Before Jawahar Lal Gupta & N.C. Khichi, JJ

AJAIB SINGH,—*Appellant*

versus

THE SIRHIND CO-OPERATIVE MARKETING-CUM-PROCESSING SERVICE SOCIETY LTD. & ANOTHER,—*Respondents.*

LPA 798 of 1991

10th February, 1998

Constitution of India, 1950—Arts. 226/227—Industrial Disputes Act, 1947—Industrial dispute raised seven years after termination order—Labour Court directed reimbursement and back wages—Challenge thereto in writ petition by management on grounds of inordinate delay in approaching for reference—Award in favour of workman set aside denying him relief of reimbursement on grounds of delay—Upheld in Letters Patent Appeal.

Held that on principle as well as precedent, it appears that a stale or belated claim made by a workman should not be entertained. The yard—stick contained in the residuary clause of Article 137 of the Indian Limitation Act should be a fair measure. If a workman raises the dispute after long delay and even the period of three years has expired, the Court is entitled to deny him the relief on the ground of laches. In any event, if there is no satisfactory explanation for delay, the Court should refuse to grant any relief. Thus, the question as posed at the outset is answered in the affirmative and it is held that the relief of reinstatement can be denied to the workman on the ground of delay beyond the period as prescribed under Article 137 of the Limitation Act.

(Paras 18 & 19)

Sarjit Singh, Senior Advocate with Vikas Singh, Advocate, for the Appellant.

Amar Singh, Advocate, for Respondent No. 1.

JUDGMENT

Jawahar Lal Gupta, J.

(1) Can the High Court set aside an award given by the Labour Court in favour of a workman and deny him the relief of

reinstatement on the ground of delay ? The learned Single Judge having decided in favour of the management, the workman has filed this Letters Patent Appeal. A few facts may be noticed.

(2) The appellant was working as a Salesman with the Sirhind Cooperative Marketing-cum-Processing Society Limited, Sirhind. His services were terminated on July 16, 1974. The appellant did not take any steps to challenge the order for a long period of more than seven years. On December 8, 1981, he served a demand notice on the Respondent-Society. Thereafter, the State Government made a reference to the Labour Court on March, 19, 1982. On April 13, 1986, the Labour Court answered the reference in favour of the workman. It held that "the management ought to have complied with the provisions of Section 25-F of the Act before passing the temination order as the workman had admittedly put in eight years service with the management ." It further held that "the workman has not given an explanation as to why the demand notice was issued after such a long period. Under these circumstances, he is not entitled for back wages till 8th December, 1981. The workman has stated that he had searched for work but could not find any. The management has led no evidence to prove that the workman remained gainfully employed during the period of forced idleness. So the management is ordered to pay full back wages to the workman from 8th December, 1981 till the date he reports for duty...."

(3) Aggrieved by the award, the Society filed a petition under Article 226 of the Constitution. It alleged that the "workman has embezzled huge amount of the society amounting to Rs. 2,08,364.86 but the Labour Court has not taken notice of this misconduct..." It further alleged that under issue No. 1, the representative had "laid stress that the reference has been made after a period of seven years. Therefore, the claim of the respondent—workman may be rejected being belated". An affidavit of the representative of the Society was also produced as Annexure P. 2 with the petition. The learned Single Judge has found that there was an inordinately long delay and that the workman had not given any explanation. It is true that the management has held no domestic enquiry, yet, it can prove the guilt of the workman before the court. On account of the lapse of time, "it would be practically impossible to collect evidence after so many years". Thus, the award given by the Labour Court was set aside. Aggrieved by the decision of the learned Single Judge, the workman has filed this Letters Patent Appeal.

(4) Sarjit Singh, learned counsel for the appellant contended that the delay, if any, was a matter for the Government to consider. Once the reference had been made, the Labour Court had to decide the dispute. The Labour Court having found that the provisions of Section 25-F had not been complied with, the High Court could not have interfered with the award in the exercise of its writ jurisdiction. Learned counsel also suggested that issue No. 1 had not been pressed before the Labour Court.

(5) It is in the context of the above facts and the contentions raised by the counsel that the question as posed at the outset arises for consideration.

