

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of Decision:- 13.11.2019**

+ W.P.(C) 11196/2015

M/S ORIX AUTO INFRASTRUCTURE SERVICES LTD

..... Petitioner

Through: Mr. Anurag Choudhary and Mr.
Saurabh Jain and Ms. Sarika,
Advocates

versus

SANATAN DAS

..... Respondent

Through: Mr. Pankaj Anil Arora, Advocates

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****REKHA PALLI, J. (ORAL)**

1. The present writ petition filed by the management assails the order dated 22.09.2015 passed by the learned Labour Court XI, Karkardooma Court, Delhi in DID No. 692/14. Under the impugned order, the Labour Court has rejected the petitioner's application under Section 2A (3) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') seeking dismissal of the respondent's claim on the ground of being barred by limitation.

2. The respondent, claiming that he had been working as a Driver with the petitioner since 20.02.2008 from where he was illegally terminated on 02.08.2010, raised a direct industrial dispute (hereinafter referred to as 'the first claim'). The claim was opposed by

the petitioner in its reply by contending *inter alia* that as the said claim was not espoused by the petitioner's regular workmen, it could not be treated as an industrial dispute and in the absence of a valid reference in accordance with the provisions of the Act, the respondent's claim was liable to be rejected. A copy of the aforesaid reply filed by the petitioner before the Labour Court has been handed over in Court and has been taken on record.

3. The first claim remained pending before the Labour Court for a period of almost three and a half years. However, in view of the amendment to Section 2A of the Act whereby Section 2A(2) was inserted w.e.f. 15.09.2010 stipulating that a direct claim would be maintainable only if the workman first approached the Conciliation Officer for conciliation of the dispute, the Labour Court rejected the respondent's claim on 01.03.2014 without expressing any opinion on merits. On 22.04.2014, immediately pursuant to the award dated 01.03.2014 rejecting the first claim for non-compliance of Section 2A(2) of the Act, the respondent approached the Conciliation Officer and a failure report came to be submitted on 13.10.2014. The respondent then raised a fresh industrial dispute under Section 2A(2) on 20.11.2014 (hereinafter referred to as 'subsequent claim') wherein notice was issued directing the petitioner/management to file its reply.

4. Upon receiving notice of the subsequent claim, the petitioner instead of filing any reply thereto to the subsequent claim, preferred an application under Section 2A(3) of the Act, seeking dismissal of the respondent's claim petition which was rejected by the Labour Court by observing as under:-

"4. Workman filed this Direct Industrial Dispute u/s 2A(2) of the Industrial Disputes Act, 1947 alleging that workman was appointed by the management on 11.01.2008 as "Radio Taxi Driver" and management illegally terminated the services of workman on 02.08.2010 in violation of provisions of Section 25F of the Industrial Disputes Act, 1947. Workman allegedly served demand notice dated 04.08.2010 through registered post upon the management but management despite having receipt of the same did not reinstate the workman in service. Thereafter workman filed/raised direct industrial dispute u/s 10(4A) of the Industrial Disputes Act, 1947 on 30.10.2010. Proceedings of the said direct industrial disputes continued till the stage of final arguments and on 28.02.2014 it was observed that w.e.f. 15.09.2010 provisions of section 2A(2) of the Industrial Disputes Act, 1947 had come into force but this direct industrial dispute was filed without complying with the provisions of Section 2A(2) of the Industrial Disputes Act, 1947. Vide award dated 01.03.2014 direct industrial dispute was held to be not maintainable for want of compliance with the provisions of section 2A(2) of the Industrial Disputes Act, 1947 and same was held to be liable to be dismissed and, accordingly, it was dismissed. Thereafter, workman filed/raised the industrial dispute on 22.04.2014 before the Conciliation Officer and Conciliation Officer gave many opportunities during the conciliation proceedings to the management to put its stand before the Conciliation Officer but management did not do so. Thus, this direct industrial dispute u/s 10(4A) & 2A (2) of the Industrial Disputes Act, 1947 on the basis of failure report dated 13.10.2014.

