

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

Decided on March 26, 2014

+ **W.P.(C) 920/2013**

BHARAT HEAVY ELECTRICALS LIMITED

..... Petitioner

Represented by: Mr.Sandeep Sethi, Sr. Adv. with
Mr.A.K.Roy, Advocate

versus

D.K.SARDANA

..... Respondent

Represented by: Mr.Rajat Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition is to the order dated December 01, 2012 passed by the Labour Court in I.D No.204/2011, whereby the Labour Court dismissed the application filed by the petitioner for consideration on the maintainability of the claim/reference before the Labour Court.

2. The primary reason given by the Labour Court for rejecting the application is that based on the objections raised by the petitioner, issues have been framed and the same are mixed questions of law and fact which have to be decided after due adjudication by allowing the parties to lead oral and documentary evidence.

3. The brief facts are that the respondent joined the services of the petitioner organization as a Stenographer on June 05, 1976. He availed leave between the period June 13, 2000 to July 30, 2000 and proceeded on tour to USA. He applied for extension of leave by way of earned

leave with effect from July 14, 2000 to September 11, 2000 which was permitted to him. Again the respondent made another request for extension of leave by 60 days vide his letter dated October 23, 2000 which was declined by the petitioner and was asked to join duty after the expiry of sanctioned leave. The respondent failed to join his duties on November 11, 2000 and the petitioner struck off the name of the respondent from its rolls vide letter dated February 07, 2001 with effect from November 11, 2000 by invoking clause 10.13 of Leave Rules of the petitioner company. The respondent filed a writ petition bearing No.2262/2005 challenging the order dated February 07, 2001. The reliefs as sought by the respondent are reproduced as under:

(a) Issuance of a writ of certiorari or appropriate writ whereby quashing the impugned order dated February 07, 2001.

(b) Issue of appropriate writ/directions of mandamus thereby directing the respondents to reinstate the petitioner in service with all consequential benefits.

(c) Pass an order thereby awarding cost of the litigation in favour of the petitioner and against the respondents.

(d) Pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

4. The said writ petition was dismissed by the learned Single Judge of this Court on February 09, 2005 by observing as under:

“CM No.1737/2005 in WP(C) No.2362/2005

Allowed, subject to all just exceptions.

WP(C) No.2362/2005

The services of the Petitioner were terminated in February, 2001. The delay in approaching this Court has been explained by contending that the Petitioner had left for the United States of America in the year 2000. At this stage he had applied for leave. It is contended that the termination of services is punitive in nature. I do not propose to go into these details, since the Petitioner has admittedly not been attending duties for a considerable long period. If the Order of termination was contrary to law, as learned counsel for the Petitioner vehemently submits, this Court ought to have been approached with expedition. Having filed the present Writ Petition after a delay of four years, the Petition is liable to be dismissed on the grounds of laches.

Dismissed.

5. The respondent preferred an Intra-Court Appeal being LPA No.973/2005 against order dated February 09, 2005. The appeal was also dismissed by the Division Bench of this Court on April 29, 2005. The relevant part of the order is reproduced as under:

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“The writ petition was filed only in the year 2005 and the delay is sought to be explained on the ground that the petitioner had left for United States of America in the year 2000. In our considered view, learned Single Judge rightly came to the conclusion that the petitioner had admitted not attending to duties for a considerable long period of time and it is really a case of abandonment of the job. That is apparently the reason that the petitioner even failed to challenge the termination order for more than four years.

Learned Senior Counsel for the appellant also seeks to contend that the office order was not served on him as he was in USA. This plea cannot be accepted since the office order was served at the permanent address of the appellant.

We are of the considered view that there has been inordinate delay of four years in approaching the Court and even assuming that the order of termination was contrary to law, the aggrieved party must approach the Court expeditiously. In view of delay and laches in preferring the petition, the writ petition has been rightly dismissed by learned Single Judge and the order calls for no interference in appeal.”

