

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

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Reserved on: 27th May, 2015
Date of Decision: 21st July, 2015

+ W.P.(C) 7878/2014

SURESH CHAND SHARMA Petitioner
Through: Mr. Rakesh Kumar, Adv.

versus

DELHI TRANSPORT CORPORATION Respondent
Through: Ms. Manish Garg, Adv.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. The petitioner by way of the present petition has assailed the order dated 23.04.2014 passed by learned Presiding Officer, Labour Court XVII, Karkardooma Courts, Delhi, in I.D. No.106/2008 (Unique ID No.02402C0477152008), whereby the claim of the workman/petitioner was dismissed as barred by limitation.

2. Succinctly stating the facts leading to the present petition are that on 11.12.2001, the Vigilance department of the respondent corporation issued a public notice whereby it asked the employees of the respondent corporation to report incidents of bribe paid by them to senior officers under pressure. Any employee who made such a disclosure was to be granted immunity from departmental inquiry with regard to such conduct. Pursuant to the said notice, the petitioner made a complaint dated 08.02.2002 to the Vigilance department bringing to its notice an alleged incident wherein one

Mr. O.P. Birdi who was appointed as a disciplinary authority in an inquiry against the petitioner demanded Rs. 35,000/- from the petitioner and the petitioner paid the said amount to him. After receiving the said amount vide order dated 16.03.2001, Mr. O.P. Birdi imposed the punishment of stopping one increment without cumulative effect. The petitioner further lodged a complaint dated 21.02.2002 against Mr. O.P. Birdi for the alleged threats that he started receiving from his agent to withdraw his complaint and also reported the matter to the vigilance department vide his letter dated 01.03.2002.

3. On the basis of the charge sheet dated 06.07.1999, the vigilance department conducted an investigation into the allegations made against the petitioner and vide report dated 16.01.2003, the vigilance department concluded that the charges levied against the petitioner were incorrect. However, in August 2002, the petitioner was not given the benefit of the provisions of Assured Career Progressive Scheme even though he was entitled for the same. Aggrieved, the petitioner made complaint to the Central Vigilance Commission dated 02.06.2003 and also made a representation dated 17.06.2003 seeking an inquiry in his complaint by a neutral agency. Vide order dated 29.07.2003/06.08.2003 the respondent placed the petitioner under suspension for filing false complaints against the officers of the respondent corporation.

4. Aggrieved by the said suspension, the petitioner raised a complaint dated 30.07.2003 before the Government of Delhi. Since no action was taken, the petitioner filed a writ petition bearing no. W.P. (C) No.6929/2003 before this Court and this Court vide its order dated 31.10.2003 stayed the operation of the suspension order. Thereafter, on the basis of allegation, for

which the petitioner had been placed under suspension, a charge sheet dated 12.11.2003 was issued to the petitioner. During the pendency of the above mentioned Writ Petition before this court, another investigation was conducted by Mr. N. Gautam in the matter of the petitioner's suspension in response to a query from the Chairman and Managing Director, DTC, Delhi (for short 'CMD') of the respondent corporation who in his report dated 19.05.2004, concluded that the petitioner was not guilty of any charge. Vide order dated 14.06.2006 this court stayed the enquiry proceedings against the petitioner pursuant to charge sheet dated 12.11.2003. However, vide order dated 13.09.2006, this court dismissed W.P. (C) No. 6929/2003 on the ground that order dated 16.03.2001 could not be quashed as it had been passed after following due process of enquiry and the suspension order could not be quashed as it was still to be investigated as to whether the complaint made by the petitioner was false or not. Vide its letter dated 06.10.2006, the respondent revived its earlier order of suspension and placed the petitioner under suspension. Aggrieved, the petitioner moved L.P.A before this court challenging the order dated 13.09.2006 passed in W.P. (C) No. 6929/2003 but during pendency of the said LPA vide removal order dated 08.06.2007, the petitioner was removed from the service of the respondent corporation on the basis of a disciplinary inquiry conducted by the Depot Manager, Hasanpur Depot, Delhi.

