

*Before N.K. Sud & J.S. Narang, JJ.*

DIRECTOR, FOOD AND SUPPLIES PUNJAB  
AND ANOTHER,—*Petitioner*

*versus*

ASHWANI KUMAR AND ANOTHER,—*Respondents*

C.W.P. No. 1301 OF 2003

24th February, 2004

*Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—Delay and laches—Termination of services of a workman after about 2 years service—Workman serving demand notice after a delay of about 9 years—No explanation/justification for delay given by the workman—Labour Court accepting the claim of the workman leaving the plea of inordinate delay unanswered—Whether the Labour Court was justified in entertaining and accepting the claim of the workman after an inordinate delay of 9 years—Held, no—In the absence of any explanation muchless reasonable explanation taken before the Labour Court claim of the workman deserves to be rejected—Workman also failing to give justifiable reasons for delay of 9 years before the High Court in making the demand—Reference suffers from delay and laches—Impugned award and the reference liable to be rejected.*

*Held*, that it is understandable if the justification had been given and the same had been accepted by the Labour Court and that the relief had been moulded while keeping the justification in mind. So far as the dicta of the Apex Court in this regard is concerned, we are in respectful agreement but the same would be dependent upon the basic ingredient i.e. the plea to justify the delay should be taken before the forum. In the case at hand, no such plea has been taken before the Labour Court and that the plea taken by the petitioner in respect of inordinate delay remains un rebutted and that the fact that the demand notice had been issued after a delay of 9 years stands established beyond any doubt. In the absence of any explanation muchless reasonable explanation and that the plea taken by the petitioner having not been answered and further the explanation given by the workman before us is not justifiable and further the

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workman has incorrectly stated that the delay had been justified before the Labour Court, which in fact has not been pleaded, we are not inclined to accept the contention of learned counsel for the respondent.

(Paras 9 & 10)

*Further held*, that the claim of the workman suffers from delays and laches which have not been explained but on the other hand, the plea has been taken that by virtue of the delay alone, the workman cannot be non-suited and that the relief ought to be moulded to the benefit of the workman which is not sustainable. Thus, in the absence of any plea taken before the Labour Court and virtually no plea having been put forth before this Court, we are of the view that the petition deserves to be allowed and the reference must fail and the claim of the workman must be rejected.

(Para 11)

Sachin Midha, A.A.G., Punjab, for the petitioner.

R.S. Sharma, Advocate, for the respondents.

### JUDGMENT

**J.S. NARANG, J.**

(1) The workman-respondent No. 1 was working as Chaukidar on daily wages with usual break in service with the petitioner. He had been given employment with effect from June, 1985 and that his services were dispensed with on 30th August, 1987. The demand notice dated 13th April, 1996 was served upon the petitioner, admittedly after a delay of 9 years approximately. The reference was made by the competent authority,—*vide* order dated 28th October, 1986. The petitioner took a specific plea that the services of the workman had been dispensed with on 30th August, 1987, therefore, the claim of the claimant suffers from inordinate delay. This plea has been noticed by the Labour Court in para No. 3 of the award but strange enough, no finding in respect thereof has been given by the Labour Court. However, on all other counts, the findings have been returned in favour of the workman and resultantly, the reference has been answered in favour of the workman by ordering reinstatement with continuity of service but without back wages.

(2) The petitioner has challenged the award upon two pivotal grounds, i.e. whether the Labour Court was justified in entertaining and accepting the claim of the workman after an inordinate delay of 9 years which has not been justified. In this regard specific question of law has been raised for consideration of this Court. Secondly, the question of jurisdiction of the Labour Court has also been raised but no question of law has been formulated for consideration of this Court. It may be noticed that the issue in respect of jurisdiction has been framed by the Labour Court as issue No. 2 and the Labour Court has observed that the respondent-petitioner did not bring any evidence in support of this issue nor the issue was contested/pressed during the course of arguments, as such, the issue has been decided against the management and in favour of the workman.