6. Pursuant to the rejection of the appeal, the petitioner released all the statutory benefits including gratuity etc. to the respondent which was accepted by him. In fact the respondent, vide his letter dated June 05, 2006 requested for settlement of terminal benefits including wage revision. It appears that the respondent raised an industrial dispute before the Assistant Labour Commissioner, which culminated in a reference made by the appropriate government vide order dated June 26, 2012. The reference reads as under:

“Whether the dismissal from the services of Sh.Dinesh Kumar Sardana s/o late Om Prakash Sardana is unfair and/or is illegal; if yes what relief is he entitled and what directions are necessary in this respect?

7. Pursuant thereto, the respondent filed his claim petition and in the claim petition the respondent has prayed for the following relief:

“Therefore, the applicant prays to this Hon’ble Court that by interfering in the dispute, the Management be ordered to make the payment of arrears, bonus, amount of arrears of weekly, annual leaves with full back wages and the workman be reinstated in service along with pay increment and justice be granted to the workman.”

8. The petitioner herein has filed a reply to the claim petition.

9. That on August 21, 2012 the petitioner filed an application before the Labour Court on maintainability of the claim/reference and had sought the following prayers:

“(a) Take up and adjudicate upon the present application in the form of preliminary objections/preliminary issues before proceeding further in the matter and decide the same because the pleadings are now complete and the claimant has not denied any of the documents filed by the respondent/applicant, nor has the claimant filed any documents with its pleadings. The trial is yet to commence.

(b) Pass appropriate directions on the given facts and circumstances of the case.

(c) Pass such other or further orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”

10. The respondent filed his reply to the said application on September 29, 2012. It appears that the written arguments were also filed by the parties. The Labour Court decided the said application vide the impugned order, the conclusion of which has already been reflected above.

11. Mr.Sandeep Sethi, learned Senior Counsel appearing for the petitioner has contended that the conclusion of the Labour Court in the impugned order that the issues as framed based on the objections taken by the petitioner in its reply to the claim petition, are mixed question of law and fact and could be decided only after allowing the parties to lead oral and documentary evidence is erroneous, inasmuch as the challenge to his dismissal has attained finality and is apparent from the orders passed by this Court by the Single Judge as well as the Division Bench. Hence the fact being apparent, no oral evidence is required to be led by the parties. He would further submit that the petitioner has also pleaded that the reference is barred by principles of res-judicata and such an issue need to be decided at the threshold.

12. On the other hand, learned counsel for the respondent would submit that the claim is maintainable as the High Court has dismissed the petition on delay and laches, since there is no adjudication on merit. He would further submit that the Industrial Dispute Act being a social legislation the respondent cannot be non-suited only on the ground that the reference and claim are not maintainable.

13. Having considered the submissions made by the counsel for the parties, insofar as the challenge to reference made by the appropriate Government vide order dated June 24, 2012 is concerned, the same is not maintainable in the absence of the appropriate Government being a party in these proceedings.

14. The issue which would arise for consideration is whether the Labour Court was right in holding that the issues framed in terms of the objections taken by the petitioner are mixed question of law and fact could be decided only after allowing the parties to lead oral and documentary evidence. For answering this issue, it is important to know as to what all preliminary objections the petitioner has taken in its reply to the claim petition. On a perusal of the reply, it is noted that some of the preliminary objections are as under:

“4. That since the petitioner is not covered within the definition of ‘Workman’ as mentioned above, the petitioner is not entitled to raise any “Industrial dispute” as defined in Section 2(k) of the I D Act.

5. That the present petition/reference is not maintainable because the petitioner being in the capacity of supervisor/Manager of a Central Government Public Sector Undertaking, was vested with the exclusive legal right of promptly challenging the order of dismissal/removal from service before the Hon’ble High Court of Delhi. It is submitted that the petitioner after

about 4 years from the order of dismissal preferred a Writ Petition vide WP© No. 2362/2005 before the Hon'ble High Court of Delhi challenging the order of termination and for reinstatement. The said writ petition was dismissed vide order dated 9.2.2005. A copy of the writ petition together with the order passed by the Hon'ble High Court is annexed hereto and marked as Annexure-R-3 (Colly). It may be pointed out that there is material difference in the averments made in the belated Writ Petition and the present statement of claim filed under the I.D. Act. The averments suffer from concealment of material and substantive facts.

