

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

CWP No.19113 of 2019

Date of decision: 25.09.2019

Nagar Panchayat Maloudh, District Ludhiana

.....Petitioner

versus

The Presiding Officer, Industrial Tribunal, Ludhiana
and another

....Respondents

Coram: **Hon'ble Mr. Justice B.S. Walia**

Present: Mr. Gurvesh Singh Khokhar, Advocate for the petitioner.

B.S. Walia, J.

[1] Prayer in the petition under Article 226/227 of the Constitution of India is for the issuance of a writ of Certiorari for quashing Award (Annexure P/5) dated 25.02.2019, passed by respondent No.1, ordering reinstatement of respondent No.2-workman, (hereinafter referred to as the workman) with continuity of service and full back wages with effect from the date of demand notice.

[2] Brief facts of the case, leading to the filing of the writ petition are that the workman served a demand notice dated 19.01.2015 under Section 2-A of the Industrial Disputes Act, contending that he was appointed as a Clerk w.e.f. September, 1994, his last drawn salary was Rs.4,000/- per month, the petitioner-management did not allow him to perform duty due to pendency of a criminal case registered against him vide FIR No.253 dated 27.09.2008. However, he was acquitted in said case vide judgment dated 21.10.2014, whereupon he reported for duty and produced judgment of the Court but the petitioner-management did not permit him to join duty on the

ground that it had since terminated his services due to pendency of the said case. In the aforesaid background, it was contended that termination of service of the workman was illegal being against the rules applicable as also the principles of natural justice, consequently, he was entitled to reinstatement with continuity of service and full back wages. On failure of conciliation proceedings between the parties, the Assistant Labour Commissioner, Circle No.4, Ludhiana referred the following Industrial Dispute to the Tribunal for adjudication :-

“Whether the termination of service of workman Shri Nirbhai Singh by the management was illegal and unjustified? If so, to what relief / exact amount of compensation the workman is entitled to ?”

[3] The workman filed statement of claim dated 27.07.2015 before the Tribunal, reiterating facts mentioned in the demand notice, whereas the petitioner-Management filed written statement dated 15.03.2016, raising preliminary objections that the statement of claim had been filed solely to pressurize it to fulfill illegal demand of the workman, that the workman had concealed material facts of his having committed fraud with the management by misappropriating Rs.3495/- out of Rs.36,641/- collected by him along with co-workman from the inhabitants of Malaudh, thereby had committed offence under **Rule XVII. 18** of the Municipal Account Code, 1930 for which, a criminal case was registered against him and one Satya Singh vide FIR No.253 dated 27.09.2008 under Sections 406/420 IPC, PS Payal and the workman dismissed from service vide Order No.212 dated 28.02.2008, that the workman had never approached the management for setting aside his dismissal nor filed any appeal or reference under the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), as such the dismissal being valid and

legal besides, the statement of claim filed by the workman being barred by limitation, on account of having been filed after a lapse of 07 years.

[4] That on the basis of pleadings of the parties, the following issues were framed on 12.04.2016 :-

- “1) *Whether the reference is not maintainable as alleged in the Para No.4 of the preliminary objection in the written statement? OPM.*
- 2) *Whether the reference is time barred? OPM.*
- 3) *Whether termination of services of the workman is justified and in order? If not, to what relief the workman is entitled to? OPW.*
- 4) *Relief.”*

[5] That *qua* Issue No.1, the Tribunal held that as admitted by the witness of the management, the Punjab Civil Services (Punishment and Appeal) Rules were applicable to the workman and since dismissal from service was a major penalty under the rules and the procedure for imposing major penalty prescribed under Rule 8 of said rules had admittedly not been followed, the reference was maintainable.

[6] As regards Issue No.2, the Tribunal held that reference had been made under Section 10(1)(c) of the Industrial Disputes Act, 1947 and as the case had been referred by the Punjab Government for adjudication to the Tribunal, there was no limitation for the same.

[7] As regards Issue No.3, the Tribunal held that RW1-Shri Achhara Singh and RW-2 Shri Jagjit Singh appearing on behalf of the management had admitted that Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, was applicable to the workman, that as per said Rule a charge sheet was to be served on the workman, reply taken, departmental enquiry was to be held, workman was to be given opportunity to produce his witnesses who

could be cross-examined by the department, similarly the department was to produce witnesses and the workman was to be given opportunity to cross examine them, but the workman was not given any charge sheet nor was any enquiry held against the workman prior to his removal from service.

[8] The Tribunal further held that since the workman had been dismissed from service vide Order No.212 dated 28.02.2008 because of charges of embezzlement, whereas subsequently the workman had been acquitted of said charges by the Court of the learned SDJM, Payal vide Order dated 21.10.2014 where after the workman had reported for duty but was not allowed to join duty and since removal of the workman from service was contrary to the procedure stipulated under Rules 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, therefore, removal of the workman from service was illegal, consequently the workman entitled to reinstatement with continuity in service and full back wages.

