

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(I) CWP No.20848 of 2018
Date of decision : 30.07.2019

Jasdev SinghPetitioner
versus

Director, State Transport, Punjab, Chandigarh and others ...Respondents

AND

(II) CWP No.21240 of 2018
Date of decision : 30.07.2019

Gian SinghPetitioner
versus

Director, State Transport, Punjab, Chandigarh and others ...Respondents

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

Present: Mr. Harpal Singh Sirohi, Advocate for the petitioners.

B.S. Walia, J.,

1. This order shall decide CWP Nos.20848 of 2018 as well as CWP No. 21240 of 2018 as common questions of law and fact are involved in the challenge to award's Annexure P/9 dated 19.10.2016/17.03.2017 and 19.10.2016/14.03.2017 passed by the Industrial Tribunal-cum-Labour Court, UT Chandigarh, (hereinafter referred to as the Tribunal) rejecting references dated 17.05.2012 regarding demand of the Punjab Roadways Workshop Workers Union under Section 2 (k) of the Act for quashing order dated 06.11.1998/20.11.1999, passed by the Director State Transport Punjab/ General Manager, Punjab Roadways, Roopnagar respectively and claiming appointment of the petitioners as Blacksmith/Welder w.e.f. 29.05.1991/

11.06.1991 respectively on the basis of award Annexure P/1 dated 05.01.1995.

2. Brief facts of the case as pleaded in the instant writ petitions are that Jasdev Singh (petitioner in CWP No. 20848/2018) was appointed as Blacksmith on daily wages in November, 1980 and his services were terminated in March, 1984 whereas Gian Singh (petitioner in CWP No. 21240 of 2018) was appointed as Welder on daily wages in July, 1980 and his services were terminated in December, 1982. Both the petitioners challenged their termination after a delay of 9 years. The Tribunal vide separate awards Annexure P/1 dated 05.01.1995, ordered reinstatement of the petitioners with continuity of service and 30% back wages w.e.f. the date of demand notices i.e. 29.05.1991/ 11.06.1991 respectively. Pursuant thereto, the petitioners were reinstated in service on 10.04.1995. Thereafter, the petitioners filed applications under Section 33 (c)(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') for payment of back wages besides regular pay scale instead of daily wages and vide order Annexure P/2 dated 06.09.1999, the petitioners were held entitled to arrears of back wages @ 30% by treating them to be in regular pay scale of ₹400-600. Accordingly, payment of arrears was made to the petitioner's. The petitioners again approached the Tribunal with a grievance that they were entitled to revision of grade from 400-600 to 950-1800 w.e.f. January, 1986 and further higher pay scale from 01.01.1996. However, the aforementioned applications were dismissed vide order dated 17.03.2004, whereupon the petitioners approached this Court by way CWP No.16062 of 2004 and CWP No.16078 of 2004. Vide order dated 31.05.2005, order dated 17.03.2004 passed by the Labour Court were set aside and the matter remanded to decide the controversy afresh.

3. Pursuant to remand, the Tribunal vide order Annexure P/3 dated 26.08.2009, held that the petitioners were entitled to receive the remaining amount after adjusting the payment already received along with interest @ 12% per annum on the amount due w.e.f. 06.09.1999 till the date of payment since the same had not been paid within three months from 06.09.1999.

4. Thereafter, demand notice, Annexure P/2 dated 12.09.2011 was served by the Punjab Roadways Workshop Workers Union under Section 2 (k) of the Act praying for quashing order dated 06.11.1998/20.11.1999, passed by the Director State Transport Punjab/ General Manager, Punjab Roadways, Roopnagar respectively appointing the petitioners as Washing Boys and claiming appointment of the petitioners as Blacksmith/Welder respectively w.e.f. 29.05.1991 on the basis of award Annexure P/1 dated 05.01.1995 passed by the Tribunal. Delay in raising claim for appointment of the petitioners on the post of Blacksmith/Welder was attributed to time taken in decision of dispute qua payment of salary to the petitioners for the post of Blacksmith/Welder. The aforesaid references were answered against the Punjab Roadways Workshop Workers Union by the Tribunal vide award's Annexure P/9 dated 19.10.2016/17.03.2017 and 19.10.2016/14.03.2017. Aforesaid awards have been impugned in the writ petitions.

5. Learned counsel for the petitioner has reiterated the submissions made before the Tribunal.

6. I have considered the submissions of learned counsel and have gone over the pleadings as well as the award.

7. Admittedly, references dated 17.05.2012 at the behest of the Punjab Roadways Workshop Workers Union under Section 2(k) of the Act qua the petitioners were declined by the Tribunal whereas the writ petitions

have been filed by the petitioners in their individual capacities. It is settled law that a dispute which is not covered under Section 2-A of the Act would become an industrial dispute only if the Workers Union or body of workmen supports the individual workman. Reference in this context can be made to the decision in **Madura Coats Ltd. vs Jayaraman (2005) 2 LLN 944 (Mad)**.

