned award dated 13th May, 1993 (Annexure P-3) is set aside. The matter is remitted to the Labour Court for decision afresh on merits in accordance with law. The parties through their counsel are directed to appear before the Labour Court, Patiala on 31st of March, 2008.

R.N.R.