

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8468 of 2017

Date of Decision: 25.04.2017

Jarnail Singh

...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal, Patiala & others

...Respondents

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

Present: Mr. Naresh Chander , Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

1. There are insuperable hurdles in the way of the petitioner in his challenge to the award of the Industrial Tribunal, Patiala dated December 18, 2013 in reference 267/2003 and in turn the punishment order dated August 01, 1996 permanently stopping four increments with cumulative effect for defrauding the respondent Corporation of a sum of ₹ 68/- while serving as a Conductor of a Bus travelling from Khanna to Sirsa. He retired from service in 2008 as Sub Inspector. He was caught in a raid conducted by two Inspectors stopping the Bus at Village Cheema for checking. They made a report against him to their superiors. This became subject matter of departmental proceedings on a charge sheet resulting in the end by infliction of major punishment inflicted by the General Manager, PRTC, Patiala Depot as punishing authority. He wrote in his hand to the General Manager an application admitting the allegations as correct while praying that any punishment would be acceptable to him which was the minimum. In the enquiry that followed he admitted his guilt and did not wish the enquiry to

proceed vide statement Exb. C.P. 65 on the enquiry file. Since it was a regular enquiry it was put through the procedural motions. During cross-examination, the petitioner owned up to his signatures on a vital document Exb C.P. 55 to his discredit, a circumstance which was held against him by the Labour Court for good reason. He did not appeal against the penalty order to the appellate authority in PRTC. His services were governed by rules which provided an appeal against the orders of punishment. Instead, he raised a dispute and secured a reference through the PRTC Workers Union to the Labour Court. The Labour Court dismissed his claim and the reference itself and awarded no relief when it found no illegality in the order or the enquiry. The petitioner had not appealed against the order and had slept over his rights, if any, for years together till he raised the dispute highly belatedly. Moreover, he had admitted his guilt and claimed clemency. Feeling aggrieved by the award the petitioner has approached this Court under Articles 226 and 227 of the Constitution assailing it. His claim deserves to be repelled as the award suffers from no error that I can find. More on merits will follow at the appropriate place of the discussion.

2. I could have dismissed the petition by a short order but what I wish to emphasise in this case before parting, is that persons like the petitioner when assailing orders of punishment where statutory remedy is available in the department against the penalty orders before the competent appellate authority either in the Corporation [as in the present case] or the State Government but to which legal recourse is not availed in the first instance and the Labour Court is approached in a rush and hurry then what might be the effect on the proceedings and the award. Supposing remedy

available in rules was resorted to in prescribed time as per rules that would have offered an opportunity to the authority above the punishing authority to revisit the order and make a suitable final decision thereon in mitigation or otherwise of the penalty. There may have been a sea change in the result if the course was adopted given that there would have still been room left for; say, reduction in punishment. But that chapter is shut by the petitioner rushing to Court while smarting under the penalty order without appealing to higher authority. Presiding Officers know that once in court the stance of the defendant against an action is always defensive and hard. I have pondered over this issue for some time and wish to say a few things which have crossed my mind and I wish to share them with the Presiding Officers as they might profit from it in contain litigation pending in their hands and those yet to be filed, in the small area contemplated for guidance in this order so that they may improve upon the theme with their rich practical experience which I may not have.

3. To wit, even if reference proceedings are at the initial stages or the award has been pronounced, could it still be terminated or the award not given effect to by the High Court, since statutory remedy was bypassed in search of protection of the provisions of the Industrial Disputes Act, 1947. There is a theory that delayed gratification is often more satisfactory than instant gratification.

