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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 16.12.2019

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W.P.(C) 13239/2019

SHRI JAGDISH

..... Petitioner

Through Mr.Anuj Aggarwal with Mr.Kumar
Utkarsh, Advs.

versus

NEW DELHI MUNICIPAL COUNCIL

..... Respondent

Through Mr.S.K.Giri, Adv. with Mr.Aman
Chaudhary, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition filed by the workman assails the award dated 08.12.2017 passed by the learned Labour Court-XVII, Dwarka Courts, Delhi in LIR No.2229/2016. Under the impugned award, the Labour Court has rejected the petitioner's claim after noticing the inordinate delay and laches on his part in assailing his alleged termination of 10.04.1987.

2. The petitioner, who was engaged as a muster roll Mali w.e.f. 25.08.1985 in the respondent/Corporation, continued to discharge services in the same capacity till 09.04.1987, whereafter he was no longer engaged. More than 20 years after his being disengaged, the petitioner approached the Conciliation Officer with a grievance that he had been illegally terminated on 10.04.1987 even though he had continuously served in the respondent corporation without any break

between i.e. 25.08.1985 and 09.04.1987. Upon the conciliation proceedings having failed, a reference was made to the Labour Court in the following terms:-

ORDER

Whereas on consideration of report submitted by Conciliation Officer, under section 12 (4) of the Industrial Disputes Act, 1947 I, V.P. Wadhwa, Deputy Labour Commissioner, Government of National Capital Territory of Delhi, am satisfied that an individual dispute in respect of the matters specified in the Schedule exists between the workman Shri Jagdish S/o Shri Moti Ram as represented by NDMC General Mazdoor Union C/o Room No. 95, Horticulture) Palika Kendra, New DeUii-110001, the management and that the same needs to be referred to the appropriate Labour Court of Delhi for adjudication.

And now, therefore, in exercise of powers conferred upon the undersigned by Section 10(1) © and 12 (5) of the said Act with Govt. of India, Ministry of Labour Notification No. S-11011/2/75 DK (1A) dated the 14th April, 1975 and Notification No. F.1/31/616/Estt./2008/7458 dated 03.03.2009 of Govt. of NCT of Delhi I, V.P. Wadhwa, Deputy Labour Commissioner, Govt. of National Capital Territory of Delhi, hereby refer the dispute to the Labour Court No. for adjudication.

SCHEDULE TERMS OF REFERENCE

'Whether the services of Sh. Jagdish S/o Shri Moti Ram has been terminated illegally and/or unjustified by the management and if so whether the workman is entitled to be regularized from the date when his juniors were regularized in the time scale of mali and if so what sum of money as monetary relief along with consequential benefits in terms of existing laws and government notifications issued from time to time is he entitled to and what directions are necessary in this respect?

3. Before the Labour Court, the respondent filed its reply disputing the petitioner's claim by specifically urging that he had never been engaged by them. It was also urged by the respondent that

the claim having been filed after almost 23 years was in any event liable to be dismissed on the ground of delay and laches itself. In support of his claim, the petitioner filed a copy of the seniority list of some muster roll employees and a copy of an award passed in another case but none of the documents filed included the petitioner's name.

4. Based on the submissions of the parties and the evidence led by them, the Labour Court rejected the petitioner's claim not only on the ground of delay and laches but also by holding that he had failed to prove that he was an employee of the respondent. The Relevant paragraphs of the impugned award, read as under:-

12. In the case in hand, claimant's service was terminated on 10.04.87. It is not on the file when he had filed complaint before Labour Department upon which the present reference was sent on 07.01.2010. But it may be presumed that conciliation proceedings may have remained pending for about 6-7 months. So, he might have approached the Labour Department in 2009. From 10.04.87 to 2009, he was sleeping over his right. He did not place on record any application etc. moved by him before management in the mean years for any relief. It shows that his claim has become stale and hence, it is suffering from delay and laches. So, it is held that claimant is not entitled to any relief. Statement of claim is dismissed. Parties to bear their own costs. Reference is answered accordingly. Award is passed accordingly.

5. Impugning the aforesaid award, the present petition has been filed by the workman after a further delay of another two years. In support of the petition, Mr. Anuj Agarwal, learned counsel for the petitioner submits that the Labour Court has failed to consider the effect of the various decisions of the Supreme Court wherein it has

been repeatedly held that the Limitation Act, 1963 is not strictly applicable to the cases under Industrial Disputes Act, 1947. He, therefore, submits that instead of rejecting the claim on the ground of delay, the Labour Court should have examined the matter on merits and determined the question whether the petitioner's services had been illegally terminated on 10.04.1987.

6. He further submits that the petitioner being muster roll employee could not be expected to produce his service documents as none were provided to him despite the petitioner's repeated requests. He submits that once the respondent failed to produce the relevant documents, the Labour Court ought to have drawn an adverse inference against them. He, therefore, prays that the impugned award be set aside.

7. On the other hand, learned counsel for the respondent, who appears on advance notice while supporting the impugned award, submits that once the petitioner approached the Conciliation Officer after more than 20 years of his alleged illegal termination, the Labour Court was justified in rejecting the petitioner's claim on the ground of delay and latches itself. He further submits that the Labour Court had also rightly appreciated the respondent's plea that it could not be expected to maintain the record of a muster roll employee after 23 years of his alleged termination. He, therefore, prays that the writ petition be dismissed.

8. I have considered the submissions of learned counsel for the parties and with their assistance perused the record and find absolutely no reason to interfere with the well reasoned award. Even though the

learned counsel for the petitioner is correct in urging that the Limitation Act, is not strictly applicable to the claims under the Industrial Disputes Act, 1947 nevertheless, a claim has to be raised within reasonable period. The petitioner, who even as per his own claim had rendered services for even less than two years as a muster roll employee, cannot be permitted to raise a claim after more than 20 years and then expect the management/respondent to produce the relevant records. The mere fact that the Limitation Act does not apply to claims under Industrial Disputes Act cannot imply that such an inordinate delay and laches in raising the claim and that too without any explanation whatsoever, should be simply overlooked.

9. Reference may also be made to the observations of the Supreme Court in ***Prabhakar v. Joint Director Sericulture Department and Ors.*** [(2016) 2 SCC (LS) 149], paragraph 42 & 43 of the said decision read as under:-

“44. To summarise, although there is no limitation prescribed under the Act for making a reference under Section 10(1) of the ID 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 ID 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.

45. On the application of the aforesaid principle to the facts of the present case, we are of the view that the High Court correctly decided the issue holding that the reference at such a belated stage i.e. after fourteen years of termination without any justifiable explanation for delay, the appropriate Government had no jurisdiction or power to make reference of a non-existing dispute.

10. I also find that in the facts of the present case, besides the petitioner's claim being grossly barred by delay and laches, he was not even able to establish an employee-employer relationship with the respondent. In these circumstances, I find no infirmity in the impugned award, warranting interference under Article 226 of the Constitution of India.

11. The writ petition being absolutely meritless is dismissed.

REKHA PALLI, J

DECEMBER 16, 2019

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