

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

CWP No.30354 of 2019

Date of decision: 19.10.2019.

Lal Chand

...Petitioner

Versus

The President, Sarustigarh Cooperative Agricultural Service Society, Village
Sarustigarh

... Respondent

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

Present: Mr. Pradeep Sharma, Advocate for the petitioner.

B.S. Walia, J.,

1. Prayer in the writ petition is for the issuance of a writ of Certiorari for quashing award Annexure P/4 dated 23.05.2019, passed by the learned Presiding Officer, Industrial Tribunal, Patiala, (hereinafter referred to as 'the Tribunal') dismissing the claim of the petitioner for reinstatement while awarding meagre compensation of Rs.15,000/-.

2. That it is claimed that the petitioner was working as Salesman with respondent No.1/management from 01.08.1987 and was drawing salary of Rs.1539/- per month while his services were illegally terminated vide resolution dated 12.02.1993. Stand of the petitioner was that charge sheet was never served upon him by the respondents while on the other hand, stand of the respondent/management is that charge sheet was duly served upon the petitioner/workman but he failed to submit any reply to the same besides failed to appear before the Enquiry Officer. It is also admitted that the petitioner filed a civil suit at Patiala, challenging his termination but the same was dismissed.

3. The Tribunal while taking all aspects of the matter into account, held that there was force in the contention raised on behalf of the workman that no show cause notice was ever issued by the management to him and in view of the respondent/management having failed to produce any evidence to prove charge sheet having been sent to the workman through post or any other mode of service on his address or of the workman having refused to accept the same, came to the conclusion that it did not find any force in the contention raised on behalf of the management that no reply was filed by the workman to the charge sheet as there was nothing on the record to prove that any intimation was given to the workman regarding initiation of inquiry against him. On the basis of the evidence led, the Tribunal came to the conclusion that the services of the petitioner were terminated without conducting a fair and proper inquiry and without giving opportunity to the petitioner to defend his case. However, the Tribunal held that although the services of the petitioner were terminated in the year 1993, yet the demand notice was served on 04.08.2011 and in the circumstances, there was delay of 18 years in raising the industrial dispute by the workman and in such circumstances, he could not be entitled to reinstatement. Reliance was placed upon the decision of Hon'ble the Supreme Court in **Haryana State Electronics Development Corporation Ltd. Vs. Mamni 2006 (2) LLJ 744 (SC)**, wherein the award was modified by directing that the workman be compensated by payment of Rs.25,000/- instead of order of reinstatement with back wages. In the circumstances, the Tribunal held the petitioner entitled to compensation of Rs.15,000/- instead of reinstatement with back wages, in view of the petitioner having worked with the management w.e.f. 01.08.1987 till 11.02.1993 and by taking into account that he was drawing

salary of Rs.1539/- per month at the time of termination of his services and the reference pending since 2012.

4. Learned Counsel contended that the impugned award was liable to be modified and the petitioner held entitled to reinstatement with full back wages in view of it having been established that the services of the petitioner were terminated illegally.

5. On query, learned counsel for the petitioner stated that admittedly there was delay of 18 years from the date of termination to the date of raising of demand notice in as much as while date of termination was 11.02.1993, demand notice was served on 04.08.2011.

6. I have considered the submission of learned Counsel. Hon'ble the Supreme Court in **Prabhakar vs. Joint Director of Sericulture Development and another 2015 (15) SCC 1**, held that it was a well recognised principle that a right not exercised for a long time was non-existent and that even in cases where there was limitation period prescribed by any statute relating to certain proceedings, Courts had coined the doctrine of delay and laches as well as doctrine of acquiescence and non-suited litigants who approached court belatedly without any justifiable explanation for bringing the action after unreasonable delay and that doctrine of laches was in fact an application of the maxim of equity i.e. 'delay defeats equities'. Relevant extract of the decision in **Prabhakar's case (supra)** 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".

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.

40. On the basis of aforesaid discussion, we summarise the legal position as under :

An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2A of the Act. Reference is made under Section 10 of the Act in those cases where the

appropriate Government forms an opinion that 'any industrial dispute exists or is apprehended'. The words 'industrial dispute exists' are of paramount importance unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute. Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary pre-condition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the

same after considerable lapse of period, whether it can be said that industrial dispute still exist. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances discloses that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no

"industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted.

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."

7. That in the case in hand there was no agitation by the workman against his termination and the dispute was raised belatedly without giving any explanation for delay/laches. Accordingly, in view of the admitted factual position of termination of the services of the petitioner having taken place on 11.02.1993, whereas the demand notice was served for the first time on 04.08.2011 and no explanation having been given for the inaction and delay in filing the demand notice after lapse of 18 years, it is a clear example of the petitioner not being entitled to any relief on account of delay and laches and the claim is squarely hit by the maxim of '*delay defeats*

equities'. The petitioner has failed to point out any infirmity with the award declining reinstatement. In view of unexplained delay of 18 years in raising the demand notice, the claim of the petitioner was a stale claim and ought to have been rejected as such. Having considered the matter in entirety, I am of the considered opinion that it is not a fit case to interfere with the exercise of discretion by the Tribunal. Accordingly in the facts and circumstances of the case, denial of reinstatement and back wages while awarding token amount of ₹15,000/- as compensation is upheld in view of the position as noted above. The writ petition is bereft of merit and is accordingly dismissed in limine without any order as to costs.

(B.S. Walia)
Judge

19.10.2019.

rajesh.k.khurana

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| 1. Whether speaking/reasoned: | Yes/No. |
| 2. Whether reportable : | Yes/No. |