[9] Learned counsel contended that the services of the workman had been terminated on account of embezzlement, therefore, the same did not warrant any interference particularly in view of the fact that he had not challenged order of termination dated 28.02.2008, till the serving of demand notice dated 19.01.2015 and had approached the Labour Court after a delay of 06 years, therefore, the Industrial dispute was a stale claim.

[10] I have considered the submissions of learned counsel for the petitioner.

[11] Termination of services of the petitioner was on allegations of misconduct of having embezzled a sum of Rs.3,495/-, out of the amount collected from the inhabitants of Malaudh. No doubt, enquiry was conducted, but the same was a one sided enquiry without conducting the same in the

manner envisaged under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, which provides for issuance of charge sheet, giving of opportunity to lead evidence and cross-examine the witnesses of the management, as well as of the delinquent. Since, procedure contemplated in Rule 8 was not followed, therefore, the impugned action of the management was contrary to the rules as well as decision of Hon'ble the Supreme Court in '**M.P. State Agro Industries Development Corporation Limited and another versus Jahan Khan**' 2007(4) SCT 309. Regarding, plea that the claim was hit by delay and laches, reference is made to the decision of Hon'ble the Supreme Court in '**U.P. State Electricity Board versus Rajesh Kumar**' 2005(4) SCT 465 in which, it has been held that there is no period of limitation prescribed for parties for seeking a reference and if the management was serious with regard to the claim of the workman being stale, it was open to it to question the reference in the year it was made and not after having participated in the proceedings and suffered an award. Relevant extract of the decision of Hon'ble the Supreme Court is reproduced as under :-

“4. The Labour Court, on the basis of the evidence on record, has recorded a finding of fact that the respondent workmen did work for 240 days. This conclusion is based on the evidence of the workmen and the list of 82 employees, which included the names of the respondent workmen. It is also on record that the correctness of this list was not challenged before the Labour Court and the management did not produce any contra-evidence or the original records which it possessed to deny the claim or contention of the workmen. Non-consideration of the evidence of the Executive Engineer who was examined on behalf of the appellant, in our view, did not affect the case in any way for the

simple reason that he was not in service on the relevant dates i.e the dates on which the services of the respondent workmen were terminated. It is also clear from the impugned judgment that the point with regard to the stale claim of the workmen was not raised before the Labour Court. For the first time it was sought to be urged before the High Court. We may also add that if the appellant was really aggrieved and serious as to the stale claim of the respondent workmen, it was open to the appellant management to question the very reference made by the State Government in the year 1997 itself. The validity of the reference was not questioned. Thereafter, the management participated in the proceedings before the Labour Court and suffered the award. The management further, unsuccessfully, challenged the award of the Labour Court before the High Court. From the award of the Labour Court it is clear that the relief granted to the workmen was only with regard to the reinstatement with continuity of service. The back wages were awarded only from the date of reference and not from the dates of termination of their services. This is how the Court has moulded the relief. We are told that when the proceedings were pending in the High Court, the respondent workmen are already reinstated.

5. *It is also not disputed by the learned counsel for the parties that there is no period of limitation as is prescribed for the parties in making the reference. The facts and circumstances of each case are to be considered in dealing with the stale claims and appropriate reliefs are to be granted. We do not think it is necessary for us to examine the question of stale claims made by the learned counsel for the appellant in these cases, in the light of the facts narrated above and particularly, when the appellant did not challenge the order of reference made in the year 1997, at this stage. Thus looking from all angles, substantial justice is done in the matter. In this view, we decline to interfere with the impugned judgment. Consequently, the appeals are dismissed. No costs.”*

[12] Since the services of the workman were admittedly terminated without conducting an enquiry in accordance with the provisions of Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 or for that matter giving him an opportunity to participate in the said proceedings, the impugned order of termination dated 28.02.2008 is legally unsustainable and was accordingly rightly set aside by the learned Tribunal. The plea of the claim being hit by delay and laches was raised for the first time before this Court, whereas as per the decision of Hon’ble the Supreme Court as referred to above, in case the management was serious about delay and laches and the claim being a stale claim, it ought to have agitated the same in the year, the reference was made or before participating in the proceedings before the Tribunal but once Award was suffered, it was no longer open to the management to subsequently raise the plea of delay and laches. In the circumstances, I find no grounds warranting interference with the award passed by the Tribunal. The writ petition is bereft of merit and is accordingly *dismissed in limine*.

(B.S. Walia)
Judge

September 25, 2019
'Rajneesh'

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No