

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Civil Writ Petition No.21666 of 2011

Date of decision: 14.9.2015

The Executive Engineer

... Petitioner

Versus

Dinesh Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.J.S.Bedi, Addl., AG, Haryana,
for the petitioner.

Mr.Ramesh Goyat, Advocate,
for respondent No.1.

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.

The State of Haryana through its Executive Engineer in the PWD, Public Health Department, Sonapat has come to this Court challenging the award dated 13th December, 2010 passed by the Presiding Officer, Labour Court, Panipat who has answered the reference in favour of the workman and against the management and set aside the illegal termination of the respondent workman. The court has awarded reinstatement with continuity of service but has restricted arrears of back wages by half from the date of demand notice i.e. 20th September, 2004. The reference of the dispute regarding termination was made in 2004 by the

appropriate government. The workman-respondent was employed as an unskilled worker in January, 1996 and when his services were terminated on 1st April, 2000, he had put a little less than 5 years of continuous service. He complained that his termination was oral without giving to the workman-respondent one months' notice indicating reasons for retrenchment and paying him wages in lieu of notice along with retrenchment compensation at the time of termination equivalent to 15 days average pay for every year of completed service. In this manner, the provisions of Section 25F of the Industrial Disputes Act, 1947 were violated. The respondent worker relied on the decisions of the Supreme Court in **Harjinder Singh v. Punjab State Warehousing Corporation Limited**; (2010) 3 SCC 192, **Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat**; (2010) 5 SCC 497 before the labour court. On the question of relief, he placed reliance on the authority in **Sapan Kumar Pandit v. U.P. Electricity Board & others**; AIR 2001 SC 2562 to urge that the Supreme Court held that the industrial dispute can be referred to adjudication so long as the dispute exists. The only authority which can form an opinion 'whether the dispute is in existence' is the Government. If the Government decides to make the reference there is a presumption that in its opinion there existed such a dispute. Thus, when the Government has chosen to refer the dispute for adjudication, the reference could not be quashed merely on the ground of delay.

2. This argument is raised to meet the contention of Mr.J.S.Bedi appearing for the State of Haryana relying on delay in raising the dispute and that if it is enormous, then reference can be declined in view of the

ruling in **Nedungadi Bank Limited v. K.P.Madhavankutty and others;** (2000) 2 SCC 455. What is being referred to by the learned counsel to measure delay and laches in the present case is the date of service of demand notice was on 20th September, 2004 against the termination effected on 1st April, 2000 i.e. after about 4½ years. In *Nedungadi* the facts were like this. The bank employee was dismissed from service in 1972. His appeal was dismissed in 1973. The dispute was raised in 1980. The appropriate government refused to make the reference to the labour court. This led to filing of a writ petition in the Kerala High Court complaining that there was refusal to refer. The High Court disposed of the petition with a direction to the Assistant Labour Commissioner to submit his report under section 12 (4) of the Act. The Central Government declined to refer the matter by passing an order. This led to the second round of litigation in the High Court which was disposed of with the direction to the Government to re-examine the matter. The order of the single bench was challenged in writ appeal which upheld the order in appeal on November 21, 1989. In the process of re-examination the reference was made to the labour court which reference order was challenged by the Bank in writ proceedings. The writ was allowed on January 24, 1995, the appeal failed. On merits the facts briefly were that the bank employee was dismissed from service following an inquiry into his misconduct. The employee years ago admitted his guilt and only pleaded for merciful treatment and accepted the amount due to him in full satisfaction on his claim. The Supreme Court held that all those factors have a bearing on the question as to whether in spite of all these the industrial dispute still subsists meriting reference. Such stark facts are nowhere near this case.

3. Mr.Bedi vehemently contends that the delay is fatal to the cause. To the contrary, Mr.Ramesh Goyat appearing for the workman-respondent 1 submits that Article 113 of the Limitation Act does not apply to the proceedings before the Labour Court as no limitation is prescribed in Section 10(1)(c) of the Industrial Disputes Act and relief cannot be denied to the workman merely on the ground of delay. He cites the ruling of the Supreme Court in **Ajaib Singh v. The Sirhind Cooperative Marketing Society**; AIR 1999 SC 1351 for this proposition. The Supreme Court in this authority held that no reference to the Labour Court can be generally questioned on the ground of delay alone. Even when delay is shown to be existing, the learned Labour Court can mould the relief by declining to grant back wages to the workman till the date he raised the demand notice regarding his illegal termination. In the present case, the Labour Court has already moulded the relief regarding back wages and has granted 50% of the arrears from the date of demand notice which is just and proper exercise of discretion based on equitable principles.

4. Mr.Bedi is not in a position to dispute that the provisions of Section 25F of the Act were breached by the officers of the Government who were in duty bound to give effect to the statutory law and the protections afforded by the Act against arbitrary severance of employment without any rhyme or reason. The delay in *Nedungadi Bank Limited* [supra] was seven years between the dismissal of the statutory appeal against the dismissal order passed in 1972 which was found just and appropriate to deny any relief in the litigation history of the case which spoke volumes against the bank employee calling for no interference in the matter. The

Nedungadi case is clearly distinguishable on facts and represents an extreme

delay.

5. There is no fundamental flaw of law or fact in the impugned award nor is there any error apparent on the face of it warranting interference in the judicial discretion exercised by the Labour Court soundly and properly to be disturbed in the writ jurisdiction.

6. For the reasons recorded above, a writ of certiorari is declined in challenge to the impugned award and the petition is ordered to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

September 14, 2015

Paritosh Kumar