(3) Learned counsel for the petitioner has argued that the workman has not justified the delay of 9 years in claiming the relief after an inordinate delay of 9 years. He has pointed out from the copy of the demand notice annexed as Annexure P-1/T wherein no such plea or explanation has been taken by the workman. He has also pointed out para No. 4 of the Preliminary Objection contained in the written statement filed before the Labour Court, whereby such objection has been taken by the petitioner. This plea has also been taken in the present writ petition. However, while submitting written statement before this Court the workman has tried to explain the delay and that the stand taken is that the said delay stands explained before the learned Labour Court. It has been further pleaded that once the reference has been made the learned Labour Court is within its jurisdiction to mould the relief and that the claim of the workman cannot be non-suited on the ground of delay alone.

(4) Learned counsel for the petitioner has placed reliance upon the latest judgment of the Apex Court rendered in re: **The Nedungadi Bank Limited versus K.P. Madhavankutty (1)** and has argued that the demand which has become stale and that no justifiable reasons have been given for the delay, the claimant ought to be non-suited on this ground alone. Admittedly, the workman has not given any explanation whatsoever in the demand notice and that the plea taken by the petitioner in the written statement before the Labour Court has not been controverted and that the same has been categorically noticed by the Labour Court but has not been answered. Since the delay has not been explained the reference deserves to be

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(1) 2000 (1) S.L.R. 636 (SC)

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answered against the workman accordingly. Since the claim suffers from an inordinate delay, resultantly, the award also deserves to be set aside. It has been further argued that explanation regarding delay as stated in the written statement before this Court is non est. In fact, no justification has been tendered as the plea has been taken that the reasons have been given in detail before the Labour Court and in reality no such justification has been given as is obvious from perusal of the record of that Court. Thus in the absence of any explanation/justification the dicta of the apex Court is fully applicable and the petition deserves to be allowed accordingly.

(5) On the other hand learned counsel for the respondent has argued that once the reference has been made and the claim of the workman has been entertained the workman cannot be non-suited on the ground of delay and in fact in view of the law laid down by the apex Court the relief deserves to be moulded by way of declining the back wages to the workman. In the case at hand, the Labour Court has correctly moulded the relief by declining the back wages.

(6) It has also been contended that the provisions of Limitation Act are not applicable to the proceedings under the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). In support of his argument he has placed reliance upon various judgments of the apex Court in re : (i) **Ajaib Singh versus The Sirhind Co-operative Marketing-cum-Processing Service Society Ltd. and another** (2) in which it has been held that-where delay is shown to be existing Labour Court can appropriately mould the relief by declining to grant back wages to the workman till the date he raised demand regarding illegal retrenchment/termination or dismissal, (ii) **Mahavir Singh versus U.P. State Electricity Board** (3) in which it has been held that-Industrial Dispute raised belatedly-Once the termination is held to be illegal, reference could not be rejected and, (iii) **Gurmail Singh versus Principal Government College of Education and others** (4) in which it has been held that-Delay in raising—Reference—if the order of dismissal is challenged belatedly the dispute would still continue for adjudication—The only question would be to deprive back wages for the period of delay in raising dispute if on merits it is to succeed.

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(2) 1999 (2) R.S.J. 407

(3) 2000 (1) S.C.T. 353

(4) 2000 (2) R.S.J. 147

(7) It shall be apposite to notice the plea set up by the workman as contained in para No. 2 of the Preliminary Objection of the Written Statement before this Court, the same reads as under :—

“2. That a perusal of the Writ Petition further reveals that the petitioner has raised a challenge to the impugned award only on 4 counts namely (i) that the answering respondent was a daily wage worker, (ii) the claim was filed after 9 years, (iii) the provisions of Section 25-F have been wrongly applied and (iv) the service of the answering respondent was dispensed with on becoming surplus.

All the four grounds of challenge are wholly untenable in law since by now it is the settled proposition of law that a daily wage worker is as good a worker as a regular one within the meaning of workman assigned under the Act and is, therefore, entitled to the protection of Section 25-F of the Act. This position of law has been held by various Division Benches of this Hon'ble Court and the Hon'ble Apex Court of India. So far as the delay part is concerned, the position admittedly stands explained before the learned Labour Court. Even otherwise, once the reference has been made, the learned Labour Court is within its jurisdiction to mould the relief. In this case, the reinstatement has been ordered, whereas back wages have been denied. The plea that Section 25-F is not applicable, is wholly wrong and untenable as has been averred in this paragraph earlier. As regards the plea that the service had been dispensed with on becoming surplus. It deserves to be pointed out that even if the termination is because of the surplusage, the provisions of Section 25-F are liable to be complied with. This is the position in law as has been held by the Hon'ble Apex Court of India. Thus, the award passed by the learned Labour Court is well reasoned, based upon the proper appreciation of evidence and the material on record and the finding of fact has been recorded on the clear admission of the witness of the petitioner Management. Thus, the award deserves to be sustained and the Writ Petition is liable to be dismissed.”