8. Thus a dispute covered under Section 2(k) of the Act and reference of which was made on behalf of the Punjab Roadways Workshop Workers Union cannot be challenged by the petitioners workmen in their individual capacity. Once the demand was espoused by the Punjab Roadways Workshop Workers Union under Section 2(k) of the Act, in respect of claim of the petitioners and references were made by the appropriate government in the name of the Punjab Roadways Workshop Workers Union and the same were answered against the Punjab Roadways Workshop Workers Union, challenge to the same would also have to be by the Punjab Roadways Workshop Workers Union, as the claim of the petitioners/workmen is not under Section 2-A of the Act which provides for agitating a claim in an individual capacity.

9. No doubt applications filed by the petitioners under Section 33 (c)(2) of the Act were allowed and vide order Annexure P/2 dated 06.09.1999, the petitioners were held entitled to arrears of back wages @ 30% by treating them to be in regular pay scale of ₹400-600. Subsequent grievance of the petitioners of being entitled to revision of grade from Rs. 400-600 to 950-1800 w.e.f. January, 1986 and further higher pay scale from 01.01.1996 was vide decided vide order Annexure P/3 dated 26.08.2009 and the petitioners were held entitled to receive the remaining amount after adjusting the payment already received along with interest @ 12% per annum on the

amount due w.e.f. 06.09.1999 till the date of payment since the same had not been paid within three months from 06.09.1999.

10. Be as it may, admittedly, pursuant to awards Annexure P/1 dated 05.01.1995, the petitioners were appointed against the post of Washing Boy and their services were also confirmed as Washing Boy's vide endorsement bearing No. 40075-96SA1(3) dated 06.11.1998- Ex.W-4, on the Committee constituted by the Director State Transport, Punjab, Chandigarh recommending regularization of the petitioners on the post of Washing Boy in Punjab Roadways, Batala Depot and vide order bearing endorsement No.15781-85/EC dated 20.11.1998, Ex.W5, the General Manager, Punjab Roadways, Roopnagar informed the petitioners of decision vide letter No.400075-96/SA(3) dated 06.11.1998 of Director State Transport Punjab, Chandigarh to regularize the services of daily wagger of Punjab Roadways, Roopnagar depot. Petitioners were directed to submit joining report to the General Manager, Punjab Roadways in the depots allotted to them against the regular post of Washing Boys. Thereafter, the General Manager, Punjab Roadways appointed the petitioners as Washing Boy's vide order dated 16.04.1999 w.e.f. 23.11.1999.

11. Undoubtedly, the petitioners also submitted affidavits in token of acceptance of the post of Washing Boys and services of the petitioners were also confirmed as Washing boys w.e.f. 23.11.1998. The petitioners also submitted affidavit's on 12.01.2007/08.09.2007, claiming benefits under the Assured Career Progression Scheme on completion of 4, 9, and 14 years service against the post of Washing Boy as per entitlement. Thus the petitioners performed duties as Washing Boy for a period of close to 12 years.

12. That although the petitioners claim that they were compelled to join the post of Washing Boys but no evidence was led to substantiate said plea despite opportunity granted by the Coordinate Bench vide order dated 10.12.2018. Had the petitioners been compelled by the management to join the post of Washing Boys in 1998-99, the petitioners could have raised a dispute at said point of time not have accepted the post of Washing Boys. However, nothing of the sort was done. On the other hand, the management produced ample evidence on record in the shape of petitioners accepting joining duty as Washing Boys, conformation of the petitioners on the post of Washing Boy, affidavit of the petitioners dated 12.01.2007 claiming benefits of the post of Washing Boys etc. The documents produced on record bear the signatures of the petitioners/workmen which clearly shows that the petitioners accepted the regular post of Washing Boys without any pressure which falsifies their stand that they were forced to join the regular post of Washing Boys. Besides, the petitioners did not agitate the order of appointment on the post of Washing Boy as also regularization instead, continued to work on the said post and also gave various affidavits as well as representations for grant of benefits admissible to the post of Washing Boy and were accordingly granted the benefits admissible on the post of Washing Boy under the Assured Career Progression Scheme. Once the petitioners accepted the post of Washing Boys, in the year 1998 and thereafter throughout performed duty on the post of Washing Boys w.e.f. 23.11.1998 till raising of demand notice Annexure P/4 dated 12.09.2011 through Punjab Roadways Workshop Workers Union besides, apart from serving on the regular post of Washing Boys also availed benefits admissible for

the said post, therefore, after an inordinate delay of close to 13 years, it is not open to the petitioners to claim the benefit of regular post of Blacksmith/Welder instead of Washing Boy. The claim is clearly hit by delay and laches as well as acquiescence.