6. That against the said order the petitioner preferred an LPA vide No. 973/2005 and the same was also dismissed on 29.4.2005 confirming the judgment passed by the Hon'ble Single Judge. Copy of the LPA and order dated 29.4.2005 passed by the Hon'ble Division Bench is annexed hereto and marked as Annexure-R-4. The petitioner did not prefer any Special Leave Petition before the Hon'ble Supreme Court against the said order. Hence the order dated 29.4.2005 passed in LPA has attained finality. Therefore the petitioner's approach of now filing an industrial Dispute after a period of almost 10 years from the date of termination and more than 4 years from the order of the Hon'ble High Court dismissing the writ petition and LPA of the petitioner is bad in law apart from being belated and without jurisdiction".

7. That the present claim also is hit by the principle of 'Res-judicate' because the petitioner having failed in getting any relief from the Hon'ble High Court under the writ jurisdiction is now precluded from raising the same issue after a period of 10 years in the form of any Industrial Dispute based completely on misrepresentation and concealment of facts. Hence is liable to face appropriate judicial proceedings owing to fraud, mis-representation and mis-leading the Court with full knowledge and consciousness. It is submitted that the misrepresentation and concealments are in regard to

self contradiction in the submissions, averments made by the petitioner in the writ petition filed by the petitioner himself and hence it is requested that this Hon'ble Court may initiate appropriate proceedings against the petitioner under Section 340 Cr.P.C. for having committed various offences under the Indian Penal Code. It is also pertinent to mention that the petitioner is in the habit of indulging in multiplicity of litigation without any cause of action and has been continuously litigating since 2007 after having received the entire terminal benefits without any demure or protest.

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9. That the present petition is not maintainable because the petitioner during his tenure of service was not known to have been associated with any such registered union through which the present reference has been filed. It is also not known as to how does the petitioner fall within the definition of 'Workman' within the provisions of Industrial Disputes Act. Therefore, the present petition has been instituted without jurisdiction as well as through a person devoid of any competence so far as the petitioner herein is concerned. Hence the present petition is liable for outright rejection."

15. On a reading of the preliminary objections taken by the petitioner in its reply, it is apparent that insofar as the issue whether the respondent is a workman; whether the respondent is precluded from raising the claim after a period of 10 years in the form of an industrial dispute; whether the espousal by the union is bad are surely mixed question of law and fact. Whether the same reasoning would hold good to the plea of res-judicata which would have a bearing on the reference, the answer is "No".

16. This Court is conscious of the fact that sometimes preliminary objections are taken and a plea is raised to decide such objections as preliminary issues to delay the proceedings. Such type of practice has

been deprecated by the Supreme Court in various cases. In the given facts, since no oral evidence has to be led except producing the orders passed by the Single Judge of this Court in W.P.(C) 2262/2005 and the order of the Division Bench in LPA No.973/2005 and copy of the pleadings the issue need to be decided by reading the nature of the order passed by the Single Judge and the Division Bench coupled with the law of res-judicata as held by this Court and the Supreme Court.

17. The impugned order dated December 01, 2012 passed by the Labour Court in an application filed by the petitioner in I.D No.204/2011 is set aside. The matter is remanded back to the Labour Court for deciding the preliminary issue about the reference and proceedings being barred by principle of res-judicata, keeping in view the orders passed by the learned Single Judge of this Court in W.P.(C) No.2262/2005 and the Division Bench in LPA No.973/2005 by taking into account the pleadings as filed by the parties on record and the position of law as laid down by this Court and the Supreme Court. The same shall be decided by the Labour Court within a period of 4 weeks from April 20, 2014, on which date the parties shall appear before the Labour Court. The Interim Order dated February 15, 2013 is vacated. The proceedings are revived.

18. The writ petition is accordingly disposed of without any order as to costs.

C.M No.1772/2013

Dismissed as infructuous.

(V.KAMESWAR RAO)
JUDGE

MARCH 26, 2014
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