4. On these lines I would advise the Presiding Officers that the Labour Court should remain vigilant to this jumping of administrative remedy when approached directly or by reference as it would seem far better to return claimant in the beginning to firstly exhaust the prescribed statutory

remedy and then come back. Towards this end, I have followed the law enunciated by the Division Bench of the Karnataka High Court in Division Controller, Karnataka State Board Transport Corporation, Bangalore Central Division, Bangalore v. G.M.D. Murthy, 2002 (2) CLR 162 ruling that remedies under Section 10 of the ID Act can be invoked only after statutory remedy of appeal provided under service rules is exhausted in case titled Gurbachan Singh Vs. Presiding Officer, Industrial Tribunal, Bathinda and others, CWP 26214 of 2012 decided on 22.01.2103 which was rendered in a situation where the remedy of appeal prescribed against the punishment order was not invoked and Labour Court approached by raising industrial dispute bypassing the wholesome remedy where relief was capable of being had. I had observed in *Gurbachan Singh* case while accepting the dictum in *G.M.D. Murthy* on principle was eminently worth application in this Court's jurisdiction for Labour Courts and Trubunls to emulate, quoting extensively from the judgment of the Karnataka High Court while setting aside an award on the short ground of remedy not availed, holding as follows:-

“It has been reasoned by the High Court [Karnataka] as follows:-

“22. An individual workman can take remedial measures under the provisions of the Industrial Disputes Act only in a case where an industrial dispute can be said to be existing within the meaning of Section 2-A of the said Act. This section reads as under:-

“2-A. Dismissal, etc. of an individual workman to be deemed to be an industrial dispute.-- Where any employer discharges, dismisses, retrenches or otherwise terminates

the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute”.

“23. To our mind, the order of discharge, dismissal, retrenchment or termination cannot be said to be giving rise to an industrial dispute so long as management like the Corporation is duty-bound to entertain and resolve the grievance of the workman within the framework of its statutory regulations providing for appeals and revisions. As already noticed above, the workman has a statutory right to assail the order of disciplinary authority on all the grounds which can be raised before the Tribunal or Labour Court under the Industrial Disputes Act.

“24. Therefore, we are of the opinion that till the order of discharge, dismissal, retrenchment or termination does not attain its finality up to revisional stage contemplated under Regulation 35 of the Regulations, the action of the Corporation taken against the workman cannot be said to have matured into an industrial dispute entitling the workman to invoke the provisions of reference and adjudication under the Industrial Disputes Act.

25. Taking of the above view will avoid chances of conflicting orders and the Corporation will have full opportunity to rectify any error committed by its officers, may be disciplinary or appellate. This will also reduce the load on the dockets of the Labour Court which are already overburdened. By this process, the Labour Court will have the benefit of views of the appellate and revisional authorities who are duty-bound to take care of all the permissible grievance raised by the workmen in relation to their discharge, dismissal etc., may be regarding the procedure, finding or the quantum of punishment. Therefore, adopting of such a recourse cannot in any way prejudice the cause of the workman rather it will facilitate him to get his grievances properly ventilated before the authorities of the Corporation who will have full access to all the records and can better appreciate the facts and the related grievances.

“26. For the aforesaid reasons, we hold that no industrial dispute can be raised or referred to Industrial Tribunal or the Labour Court relating to discharge, dismissal, retrenchment or termination of any individual workman employed in the Corporation unless it is shown and found that he has exhausted all his statutory remedies provided under the regulations. It is only if, even after the finality of such internal remedies the workman still feels dissatisfied

with the action of the Corporation, then only he can seek for his remedy under Section 10 of the Industrial Disputes Act.”

The view of the Division Bench appears to this Court to be flawless rendition of the law and deserves to be followed.

Following the thread of reasoning as above the reference itself is rendered incompetent and without jurisdiction. The Labour Court was thus not competent to decide the matter in the face of alternative remedy under rules framed under proviso to Article 309 of the Constitution of India, to wit the Punjab Civil Services (Punishment & Appeal) Rules, 1970 applicable to the Punjab Roadways. However, since the petitioner was pursuing a remedy in a wrong forum an allowance deserves to be given to him by affording him the protection under Section 14 of the Limitation Act, 1963 since the period of limitation for filing departmental/statutory appeal may have run out long ago. Learned counsel for the petitioner submits that in view of this legal position he now be relegated to his remedy of statutory appeal de hors the award of the Labour Court. There is merit in prayer no.1. The award is, therefore, liable to set aside. The setting aside of the award without hearing the other party will not lead to any injustice to the Punjab Roadways which is a department of the Government bound by the rule of law. In fact adopting such course would subserve justice. The view of the appellate authority on the dismissal would emerge which it would have been bound to decide had an appeal been preferred. Therefore, it is not necessary to call upon the respondent – Punjab Roadways to respond to this petition. Neither they can be said to be aggrieved if a direction is issued by this Court that petitioner be permitted to avail his remedy of statutory appeal against the order of

