

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P(C) No.1195/2008**

% **Date of decision: 03.03.2008**

Sh.Inder Kumar Petitioner

Through: Mr.T.K.Samanta, Advocate.

Versus

M/s.Air Force Senior Secondary School Respondent

Through: Mr.J.H.Jafri, Advocate.

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner has impugned the award dated 20th April, 2007 dismissing the claim of the petitioner on the ground of delay.

2. A reference dated 14th August, 2006 was made by the appropriate Government as under:-

“Whether the services of Sh.Inder Kumar, s/o.Late Sh.Mool Chand have been terminated by the management illegally and/or unjustifiably and if so to what sum of money as monetary relief alongwith consequential benefits in terms of existing Law/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?”

3. The petitioner alleged that he was employed with the respondent management on a post of Chowkidar at a salary of Rs.500 per month which was later increased to Rs.800 per month. He alleged that his services were terminated without any cogent reason on 26th October, 1995. The petitioner contended that during the time he was working, some false charges were made against him regarding missing of a torchlight worth Rs.120 though the said torchlight belonged to the petitioner. Other allegations were also made against the petitioner as a counter blast to the petitioner approaching the Court claiming minimum wages.

4. The petitioner is stated to be a poor person and is unemployed and a demand notice dated 22nd February, 1993 was sent to the management. The petitioner also contended that he was handed over to the police several times with false allegations which were proved to be false and no case was ever made out against the petitioner. In the circumstances the petitioner has prayed for reinstatement with continuity of service and full back wages.

5. The respondent contended that the petitioner had filed another petition being case No.MW.94/92 claiming minimum wages. During the pendency of those proceedings, the pleas of illegal termination or dismissal or reinstatement with back wages, continuity of service were never raised. According to the respondent the petitioner was careless

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and was guilty of dereliction of duties and since the month of October, 1995 he stopped coming to the school without any intimation and permission. It is stated by the respondent that the petitioner is gainfully employed with different establishment thereafter and, therefore, neither he filed any claim regarding reinstatement nor he is entitled for anything.

6. On consideration of pleas and the evidence of the parties the Labour Court held that the claim of the petitioner suffers from delay and laches as the same was filed almost after 12 years of the alleged termination of the petitioner. The Labour Court has held that though there is no limitation provided under the Industrial Disputes Act, 1947 to raise an industrial dispute but it cannot be raised at any time without any rational explanation. The Labour Court has also held that when the dispute is raised by a workman belatedly the same must form a relevant part for refusing reference and decision of the Government refusing to make a reference on the ground of inordinate and unexplained delay will be justified.

7. The learned counsel for the petitioner has produced a copy of affidavit dated April, 1997 alleged to have been filed before the Labour Court deposing inter-alia that after lots of request the respondent started to pay Rs.800 per month and did not pay the dues for all the

years and threatened the petitioner to withdraw the case filed by him seeking minimum wages.

8. This is not a sufficient explanation for raising the dispute almost after eleven years after alleged termination on 26th October, 1995. The petitioner has also produced a copy of award dated 7th March, 2005 in MW No.94/92 where it was held that the petitioner is entitled for difference of minimum wages for the period upto August, 1992. The learned counsel is unable to show anything that any grievance was made in the said petition regarding illegal and unlawful dismissal of the petitioner.

9. The petitioner had deposed that he was working as a peon/ gate keeper and Lashkar since 6th December, 1991 and was given Rs.500/- per month till July, 1992 and after August, 1992 the petitioner was paid Rs.700/- per month. No cogent reason or sufficient reason has been given by the petitioner for not raising the dispute about his illegal termination since October, 1995 when he is alleged to have been dismissed. The learned counsel is also unable to give any sufficient reason or cogent reason for the delay in raising the dispute regarding the reinstatement and payment of back wages. Perusal of the writ petition reflects that no sufficient reason has been made out for not challenging the alleged dismissal on 26th October, 1995 till the claim was filed after the reference dated 14th August, 2006. In the **W.P(C) No.1195/2008**

circumstances the findings of the Labour Court that the claim of the petitioner is belated and he is not entitled for any relief cannot be faulted.

10. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court is not to interfere with factual findings of the lower courts and should restrain itself from re-appreciating evidence while exercising powers of judicial review. Reliance for this proposition can be placed on the judgment of the Supreme Court, *Government of A.P. and Ors. v. Mohd. Nasrullah Khan* reported as (2006) 2 SCC 373. Writ court should refrain from interfering with the orders of an inferior tribunal or subordinate court unless it suffers from an error of jurisdiction or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. The objective of judicial review is that a person receives a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

11. In the circumstances there are no grounds to interfere with the award dated 20th April, 2007. There is no manifest error in the award
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dismissing the claim of the petitioner which was filed after an inordinate delay of about eleven year after alleged dismissal on 26th October, 1995. The writ petition in the facts and circumstances is without any merit and is liable to be dismissed. The writ petition is, therefore, dismissed.

March 3rd, 2008.
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ANIL KUMAR, J.