

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

LPA No.925 of 2018
Date of decision: 21.08.2018

Mahender

... Appellant

Versus

Presiding Officer, Industrial Tribunal cum Labour Court, Hisar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Rakesh Nagpal, Advocate for the appellant.

ARUN PALLI, J. (Oral)

This is an intra-court appeal under clause X of the Letters Patent against the order and judgment dated 06.03.2018, rendered by the learned Single Judge, vide which the writ petition preferred by the appellant-workman (hereinafter referred to as 'workman') against the award made by the Labour Court dated 19.07.2013, had since been dismissed.

The case set out by the workman has been that he was appointed as Chowkidar/Beldar on 01.02.1993 and was posted at Rest House, Charkhi Dadri to watch and ward the material i.e. Bitumen drums etc. However, his services were abruptly brought to an end on 01.04.2004 without affording him any notice or compensation in terms of the provisions of Section 25F of the Industrial Disputes Act, 1947 (for short, 'the Act'). As persons junior to the workman were retained in service and the respondents rather recruited fresh hands, thus, there was a violation even of the provisions of Sections 25G and 25H of the Act.

In defence, the respondents denied the claim of the workman and clarified that he was engaged as a Beldar on daily wage for a specific work during August, 1993 on muster roll No.121-1/1, and after the work for which he was engaged ceased to exist he himself left and abandoned the job in March 1994. Thus, he did not even render service for a period of 240 days in the 12 calendar months immediately preceding his termination. Further, the workman had raised a dispute after a long delay of 15 years since he last served the respondent and left the job, thus, his claim was liable to be rejected on that score alone.

On a consideration of the matter and the evidence on record, the Labour Court reached a conclusion that contrary to the claim of the workman that he served for 11 long years from February, 1993 to April, 2004, it was proved that he actually served for 139 and 63 days in the years 1993 and 1994, respectively, thus there was no violation of the provisions of Section 25F of the Act. However, from the material on record it was proved that the respondents had violated the provisions of Sections 25G and 25H of the Act, but since the workman had issued a demand notice on 01.02.2007, i.e. after more than 13 years, he was not entitled to any relief, for, his claim was time-barred.

Being aggrieved by the award rendered by the Labour Court, the workman approached this Court vide a writ petition, as indicated above, which too was dismissed as the learned Single Judge was of the view that the claim of the workman suffered from an inordinate delay, further in reference to the decision of the Hon'ble Supreme Court in **State of Jammu and Kashmir v. R.K. Zalpuri and others**, (2015) 15 SCC 602, it was concluded that even otherwise the writ petition having been filed after 5

years of the award rendered by the Labour Court it suffered from delay and laches. Thus, this appeal.

Learned counsel for the appellant submits that the Labour Court as also the learned Single Judge erred in law while declining the claim of the workman solely on the ground that he had raised a dispute after a long delay post his alleged termination. Further, the amendment carried out in the provisions of Section 2A of the Act, w.e.f. 15.09.2010, neither had any bearing on the matter nor could be made applicable thereto. Thus, even if the workman was guilty of having raised a dispute belatedly, the Labour Court could always mould the relief appropriately, for neither any limitation is prescribed nor any time is specified to raise any such dispute. In support of his submission, he has placed reliance upon the decisions of this Court as also the Hon'ble Supreme Court in Ram Kumar v. Presiding Officer, 2002(2) SCT 323; Sapan Kumar Pandit v. U.P. State Electricity Board, 2001(6) SCC 222; Raghubir Singh v. General Manager, Haryana Roadways, Hissar, 2015(1) SCC (L&S) 23; and Karan Singh v. M/s Executive Engineer Haryana State Marketing Board, 2009(1) SCC (L&S) 497.

We have heard learned counsel for the appellant and perused the records.