5. It is pertinent to note that as per workman his services were terminated by the management on 02.08.2010. Workman sent demand notice on 04.08.2010 and workman filed direct industrial dispute u/s 10(4A) of the Industrial Disputes Act, 1947 on 30.10.2010 which was, however, dismissed vide order dated 01.03.2014 for want of compliance with the provisions of Section 2A(2) of the Industrial Disputes Act, 1947, which was inserted in the statute book w.e.f. 15.09.2010. Provisions of

20

Section 2A(3) of the Industrial Disputes Act, 1947 for barring a workman from raising an industrial dispute after the expiry of three years from the date of termination of his services is intended to be applied to a workman who sleeps over his rights and does not take any action for redressal of his grievances against the management before the expiry of three years from the date of his termination of his services. Here, it is not that workman slept over his rights during the entire period of three years as abovesaid. Workman did raise the industrial dispute within a few months after the termination of his services by the management; however, the said industrial dispute was dismissed as abovesaid. Thereafter workman has allegedly complied with provisions of section 2A(2) of the Industrial Disputes Act, 1947 and filed this direct industrial dispute before the court. Going by the true and real spirit of the application area of provisions of section 2A(3) of the Industrial Disputes Act, 1947 it can be said that provisions does not apply to the facts of this case. What is pertinent to note is that even the management in its WS had not taken any stand regarding the workman not complying with the provisions of section 2A(2) of the Industrial Disputes Act, 1947 and issue regarding non-compliance of section 2A(2) of the Industrial Disputes Act, 1947 was noticed at the stage of final arguments. Whatever has happened in this case appears to have happened because none of the parties had come to know about the amendments in section 2A of the Industrial Disputes Act, 1947 w.e.f. 15.09.2010. In my considered opinion, application moved by management in the peculiar facts and circumstances of this case merits dismissal and same is hereby dismissed. None of the case laws relied upon by Id. Counsel for the management has any application on the facts and circumstances of this case. None of these case laws pertains to provisions of section 2A of the Industrial Disputes Act, 1947 dealing with factual situation as in this case. In my considered opinion every court constituted for the purposes of doing justice according to law must be deemed to possess as a necessary corollary and as inherent in its very constitution all such powers as may be necessary to do the justice and undo a wrong in the cause of

administration of justice."

5. The present petition has been filed impugning the aforesaid order. While issuing notice in the present petition, this Court vide its order dated 02.12.2015 had directed the petitioner to file its reply to the claim petition and had further directed the Labour Court to proceed only till the stage of completion of pleadings. The parties have since completed their pleadings and the matter is presently pending adjudication before the Court.

6. In support of the petition, learned counsel for the petitioner submits that once the very claim of the respondent/workmen on 20.11.2014 challenging his alleged termination on 02.08.2010 was filed beyond the period of three years prescribed in Section 2A(3) of the Act, the same could not be entertained by this Court especially when there is no provision in the Act for entertaining time barred direct industrial disputes. He submits that the Labour Court's reliance on the order dated 01.03.2014 passed in the respondent's first claim was misplaced as at the time of rejecting the same, the respondent was not granted any liberty to raise a fresh industrial dispute. He further submits that in any event, even if the respondent was entitled to raise a fresh claim, the same could not have been done beyond the prescribed time period without filing an appropriate application seeking condonation of delay.

7. Mr.Jain further submits that since the provisions of the Limitation Act, 1963 are not per se applicable to the provisions of the Industrial Disputes Act, 1947, the Labour Court could not have

NR
excluded the period during which the respondent's first claim had remained pending. In support of his aforesaid submission, he places reliance on the decision of the Supreme Court in *The Commissioner of Sales Tax Uttar Pradesh, Lucknow v. M/s Parson Tools and Plants, Kanpur* [AIR 1975 SC 1039]. He also places reliance on *Smita Subhash Sawant v. Jagdeeshwari Jagdish Amin & Ors.*, to submit that the period of limitation prescribed under the statute cannot be extended merely on the ground of hardship and sympathy. By further placing reliance on a decision of this Court in *Balwant Singh & Ors. v. Sahara India Parivar & Ors.* [2014 LawSuit (Del) 576] and of the Karnataka High Court in *ITC Infotech India Ltd. v. Venkataramana Uppada* [2016 Law Suit (Kar)224], he contends that a claim petition filed beyond the statutorily prescribed period of three years was not maintainable and had to be necessarily dismissed.

8. On the other hand, learned counsel for the respondent submits that since the amendment to Section 2A of the Act, mandating a workman to first approach the Conciliation Officer before raising a direct industrial dispute, came to be notified only on 15.09.2010, i.e., barely a month after the respondent's termination under challenge, he could not be faulted for raising the first claim without approaching the Conciliation Officer. He submits that in fact none of the parties were aware of the said amendment till the stage of final arguments in respect of the respondent's first claim. Even the petitioner, while filing its reply, did not raise any specific objection to that effect, which fact has also been noted in the impugned order. He further submits that once the respondent's first claim was entertained by the

23

Labour Court despite the amendment coming into effect, the respondent cannot be faulted or penalized for the delay in filing a fresh claim in November, 2014 and is entitled to seek a proper adjudication of his claim on merits. He contends that the Labour Court has rightly rejected the petitioner's application and decided to consider the respondent's claim on merits after noticing that the period of limitation for the respondent to raise a claim had elapsed during the pendency of his first claim. He, thus, contends that there is no reason as to why this Court should exercise its writ jurisdiction to interfere with the impugned award. He, therefore, prays that the writ petition be dismissed.

