IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21484 of 2014.
Date of Decision:-17.07.2017.

Punard Ram

.....Petitioner

Versus

The Presiding Officer, Labour Court, U.T. Chandigarh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

****

Present: Mr. Jai Bhagwan, Advocate for the petitioner.

Mr. B.S. Sewak, Additional A.G. Punjab.

****

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has assailed the award dated 22.8.2006 (Annexure P-5).

2.) Petitioner is stated to have been appointed as Peon by the respondent-management on daily wage basis w.e.f. 17.12.1985. He has worked in the same capacity up to 03.08.1989. The petitioner is stated to have left the respondent-management in order to obtain new appointment with the new management, namely, Nakodar Cooperative Waste Plant (Punjab Cooperative Cotton Marketing and Spinning Mills Federation Limited) on 28.4.1993. Order of termination was the subject matter before the concerned forum. In this background, petitioner issued a demand notice on 2.10.2000. Based on the same, a reference was made to the Labour Court vide Reference No.186 of 2003. The Labour Court framed the

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following issues:-

> *"5. From the pleadings of the parties, following issues were framed by my learned predecessor as on 22nd March, 2004:-*
>
> *(1)Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief the workman is entitled to if any? OPW*
>
> *(2)Whether the claim is not maintainable, as alleged? OPM*
>
> *(3)Relief."*

The respondent-management in their reply specifically pointed out that petitioner's grievance with reference to issuance of demand notice is after gap of a decade. Therefore, grievance of the petitioner is liable to be rejected on the score of delay and laches. The Labour Court while considering factual aspects of the petitioner relating to joining of respondent-management read with new appointment with the Punjab Cooperative Cotton Marketing and Spinning Mills Federation Ltd. during the period from 11.1.1990 to 28.4.1993, proceeded to reject the petitioner's claim on the ground of delay and laches. An extract of para 16 and 17 reads as under:-

> *"16. The conduct of the workman in approaching this Court after more than ten years, is a relevant factor which is to be looked into by this Court, while allowing the relief as claimed. Appreciating the averments of the parties, the case of the workman is that his services were terminated. The management has alleged that he has left of his own for a better career. The averments of the management are more correct, relevant and worthy of reliance. In case the services of*

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> *the workman had been terminated illegally, he would have approached the Court immediately thereafter. It appears that he has left his job for a better career and that is why he did not turn up for a long period of ten years. During this period, he had no grouse against the management. He was rather litigating with his subsequent employer. Even in the case* ***Haryana State Cooperative Land Development Bank*** *versus* ***Neelam*** *reported as 2005 (1) LLJ page 1153 (S.C.) (Supra) the Hon'ble Supreme Court has approved the order of the Labour court refusing to grant any relief to the workman who had approached it after more than seven years.*
>
> *17. The Learned Representative of workman has drawn my attention to the citation* ***Shahji*** *versus* ***Executive Engineer PWD*** *reported as 2005(12) SCC page 141 wherein it has been observed that the law laid down in the case of Ajib Singh (Supra) is correct. I have gone through the above citation. In that case, the reference was made ot the Labour Court, but was not entertained on the ground of delay and latches. The Hon'ble Supreme Court held in the above-referred case that no ground of delay and latches has been taken by the management and the reference was sent back to the Labour Court to decide the same on merits. The above observations were made in altogether different facts and circumstances, as such, are not of any help to the workman in this case."*

Thus, the present petition in challenging the award of the Labour Court dated 22.8.2006.

3.) Learned counsel for the petitioner vehemently submitted that question of delay and laches should not be taken into consideration for the purpose of deciding reference. In this regard, petitioner relied on the

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reported decisions reported in (i) ***2005 (12) SCC 141(Shahji Vs. Executive Engineer, P.W.D.)*** wherein para 6 reads as under:-

> *"6. We have heard counsel for the parties and we have also been taken through the Judgment of this Court reported in **Ajaib Singh v. Sirhind Co-op. Nedungadi Bank Ltd. v. K.P. Madhavankutty**, and **Sapan Kumar Pandit v. U.P. Electricity Board**. Having gone through the Judgments we have no doubt that the Judgment of this Court in Ajaib Singh's case lays down the law correctly. In the instant case there was no ground of delay urged by the Management. Moreover, even if there was delay in making the reference to Labour Court, if it came to the conclusion that he termination was illegal, it could have suitably moulded the relief to be granted to the workman in view of the delay. In such cases the award of back wages may either be not permitted, or curtailed. In Nedungadi Bank's Case what was challenged before the High Court was the Order making the reference. That was not a case where the Labour Court refused to entertain the dispute on the ground of delay. Having regard to the clear position in law we are left with no option but to allow the is Appeal and set aside the Judgment and Order of the High Court."*

(ii) 1***999 (6) SCC 82*** (***Ajaib Singh Vs. The Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.)*** wherein para 10 and 12 read as under:-

> *"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if*

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raised by the employer is required to be proved as a matter of fact by showing the real prejudice and hot as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned counsel for the respondent- management on the full bench judgment of the Punjab and Haryana High Court in Ram Chander Morya v. State of Haryana, (1999) 1 SCT 141 is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held "neither any limitation has been provided nor any guidelines to determine as to what shall be the period of limitation in such cases." However, it went on further to say that "reasonable time in the cases of labour for demand of reference or dispute by appropriate government to labour tribunals will be five years after which the government can refuse to make a reference on the ground of delay and latches if there is no explanation to the delay." We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application under Section 37-C of the Act to be adjudicated. It is not the function of the court to prescribe the limitation where the Legislature in its wisdom had, though it fit not to prescribe any period.