Ex facie, the case set out by the workman was that he was employed on 01.02.1993 and he continued to serve the respondent-authorities till 01.04.2004, when his services were terminated without any notice or payment of compensation. Whereas, on the contrary the case of the respondents has been that the workman was engaged as a casual labour during August, 1993 and he himself left the job during March, 1994 and

never returned thereafter. To substantiate his claim, the workman had moved an application before the Labour Court requiring the respondents to produce the muster rolls, issuance register, attendance register of the workers as also the records regarding payment of wages to them during the relevant period. And pursuant to the directions issued by the Labour Court, the respondents through its official i.e. R.K. Babbar, SDE, produced the requisite records (Ex.W-X). However, as per the said records, the workman remained in employment of the respondents only from August, 1993 to March, 1994, and that too with intermittent breaks. In fact, the respondents examined R.K. Babbar, SDE (MW1), who testified in his deposition that the workman was engaged as daily wager in the month of August, 1993 and he worked, with breaks, upto March, 1994 and thereafter he left the job on his own volition. The Labour Court on an analysis of the record reached a conclusion that the workman actually served the respondent for 139 days in the year 1993 and for 63 days in the year 1994 only. Thus, he completely failed to substantiate his claim. Nothing was brought on record either to show if the finding recorded by the Labour Court was perverse or contrary to the record.

We may now advert to another aspect of the matter: the respondents had set up a plea of abandonment and it is not in dispute either that the workman had raised an industrial dispute after over 13 years since he last served the respondent i.e. March, 1994, vide a demand notice dated 01.02.2007. No evidence was led to show that post March, 1994 till the respondents were served with the demand notice dated 01.02.2007, the workman either approached the respondents for assignment of duty or represented to the authorities under the Act to intervene in the matter. Therefore, an absolute silence at the instance of the workman for over a

decade proved that he severed his relations with the respondents and had abandoned the duty voluntarily. And that being so, even the findings recorded by the Labour Court that persons junior to the workman were retained in service and some fresh hands were recruited also pales into insignificance.

Further, there cannot be any quarrel with the proposition of law that if a workman is found entitled to a definite relief then just because there was some delay in raising an industrial dispute, his claim should not be rejected. But that is not the position in the matter at hands. As indicated above, the workman remained in the employment of the respondents only till March, 1994 and he raised an industrial dispute after more than 13 years vide a demand notice dated 01.02.2007. Thus, apparently the claim of the workman was stale and suffered from gross, inordinate and unexplained delay. Rather, in the given situation, the issue that would assume significance is: if the reference itself could be maintainable. For, no industrial dispute could be said to exist even after a lapse of 13 years. Likewise, there cannot be any illusion as regards the exposition of law by this Court as also the Hon'ble Supreme Court in **Ram Kumar v. Presiding Officer; Sapan Kumar Pandit v. U.P. State Electricity Board; Raghubir Singh v. General Manager, Haryana Roadways, Hissar; and Karan Singh v. M/s Executive Engineer Haryana State Marketing Board (supra)**, but in the wake of the position as sketched out above, these would have no bearing on the matter at hands.

The matter could be viewed from yet another perspective. Concededly, the Labour Court declined the claim of the workman vide its award dated 19.07.2013, and the workman had assailed the said award

nearly after 5 years vide a writ petition. Thus, even the writ petition preferred by the workman suffered from gross delay and laches. The argument advanced by the learned counsel for the appellant that post passing of the award the workman had filed a civil suit in the Court of Civil Judge (Sr. Divn.), Bhiwani, which he later withdrew on 21.01.2017 to assail the award dated 19.07.2013 by way of writ petition and, therefore, he had a valid explanation as regards the delay that had occurred in the process, lacks conviction and cannot be countenanced. Records show that even the suit referred to above was filed by the workman after two years of passing of the award. Not just that, in the said suit the workman had sought a declaration that he was entitled for the post of regular Beldar/Chowkidar along with all service benefits like promotion, D.A. and pay-scales as provided by the Government from time to time. One wonders, as to how once the claim of the workman was rejected by the Labour Court such a suit was even maintainable. Therefore, if the workman chose to institute a wholly misconceived suit and did not opt to question the award dated 19.07.2013 for a period of 5 years, the time lost in filing and pursuing the said suit would not enure to his advantage. In other words, he cannot be the beneficiary of his own wrong.

In conspectus of the above, we are dissuaded to interfere with the impugned order and judgment. Thus, the appeal being devoid of merit is accordingly dismissed.

(Krishna Murari)
Chief Justice

(Arun Palli)
Judge

21.08.2018
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO