

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

**Date of decision: 1<sup>st</sup> July, 2010**

**+ W.P.(C) No.5796/2001**

**%**

**M/S RADHEY LAL PRADEEP  
KUMAR & ANR.**

**.... PETITIONERS**

Through: Mr. Harvinder Singh, Advocate

**Versus**

**SH. SHYAM LAL & ANR.**

**..... RESPONDENTS**

Through: Mr. Som Dutt Sharma, Advocate

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

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

**RAJIV SAHAI ENDLAW, J.**

1. The petitioner employer by this writ petition impugns the award dated 5<sup>th</sup> November, 1999 of the Labour Court on the following reference:

“Whether the services of Sh. Shyam Lal have been terminated illegally and / or unjustifiably and if so, to what relief is he entitled and what directions are necessary in this respect?”

The Labour Court observed that though the industrial dispute was raised by the respondent no.1 workman after 20 years of his alleged removal, but held that, since no limitation is prescribed for raising a dispute and further since there was satisfactory explanation for the delay in raising the dispute, the reference could not be decided against the respondent no.1 workman on that ground. The Labour court further held that the petitioner employer had failed to prove that the respondent workman had left the service of his own; axiomatically, the termination being without compliance of Section 25F of the I.D. Act was held illegal and unjustified. However, for the reason of i) the petitioner employer firm having been closed down and ii) the respondent workman having been shown to be in employment elsewhere for sometime after reference of the industrial dispute and iii) for the reason of the criminal prosecution of the respondent workman at the instance of the petitioner employer and the complaints by the respondent workman against the petitioner employer with the Income Tax authorities, the relief of reinstatement was not considered to be the appropriate relief. The Labour Court awarded Rs.1,00,000/- as lumpsum compensation to the respondent workman.

2. The respondent workman has not challenged the award. The petitioner employer aggrieved therefrom preferred the present petition. Vide *ex parte* order dated 20<sup>th</sup> September, 2001, while issuing notice of

the petition, the operation of the award was stayed subject to the petitioner employer depositing Rs.50,000/- with the Registrar of this Court. Subsequently, on 5<sup>th</sup> March, 2002, it was informed that the said sum of Rs.50,000/- had been deposited by the petitioner employer. On 2<sup>nd</sup> September, 2004, Rule was issued in the petition and the sum of Rs.50,000/- directed to be kept in fixed deposit and the interim order in terms of the above made absolute till the disposal of the petition. As per records, the sum of Rs.50,000/- had a maturity value of Rs.71,000/- as on 1<sup>st</sup> October, 2009.

3. The counsel for the petitioner employer has at the outset contended that the reference ought to have been decided against the respondent workman and in favour of the petitioner employer for the reason of the long delay of 20 years by the respondent workman in raising the dispute. The Labour court has held the delay to have been explained for the reason of the petitioner employer having initiated criminal prosecution of the respondent workman and in which the respondent workman was acquitted approximately two years prior to raising the dispute. This was held to be sufficient explanation for the delay in raising the dispute.

4. The counsel for the petitioner employer has contended that the Labour Court has failed to appreciate that the criminal prosecution had

nothing to do with the termination. It is contended that it is not the case that the petitioner employer had terminated the services of the respondent workman for the reason of embezzlement of monies for which the respondent workman was prosecuted; in fact, the criminal complaint of embezzlement was filed much after the cessation of services of the respondent workman and only when the said embezzlement was discovered after the respondent workman had left the employment. It is thus contended that the respondent workman had no reason to await the outcome of the criminal prosecution before raising the industrial dispute and the two were separate and the pendency of the said criminal prosecution had no connection with the dispute, if any, qua termination. Reliance in this regard is placed on:

(i) ***N.S. Bhatnagar Vs. Indian Tourism Development Corporation***

2008 (118) FLR 719, where a Single Judge of this Court upheld the award against the workman for the reason of being stale and preferred 27 years after suspension of the workman; the plea of the workman that he was advised to await outcome of criminal trial was held to be not acceptable.

(ii) ***Krishi Utpadan Mandi Samiti Vs. Pahal Singh*** 2007 (113) FLR

818 (SC), holding that the Labour Court is under an obligation to consider whether any relief, if at all, could be granted in favour of

the workman in view of the delay (in that case of 18 years) and that delay defeats equity.

