

CWP-6544-2016 (O&M)

Date of Decision: August 21, 2017

Kurukshetra University, Kurukshetra and another

....Petitioner(s)

Versus

Madan Lal and another

....Respondent(s)

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

Present : Mr. A.S. Virk, Advocate
for the petitioner(s).

Mr. Sandeep Panwar, Advocate
for respondent No.1.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, the petitioners have questioned the validity of the Labour Court award dated 24.12.2015 (Annexure P-4).

Respondent No.1-workman is stated to have been joined as Labourer on contractual basis on 27.07.1998. His services were dismissed/terminated on 07.11.2002. Respondent No.1-workman filed a writ petition before this Court questioning the validity of termination by filing CWP No.5442 of 2003. The same was ordered to be dismissed as withdrawn on an application moved by respondent No.1-workman. In CWP No.5442 of 2003, respondent No.1-Workman has specifically stated that “since the services of respondent No.1 has been terminated, therefore, petitioners seek permission from this Hon'ble Court for withdrawal of the present petition, so the petitioners may challenge the order in the Labour Court”, for the said purpose CM No.14908 of 2014 was filed in CWP No.5442 of 2003. The petitioners-University have no objection.

Respondent No.1-workman, thereafter, filed application before the Labour Court under Section 2-A(2) of the Industrial Disputes Act (Act 24 of 2010 w.e.f. 15.09.2010). Labour Court framed the following issues:-

“1. Whether the termination of the services of workman is liable to be set-aside being wrong, illegal, null and void etc. and the workman is entitled to reinstatement in service with full back wages and all the benefits including the continuity of service? OPW

2. Whether the workman has no cause of action against the management to file the present claim statement? OPM

3. Whether the workman has no locus-standi to file the present claim statement? OPM

4. Whether the claim application is time barred? OPM”

Labour Court passed order in favour of respondent No.1-workman. Hence the present petition.

Learned counsel for the petitioners submitted that CWP No.5442 of 2003 was dismissed as withdrawn without there being a liberty, therefore, respondent has no claim before the Labour Court. It was further submitted that under Section 2-A(2) of the I.D. Act, which was incorporated in the Industrial Disputes Act, w.e.f. 15.09.2010, Labour Court should not have entertained the petitioner's application with reference to Section 2A(3) of the I.D. Act, which is in the prospective nature, having regard to the clause that 3 years limitation from the date of dismissal/termination/retrenchment. Thus, Labour Court has exceeded its jurisdiction in entertaining the respondent's-workman's application under Section 2-A(2) of the I.D. Act.

Learned counsel for the respondents submits that having regard to the CM 14908 of 2014 filed in CWP No.5442 of 2003, University counsel has no objection in allowing the CM No.14908 of 2014. Petitioner's contention that CWP No.5442 of 2003 was dismissed as withdrawn, consequently without liberty, the same cannot be accepted.

Heard learned counsel for the parties.

Crux of the matter in the present petition is whether the Labour Court can entertain application under Section 2-A of the Industrial Disputes Act or not? Undisputedly, respondent No.1-workman was dismissed on 07.11.2002 and Section 2-A of the I.D. Act was incorporated in the Act on 15.09.2010 vide Act 24 of 2010. Therefore, it is prospective in nature. Clause 3 of Section 2-A reads as under:-

“(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)”.

Reading of the above clause, it is crystal clear that there is a limitation of three years from the date of discharge/dismissal/retrenchment or otherwise from termination of service as specified in sub-section 1.

In the present case, the respondent-workman's services were terminated on 07.11.2002. Therefore, Labour Court has failed to appreciate clause 3 of Section 2-A of the I.D. Act which was incorporated on 15.09.2010.

In view of the legal position that order of termination or dismissal is required to be challenged within three years prior to 15.09.2010

i.e. permissible from 14.09.2007 onwards, thus, in the present case

respondent-workman has been dismissed or terminated on 07.11.2002. Therefore, respondent No.1-workman cannot invoke Section 2-A of the I.D. Act. Accordingly, the Labour Court has failed in entertaining the respondent No.1-workman's application under Section 2-A of the I.D. Act which was incorporated on 15.09.2010 by virtue of Act 24 of 2010. Accordingly, the Labour Court award passed by the Labour Court is set aside and the petition stands allowed.

At this stage, learned counsel for respondent No.1-workman has placed reliance upon '*Detergents India Limited Vs. Presiding Officer and another 1993 CLJ(Service) 524*', '*K. Rama Rao Vs. Chief Executive (Mills), Nellimarla Jute Mills 1993(1) CLR 322*', '*M/s Kinnison Jute Mills Go. Ltd. Vs. State of West Bengal and others 1974 LIC 828*', and '*State of Haryana Vs. Ram Kumar and another 2004(4) S.C.T. 474*' in respect of prospectivity and retrospectivity of Section 2-A of the I.D. Act. It was contended that it has retrospective effect. Perusal of clause 3 of Section 2-A, it is crystal clear that there is a limitation for making an application in so far as challenge to dismissal and termination. Therefore, in the present case, if respondent No.1-workman's services were terminated as on 07.09.2007, in that event, respondent's application under Section 2-A of the I.D. Act could have been entertained whereas in the present case respondent's termination is 07.11.2002. Therefore, cited decisions are hereby distinguished.

August 21, 2017

ps-I

(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No