

Neutral Citation No. - 2023:AHC-LKO:85351

Reserved

Case :- WRIT - C No. - 8451 of 2023

Petitioner :- Prem Sagar Vishwakarma

Respondent :- Presiding Officer, Central Government Industrial Tribunal-
Cum-Labour Court, Lko. And 2 Others

Counsel for Petitioner :- Anurag Srivastava

Counsel for Respondent :- A.S.G.I.

Hon'ble Pankaj Bhatia, J.

1. Heard learned Counsel for the petitioner and learned ASG assisted by Sri Anand Dwivedi, learned Counsel appearing on behalf of the respondents no.1 and 2.
2. The present petition has been filed by the petitioner challenging the order dated 27.04.2023 passed by the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, whereby the application filed by the petitioner under Section 2A of the Industrial Disputes Act, 1947 was dismissed as being time barred.
3. On perusal of the order impugned, it is clear that the Industrial Tribunal while rejecting the application relied upon the provisions of Section 2A as contained in the Act and introduced by virtue of Industrial Disputes (Amendment) Act, 2010.
4. On perusal of the Industrial Disputes (Amendment) Act, 2010 being Act No.24 of 2010, which came into effect on 15.09.2010, Section 2A was amended providing limitation for moving an application. A period of three years was prescribed for filing an appropriate application.
5. As the application filed by the petitioner was beyond period of three years, the impugned order came to be passed dismissing the

application on the ground that the same was barred by limitation prescribed under Section 2A(3) of the Industrial Disputes Act, 1947.

6. The Counsel for the petitioner has produced a copy of The Repealing and Amending Act, 2016 being Act No.23 of 2016. It is argued that The Repealing Act being Act No.23 of 2016 has repealed the entire Industrial Disputes (Amendment) Act, 2010 and thus, the application filed by the petitioner was maintainable and the Tribunal has erred in rejecting the application filed by the petitioner.
7. The learned ASG, on the other hand, placing reliance on an order dated 20.01.2023 passed by the Central Government Industrial Tribunal-cum-Labour Court, Lucknow in ID No.89/ 2021; VD Jha vs Scooter India Limited along with other cases, argues on behalf of the respondents that in this aspect what repealed and what replaced was considered by the Tribunal in its judgment. He argues that in view thereof, the submission of the Counsel for the petitioner deserves to be rejected.
8. It appears from the record that the services of the petitioner was terminated vide order dated 30.12.2013 and the application was preferred under Section 2A on 21.08.2017.
9. In terms of the arguments advanced in between the parties, the sole issue to be decided by this Court is with regard to the rights of the petitioner to have approached for redressal of his grievance before the authority under the Industrial Disputes Act. In terms of the provisions of the Industrial Disputes Act particularly Section 2A(3) read with the Repealing and Amending Act, 2016, it has already been noted above that services of the petitioner were come to an end on 30.12.2013, the date upto which allegedly the petitioner worked with the organization and was not allowed to work thereafter. To understand the said

controversy, it is essential to note the provisions as contained in Section 2A of the Industrial Disputes Act is quoted below:

“[2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”

10. The said amendment under Section 2A(3) was inserted by Act No.24 of 2010 w.e.f. 15.09.2010. Subsequently, the Central Government enacted the Repealing and Amending Act, 2016 being Act No.23 of 2016 w.e.f. 06.05.2023, whereby the entire Amending Act No.24 of 2010 was repealed in whole. It is essential to note Section 4 of the Repealing and Amending Act, 2016, which reads as under:

“4. The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to:

and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from any enactment hereby repealed:

nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.”

11. Thus, in terms of the repealing of the entire Act No.24 of 2010, the submission of the Counsel for the petitioner is that no limitation was prescribed for raising a grievance/ approaching the Tribunal for redressal of his rights and thus, the same could have been done ignoring the bar of Section 2A(3) of the Industrial Disputes Act and to that extent, the Tribunal had erred in rejecting the application on the ground of delay.
12. The Industrial Tribunal after referring to the various cases as referred in the order impugned, was of the view that as the services of petitioner were terminated on 30.12.2013 and the same was challenged by filing an industrial dispute on 21.08.2017, the same was clearly barred by virtue of limitation provided under Section 2A(3) of

the Industrial Disputes Act. The said order, deserves interference solely on account of the fact that the subsequent repealing of Section 2A(3) of the Industrial Disputes Act by virtue of Act No.23 of 2016 has not been introduced by the Tribunal, as such, on that ground alone, the award dated 27.04.2023 cannot be sustained and is quashed.