5. Against the said removal order, the petitioner preferred an appeal before the Regional Manager (East) on 17.07.2007, which was dismissed vide order dated 30.10.2007. Against the said order dated 30.10.2007, the petitioner further preferred an appeal before the CMD of the respondent corporation and during its pendency, raised a direct industrial dispute before the Labour Court, Karkardooma Courts, Delhi. The CMD entertained the

petitioner's appeal and passed an order on 09.09.2008 stating therein that any action on the part of the CMD at this stage may adversely affect the sub judice industrial dispute raised by the petitioner. During the course of evidence of Management at the time of trial, the labour court raised the issue of limitation and came to the conclusion that the claim was time barred and accordingly dismissed the claim filed by the petitioner.

6. Learned counsel for the petitioner contended that the impugned order is unjust and suffers from error of law. The learned labour court failed to consider that the petitioner has filed the claim within the time prescribed by law. The petitioner filed an appeal against the removal order of the respondent and the same was disposed of on 30.10.2007. Therefore, the cause of action arises from the date the appeal was disposed of and not from the date the order of removal was passed. The limitation for filing of the claim shall start from the last cause of action that arose from the dismissal of the petitioner's appeal. Limitation period to file the claim under Section 10 (4-A) of the Industrial Disputes Act (for short 'ID Act') has already been amended in 2010 and enhanced from 1 year to 3 years.

7. It was lastly contended by the learned counsel for the petitioner that the pleadings in the case are complete and at the stage of final arguments, the court has raised an objection of limitation. The court below erred in considering that the petitioner preferred a mercy appeal before the CMD and the same was pending at the time of raising the said industrial dispute.

8. *Per Contra*, learned counsel for the respondent contended that the intent of the legislature envisaged in Section 10 (4A) of the ID Act is mandatory. Had the intent been directory, then it would not have prescribed the period of limitation and it would have used the words 'at anytime'

instead of using the words ‘within twelve months’. It is not permissible for the Court to dilute the provisions providing time-frame on the basis of supposed legislative policy. The present case is that of direct industrial dispute preferred by the petitioner. The amendment is in reference to Section 10 of the ID Act wherein there is reference by the government, which element is not present in this case. The ground that appeal was pending and decided only on 30.10.2007 is an afterthought. The Court has to apply its mind having regard to statute involved in the present case.

9. It was lastly contended by the learned counsel for the respondent that any amendment cannot have a retrospective effect. The amendment came into effect on 15.09.2010 thus cannot be applied to statement of claim filed in the year 2008.

10. I have given my thoughtful consideration to the submissions of both the parties in the light of documents and material, which were referred to at the time of arguments.

11. Before advertng to the facts of the case, it will be relevant to reproduce Section 10(4A) of the ID Act, which is as follows: -

“10(4A) Notwithstanding anything contained in section 9C and in this section, in the case of a dispute falling within the scope of section 2A, the individual workman concerned may, within twelve months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or the date of commencement of the Industrial Disputes (Delhi Amendment) Act, 2003, whichever, is later, apply in the prescribed manner, to the Labour Court or the Tribunal, as the case may be, for adjudication of the dispute and the Labour Court or Tribunal, as the case may be, shall dispose of such application in the same manner as a dispute referred under sub-section (1).”

(emphasis supplied)

12. Therefore, a bare perusal of Section 10(4A) of the ID Act shows that the workman may apply to Labour Court or Tribunal within 12 months from:

- (i) Date of communication of order of discharge; or
- (ii) Date of termination (if otherwise) specified; or
- (iii) Date of commencement of Industrial Disputes (Delhi Amendment) Act, 2003, whichever is later.

13. Applying the aforementioned provisions of Section 10(4A) of the ID Act to the facts and circumstances of the present case, it has come before this court that the petitioner has been terminated on 08.06.2007 and the same was communicated to him vide a letter issued on the same day by the Depot Manager, Hasanpur Depot, Delhi. Further, it has been clearly stated in the termination order dated 08.06.2007 that:

“He is removed from the services of this corporation with immediate effect under clause 15(2)(vi) of the DRTA (Conditions of appointment & services) Regulations 1952.”

Therefore, the learned Labour Court has reckoned the period of limitation of one year w.e.f. 08.06.2007 itself. On the said touchstone, the claim petition which is purported to have been filed by the petitioner on 03.07.2007 has been held to be barred by limitation.

14. It is beyond any cavil that limitation provisions are to be strictly construed and are mandatory in nature, provided flexible provisions are provided in the concerned enactment itself. Section 10(4A) of the ID Act clearly does not make the limitation of 12 months, so prescribed, as flexible. If a claim is *ex-facie* barred by the law of limitation, a Court has no choice

but to dismiss the same even if the defendant has not raised the plea of limitation.