- (iii) ***Balbir Singh Vs. Punjab Roadways*** 2001 I LLJ 476 laying down that there is no general principle that in industrial dispute delay is not to be taken as a ground for denying relief to the workman. In this case, relief was denied to the workman for the reason of delay of sixteen years in raising the dispute.

5. Per contra, the counsel for the respondent workman relies on:

- (i) ***Ajaib Singh Vs. The Sirhind Co-operative Marketing-cum-Processing Service Society Ltd.*** AIR 1999 SC 1351 laying down that the provisions of the Limitation Act, 1963 do not apply to Industrial Adjudicators under the Industrial Disputes Act. In this case, the delay was of 7 years and the Supreme Court held that for the reason of delay, in appropriate cases, the relief may be moulded by declining to grant back wages to the workman till the date he raised the demand.
- (ii) ***The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty*** AIR 2000 SC 839, laying down that law does not prescribe any time limit for the appropriate Government to exercise its

powers under Section 10 of the Act. I may however notice that the Supreme Court after observing so has held that a dispute which is stale could not be the subject matter of reference under Section 10 of the Act. The question whether a dispute is stale or not was held to depend on the facts and circumstances of the case. In that case, the delay was of 7 years and the reference was held to be bad.

- (iii) ***Sapan Kumar Pandit Vs. U.P. State Electricity Board*** AIR 2001 SC 2562, laying down that when the government chooses to refer the dispute for adjudication, the reference could not be quashed merely on the ground of delay, though long delay could be considered by the adjudicating authorities while moulding the relief.

6. What follows from the aforesaid judgments is that delay is certainly a factor to be countenanced in adjudication of the industrial dispute. Though ***Sapan Kumar Pandit*** (supra) holds that once a reference has been made, it could not be quashed for the reason of delay and the counsel for the respondent workman contends that the challenge if any by the petitioner employer on the ground of delay should have been to the reference, as in ***The Nedungadi Bank Ltd.*** (supra) but I am unable to agree with the said contention. If the Court lays it down as a

general rule that the challenge, if any, on account of delay should be by impugning the order of the appropriate Government of reference and the employer would not be entitled to impugn the award on the ground of delay / laches even if a defence before the industrial adjudicator, for the reason of having not challenged the order of reference, the same is likely to delay considerably the adjudication by the Industrial Adjudicator; then writ petitions challenging the reference orders would be preferred and the proceedings before the Industrial Adjudicator in the reference would remain stayed / pending judicial review of the reference order. It is not appropriate for the Courts to take a view which is likely to delay adjudication of the industrial disputes. It is more practicable that once a reference has been made, the dispute is adjudicated and the challenge, if any, to the reference on the ground of delay and / or to the award, being made on all grounds after the award has been published, rather than at the intermittent stage. I therefore hold that the petitioner employer in the present case is entitled to contend as it is found to have done before the Labour Court also, that the respondent workman is not entitled to any relief merely for the reason of delay of 20 years in raising the dispute.

7. Faced with the aforesaid, the counsel for the respondent workman contends that this Court in the exercise of writ jurisdiction ought not to interfere with the finding of the Labour Court of the respondent workman owing to the criminal prosecution (supra) being

justified in raising the dispute after delay of 20 years. Reliance in this regard is placed on ***Sadhu Ram Vs. Delhi Transport Corporation*** AIR 1984 SC 1467 holding that the question of jurisdictional facts decided by the Labour Court and which it is competent to decide are not open to judicial review and on ***M/s Little Sons & Company Vs. Amar Nath*** 1978 LAB I.C. 430 (Punjab & Haryana) to the effect that the High Court in exercise of jurisdiction under Article 226 of the Constitution does not normally upset the findings of fact recorded by the Tribunals and the writ of certiorari can be issued only for correcting the errors of law which are apparent on the face of the record. Reliance in this regard is also placed on ***Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union*** IV (1999) SLT 540 laying down that the findings of fact recorded by a fact finding authority duly constituted for the purpose, ordinarily should be considered to have become final and cannot be disturbed for the mere reason of having been based on material or evidence not sufficient or credible in the opinion of the Writ Court.

8. Per contra, the counsel for the petitioner employer in this respect draws attention to ***Seema Ghosh Vs. Tata Iron & Steel Company*** (2006) 7 SCC 722 where it was held that an award passed without regard to Supreme Court decision on the point in issue is liable to be interfered with and it was held that misplaced sympathy for the workman cannot come in the way of the High Court interfering with the award.

9. Though on first blush, the reason accepted by the Labour Court, as explaining the delay, appears to be a plausible reason, not requiring interference by this Court but a perusal of the statement of claim of the respondent workman before the Labour Court shows that it was his case that he was employed with the petitioner employer as a *Munim* with effect from July, 1963 at a salary of Rs.120/- per month and was not allowed to join duty with effect from July 1964; that the petitioner employer did not reinstate him from August, 1964 to November, 1964 but kept on assuring that he would be reinstated; that in the end of 1964 he made complaints against the petitioner employer to the Income Tax department and when the petitioner employer came to know of it, they refused to reinstate him and lodged a false complaint of embezzlement against him, to save their own skin from the Income Tax department.

10. I find that the respondent workman has subsequently attempted to change his case and attempted to argue that his removal in July, 1964 was also for the false charge of embezzlement against him. However, the respondent workman cannot be permitted to so change the facts. His categorical case in his first pleading is that approximately 5/6 months after his removal and during which time assurances of reinstatement are claimed to have been given, he made complaint against the petitioner employer and the petitioner employer thereafter by way of retaliation

lodged a false prosecution of embezzlement against him. From the first pleading of the respondent workman, it is clear that the charge of embezzlement against him was not the basis of his termination and the charge of embezzlement was made by the petitioner employer only to save their skin in the complaints to the Income Tax authorities made by the respondent workman against the petitioner employer.

11. A perusal of the aforesaid statement of claim lays credence to the argument of the counsel for the petitioner employer that the criminal prosecution in which the respondent workman was acquitted in 1982 was no reason for him to, in 1984, raise an industrial dispute belatedly qua his termination in July, 1964. The Labour Court has also held the termination of the respondent workman to be bad only for the reason of non compliance of Section 25F and not for the reason of the respondent workman having been dismissed on the ground of embezzlement without any inquiry.

12. It was further the case of the respondent workman in his statement of claim before the Labour Court that even after initiation of criminal prosecution against him, the petitioner employer was assuring him that he would be taken on job after the decision in the criminal prosecution and only when the petitioner employer refused to take him back inspite of his acquittal he raised the dispute. The respondent workman

appearing as his own witness before the Labour Court also deposed to the same effect. The witness of the petitioner employer denied the said claim of the respondent workman (the counsel for the respondent workman though challenges the said statement of the petitioner's witness on the ground of his not being involved in the business at the relevant time) (I am however not inclined to accept the said objection because when a dispute is raised after a long delay, the concerned witness cannot be expected to be around or available for evidence). The fact remains that not a single letter is proved to have been written by the respondent workman to the petitioner employer after cessation of his employment in July, 1964, asking the petitioner employer to give him work or to allow him to rejoin, neither till the initiation of the criminal prosecution against him nor thereafter and not till shortly before raising the dispute in 1984.

13. One thing is clear in the present case; the respondent workman was not a helpless person. According to him, his services had been terminated in July, 1964; towards the end of 1964, instead of raising an industrial dispute, he chose to make complaints to the Income Tax department and the Home Minister against the petitioner employer. He has in his cross examination also admitted to be possessed of agricultural land and living off it. All this shows that the respondent workman was aware of his legal rights and the weaknesses, if any, of the petitioner employer and instead of raising an industrial dispute or seeking his

reinstatement, opted to complain about the petitioner employer to the Income Tax department. His termination according to him also was not for the reason of embezzlement for which he was prosecuted and has been held by the Labour Court also to be bad only for non compliance with Section 25F. In the circumstances, the reason given for delay i.e. of criminal prosecution is extraneous and irrelevant. The termination now held to be bad for the reason of non compliance of Section 25F could have been held bad for the same reason irrespective of the outcome of the criminal prosecution. The Labour Court got swayed by the said prosecution even though it had nothing to do with the industrial dispute.