13. It is essential, however, to meet the submission raised by the Counsel for the respondent that the Industrial Tribunal has passed order considering the repealing act also in respect of the same other matters. The said submission of the Counsel for the respondent cannot be considered in the present case solely as the judgment rendered by the Presiding Officer under the Industrial Disputes Act was consider the effect of pending proceedings instituted after the Amending Act No.24 of 2010, but continuing after the enforcement of the Act No.24 of 2016. In the present case, the facts are clearly different. The petitioner after being allegedly terminated on 30.12.2013 have approached the Tribunal upto a period of three years i.e. up to 29.12.2016, when the Repealing Act No.23 of 2016 had not been enacted, however, the Repealing Act No.23 of 2016 was enacted on 06.05.2016, thus, the limitation created by virtue of Section 2A(3) stood vanished on 06.05.2016, as such, it was open to the petitioner to have agitated his rights by filing an appropriate application as there is no limitation prescribed. This finding also flows by virtue of the judgment of the Hon'ble Supreme Court in the case of ***Fibre Boards Private Limited, Bangalore vs Commissioner of of Income Tax, Bangalore; (2015) 10 SCC 333***, wherein the Hon'ble Supreme Court had the occasion to interpret the scope of Section 6 and 6A of the General Clauses Act after analysis various judgments, which reads as under:

“23. But then Shri Arijit Prasad put before us two roadblocks in the form of two Constitution Bench decisions. He cited Rayala Corpn. (P) Ltd. v. Director of Enforcement [(1969) 2 SCC 412] which was followed in

Kolhapur Canesugar Works Ltd. v. Union of India [(2000) 2 SCC 536]. He argued based upon these two judgments that an “omission” would not amount to “repeal” and that since the present case was concerned with the omission of Section 280-ZA, Section 24 would have no application.

24. Shri Prasad is correct in relying upon these two Constitution Bench judgments [(1969) 2 SCC 412], [(2000) 2 SCC 536] for they do indeed say that in Section 6 of the General Clauses Act, the word “repeal” would not take within its ken an “omission”.

25. In Rayala Corpn. (P) Ltd. [(1969) 2 SCC 412] , what fell for decision was whether proceedings could be validly continued on a complaint in respect of a charge made under Rule 132-A of the Defence of India Rules, which ceased to be in existence before the accused were convicted in respect of the charge made under the said Rule. The said Rule 132-A was omitted by a Notification dated 30-3-1966. What was decided in that case is set out by para 17 of the said judgment, which is as follows: (SCC p. 424)

“17. Reference was next made to a decision of the Madhya Pradesh High Court in State of M.P. v. Hiralal Sutwala [1958 SCC OnLine MP 149 : AIR 1959 MP 93] but, there again, the accused was sought to be prosecuted for an offence punishable under an Act on the repeal of which Section 6 of the General Clauses Act had been made applicable. In the case before us, Section 6 of the General Clauses Act cannot obviously apply on the omission of Rule 132-A of the DIRs for the two obvious reasons that Section 6 only applies to repeals and not to omissions, and applies when the repeal is of a Central Act or Regulation and not of a Rule. If Section 6 of the General Clauses Act had been applied, no doubt this complaint against the two accused for the offence punishable under Rule 132-A of the DIRs could have been instituted even after the repeal of that Rule.”

26. It will be clear from a reading of this paragraph that the Madhya Pradesh High Court judgment was distinguished by the Constitution Bench on two grounds. One being that Section 6 of the General Clauses Act does not apply to a rule but only applies to a Central Act or Regulation, and secondly, that Section 6 itself would apply only to a “repeal” not to “an omission”. This statement of law was followed by another Constitution Bench in Kolhapur Canesugar Works Ltd. Case [(2000) 2 SCC 536] . After setting out para 17 of the earlier judgment, the second Constitution Bench judgment states as follows: (SCC p. 550, para 33)

“33. In para 21 of the judgment the Full Bench [Saurashtra Cement and Chemical Industries Ltd. v. Union of India, (1993) 1 Guj LR 5 : (1995) 79 ELT 367] has noted the decision of a Constitution Bench of this Court in Chief Inspector of Mines v. Karam Chand Thapar [AIR 1961 SC 838 : (1961) 2 Cri LJ 1] and has relied upon the principles laid down therein. The Full Bench overlooked the position that that was a case under Section 24 of the General Clauses Act which makes provision for continuation of orders, notification, scheme, rule, form or bye-law, issued under the repealed Act or regulation under an Act after its repeal and re-enactment. In that case Section 6 did not come up for consideration. Therefore the ratio of that case is not applicable to the present case. With respect we agree with the principles laid down by the Constitution Bench in Rayala Corpn. Case [(1969) 2 SCC 412]. In our considered view the ratio of the said decision squarely applies to the case on hand.”