15. On this legal technicality alone this petition could be dismissed by this court as well. However, I am of the view that such a stand taken by me would not serve the purpose of ends of justice that law seeks to achieve.

16. A Constitution bench of the Supreme Court in '**State of U.P. and Ors. v. Babu Ram Upadhyaya**', *AIR 1961 SC 751*, was of the view that:

“42.For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.”

17. In my view, the interpretation of any statute should be consistent with justice, equity and good conscience. Had the petitioner raised a claim before the labour court directly before following the prescribed appeal rules against his termination order, the labour court would have dismissed the claim of the petitioner as an alternate remedy was available. Therefore, before raising his claim before the labour court the petitioner had to follow the necessary rules as prescribed by the respondent corporation. Further, this court cannot ignore the fact that if the claim raised by the petitioner is barred by limitation before the labour court on the ground of legal technicalities prescribed under the Limitation Act, the petitioner would not be left with any efficacious or alternative remedy. There is likelihood of a possible

scenario wherein the petitioner may approach the concerned CMD again after the impugned order of the learned labour court dated 23.04.2014 and the CMD may not initiate any further inquiry as the labour court has already taken a legal stand against the petitioner. To leave the petitioner with no remedy at his discretion would not achieve the requisite ends of justice law seeks to achieve.

18. The purpose of law is to mete out justice; in other words, to prevent injustice or miscarriage of justice. It is to be remembered that the basis of each and every case is not only fixed by the statute but by the statutory principles available for the purpose of ends of justice or to prevent the abuse of process of Court of Law. The purpose of legal enactments is to prevent the wrong doers from taking advantage of the situation and not to cause injustice to anyone. The Courts have wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. After all, as said earlier, the purpose of law is to prevent brooding sense of injustice. It is not the words of the law but the spirit and internal sense of it that makes the law meaningful. The letter of the law is the body but the sense and reason of the law is the soul. A pragmatic approach would meet the ends of justice and further provide the petitioner with an efficacious remedy. It would, therefore, be just and proper for the court to adopt common sense approach keeping at the back of its mind, justice, equity and good conscience and consider the facts and circumstances of the case in hand.

19. As far as the contention of the respondent that the provision of limitation is mandatory under Section 10(4A) of the ID Act is concerned,

the Supreme Court in '**George v. Special Tahsildar and Ors.**', (2010) 13 SCC 98 was of the view that:

“14. While determining whether a provision is mandatory or directory, in addition to the language used therein, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve. It may also be necessary to find out the intent of the legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its application. The provision is mandatory if it is passed for the purpose of enabling the doing of something and prescribes the formalities for doing certain things.

24. The law on this issue can be summarised to the effect that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance of the provision could render entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of Legislature and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject matter and object of the statutory provisions in question. The Court may find out as what would be the consequence which would flow from construing it in one way or the other and as to whether the Statute provides for a contingency of the non-compliance of the provisions and as to whether the non-compliance is visited by small penalty or serious consequence would flow therefrom and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid.”

20. Based on the above, it is beyond any reasonable doubt that provision for limitation under Section 10(4A) of the ID Act is mandatory in nature however, under the powers vested with this court in terms of Articles 226 and 227 of the Constitution of India, this court can exercise its extraordinary jurisdiction in order to prevent the injustice, the petitioner may be subjected to if his claim is barred by limitation.

21. Otherwise also, the petitioner was removed from service vide letter dated 08.06.2007, the petitioner preferred an appeal before the Regional Manager (East), which was dismissed on 30.10.2007. In case, the period of limitation is reckoned from the said date, the claim petition filed by the petitioner on 03.07.2008 is within the prescribed period of limitation.

22. In view of the aforesaid discussion, the petition is allowed, the impugned order dated 23.04.2014 passed by the learned Presiding Officer, Labour Court-XVII, Karkardooma Courts, Delhi in I.D. No.106/2008, is set aside and the matter is remanded back to the concerned Labour Court to decide the claim of the petitioner expeditiously in accordance with law.

23. Both the parties are directed to appear before the concerned Labour Court on 04.08.2015 at 10:00 a.m.

24. The trial court record be sent back forthwith.

(VED PRAKASH VAISH)
JUDGE

JULY 21st, 2015
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