dismissal on pleas that may be available to him under the law and on facts which he may press in his defence. The award is therefore nullified. Resultantly, it is not necessary to examine the impugned award on merits and nothing said therein would be taken into consideration by the appellate authority in the Transport Department, Punjab nor would impede its judgment in reexamination of the matter. A direction is, therefore, issued that the petitioner may file an appeal within 30 days of receipt of certified copy of this order before the Appellate Authority. In case, such an appeal is filed, the same would be decided on merits without citing bar of limitation. In case, such an appeal is filed, a further direction is issued that the same be decided on merits by the authority within three months of the date of filing of the appeal. Needless to add, the Appellate Authority would afford opportunity of hearing to the petitioner and pass an order in appeal in accordance with law. In case the order in appeal is adverse to the petitioner he would be at liberty to challenge the same in accordance with law.”

5. On a consideration of the law in *G.M.D. Murthy* case on relegation to statutory remedy against adverse orders passed by the authorities to appellate forums even in the presence of award of Labour Court/Tribunal and on consideration of the fact that the punishment was imposed two decades ago on August 01, 1996, then at this distance of time it may not be prudent or pragmatic to set aside the award and remit the matter back to the appellate authority in anticipation of a decision in appeal against the punishment order, much that I would liked to have. But I would not on merits since the award is perfectly in order and switches off the relief.

6. Nevertheless, and for the future it appears to me that broad guidelines deserve to be laid down for Labour Courts and Tribunals to follow in situations prevailing where the available statutory remedy has not been applied for and exhausted, the Labour Courts and Tribunals in Punjab, Haryana and Chandigarh on receipt of reference or when approached directly under amended Section 2A of the ID Act are advised to terminate the reference by foreclosure of trial on merits of the dispute on proof of statutory remedy being available under the rules of service but not pursued. They should immediately relegate the workman in the first opportunity after IDR is registered where claimant qualifies as a civil servant-cum-workman under Section 2(s) of the Act or an employee of Corporations, Municipalities, or other statutory bodies etc. and service is regulated by statutory rules to show him or her the way to first avail his/her remedy in statutory appeal with liberty to approach the labour court again in case order is still adverse to his interest. If the decision of the competent authority is still adverse then they may go ahead. This, if followed, would give an opportunity to the competent appellate authority to correct errors and omissions in the passing orders by the punishing authority by either affirming or varying them, as the case may be. This may go a long way in strengthening the framework of Section 11A of ID Act while considering proportionality and reasonableness of action taken within Labour Court's power to award lesser punishment will be realistic when the final decision on punishment by the appellate authority is known.

7. However, while venturing to do so, care and caution has to be exercised by Labour Courts and Tribunals only in such cases where a

Section 2 (j) “workman” serves in Government departments and other statutory bodies on public posts described/categorized/designated in rules but not daily wagers, casual or seasonal workers, part-time workers etc whose conditions of service may not be regulated by rules then principles in the order would not apply when they do not hold civil posts under the State or its instrumentalities. The distinction to be kept in mind is whether services are or are not regulated by formal rules/byelaws, or by whatever name called, provided they are statutory in character. But non-public servants but still employed by and working with the departments of the State Government and Corporations and other statutory bodies then the principles in this judgment will not apply and their cases be processed for trial in the accustomed way since there may be no statutory appeals provided for them in the rules for settlement of service grievances.