14. Else, the law as enunciated from the judgments aforesaid is that long delay is a ground for declining relief and / or for dismissing the reference. The respondent workman appears to be fully aware of the same and sought to explain away the same by pleading the assurances meted out to him. Though the Labour Court has not given any finding thereon but this Court finds the said explanation also to be contrary to ordinary human conduct and unbelievable. It is highly unlikely that the petitioner employer would have meted out any such assurance of reinstatement to the respondent workman especially after the respondent workman had lodged complaints against the petitioner employer with the Income Tax department and the Home Minister and after he was being prosecuted for embezzling the funds of the petitioner employer. In these

circumstances, it also cannot be believed that the assurances, even if any given, would have been believed by the respondent workman. Else, there is no other explanation for the delay and in the facts of the case, the delay makes the dispute a stale one and reference bad and the claim of the respondent workman liable to be dismissed on this ground alone. The Labour court has also held that a workman should not “unnecessarily” delay the raising of the dispute. In the present case, the delay is found to be “unnecessary” and the reason given by the Labour Court for condoning / overlooking the same found to be extraneous.

15. Next contention of the counsel for the petitioner employer is that the Labour Court erroneously rejected its case of the respondent workman having left the services of its own. The petitioner employer had sought to prove the same from the evidence led by the respondent workman in the criminal prosecution where it was so contended. It was the case of the respondent workman that he could not be prosecuted for embezzlement for the reason of his having left the employment of the petitioner employer and settled his accounts. The petitioner employer sought to prove the same by filing the copies of the record of the criminal prosecution and which was collectively given Mark ‘A’ by the Labour Court. The Labour Court however held that the petitioner employer has failed to get the original documents proved and exhibited before the Labour Court and the copies of the record of the Criminal

Court on which Mark 'A' had been put could not be looked into. It is the case of the petitioner employer that it had tried its best to summon the record of the Criminal Court but which was not found and that the technicalities of exhibiting and proving the documents as per the Indian Evidence Act, 1872 do not apply to the Labour Court. Reliance in this regard was placed on *Food Corporation of India Workers Union Vs. Food Corporation of India* JT 1996 (6) SC 724. The same argument has been urged before this Court also. Though there is merit in the said contention of the counsel for the petitioner employer but the petitioner employer before this Court also has not filed even the photocopies of the evidence in the criminal prosecution. This Court is therefore unable to even fathom the evidence, if any, in the criminal prosecution, and in the absence of the same, the finding of the Labour Court in this regard cannot be interfered with.

16. The counsels have addressed at length on the compensation awarded, with the counsel for the petitioner employer contending that considering the fact that i) the respondent workman had admittedly worked for the petitioner employer for one year only and ii) at a salary of Rs.120/- p.m. and iii) the business of the petitioner employer firm had been found to be closed down and iv) it having been established that the respondent no.1 workman was employed at least for some time after the reference of the dispute, the compensation of Rs.1,00,000/- without

giving any reason is unsustainable, and the counsel for the respondent workman contending again that the same cannot be interfered with in the writ jurisdiction. The counsel for the respondent workman in this regard also relies on the judgment dated 12<sup>th</sup> March, 2010 of the Supreme Court in ***Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board*** Civil Appeal No.2335/2010. Per contra, the counsel for the petitioner employer relies on ***Krishi Utpadan Mandi Samiti*** (supra) where the factor of the workman having worked for a short period was held to be relevant, on ***State of M.P. Vs. Arjunlal Rajak*** (2006) 2 SCC 711 where compensation of Rs.10,000/- only was awarded for the reason of the production unit in which the workman was working having closed down, on ***Indiana Engineering Works (Bombay) Pvt. Ltd. Vs. The Presiding Officer*** 1996 (72) FLR 150 (Bom) where it was held that a workman found gainfully employed is not entitled to any amount towards back wages and also on ***Kendriya Vidyalaya Sangathan Vs. S.C. Sharma*** (2005) 2 SCC 363 laying down that the initial burden is on the employee to show that he is not gainfully employed and it is only thereafter that the employer can bring on record material to rebut the claim of the employee. In the present case, the petitioner employer examined a witness who deposed that the respondent workman worked with him from 6<sup>th</sup> January, 1986 to 21<sup>st</sup> July, 1988 at a salary of Rs.1200-1300 per month. This part is not disputed by the respondent workman also. It is urged by the counsel for the petitioner employer that the

respondent workman having concealed such employment also, is not entitled to any relief.