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> *The courts admittedly interpret law and do not make laws. Personal views of the Judges presiding the court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the Legislature. The judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purposes of invoking the jurisdiction of the courts/boards and tribunal under the Act."*
>
> *"12. We are, however, of the opinion that on account of the admitted delay, the labour court ought to have appropriately moulded the relief by denying the appellant-workman some part of the back wages. In the circumstances, the appeal is allowed, the impugned judgment is set aside by upholding the award of the labour court with modification that upon his reinstatement the appellant would be entitled to continuity of service, but back wages to the extent of 60 per cent with effect from 8.12,1981 when he raised the demand for Justice till the date of award of the labour court i.e 16.4.1986 and full back wages thereafter till his reinstatement would be payable to him. The appellant is also held entitled to the costs of litigation assessed at Rs. 5.000 to be paid by the respondent-management."*

Learned counsel for the petitioner in the alternative of reinstatement with back wages for the purpose of granting compensation, he relied on decision reported in ***2014 (7) SCC 177 (B.S.N.L. Vs. Bhurumal)*** wherein para 26 reads as under:-

> "*26. Applying the aforesaid principles, let us discuss the present case. We find that the respondent*

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> *was working as a daily wager. Moreover, the termination took place more than 11 years ago. No doubt, as per the respondent he had worked for 15 years. However, the fact remains that no direct evidence for working 15 years has been furnished by the respondent and most of his documents are relatable to two years i.e. 2001 and 2002. Therefore, this fact becomes relevant when it comes to giving the relief. Judicial notice can also be taken of the fact that the need of lineman in the telephone department is drastically reduced after the advancement of technology. For all these reasons, we are of the view that ends of justice would be met by granting compensation in lieu of reinstatement. In Man Singh (supra) which was also a case of BSNL, this Court had granted compensation of Rs.2 Lakh to each of the workmen when they had worked for merely 240 days. Since the respondent herein worked for longer period, we are of the view that he should be paid a compensation of Rs. 3 lakhs. This compensation should be paid within 2 months failing which the respondent shall also be entitled to interest at the rate of 12% per annum from the date of this judgment. Award of the CGIT is modified to this extent. The appeal is disposed of in the above terms. The respondent shall also be entitled to the cost of Rs.15,000/-(Rupees Fifteen Thousand only) in this appeal."*

4.) Per contra, learned counsel for the respondents vehemently submitted that petitioner abandoned his services with the respondent-management on 3.8.1989 in order to join new management, namely, Punjab Cooperative Cotton Marketing and Spinning Mills Federation Limited. Therefore, question of terminating petitioner's services by the respondent-management does not arise. It was further submitted that petitioner has

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abandoned the services in the month of August, 1989. Thereafter, when he was in trouble in the new management that his services were terminated in the new management on 28.4.1993 and the petitioner has assailed the order of termination before writ jurisdiction and it is learnt that matter is pending consideration. Having regard to the conduct of the petitioner read with delay and laches, rightly the Labour Court has rejected the petitioner's claim on 22.8.2006. Thus, no interference is called from this Court in respect of award.

5.) Heard learned counsel for the parties.

6.) The petitioner was appointed as a Peon with the respondent-management on 17.12.1985 and worked upto 03.08.1989. Thereafter, he has abandoned his services in order to obtain new appointment with the Punjab Cooperative Cotton Marketing and Spinning Mills Federation Limited. Thus, he got an appointment on 11.1.1990. His services were terminated by the new employer on 28.4.1993 which was the subject matter of litigation and is pending consideration. Had the petitioner intended to challenge the alleged termination which is stated to be issued in the month of August, 1989, he would have made necessary demand notice within a reasonable period. That apart when he has abandoned service, question of terminating his service do not arise as such petitioner's services were never terminated as claimed by the petitioner. He has submitted demand notice only on 2.10.2000 i.e. much after his termination by the new employer on 28.4.1993. In this background and the fact that there is a delay and laches on the part of the petitioner so also the conduct of the petitioner when he has abandoned his services with the respondent-management in the month of August, 1989 and the fact that he has submitted demand notice on

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2.10.2000, it is evident that petitioner was not keen to rejoin the respondent-management. Therefore, rightly, the Labour Court has rejected the petitioner's claim on the ground of delay and laches, while considering the decisions of the Supreme Court which are quoted in para 13, 16 and 17. Petitioner relied on the above reproduced decisions in respect of reinstatement with continuity of service or in the alternative for entitlement of compensation. The aforesaid decisions are distinguishable having regard to the conduct of the petitioner. Factual aspects of the case are required to be taken into consideration before considering any decision of the Supreme Court. In the present case, petitioner's conduct, delay and laches are sufficient to deny him the benefit of reinstatement, continuity of service or compensation. That apart in the present case, there is no order of termination as is evident from the records that petitioner has abandoned his service from 03.08.1989 in order to obtain new appointment with the Punjab Cooperative Cotton Marketing and Spinning Mills Federation Ltd. Thus, factual aspects are distinguishable with reference to the cited decisions. Hence, petitioner is not entitled to any relief sought in the present petition.

7.) Accordingly, petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

July 17, 2017.
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Whether speaking/reasoned:- Yes / No

Whether Reportable:- Yes / No.

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