(6) The rule of vigilance rests on a principle of public policy. A claimant should be prompt in claiming relief. A person who seeks to enforce his right cannot be permitted to sleep over the matter. It is true that lapse of time does not destroy the right but it debars the aggrieved person from seeking the remedy. The rule of limitation introduces a fictional presumption that a right which is not exercised or enforced for long shall be deemed to have become non-existent. It is calculated to prevent disturbance or deprivation of the equity which accrues by long enjoyment or by long inaction. Even though initially, as in the case of *Town Municipal Council Athani v. Presiding Officer* (1) it was held that the residuary clause of Article 137 of the Limitation Act, 1963 did not apply to the proceedings before the Labour Court or a Tribunal not governed by the Civil Procedure Code, the court deviated from the view, and in *The Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma* (2), it was held that "Article 137 will apply to *any petition* or *application filed* under any Act to a civil court. It is not confined to applications contemplated by or under the Code of Civil Procedure" (emphasis supplied). Undoubtedly, there are certain proceedings where no period of limitation has been prescribed. To illustrate: no period has been prescribed for filing a writ petition under Article 226 of the Constitution. Even then, it has been ruled that if a claim is belated and a triable issue of limitation arises, the High Court should not exercise its discretion under Article 226 of the Constitution. Reference in this behalf may be made to the decision of their Lordships of the Supreme Court in *State of Madhaya Pradesh & anr v. Bhailal Bhai & Ors* (3). Still further,

(1) A.I.R. 1969 S.C. 1337
(2) A.I.R. 1977 S.C. 282
(3) A.I.R. 1964 S.C. 1006.

even in cases where the strict rule of limitation is not attracted, the principle of laches has been applied. It is based on the maxim— 'Delay defeats equity'. Thus, the Court refuses to grant an injunction, appoint a receiver or even order specific performance in cases where the delay on the part of the applicant has caused prejudice to the respondent.

(7) It was contended by Mr. Sarjit Singh that no period of limitation has been prescribed under the Industrial Disputes Act. An aggrieved workman can raise the dispute at any time and if there is delay, the court can keep that in view while determining the relief. Is it so ?

(8) It is true that a fight between a workman and the employer is not a contest between equals. It is on account of this reason that the strict rules applicable to civil proceedings are not applied to the disputes under the Industrial Disputes Act. Yet, it cannot mean that a workman is free to raise the dispute at any time before any forum at his whim. Even if it is assumed that the residuary clause contained in Article 137 of the Limitation Act is not strictly applicable to the proceedings under the Industrial Disputes Act, it cannot be said that the workman shall be entitled to raise the dispute at any time. He must approach the court at the earliest. If there is delay, he must give some explanation. If the explanation is not satisfactory and the delay is even more than the maximum period of limitation prescribed under the residuary clause, it would be a sound exercise of discretion to deny relief to the workman. After all, it is well-known that a civil servant who may be as poor as an industrial workman, has to seek his remedy by way of a civil suit within the prescribed period of limitation. Similarly, if he chooses to invoke the jurisdiction of the High Court under Article 226 of the Constitution, he has to approach the Court without any culpable delay. There is no principle of law which may warrant the application of a different yard-stick to a workman. Undoubtedly, quite often, the workman also invokes the remedies of an ordinary civil suit or a writ petition which are available to him also. When he chooses one of those remedies, the law of limitation applies. There is no reason why the same principle should not govern even the proceedings under the Industrial Disputes Act. In any event, it would be totally unfair to ignore a long and unexplained delay.

(9) The Court is bound to render an even-handed justice. The Goddess of Justice is blind. It holds the balance between the two parties equally. If a workman is allowed to raise stale disputes

