

time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

(13) The observations made by their Lordships are aptly applicable to the facts and circumstances of the present case. In order to do substantial justice between the parties, it would be in the interest of justice to condone the delay in filing the petitions and to issue a direction to the Tribunal to refer the same question of law which was ordered by this Court in S.T.C. 1 of 1986, pertaining to the earlier assessment year.

(14) In view of the above, it is held that the following question of law does arise from the order of the Tribunal :—

"Whether on the facts and circumstances of the case, the Tribunal was right in setting aside the order of the Additional Excise and Taxation Commissioner-II dated December 12, 1983 passed under section 40 of the Haryana General Sales Tax Act, 1973 ?"

(15) Tribunal is, accordingly, directed to refer the above said question of law together with the statement of the case for opinion of this Court, within a period of three months from today. On receipt of the reference from the Tribunal, the same be put up along with G.S.T.R. 14 of 1988.

R.N.R.

Before Hon'ble N. K. Sodhi, J.

HANS RAJ,—*Petitioner.*

versus

THE CENTRAL CO-OPERATIVE BANK LTD. FAZILKA AND ANOTHER,—*Respondents.*

C.W.P. 6907 of 1992.

11th October, 1995.

Constitution of India, 1950—Arts. 226/227—Industrial adjudication—Delay in raising demand—Services of workman terminated in

**Hans Raj v. The Central Co-operative Bank Ltd. Fazilka and 165
another (N. K. Sodhi, J.)**

1980—Demand notice served in 1989—Labour Court would be justified in refusing relief solely on ground of a long un-explained delay—Award upheld.

Held that, it is not open to the workman to raise a dispute after a long un-explained delay of more than 8 years. The State Government too while referring the same must examine whether the claim put forth by the workman is belated and stale and whether there is any reasonable explanation for the delay. Even in cases where a belated or a stale claim is referred for adjudication, it is open to the Labour Court to decline relief to the workman on the ground of delay alone unless the workman offers a reasonable explanation for the delay. It is well settled principle of industrial adjudication that over-stale claims should not be encouraged or allowed unless there is a satisfactory explanation for the delay. Apart from the obvious risk of industrial peace from the entertainment of claims after a lapse of time, it is necessary also to take into account the unsettling effect it is likely to have on the employer's arrangements.

(Para 3)

Further held, that the Labour Court in its discretion refused to grant any relief to him. The discretion cannot be said to have been exercised arbitrarily so as to warrant any interference by this Court in the exercise of its extraordinary jurisdiction.

(Para 3)

Mrs. Sabina, Advocate, for the Petitioner.

D. V. Sharma, Advocate with Sushma Chopra, Advocate, for Respondent No. 1.

JUDGMENT

N. K. Sodhi, J.

(1) This order will conveniently dispose of two writ petitions No. 6907 of 1992 and 4479 of 1994 as both are directed against the awards of the Labour Court, Bhatinda, whereby relief has been denied to the workmen on the ground of delay alone. Since the arguments were addressed in C.W.P. No. 6907 of 1992, the facts are being taken from this case.

(2) Petitioner was working as a Clerk with the Fazilka Central Co-operative Bank Ltd., Fazilka with effect from 14th March, 1980 when his services were terminated on 31st October, 1980 and it is alleged that this was done without any notice, charge-sheet, inquiry or payment of compensation. He raised an industrial dispute after 8 years which was referred for adjudication in August, 1989. It is

pleaded on behalf of the workman that even though he had not completed 240 days of service with the employer yet his termination amounted to an unfair labour practice as the employer terminated his service only to ensure that he did not complete the requisite period of 240 days of service. The case of the management however was that the workman was being employed for short periods and on the expiry of the period of his last employment his services were terminated on 31st October, 1980. The Labour Court after considering the evidence led by the parties came to the conclusion that the termination of the services of the petitioner was an unfair labour practice on the part of the management but in view of the unexplained delay of more than 8 years in raising the industrial dispute, it declined any relief to the workman. Consequently, the reference was decided against the workman and in favour of the employer. It is this award that has been challenged in this petition filed by the workman under Article 226 of the Constitution.

(3) Ms. Sabina, learned counsel for the petitioner submitted that once the reference had been made even though it was belated, the Labour Court could not decline the same on the ground of delay and had to grant the necessary relief to the workman if he was otherwise entitled to it. She further submitted that while granting relief to the workman, the Labour Court could have moulded the same so as not to grant any relief for the period prior to the date when the dispute was raised. There is no merit in this contention. It is not open to the workman to raise a dispute after a long unexplained delay of more than 8 years. The State Government too while referring the same must examine whether the claim put forth by the workman is belated and stale and whether there is any reasonable explanation for the delay. Even in cases where a belated or a stale claim is referred for adjudication, it is open to the Labour Court to decline relief to the workman on the ground of delay alone unless the workman offers a reasonable explanation for the delay. It is a well settled principle of industrial adjudication that over-stale claims should not be encouraged or allowed unless there is a satisfactory explanation for the delay. Apart from the obvious risk to industrial peace from the entertainment of claims after a lapse of time, it is necessary also to take into account the unsettling effect it is likely to have on the employer's arrangements. After all an employer cannot be expected to keep waiting indefinitely for a workman whose services had been terminated to raise an industrial dispute. In the meantime, if the employer had made alternative arrangements by employing another person and if the workman is directed to be reinstated after a long delay, he will come back only

at the expense of another employee who too might have spent a couple of years with the employer. The very purpose of providing a machinery for the settlement of industrial disputes would get frustrated if stale claims are allowed to be raised or entertained. Of course, whether a claim has become stale or not will depend upon the circumstances of each case. In the present case, the workman has not offered any explanation much less satisfactory explanation for raising a dispute after more than 8 years from the date of his termination. The Labour Court in its discretion refused to grant any relief to him. The discretion cannot be said to have been exercised arbitrarily so as to warrant any interference by this Court in the exercise of its extraordinary jurisdiction.

(4) In Civil Writ Petition No. 4479 of 1994, the services of the workman were terminated on 17th February, 1988 and he raised an industrial dispute by serving a demand notice on 17th February, 1990. The Labour Court, in my opinion, was justified in refusing relief to the workman solely on the ground of delay.

(5) In the result, there is no merit in either of the writ petitions and both stand dismissed leaving the parties to bear their own costs.

R.N.R.

Before Hon'ble P. K. Jain, J.

VAKIL CHAND,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS.—*Respondents.*

Cr. M. No. 7470-M of 1995.

15th January, 1996.

Constitution of India, 1950—Arts. 226/227—Code of Criminal Procedure, 1973—S. 482—Instruction regarding pre-mature release of life convict—S. 2(D)—Petitioner suffering from AIDS (HIV-I)—Lodged in jail seeking premature release under instructions—Release rejected by respondents on ground that crime committed was heinous—Convict is suffering from AIDS and if released can also infect other citizens with virus—Such rejection not justified by law—Exercise of all administrative powers vested in public authority must be informed by relevance and reason.

Held, that under our Constitution, deprivation of personal liberty as penal policy is purposive because the imprisonment of the criminal is sanctioned as a measure of social defence and individual