8. Thus, the leading question to be asked from the worker/management and their authorised representatives by the Labour Court when reference is received and parties appear where respondent is “State” or “other authority” or case is directly filed by following procedure in amended Section 2A of the ID Act is whether claimant holds post described in rules and its appendices and statutory appeal is provided or not against the impugned order in reference. If the answer is in the affirmative; then whether it has it been applied for, availed and remedy exhausted, and if not, to relegate workman to his appeal in the first instance. In case appeal is filed but not decided or is pending for unreasonably long time, then to direct the decision-making authority to complete its task within a time-bound period with liberty to approach Court after orders are received. Such orders

can well be passed since the final remedy before the manager of punishment is still awaited. In the second round of litigation the Labour Court will be better equipped with all the industrial tools in hand to make a final award on evidence adduced by parties and consideration of the quantum of punishment by applying principles of proportionality. It would ultimately make the work of the Labour Court and therefore the High Court much easier and less tedious while grappling with issues of awarding lesser punishment with reference to powers under Section 11A of the Act.

9. In pending litigation the same question may be asked on the coming date i.e. if recourse was taken to alternative remedy, and if not availed, then party claimant be relegated to that remedy without wasting further time and necessary orders may be passed without entering upon any discussion on the merits of the dispute to avoid any prejudice to the parties by keeping the reference unanswered in cold storage passing an order in writing holding that “workman” is a Government servant and must therefore exhaust the channels of appeal etc before he returns. In which case, it will be within the authority and discretion of the Labour Courts/Tribunals to pass time-bound orders reminding the authorities to pass reasoned orders on appeal after providing an adequate opportunity of hearing to the appellant/s and conveying the decision promptly to them to act accordingly.

10. If the limitation prescribed for filing service appeal in the rules has expired and remedy has not been availed in cases returned by the Labour Courts and Tribunals on remand the appellate authorities/State are directed to consider condoning the delay and to consider and decide all such appeals presented or to be presented on merits within a reasonable time

which should normally not be beyond three months of the day workman approaches appellate authority on remand.

11. In the cases which return to the Labour Court or Tribunal after remand and dispute is subsisting, and even in cases where the original reference is prior to September 15, 2010 when Sub-sections (2) and (3) were added to Section 2A, the Labour Court or Tribunal, as the case may be, will directly entertain the request for reviving the case remanded and proceed with the adjudication of the dispute which had already come into existence and after accepting pleadings from the parties in challenge to the final order in appeal proceed to determine the case on merits. If evidence stands closed prior to remand but before the award is pronounced, then adequate and reasonable opportunity would be provided to the parties on reopening of the lis, and if permission is sought, permit parties to lead further evidence. In such situations as envisaged in this order, it will be in the discretion of the Labour Court to allow witnesses to be recalled for examination and cross-examination, as the case may be, but the previous testimonies of witnesses, if recorded, shall be read in evidence as they stand preserved and cannot be overwritten. This will abridge the trial suitably and save time of recording of oral evidence. The Labour Court or Tribunal will not restart the case all over again but will pick up the threads from where they were left i.e. on the date the case was remanded and workman sent back to statutory appeal, revision etc.

12. The reason which persuades me to hold that the Labour Court can adopt such path by closing the reference or keeping it pending, either in its discretion to await orders in appeal after returning the claimant to his

appellate remedy, is that the making of an order of reference under Section 10 of the ID Act is an administrative action while a judicial or quasi judicial authority can always override an administrative decision or keep it in abeyance till such time as appeal is decided. In this manner, and to my mind the Labour Court or Industrial Tribunal is not precluded to remand the case or be compelled to answer a reference on merits, when it arrives prima facie at the conclusion that remedy of statutory appeal is available to the claimant but has not been invoked. It would then be committing no wrong in relegating the person to pursue appeal till a final administrative decision is taken and conveyed to the claimant. Another reason to relegate claimant to appellate authority is that the Labour Courts and Industrial Tribunals do not possess jurisdiction to pass stay orders, so there is no urgency. The Labour Court and Industrial Tribunal can pass an interim award, but it may not have the authority to pass interim directions staying operation of the punishment orders. Even for an interim award, there would have to be a process of determination upon admission or adjudication.