after long and unexplained delay, the interests of the employer are likely to be prejudiced. With the lapse of time, the evidence may not be available. The best evidence may be lost. The memory fails. Thus, the truth may not be proved. Still further, such a course of action would place a wholly unfair burden on the employer. It would be always under an obligation to preserve the old records. It would be unable to make regular arrangement against a vacant post. There are instances when a workman just abandons his job and goes. He joins another post at a different place. The employer cannot keep track of the employee all the time. After working for a few years, the employees are known to have raised industrial disputes and claimed that they have remained unemployed. In such a situation, the employer normally faces an uphill task. In certain cases, it is likely to lead to unfair results. In these days of rising prices and high cost of living, no one can survive without working. A person whose services are illegally terminated would be in a hurry to get his job back. He cannot wait. If he does, it cannot be without reason. Normally, it is on account of an alternative job. In any case, when a workman approaches the court after an inordinately long delay and offers no explanation for the intervening period, it should be safe to assume that he was gainfully employed unless he proves the contrary. That would be fair to both sides. Still further, the maximum period during which he may be entitled to raise the dispute should not be beyond what is prescribed under the Limitation Act for a similar relief or under the residuary clause.

(10) Mr. Sarjit Singh referred to the decisions in *The Patiala Central Cooperative Bank Ltd. v. The Presiding Officer, Labour Court and another* (4), *Management of Haryana Development Authority v. Miss Neelam Kumari and another* (5), and *Mani Ram v. The Presiding Officer, Labour Court, Ambala and others* (6), On the basis of these decisions, it was contended that the relief of reinstatement cannot be denied on the ground of delay.

(11) In The Patiala Central Cooperative Bank's case (*supra*), the services of the workman had been terminated in the year 1973. The demand was raised in the year 1980. Yet, the learned Judge took the view that the relief could not be declined. We are unable to accept the view expressed by the learned Single Judge. An inordinately long delay of seven years cannot be just washed away.

(4) 1990 (5) SLR 509
(5) 1993 (5) SLR 134
(6) 1996 (2) SLR 716

(12) In Neelam Kumari's case (*supra*), the Division Bench took the view that "the provisions of Indian Limitation Act cannot be imbibed into the provisions of Industrial Disputes Act, which by itself is a complete Code" (Pr. 21). Their Lordships referred to the decision of the Supreme Court in Town Municipal Council, Athani (*supra*) to hold that the "Industrial Tribunal or Labour Court are not in any way governed by the Code of Civil Procedure. As a natural corollary applicability of Article 137 of the Indian Limitation Act cannot be accepted." However, it deserves mention that in *The Kerala State Electricity Board, Trivandrum* v. *T.P. Kunhaliumma* (7), it was observed that "this court in Nityananda Joshi's case (AIR 1970 SC 209) has rightly thrown doubt on the two Judge Bench decision of this Court in Athani Municipal Council case (AIR 1969 SC 1335) where this court construed Article 137 to be referable to applications under the Civil Procedure Code." In paragraph 21, it was held that "the conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two Judge Bench of this Court in Athani Municipal Council case and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure." It is undoubtedly correct that the Bench has noticed this case. However, the fact that the view expressed in the earlier decision had not been approved, does not appear to have been pointed out to their Lordships. The Bench has further observed that "by importing the provisions of Indian Limitation Act into the Industrial Disputes Act, the very object of the Act providing speedy, simple straight remedy devoid of any technicality and avoidance of proverbial delays of civil courts would stand frustrated." There can be no quarrel with the proposition. However, the fact remains that in spite of these platitudes, the proceedings even before the Labour Court take long time. Even in the present case, the reference had been made in March 1982. The Labour Court had given its award on April 13, 1986. Merely because a speedy remedy is intended cannot mean that the workman is entitled to take his own time. Allowing him to take unlimited time would frustrate the avowed purpose of a speedy remedy. With respect, it appears to us that the view is based on the decision in the case of Municipal Council, Athani which has already been disapproved in the later decision.

(13) Similarly, in Mani Ram's case (supra), a delay of four

(7) A.I.R. 1977 S.C. 282

years was over-looked and it was said that the employee was not entitled to the back wages for that period. Since we have reservations about the view expressed by the Bench, it would have been appropriate to refer this matter to a larger Bench. However, it does not appear necessary to do so in view of the fact that there are other binding decisions which seem to answer the question involved in the present case.

