

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15372 of 1993 (O&M)

Date of Decision: 05.12.2015

Jailal

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sunil Sharma, Advocate,
for Mr. Amit Jain, Advocate,
for the petitioner.

Mr. Gaurav Goel, AAG, Haryana.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.

1. The impugned order declining to refer the industrial dispute for determination by the labour court reads as follows:-

“On the above subject you are informed that the State Government does not find your case fit to be referred to the court for adjudication because from the enquiry it has revealed that your services were terminated as per the terms and conditions of your appointment letter. The management was still willing to take you back in service without back wages for the intervening period, but you are not willing to join.”

2. The reference has been declined by breaching all canons of industrial law and judicial precedents on the point long established that the appropriate government is merely a post office in referring industrial disputes to the area Labour Court for adjudication on merits. In this process,

the appropriate government cannot don the robes of the court and decline reference on the ground that the termination took place in terms of the appointment letter. The second reason to decline the reference is equally bad, that the management is still willing to take back the workman in service without back wages for the intervening period but the petitioner was not willing to join. Both these reasons are irrelevant to the consideration in making reference under section 10 (1) (c) read with section 2-A of the Industrial Disputes Act, 1947 ("the Act"). The impugned order is declared *per se* illegal and unsustainable. No arguments are required to be addressed on the grievance of the petitioning workman that he has been grossly wronged by the State in declining reference on the flimsiest of grounds.

3. The writ petition is allowed without expressing any opinion on the merits of the claim. A writ of certiorari is issued quashing the impugned order. Had this matter been decided prior to amendment of Section 2-A of the Act, this Court would have directed the appropriate Government to make a reference to the area Labour Court or consider doing so. However, with the change of law the conditions prescribed in the amended Sub-Section 2 of Section 2-A have come into force and deserve to be applied in order to save further loss of time. The petitioner is given the liberty to approach the area Labour Court at Faridabad, Haryana directly by presenting his statement of claim. On claim being presented within two months from the date of receipt of certified copy of this order, the Labour Court will issue process to the opposite party to appear by numbering the reference and thereafter would proceed to conduct the trial on the issue: whether the termination of the services of the workman is illegal and

unjustified, and if not, to what relief the workman is entitled to? The Labour Court is free to strike issues, in case it deems it fit for its convenience in returning findings on the issues arising on the pleadings received. The dispute being a grossly old and the fact that it has taken 22 years for this matter to be decided, the Labour Court is directed to expedite the hearing of the trial and make a serious endeavour to conclude the matter preferably within one year from the date when parties are called upon to produce their evidence. The labour court will be cautious and extremely careful in granting adjournments and preferably none be given and therefore a schedule of milestones in the conduct of the trial from start to finish be listed in the shape of a time table/calendar by fixing day and event in advance as recommended for civil suits by the Supreme Court in **Ramrameshwari Devi v. Nirmila Devi** (2011) 8 SCC 249 designing for good measure in para.52 & 53 a salutary procedure as follows:-

“J. At the time of filing of the plaint, the trial court should prepare complete schedule and fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of judgment and the courts should strictly adhere to the said dates and the said time table as far as possible. If any interlocutory application is filed then the same be disposed of in between the said dates of hearings fixed in the said suit itself so that the date fixed for the main suit may not be disturbed.

53. According to us, these aforementioned steps may help the courts to drastically improve the existing system of administration of civil litigation in our Courts. No doubt, it would take some time for the courts, litigants and the advocates to follow the aforesaid steps, but once it is observed across the country, then prevailing system of adjudication of civil courts is bound to improve.”

4.

I see no reason why such time tables should not be enforced in

the domain of labour courts and tribunals immediately within the territory of this Court. What is true of civil courts is equally true of the fora in labour laws and labour courts have greater flexibility of procedure than civil courts since they can devise such procedure as they deem fit which are in conformity with the rule of natural justice. If such a course is adopted by the tribunals it would go a long way in dealing with concerns of delay in labour courts and pendency issues. The labour courts should also liberally resort to discovery and production of documents and interrogatories at the earliest to abridge the trial especially in cases falling under Section 2-A of the ID Act which causes the greatest suffering as the labour courts and tribunals have no power to grant an interim stay. They should use their imagination and rich experience gained from civil litigation and its many pitfalls, to devise and evolve speedier methods within the framework of labour law and procedure to abridge as far as possible delays at every step of the proceedings but without compromising the quality of the trials conducted by them.

5. Before parting with the order and with a view to do restorative justice while there is still effective time to compensate the workman for time irretrievably lost to him and for him to prosecute his case in the present times of inflation when everything including access to justice is expensive, the State is saddled with costs of Rs.1 lac for passing an ex facie illegal order to begin with even when the law on the subject was well known and followed.

6. Costs be paid to the workman before the labour court on the date fixed by it, failing which, the amount will earn penal interest @ 18 %

per annum from the date of default till payment, besides resulting in striking off the defence of the State. This measure is expected to ensure prompt payment of costs and to foster a spirit of contest between the parties on somewhat equal footing, both woken up after over two decades.

(RAJIV NARAIN RAINA)
JUDGE

05.12.2015
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