13. Accordingly, the dispute raised under Sections 2A, 2 (k) read with Section 10 should be treated as premature in the presence of remedy available against the original adverse order not having been exhausted by the claimant. The dispute will come into full bloom only when the appellate remedy is taken recourse to and is exhausted. This would give valuable opportunity to the appellate authority to review the order of punishment. Take for instance a situation where the service appeal is allowed and the punishment order is set aside, the dispute would stand resolved automatically and there would be no occasion to approach Court unless the

order still visits civil consequences on the claimant. In case lesser punishment is awarded in appeal then the Labour Court in resumed hearing on the merits of the case would be in a far better position to apply Section 11A if called upon to do so. The path would then be clear for adjudication, when Labour Court is approached again to settle the subsisting dispute from where it was left upon remand.

14. To return to the case on facts and law, the other major obstacle for the petitioner to cross is the considerable delay and unexplained laches involved in this case. Although there is no limitation provided in Section 10 of the ID Act in raising a dispute but still the impugned order passed by the punishing authority in August 1996 was raised as an Industrial Dispute in the year 2003, which led to reference No.267 of 2003. It took 10 years of protracted litigation before the Tribunal to conclude the matter against the workman. This is not proper court management in the labour court which requires disputes to be settled within three months as per rules and reasons for delay caused by adjournments recorded in writing. Labour Courts should remain wary of letting time pass and be forever conscious of their pious duties in settling disputes which burn the hearts of labour by creating situations compelling parties not to seek adjournments after adjournments on pain of heavy costs. Evidence should be recorded within the shortest possible time. Parties should be asked reasons in writing from the authorised representatives of labour and managements, the purpose and relevancy of production of witnesses. The file should not be allowed to be burdened with inconsequential material. Mass makes a mess.

15. Labour Courts and Tribunals are guided to apply religiously the

methodology of admissions and denials in cases falling under Section 2A [as amended in 2010] where the brunt of litigation is the maximum today. Such measures should be adopted in letter and spirit of Order 8 Rule 1A of the Code of Civil Procedure, 1908 and the provision utilized effectively to curtail exhibition of public documents through formal witnesses from the departments of Government and the exercise aimed to save time. This should be observed without departure and in routine on the first date of hearing on appearance of respondents by fixing a date for the purpose. No further adjournment should be allowed except by order in writing containing reasons. Thereafter, pleadings be allowed to be exchanged, issues framed, if required, and evidence let in on the contested facts in issue. This will help in timely conclusion of trials which can be done by toning up the system by each of the labour Courts and Tribunals. The idea in this is to stop labour matters drifting aimlessly for years without taking control by the Court to rein in parties to the time lines. Depending on the complexity of the matter, normally, the target should be to conclude cases by making awards within reasonable time even when the Central Industrial Disputes Rules enjoin a period of three months to conclude the trial. The target should be to contain litigation to a maximum of about a year and a half or less and as realistically as possible depending on the nature of the disputes consistent with the demands of justice and without sounding hurried or curtailing reasonable and adequate opportunity to the parties to establish their respective cases satisfactorily. This will lie in the active control of the Presiding Officers.

16. As a rule and always inflexibly, a schedule of the milestones in

the life of the trial should be fixed by the Labour Courts and Tribunals when parties put in appearance and if practicable, on the date of consideration of application for admissions and denial of documents and thenceforth the parties be called upon to meet the dates fixed in the opening sheet strictly to be followed, failing which, imposition of heavy costs should be considered on defaulting party as the order of the day, be it labour or management.

17. In cases involving the State and its organs, Labour Courts usually deal with public documents and there is, therefore, hardly any excuse for delay in exhibition of documents through formal witness called to produce documents. Admission and denial procedure, when followed, will obviate protraction in trials. Such files should be marked red for easy identification. The departments of Government and Corporations and other statutory bodies deserve to be strictly dealt with in the early stages to compel them to produce the entire relevant record on file, which by itself will be admission of documents for the Court to trust and consider their evidentiary weight on the issues framed for answer.