13. That it is settled law that if a workman does not raise a demand for a number of years against a wrongful act of the employer/management, then it is liable to be presumed that the workman has accepted the act of the employer and acquiesced in the same. The workman cannot make a demand after the lapse of several years and convert a dead and buried issue into an industrial dispute. The principle of delay and laches is applicable even when no limitation is prescribed as procedural laws like estoppels, waiver, acquiescence and doctrine of acceptance sub silentio are applicable even to proceedings under the Industrial Disputes Act. Therefore, even where no limitation is prescribed but for a long period the aggrieved party does not approach the court, relief can be denied on the ground of unexplained delay and laches or on presumption of waiver of rights or acquiescence. Reference in this context can be made to the decision of Hon'ble the Supreme Court in **Prabhakar vs Joint Director Sericulture Department and another 2015 (15) SCC 1**. Relevant extract of the same is reproduced as under:-

36. It is now a well recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases Courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine

of laches is in fact an application of maxim of equity "delay defeats equities".

37. This principle is applied in those cases where discretionary orders of the Court are claimed, such as specific performance, permanent or temporary injunction, appointment of receiver etc. These principles are also applied in the writ petitions filed under Articles 32 and 226 of Constitution of India. In such cases, Courts can still refuse relief where the delay on the petitioner's part has prejudiced the respondent even though the petitioner might have come to Court within the period prescribed by the Limitation Act.

38. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong.

39. Thus, in those cases where period of limitation is prescribed within which the action is to be brought before the Court, if the action is not brought within that prescribed period the aggrieved party loses remedy and cannot enforce his legal right after the period of limitation is over. Likewise, in other cases even where no limitation is prescribed, but for a long period the aggrieved party does not approach the machinery provided under the law for redressal of his grievance, it can be presumed that relief can be denied on the ground of unexplained delay and laches and/or on the presumption that such person has waived his right or acquiesced into the act of other. As mentioned above, these principles as part of equity are based on principles relatable to sound public policy that if a person does not exercise his right for a long time then such a right is non-existent.

42. To summarise, although there is no limitation prescribed under the Act for making a reference under Section 10(1) of the Act, yet it is for the 'appropriate Government' to consider whether it is expedient or not to make the reference. The words 'at any time' used in Section 10(1) do

not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the Act. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers' financial arrangement and to avoid dislocation of an industry.

14. Similar view as above was taken by Hon'ble the Supreme Court in the case of **Haryana State Coop. Land Dev. Bank versus Neelam 2005**

(5) SCC 91. Relevant extract of the same is reproduced as under:-

13. It is trite that the courts and tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of Acceptance Sub silentio. The Respondent herein did not raise any industrial dispute questioning the termination of her services within a reasonable time. She even accepted an alternative employment and has been continuing therein from 10.8.1988. In her replication filed before the Presiding Officer of the Labour Court while traversing the plea raised by the Appellant herein that she is gainfully employed in HUDA with effect from 10.8.1988 and her services had been regularised therein, it was averred :

"6. The applicant workman had already given replication to the A.L.C. cum Conciliation Officer, stating therein that she was engaged by HUDA from 10.8.1988 as Clerk-cum-

Typist on daily wage basis. The applicant workman has the right to come to the service of the management and she is interested to join them."

She, therefore, did not deny or dispute that she had been regularly employed or her services had been regularized. She merely exercised her right to join the service of the Appellant.

14. It is true that the Respondent had filed a writ petition within a period of three years but indisputably the same was filed only after the other workmen obtained same relief from the Labour Court in a reference made in that behalf by the State. Evidently in the writ petition she was not in a position to establish her legal right so as to obtain a writ of or in the nature of mandamus directing the Appellant herein to reinstate her in service. She was advised to withdraw the writ petition presumably because she would not have obtained any relief in the said proceeding. Even the High Court could have dismissed the writ petition on the ground of delay or could have otherwise refused to exercise its discretionary jurisdiction. The conduct of the Appellant (Respondent ?) in approaching the Labour Court after more than seven years had, therefore, been considered to be a relevant factor by the Labour Court for refusing to grant any relief to her. Such a consideration on the part of the Labour Court cannot be said to be an irrelevant one. The Labour Court in the aforementioned situation cannot be said to have exercised its discretionary jurisdiction injudiciously, arbitrarily and capriciously warranting interference at the hands of the High Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution.

15. The petitioners never challenged the order's of the year 1998 appointing them as Washing Boys or giving them regular appointment and confirmation on the said post vide order dated 20.09.2001 w.e.f. 06.11.1998. Besides, the petitioners sought and were granted benefits admissible on the post of Washing Boys.

16. In view of the position as noted above, I find no infirmity with the well reasoned order passed by the Tribunal. The writ petition is devoid of merit and is accordingly dismissed in limine.

30.07.2019
rajesh.k.khurana

(B.S. Walia)
Judge

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