9. I have considered the submissions of learned counsel for the parties and with their assistance perused the record. The admitted position which emerges from the record is that the respondent/workman claiming to have been illegally terminated from service on 02.08.2010, had issued a demand notice immediately thereafter and raised an industrial dispute on 30.10.2010, i.e., within less than 3 months from the date of his alleged termination. It is also undisputed that the first claim was made by him without approaching the Conciliation Officer, which remained pending before the Court for almost three and a half years despite the same not being maintainable from day one. The first claim came to be rejected only on 01.03.2014 by which time, the period for filing a claim, which is to be counted from the date of the alleged termination, already stood expired. No doubt, the period of limitation provided in Section 2A(3) of the Act for raising a direct industrial dispute has a salutary purpose and is

24
meant to prevent workmen from raising stale claims, but this provision cannot be read in a manner so as to deprive a workman from the reliefs he is entitled to, especially when he had diligently raised his initial claim within the period prescribed under the Act. In the present case, the amendment to Section 2A came to be notified on 15.09.2010 whereas the respondent was allegedly terminated on 02.08.2010; therefore, while undoubtedly the amendment was applicable to him, but his failure to approach the Conciliation Officer in terms of the amended provision before raising the first claim, cannot be called deliberate.

10. In fact, the record shows that even though it was clear from a bare perusal of the first claim itself, that the respondent had not approached the Conciliation Officer before directly raising the industrial dispute, perhaps the Labour Court had also failed to notice the effect of the amendment, till the matter reached the stage of final hearing after almost three and a half years. It also transpires that the Labour Court had dismissed the respondent's first claim only on the joint submission of the counsel, by specifically observing that it was not expressing its opinion on the merits of the case. While passing the impugned order the Labour Court also noticed that grave injustice and prejudice had been caused to the respondent on account of the pendency of the first claim for three and a half years thereby running out the clock for him to raise a claim in accordance with the amended Act, within the statutorily prescribed time period. In these circumstances, while dealing with the respondent's subsequent claim, the Labour Court has, in consonance with the spirit of the Act,

25

declined to accede to the petitioner's request for rejection of the same. I have no hesitation in concurring with this finding of the Labour Court.

11. Had the Labour Court noticed at the very beginning that the first claim was not maintainable, in view of the amendment to Section 2A, and rejected the same in a timely manner, the present situation could have been avoided and the respondent could have easily raised a fresh industrial dispute well before the limitation period of three years elapsed on 02.08.2013. Even if the provisions of Limitation Act are not strictly applicable to the Industrial Disputes Act, it cannot be said that the Labour Court is barred from following the principles as laid down in Section 14 of the Limitation Act, when evidently not only were the parties unaware of the amendment, but even the Labour Court had failed to notice the effect of the said amendment on the first claim, for a long period of three and a half years.

12. I have also considered the decisions relied upon by the learned counsel for the petitioner and find that none of them forward the petitioner's case in any manner. In *The Commissioner of Sales Tax Uttar Pradesh, Lucknow (supra)* the Supreme Court was dealing with a case of a fiscal statute under the U.P Sales Tax Act and in *Smita Subhash Sawant (supra)* the case related to filing of an election petition, whereas in the present case the Labour Court was dealing with a social welfare statute like the Industrial Disputes Act wherein it found that the respondent had been very vigilant about raising his claim. Therefore, it cannot be said that the respondent's claim was liable to be rejected only on the ground of delay. I have also

considered the decision of the Coordinate Bench of this Court in **Balwant Singh** (*supra*) as also the decision of the High Court of Karnataka in **ITC Infotech India Ltd.** (*supra*) and find that these cases related to direct industrial disputes sought to be raised for the first time beyond the period of three years and were therefore rejected as being time barred. In the present case, as noted hereinabove, the initial industrial dispute was raised by the respondent within three months of his termination and, therefore, as rightly observed by the Labour Court it would be in the interest of justice to adjudicate the respondent's claim on merits.

13. For the aforesaid reasons, I find absolutely no reason to interfere with the well-reasoned order passed by the Labour Court in exercise of my writ jurisdiction. Consequently the writ petition being meritless is dismissed.

14. Keeping in view the fact that the industrial dispute raised by the respondent has remained pending for the last many years, the Labour Court is requested to decide the same expeditiously in accordance with law.

NOVEMBER 13, 2019

rhc



REKHA PALLI, J