

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

+ **Writ Petition (Civil) No.6851/2009**

Date of Decision : 02.4.2009

SH.JOEL SWAMI

.....Petitioner

Through : Mr.H.K.Chaturvedi,
Advocate

Versus

THE MANAGEMENT OF ORDINANCE FACTORY

..... Respondent

Through : Mr.Subhash
Chander for Ms.Reeta Kaul,
Advocate

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (Oral)

1. The petitioner in the present writ petition has challenged the award dated 15.2.2008 passed by the Presiding Officer, Industrial Tribunal cum Labour Court-II in ID No.8/1996 titled Shri. Joel Swami Vs. The General Manager, Ordinance Factory, Muradnagar, District Ghaziabad (UP).

2. By virtue of the aforesaid award, the reference which was made by the appropriate Government, which reads as under:

“Whether the action of the management of Ordinance Factory, Muradnagar in removing from services to Shri Joel Swami s/o Shri K.L.Swami, Mechinist grade E vide orders dated 28.9.83/28.4.84 is legal and justified? If not, to what relief the workman is entitled to?”

3. The claim of the petitioner was dismissed on the sole ground that the workers have approached the appropriate Government for reference only in 1995 and as such the reference was highly belated.

4. The learned Tribunal had given detailed reasons and referred to number of authorities passed by the Apex Court wherein it has been specifically stated that delay defeats the right and state claim should not be permitted to be raised.

5. I have heard the learned counsel for the petitioner as well as proxy counsel for the respondent who has appeared in response to the advance copy having been served. I have also gone through the record.

6. The main contention of the learned counsel for the petitioner is that the award of the learned Tribunal suffers from perversity on account of the fact that the Tribunal has not taken into consideration the various factors that consumed time of the petitioner in getting his grievance redressed by filing the appeal, review petition as well as mercy petition of the President of India to the effect that he is not keeping good health. These dates have been given in the list of dates as well as in the petition

7. I have carefully considered the entire record. I find myself in full agreement that the reasoning giving by the industrial adjudicator that the petitioner having chosen to remain silent for almost 15 years had lost his right to get the dispute referred to the industrial adjudicator and even if it is done so as has been done, in the instant case by the appropriate

Government, the industrial adjudicator was perfectly right in dismissing the claim on the ground of inordinate delay and latches.

8. The second reason which has been given by the industrial adjudicator is that the evidence had been brought by the Management on record to show that the petitioner was a habitual absentee with the respondent/Organization and necessary record was also brought before the industrial adjudicator by the respondent. On account of this frequent absenteeism, the discipline of the Organization was hampered. Therefore, that was also taken to be a ground for dismissing the claim of the petitioner. The industrial adjudicator while dismissing the claim of the petitioner has observed as under:

“From perusal of the records it transpires that the workman was removed in 1983 and he has raised this dispute in the year 1996 after a long gap of 13 years. He has not explained about the delay which prevented him from raising the dispute earlier. It was submitted from the side of the management that there is no explanation of delay. Not to speak of plausible or satisfactory explanation. There is no explanation at all what prevented the workman to approach this forum after a long period of 13 years. It is settled law that stale claim made after an inordinate and unexplained period could not be entertained.

My attention was drawn to 2005 (5) SCC page 91 paras 12 and 13. The Hon’ble Apex Court has held that long delay impedes the maintenance of the records. Belated claim should not be considered.

It has been held in (2001) 6 SCC 222 as under:-

“Law does not prescribe any time limit for the appropriate government to exercise its powers

under section 10 of the Act. It is not that this power can be exercised at any point of time and to review matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service.”

In the instant case reference has been made after a delay of long 13 years. Limitation Act is not applicable in ID cases but stale cases should not be considered. Delay in the instant case is inordinate and relief can be rejected on the ground of delay alone.

In the instant case the workman has absented himself unauthorisedly on several occasions. The working of the management suffered setback due to unauthorized absence of the workman.

It has been held by the Hon’ble Apex Court that no industrial dispute existed or could be even said to have been apprehend the Central Government exercised powers in this case after a lapse of about seven years.

It has been held in 1993 AIR SCW 2224 that the delay would certainly be fatal if it has resulted in material evidence relevant to the contention is lost and not rendered available, Lapse of time results in losing the remedy and right as well.

It has been also held in this case that case filed after delay of 7-9 years should not be entertained.

It has been held in MANU/SC/0140/1959 that merely because the industrial dispute does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation for reference of disputes to an industrial tribunal even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when

dispute relate to discharge of workmen wholesale.

In the instant case the workman has raised the dispute after long delay of 15 years.

It has been held in AIR 1993 SC 2277 that delay itself disentitles a workman of remedy and right.

There is delay of nine years and in the light of the law laid down by the Hon'ble Apex Court. The reference itself is not maintainable."

9. The reasoning given by the industrial adjudicator is sound and correct. The person who slept over his rights for such a long time has absolutely no business to come at will and invoke jurisdiction of in judicial or quasi –judicial forum to get his grievance redressed. I do not find any perversity, illegally or violation or any rule or regulation, which would warrant the exercise of discretionary, jurisdiction in the present writ petition.

Accordingly, the writ petition is dismissed.

No order as to costs.

V.K. SHALI, J.

April 2, 2009
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