27. Kolhapur Canesugar Works Ltd. [(2000) 2 SCC 536] judgment also concerned itself with the applicability of Section 6 of the General Clauses Act to the deletion of Rules 10 and 10-A of the Central Excise Rules on 6-8-1977.

28. *An attempt was made in General Finance Co. v. CIT [(2002) 7 SCC 1] to refer these two judgments [(1969) 2 SCC 412], [(2000) 2 SCC 536] to a larger Bench on the point that an omission would not amount to a repeal for the purpose of Section 6 of the General Clauses Act. Though the Court found substance in the argument favouring the reference to a larger Bench, ultimately it decided that the prosecution in cases of non-compliance with the provision therein contained was only transitional and cases covered by it were few and far between, and hence found on facts that it was not an appropriate case for reference to a larger Bench.*

29. *We may also point out that in G.P. Singh's Principles of Statutory Interpretation, 12th Edn., the learned author has criticised the aforesaid judgments in the following terms:*

“Section 6 of the General Clauses Act applies to all types of repeals. The section applies whether the repeal be express or implied, entire or partial or whether it be repeal simpliciter or repeal accompanied by fresh legislation. The section also applies when a temporary statute is repealed before its expiry, but it has no application when such a statute is not repealed but comes to an end by expiry. The section on its own terms is limited to a repeal brought about by a Central Act or Regulation. A rule made under an Act is not a Central Act or Regulation and if a rule be repealed by another rule, Section 6 of the General Clauses Act will not be attracted. It has been so held in two Constitution Bench decisions. The passing observation in these cases that ‘Section 6 only applies to repeals and not to omissions’ needs reconsideration for omission of a provision results in abrogation or obliteration of that provision in the same way as it happens in repeal. The stress in these cases was on the question that a ‘rule’ not being a Central Act or Regulation, as defined in the General Clauses Act, omission or repeal of a ‘rule’ by another ‘rule’ does not attract Section 6 of the Act and proceedings initiated under the omitted

rule cannot continue unless the new rule contains a saving clause to that effect.”(at pp. 697-98.)

30. In view of what has been stated hereinabove, perhaps the appropriate course in the present case would have been to refer the aforesaid judgment to a larger Bench. But we do not find the need to do so in view of what is stated by us hereinbelow.

31. First and foremost, it will be noticed that two reasons were given in Rayala Corpn. (P) Ltd. [(1969) 2 SCC 412] for distinguishing the Madhya Pradesh High Court judgment [1958 SCC OnLine MP 149 : AIR 1959 MP 93]. Ordinarily, both reasons would form the ratio decidendi for the said decision and both reasons would be binding upon us. But we find that once it is held that Section 6 of the General Clauses Act would itself not apply to a rule which is subordinate legislation as it applies only to a Central Act or Regulation, it would be wholly unnecessary to state that on a construction of the word “repeal” in Section 6 of the General Clauses Act, “omissions” made by the legislature would not be included. Assume, on the other hand, that the Constitution Bench had given two reasons for the non-applicability of Section 6 of the General Clauses Act. In such a situation, obviously both reasons would be ratio decidendi and would be binding upon a subsequent Bench. However, once it is found that Section 6 itself would not apply, it would be wholly superfluous to further state that on an interpretation of the word “repeal”, an “omission” would not be included. We are, therefore, of the view that the second so-called ratio of the Constitution Bench in Rayala Corpn. (P) Ltd. [(1969) 2 SCC 412] cannot be said to be a ratio decidendi at all and is really in the nature of obiter dicta.

32. Secondly, we find no reference to Section 6-A of the General Clauses Act in either of these Constitution Bench judgments. Section 6-A reads as follows:

“6-A.Repeal of Act making textual amendment in Act or Regulation.—Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.”

33. A reading of this Section would show that a repeal by an amending Act can be by way of an express omission. This being the case, obviously the word “repeal” in both Section 6 and Section 24 would, therefore, include repeals by express omission. The absence of any reference to Section 6-A, therefore, again undoes the binding effect of these two judgments on an application of the *per incuriam* principle.