18. Labour Courts and Tribunals must remember they exercise extraordinary jurisdiction while dealing with orders of authorities falling within the purview of Article 226 of the Constitution and where service is regulated by statutory rules framed either under proviso to Article 309 of the Constitution or by Statute they enjoy power akin to certiorari which goes to record to uphold or upset orders of discharge, dismissal, termination or retrenchment passed by public authorities. The powers of Labour Courts and Tribunals sometimes go even beyond mandamus jurisdiction since they can mould the relief and no other court can by resort to extraordinary and

judicious measures including power to replace contracts which the writ court would be shy of. They are not only the judges but the administrators of disputes falling under The Second and The Third Schedules of the Industrial Disputes Act, 1947. Apart from being the custodians of unfair labour practice in The Fifth Schedule to the Act they exercise vast powers as are in the hands of a benefactor coming in aid of those who need it most in a country of severe unemployment but sadly still some judicial officers resent posting in Labour Courts and Tribunals. This mind set must change to accept the challenges the ID Act and other labour legislation present on the scene.

19. The Presiding Officers must also remember, as they do, and remind themselves that while sitting in Labour Courts and Tribunals these statutory courts enjoy very special powers, authority and jurisdiction like no other Court in India enjoys in the first instance i.e. under Section 11A of the Act. This provision is the ultimate weapon in the hands of these Tribunals to strike down arbitrariness in administrative action which the High Court may shy away within the constraints and the expanse of Article 226.

20. The Labour Courts and Tribunals wear many hats and exercise vast powers. They become adjudicators of industrial disputes in the background of socially beneficial legislation by protecting the weak and the helpless against overpowering managements; by sifting out the indolent, the imposters, the false claimants they become enquiry officers; they become punishing authorities and virtually exercise appellate authority over the punishing authority to vary quantum of punishments imposed by the functionaries of State/Corporations etc. all by themselves and preside over

the actions of a wide range of employers, both in public and private sector, when facts and justice demands.

21. The work of Labour Courts and Tribunals is not over and done with after announcement of the award. Apart from remittance of it to the appropriate Government after expiry of the periods prescribed by Section 17 and 17A of the Act, they have also to perform an obligation thereafter to transmit the award to the Civil Court having jurisdiction for execution as per the amendment, 2010 introducing Sub-section (10) to Section 11 of the Act. By the amendment the executing authority is the Civil Court under Section 11 (9) of the ID Act. The Labour Courts and Tribunals must not forget to do this, if not already doing, to directly remit their awards for timely implementation.

22. To return to the case again, the Labour Court has had to address itself to the delay in approaching it while dealing with disputes, even when it has power to mould relief and when the motion made to it is inordinately delayed and the employer is a department of the State Government and the post is public in nature, then a stale claim can well be refused, which judicial thinking is reflected in the Supreme Court judgments focusing on the issue in cases such as Nedungadi Bank Ltd. Vs. K.P. Madhavan Kutty, (2000) 2 SCC 455; Executive Engineer Vs. Shivlinga, (2002) 10 SCC 167; Haryana State Coop. Land Development Bank Vs. Neelam, (2005) 5 SCC 91 and State of Karnataka Vs. Ravi Kumar, (2009) 13 SCC 746. A sea of judgments of the High Courts on the point would only add volume to the order and are therefore not noticed.

23. The delay in raising the dispute in this case is 7 years, which

has not been explained by the causes of delay. As said earlier, there may be no limitation in Section 10 of the ID Act but still the words “at any time” in Section 10 are to be read with reasonable curtailments of time. See, Regional Provident Fund Commissioner v. K.T.Rolling Mills, (1995) 1 SCC 181. The Supreme Court observed that when a power is conferred by statute without mentioning the period within which it could be invoked, the same has to be done within reasonable period, as all powers must be exercised reasonably, and exercise of the same within reasonable period would be a facet of reasonableness.

24. As far as the case on facts goes, I find no merit therein and would accordingly dismiss the petition and uphold the award on its own force and for the additional reasons as above discussed.

25. A copy of this order be circulated to the Labour Courts and Tribunals within the jurisdiction of this Court for their guidance and for making improvements thereon by thinking out of the box while faced with heavy dockets growing by the day.

(RAJIV NARAIN RAINA)
JUDGE

25.04.2017
neeraj/Vimal

REPORTABLE