17. As far as the plea of the petitioner employer of the firm in which the respondent workman was employed having closed down in 1964 itself is concerned, it is the case of the respondent workman that though employed in one firm, he was also doing the work of the other firm carrying on business from the same premises and there were common partners in the two firms and the other firm continues to be in business. Again no finding in this regard has been given by the Labour Court.

18. This Court at the time of hearing expressly enquired from the counsels as to the measure of damages, even if to be awarded, in lieu of reinstatement and back wages. The counsel for the petitioner employer contended that the principle of mitigation in the Indian Contract Act, 1872 would apply; that the measure should be confined to the time within which the employee is likely to get alternate employment; that even in Voluntary Retirement Schemes not more than 6 to 7 years wages subject to maximum of Rs.5,00,000/- are given; that the formula of Section 25F of 15 days wages for each year's employment should be followed.

19. I find that a Single Judge of this Court in ***Autocentre Workshop Vs. Delhi Administration*** 125 (2005) DLT 675 has held that

compensation in lieu of reinstatement has to reflect two factors i.e. (a) the amount payable as back wages and (b) the amount payable in lieu of reinstatement which may be denied due to myriad factors. Another Single Judge in *On-Dot Couriers and Cargo Ltd. Vs. Anand Singh Rawat* 165 (2009) DLT 89, from the various judgments cited therein concluded, that compensation equivalent to 3.33 years' salary (including allowances as admissible) on the basis of last pay and allowances would be a reasonable amount to award in lieu of reinstatement.

20. The Labour Court in the present case has not given any basis for the compensation of Rs.1,00,000 /- awarded to the respondent no.1 workman. Though there could be no hard and fast rule for arriving at the amount of compensation but the Industrial Adjudicator is expected to at least spell out the factors which had weighed in his mind in arriving at the compensation awarded. That has not been done in the present case. Going by the formula of 3.33 years' salary also, the respondent no.1 workman who admittedly at the time of termination was drawing Rs.120/- per month, would not be entitled to the compensation of Rs.1,00,000/- particularly when owing to delay, back wages were not to be granted. The award of compensation of Rs.1,00,000/- in the present case is also thus found to be such which is liable for interference under Article 226 of the Constitution. Had the Industrial Adjudicator given any basis for arriving at the said compensation, and had the Court not

found the same to be totally extraneous, it could have been urged that the Court should not impose its own view over that of the Industrial Adjudicator inasmuch as there is bound to be a certain amount of discretion in awarding the compensation. However, when there are no reasons or basis given and when the compensation is found to be at the whim and fancy and *ipse dixit* of the Industrial Adjudicator and with which the Court does not agree, this Court would be entitled to interfere. The Industrial Adjudicator appears to have lost sight of the fact that the termination was in 1964 and the delay of 20 years in raising the dispute was attributable to the respondent workman. The measure of compensation thus had to be as per the rates / wages prevailing in 1964 and could not have been as per the prices of 1984 and by which the Industrial Adjudicator appears to have been guided.

21. However, since this Court has found the dispute raised to be stale and the reference to be bad and the claim of the respondent workman to be barred by principle of laches, there is no need for this Court to compute the compensation to which the respondent workman would have been entitled to.

22. The writ petition therefore succeeds. The award of the Labour Court impugned in this petition is set aside / quashed. The dispute raised by the respondent workman is found to be stale and barred by laches and

the respondent workman found not entitled to any relief. The petitioner employer has become entitled to refund of the sum of Rs.50,000/- deposited as aforesaid in this Court together with the interest accrued thereon. However, to provide sufficient time to the respondent workman to appeal and / or to, if found entitled, obtain stay of such release, the Registry is directed to release the said amount to the petitioner employer only after 16<sup>th</sup> August, 2010.

The writ petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**1<sup>st</sup> July, 2010**  
gsr