(14) In *State of Punjab v. Shri Kali Dass and another* (8), a Division Bench of this Court observed as under :—

> "No doubt there is no limitation provided under the Industrial Disputes Act to raise an industrial dispute but can it be said that it can be raised at any time and that too without any explanation. Is a workman at a better footing or at a higher pedestal than a civil servant or an employee of any other organisation ? If the services of an employee of the latter category are dispensed with, they are required to challenge the same in the Civil Court within a period of three years. Even for writ petition, the Supreme Court has observed that three years is a reasonable period within which the aggrieved party must approach to challenge termination as that is the period for filing a civil suit. According to us, the workman cannot be allowed to approach the Labour Court after more than three years of the termination of service."

It was further observed as under :—

> "The respondent—workman in the present case had chosen not to raise the little finger for a period of more than 7½ years when he thought of just issue a demand notice. For such a long time, the petitioner—management is even not supposed to keep all the record concerning its workmen. It becomes really difficult to defend such a case. The suit, if it had to be filed by the workman before a civil court, would have been hopelessly time-barred. Under the circumstances, we are of the view that the respondent—workman was not entitled to any relief from the Labour Court on the ground of delay."

(8) 1997 (2) RSJ 240

(15) Still further, in *Shalimar Works Ltd. v. Its Workmen* (9), a similar issue had arisen for consideration. The company had discharged its workmen on April 6, 1948. A dispute was admittedly pending at that time and the action of the company was in breach of Section 33. The workmen had raised a dispute after about three years and the reference was made on October 7, 1952. While dealing with the effect of delay, their Lordships were pleased to observe as under :—

> "It is true that there is no limitation prescribed for reference of disputes to an industrial tribunal; even so it is only reasonable that disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed; particularly so when disputes relate to discharge of workmen wholesale, as in this case. The industry has to carry on and if for any reason there has been a wholesale discharge of workmen and closure of the industry followed by its reopening and fresh recruitment of labour, it is necessary that a dispute regarding reinstatement of a large number of workmen should be referred for adjudication within a reasonable time. We are of opinion that in this particular case the dispute was not referred for adjudication within a reasonable time as it was sent to the industrial tribunal more than four years after re-employment of most of the old workmen. We have also pointed out that it was open to the workmen themselves even individually to apply under Section 33A in this case; but neither that was done by the workmen nor was the matter referred for adjudication within a reasonable time. In these circumstaces, we are of opinion that the tribunal would be justified in refusing the relief of reinstatement to avoid dislocation of the industry and that is the correct order to make."

(16) In *J.B. Mangharam & Co. v. State of Madhya Pradesh* (10), it was said that "it is well expected principle of adjudication that over-stale claims should not be generally entertained for the delay."

(9) 1959 (2) Labour Law Journal 26

(10) 1961 (2) Labour Law Journal 89

(17) Later on, in *Bombay Union of Journalists & Ors v. The State of Bombay and another* (11), it was *inter alia* observed that "if the claim made is patently frivolous or is clearly belated, the appropriate government may refuse to make a reference."

(18) Thus, on principle as well as precedent, it appears that a stale or belated claim made by a workman should not be entertained. The yard-stick contained in the residuary clause of Article 137 of the Indian Limitation Act should be a fair measure. If a workman raises the dispute after long delay and even the period of three years has expired, the court is entitled to deny him the relief on the ground of laches. In any event, if there is no satisfactory explanation for delay, the court should refuse to grant any relief.

(19) Thus, the question as posed at the outset is answered in the affirmative and it is held that the relief of reinstatement can be denied to the workman on the ground of delay beyond the period as prescribed under Article 137 of the Limitation Act.

(20) What is the position in the present case ?

(21) Admittedly, the services of the workman were terminated on July 16, 1974. He had waited for more than seven years till December 8, 1981, when he had issued the notice of demand. There is no explanation for this delay. In fact, it is the admitted position that he had gone abroad. He had raised no dispute for more than seven years. Still further, it is also on the record that there was an allegation that he owed more than Rs. 2 lacs to the employer. The matter was referred to the Arbitrator who had given an award in 1985. In this situation, it was justifiably urged on behalf of the respondent—society that the workman had made his pile and gone abroad. After earning more money, he had come back and raised the dispute. In the circumstances of the case, we find that the view taken by the learned Single Judge was in conformity with law. It calls for no interference.

(22) Resultantly, we find no merit in this appeal. It is, consequently, dismissed. No costs.

J.S.T.

(11) A.I.R. 1964 S.C. 1617