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

Judgment delivered on: 17th October, 2014

+ W.P.(C) No.7167/2014

MANVIR SINGH

..... Petitioner

Represented by: Mr. Anuj Aggarwal and
Ms. Divya Aggarwal,
Advocates.

Versus

NEW DELHI MUNICIPAL COUNCIL

..... Respondent

Represented by: Mr. Arun Bhardewaj, CGSC
and Mr. Rishi Kapoor, ASC
for the Respondent.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition, the petitioner has assailed the impugned order dated 15.04.2014 passed by the Industrial Tribunal in application bearing No.14/13 in I.D. No. 116/2002. Also seeks directions to set aside the award dated 10.11.2004 passed by the Industrial Tribunal in I.D. No. 116/2002, whereby the learned Industrial Tribunal answered the reference in negative.

2. Case of the petitioner is that the petitioner/workman was stopped from entering the premises of respondent establishment with effect from 02.04.1995. Thereafter, a meeting was held on 14.09.2001 in the Union

Office and it was unanimously resolved in the said meeting that an industrial dispute will be raised before the Assistant Labour Commissioner, NCT of Delhi, in respect of reinstatement and regularization of the petitioner. Accordingly, the Statement of Claim was filed by the Union on behalf of the petitioner. The terms of reference were as under:-

“1. Whether the services of Shri Manvir Singh S/o Shri Gokal Prasad have been terminated illegally and/or unjustifiably by the management if so to what sum of money as monetary relief alongwith consequential benefits in terms of existing laws/ Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?”

2. Whether Shri Manvir Singh is entitled to be regularised in the post and in pay scale of Mali, if so, from which date and what directions are necessary in this respect?”

3. The Management contested the claim of the workman and in the written statement, the respondent took the preliminary objection that workman did neither serve a notice prior to instituting the claim as per the provisions of the NDMC Act, nor serve a demand notice on the Management.

4. It is further stated that the respondent never terminated the services of the workman, but the workman himself abandoned the job. The workman was employed as a temporary muster roll worker with the management with periodic breaks.

5. In para 7 of the award dated 10.11.2004 it is recorded that after

framing of the issues, the case was fixed for workman evidence. Many opportunities were granted for workman evidence but neither the workman appeared nor he led any evidence. Under these circumstances, the learned Tribunal has drawn adverse inference against the workman and accordingly, answered the reference in negative.

6. Being aggrieved, the petitioner moved an application bearing Misc. No.14/13 in I.D. No.116/2002 for setting aside the *ex parte* award. The same was dismissed by the learned Tribunal vide its detailed order dated 15.04.2014, whereby it is opined that in normal case, such a long period of eight years is not consumed in publication and enforcement of an award. Since the present application has been filed after about more than eight years of the award and that it is not the case of workman that the award has not been published or that the same has not become enforceable, the Tribunal has become *functus officio* in this case.

7. To support his case, learned counsel for the petitioner has relied upon the case of ***Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Anr.***, reported in ***AIR 1999SC1351***, wherein the Apex Court held as under:-

“11. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be

existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned Counsel for the respondent-management on the full bench judgment of the Punjab and Haryana High Court in Ram Chancier Morya v. State of Haryana (1999) 1 SCT 141 is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held "neither any limitation has been provided nor any guidelines to determine as to what shall be the period of limitation in such cases." However, it went on further to say that "reasonable time in the cases of labour for demand of reference or dispute by appropriate government to labour tribunals will be five years after which the government can refuse to make a reference on the ground of delay and latches if there is no explanation to the delay." We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application under Section 37C of the Act to be adjudicated. It is not the function of the court to prescribe the limitation where the Legislature in its wisdom had thought it fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the Judges presiding the court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the Legislature. The judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purposes of invoking the

jurisdiction of the courts/boards and tribunal under the Act.

8. Even if the learned Tribunal had power to entertain the aforesaid application, then also the petitioner failed to explain the long delay of eight years except the contention that the petitioner was not informed by the Union, which was authorized by him to file the claim petition before the learned Tribunal.

9. Moreover, the claim petition was filed in the year 2001 and the application for setting aside the *ex parte* award was filed in the year 2012. Since the petitioner continued to sleep over the matter for eleven long years and has not made any averment in the application to explain the inordinate delay of eight years, therefore, in my considered view, there is no good ground made by the petitioner to set aside the ex-parte award dated 10.11.2004 passed by the Tribunal.

10. In view of the above noted facts, I find no merits in the instant petition.

11. The same is dismissed accordingly.

**SURESH KAIT
(JUDGE)**

OCTOBER 17, 2014
Sb/jg