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(8) Thus, the award of the Labour Court is sustainable under law.

(9) After hearing learned counsel for the parties and perusal of the documentary evidence, the stand of the workman in respect of delay and so also the award of the Labour Court, we are of the view that the Labour Court has fallen into error in leaving the plea of delay unanswered. However, no useful purpose would be served in remitting the case to the Labour Court on this count alone as the facts are admitted and far too obvious so far as the inordinate delay on the part of the workman and that no explanation/justification submitted in respect thereof. The perusal of the demand notice shows that the workman has not given any justification much less reasonable justification for explaining the delay of 9 years. Admittedly, the petitioner has taken a specific plea that the claim deserves to be rejected as the services were dispensed with in 1987 and that the demand notice has been issued in the year 1996 after a delay of 9 years and that the inordinate delay has not been explained. This plea has been noticed by the Labour Court but has not been answered either against the petitioner or in favour of the workman. This plea has been taken before us and which has been controverted by the workman as has been noticed here above, the perusal of the same shows that the plea has been taken that the delay has been duly explained before the Labour Court but the perusal of the record shows that no explanation/justification has been given by the workman before the Labour Court. Thus, the stand of the workman is absolutely incorrect and is contrary to the plea taken before us as is evident that in the demand notice no such justification has been given. It is understandable if the justification had been given and the same had been accepted by the Labour Court and that the relief had been moulded while keeping the justification in mind. So far as the dicta of the apex Court in this regard is concerned. We are in respectful agreement but the same would be dependent upon the basic ingredient. i.e., the plea to justify the delay should be taken before the forum. In the case at hand no such plea has been taken before the Labour Court and that the plea taken by the petitioner in respect of inordinate delay remains un rebutted and that the fact that the demand notice had been issued after a delay of 9 years stands established beyond any doubt. The apex Court in re: **The Nedungadi Bank Ltd.'s case** (*supra*) has categorically held that a demand which has become stale

and has not been justified by justifiable reasons, such claim should not be entertained. There is no doubt that the provisions of Limitation Act are not applicable to the proceedings under the Act but de hors of that reasonable period may be condoned where the justifiable reasons have been given for consideration of the forum for condoning the delay. If no reasons are given no plea is taken and that the plea taken by the management is not controverted such claim should not be entertained as has been categorically held by their Lordships of the Supreme Court in re: **The Nedungadi Band Ltd.'s case** (*supra*). Further, if the justification/reasons for delay do not contain or testify the rigour of "sufficient cause" condoning such delay would be violative of principles of natural justice. Reference may also be made to Division Bench judgment of this Court rendered in re: **Parkash Chand versus State of Punjab and others** (5).

(10) In the absence of any explanation muchless reasonable explanation and that the plea taken by the petitioner having not been answered and further the explanation given by the workman before us is not justifiable and further the workman has incorrectly stated that the delay had been justified before the Labour Court, which infact has not been pleaded we are not inclined to accept the contention of learned counsel for the respondent.

(11) Resultantly, we are of the opinion that claim of the workman suffers from delays and laches which have not been explained but on the other hand, the plea has been taken that by virtue of the delay alone, the workman cannot be non-suited and that the relief ought to be moulded to the benefit of the workman, which is not sustainable. Thus, in the absence of any plea taken before the Labour Court and virtually no plea having been put forth before this Court we are of the view that the petition deserves to be allowed and the reference must fail and the claim of the workman must be rejected.

(12) We allow this petition and quash the impugned award dated 9th November, 2001 and the refernece is rejected as the demand/claim from delay and laches of 9 years which have neither been explained before the Labour Court nor justifiable reasons have been given before this Court. No order as to costs.

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**R.N.R.**