34. Thirdly, an earlier Constitution Bench judgment referred to earlier in this judgment, namely, *State of Orissa v. M.A. Tulloch & Co.* [(1964) 4 SCR 461 : AIR 1964 SC 1284] has also been missed. The Court there stated: (SCR pp. 483-84 : AIR pp. 1294-95, para 21)

“... Now, if the legislative intent to supersede the earlier law is the basis upon which the doctrine of implied repeal is founded could there be any incongruity in attributing to the later legislation the same intent which Section 6 presumes where the word ‘repeal’ is expressly used. So far as statutory construction is concerned, it is one of the cardinal principles of the law that there is no distinction or difference between an express provision and a provision which is necessarily implied, for it is only the form that differs in the two cases and there is no difference in intention or in substance. A repeal may be brought about by repugnant legislation, without even any reference to the Act intended to be repealed, for once legislative competence to effect a repeal is posited, it matters little whether this is

done expressly or inferentially or by the enactment of repugnant legislation. If such is the basis upon which repeals and implied repeals are brought about it appears to us to be both logical as well as in accordance with the principles upon which the rule as to implied repeal rests to attribute to that legislature which effects a repeal by necessary implication the same intention as that which would attend the case of an express repeal. Where an intention to effect a repeal is attributed to a legislature then the same would, in our opinion, attract the incident of the saving found in Section 6 for the rules of construction embodied in the General Clauses Act are, so to speak, the basic assumptions on which statutes are drafted.”

(emphasis supplied)

35. *The two later Constitution Bench judgments [(1969) 2 SCC 412] , [(2000) 2 SCC 536] also did not have the benefit of the aforesaid exposition of the law. It is clear that even an implied repeal of a statute would fall within the expression “repeal” in Section 6 of the General Clauses Act. This is for the reason given by the Constitution Bench in M.A. Tulloch & Co. [(1964) 4 SCR 461 : AIR 1964 SC 1284] that only the form of repeal differs but there is no difference in intent or substance. If even an implied repeal is covered by the expression “repeal”, it is clear that repeals may take any form and so long as a statute or part of it is obliterated, such obliteration would be covered by the expression “repeal” in Section 6 of the General Clauses Act.*

36. *In fact in Halsbury's Laws of England, Fourth Edn., it is stated that:*

“So far as express repeal is concerned, it is not necessary that any particular form of words should be used. (R.v. Longmead [(1795) 2 Leach 694 : 168 ER 448] , Leach at 696). All that is required is that an intention to abrogate the enactment or portion in question should be clearly shown. [Thus, whilst the formula ‘is hereby repealed’ is frequently used, it is equally common for it to be provided that an enactment ‘shall cease to have effect’ (or, If not yet in operation, ‘shall not have effect’) or that a

particular portion of an enactment 'shall be omitted'.]"

37. *At this stage, it is important to note that a temporary statute does not attract the provision of Section 6 of the General Clauses Act only for the reason that the said statute expires by itself after the period for which it has been promulgated ends. In such cases, there is no repeal for the reason that the legislature has not applied its mind to a live statute and obliterated it. In all cases where a temporary statute expires, the statute expires of its own force without being obliterated by a subsequent legislative enactment. But even in this area, if a temporary statute is in fact repealed at a point of time earlier than its expiry, it has been held that Section 6 of the General Clauses Act would apply. (See State of Punjab v. Mohar Singh [(1955) 1 SCR 893 : AIR 1955 SC 84 : 1955 Cri LJ 254] , SCR at p. 898.)*

38. *In CIT v. Venkateswara Hatcheries (P) Ltd. [(1999) 3 SCC 632] , this Court was faced with an omission and re-enactment of two Sections of the Income Tax Act. This Court found that Section 24 of the General Clauses Act would apply to such omission and re-enactment. The Court has stated as follows: (SCC p. 638, para 12)*

"12. As noticed earlier, the omission of Section 2(27) and re-enactment of Section 80-JJ was done simultaneously. It is a very well-recognised rule of interpretation of statutes that where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event such re-enactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of the re-enacted provision. Viewed in this background, the effect of the re-enacted provision of Section 80-JJ was that profit from the business of livestock and poultry which enjoyed total exemption under Section 10(27) of the Act from Assessment Years 1964-1965 to 1975-1976 became partially exempt by way of deduction on fulfilment of certain conditions."

14. In the present case, the Repealing and Amending Act, 2016 itself provides for the consequences which flow from Section 6 of the General Clauses Act and specifically provides for flowing of any rights, title, obligation and liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof revive any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practices and procedure, thus, the restrictions placed by virtue of Section 2A(3) of the Act stood vanished on 06.05.2016 and the petitioner could have approached the Industrial Tribunal for agitating his rights flowing from the Industrial Disputes Act without any limitation, thus for all the reasons recorded above, the impugned judgment and order passed by the Industrial Tribunal dated 27.04.2023 cannot be sustained and is quashed. The writ petition stands *allowed*.
15. The matter is remanded to the Central Government Industrial Tribunal-cum-Labour Court, Lucknow to decide the issue on merits, in accordance with law, with all expedition.

Order Date:22.12.2023

akverma

(Pankaj Bhatia,J.)