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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1947/2018

GAJJAN SINGH

..... Petitioner

Through: Ms.Priyanka Sinha, Adv. (DHCLSA)

versus

COMMISSIONER EAST DELHI MUNICIPAL CORPORATION

..... Respondent

Through: Mr.Kumar Rajesh Singh and
Ms.Punam Singh, Advocates for
MCD.

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*Date of Decision: 17th August, 2022***CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J. (Oral)**

1. Present petition has been filed on behalf of the petitioner workman seeking the following prayers:

“Set aside the impugned award dated 23.02.2017 passed Ld. Labour Court -XIX, Karkardooma Courts, Delhi in LIR No. 6533/2016 titled as Sh. Gajjan Singh Vs. M/s Commissioner, East Delhi Municipal Corporation, thereby remanding back the matter to the Ld. Labour Court for passing of fresh award after giving the petitioner the opportunity to lead evidence to prove his case”

2. Petitioner's case in brief is that he joined the employment of erstwhile East Delhi Municipal Corporation/ respondent herein on 01.03.1980 as



a Beldar on muster roll basis. On 09.10.1986 the petitioner met with an accident while returning back from his duty and underwent treatment for a long time. On 04.08.1987, the petitioner after recovering from his injuries ,visited the MCD's office to resume his duty. However, the petitioner was not allowed to resume his duty and was terminated w.e.f. 04.08.1987. The petitioner states that he made several requests for his reinstatement, however was not allowed to resume his duties.

3. Learned counsel for the petitioner submits that the provisions of Section 25F, 25G, 25H & 25N of the I.D. Act were not followed and the termination of the petitioner was in violation of Rule 77 & 78 of the Industrial Disputes (Central) Rules, 1957. It has further been submitted that thereafter on 19.07.2014, the petitioner sent a legal notice demanding reinstatement after which Conciliation proceedings were started and the case of the petitioner was referred to learned Labour Court XIX, Karkardooma Court for adjudication with the following reference:

"Whether services of Sh. Gajjan Singh S/o Lt. Khazan Singh has been terminated illegally and/or unjustifiably by the management and if so, to what sum of money as monetary relief along with other consequential benefits in terms of existing Laws/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?"

4. The respondent filed its written statement and on 06.01.2017 the learned Labour Court framed the issues and *inter alia* passed the following order:

"Now coming to the facts of the present case. The workman in the present claim was terminated from services in the year 1987 as stated and the present claim was filed in the year 2015 that is



much after the amendment of Section 2A which came in the year 2010. Even the first legal notice was sent in the year 2014. No reason has been given for the delay of about 27 years in filing the present claim. Therefore, keeping in view the unexplained and unreasonable delay in filing the present claim and in view of the amendment of Section 2 (A) of the Industrial Disputes Act, the present claim per se appears to be barred by law & is dismissed accordingly. Award is passed and case file be consigned to record room.”

5. Learned counsel submitted that the learned Labour Court passed the impugned award dated 23.02.2017 without giving the petitioner any opportunity to lead his evidence or without conducting cross examination of the management witnesses. Learned Labour Court has further failed to appreciate that the amendment in section 2(a) is not applicable to the case of the petitioner as the same is covered under Section 2(a)(i) of the ID Act. Learned counsel submitted that the learned Labour Court has failed to appreciate that in the case of reference there is no condition of three years limitation.
6. Learned counsel for the petitioner has placed reliance on ***Ajaib Singh Vs. The Sirhind Co-operative Marketing Cum Processing Service Society Ltd. &Anr.***, 1999 (6) SCC 82, wherein the Hon'ble Supreme Court has held that even if it is proved there has been delay in raising the dispute, the learned Labour Court has ample authority to cut some portion of backwages and appropriately mold the relief.
7. Per contra Ld. Counsel on behalf of respondent MCD has submitted that there was no employer - employee relationship between the parties and the workman was never an employee of the management. Learned counsel for the respondent has further submitted that even otherwise,



present claim has been filed in the year 2015 i.e. after 28 years since his alleged termination and is thus barred by limitation.

8. Ld. Counsel has submitted that the learned Labour Court has rightly framed the preliminary issue with respect to whether the claim is within limitation period and has rightly passed the Award dated 23.02.2017 keeping in view the provisions of Section 2(A) of ID Act, so inserted in September 2010, by way of amendment in the ID Act, also keeping in view the date of alleged termination i.e. 04.08.1987 and in view that the reference was received in the year 2015 i.e. after 28 years.
9. I have heard the submissions of both the parties and have perused the record.
10. The petitioner workman was allegedly terminated in 1987. The workman sent a legal notice demanding reinstatement on 19.07.2014 and finally the claim was raised in the year 2015 after a gap of almost 27-28 years and after five years from the amendment in 2010.
11. In ***Nedungadi Bank Ltd. vs. K.P. Madhavankutty and Others*** [(2000) 2 SCC 455], a Bench of the Hon'ble Supreme Court, where Hon'ble Mr. Justice S. Saghir Ahmad was a member [His Lordship was also a member in ***Ajaib Singh*** (*supra*), opined:

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale



could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made.”

12. The learned Labour Court in its award dated 23.02.2017 (impugned herein) has noted that no reason has been given for the delay of about 27 years in filing the claim by the workman and therefore in view of the unexplained and unreasonable delay in filing the claim and in view of the amendment of Section 2A of the Industrial Disputes Act, held the claim to be barred by law & dismissed it accordingly.
13. Even though as correctly pointed out by the Ld. Counsel for the petitioner that the Limitation Act is not strictly applicable to the claims under the ID Act, nevertheless, this Court considers that a claim has to be raised within a reasonable period. The petitioner cannot be permitted to raise a claim after more than 28 years in view of the settled general principle of equity '*Vigilantibus non dormientibus aequitas subvenit*' which implies that equity assists the vigilant and not those who sleep on their rights. The mere fact that the Limitation Act is not applicable to the claims under ID Act cannot suggest that such inordinate delay and that too without cogent reasoning and explanation can be overlooked. Reliance is placed on the judgement dated 16.12.2019 in WP (C) 13239/2019 titled '*Shri Jagdish vs New Delhi Municipal Corporation*'. In this case it was inter alia held as under:



“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.

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.”

14. Further in the case of ***Ajaib Singh Vs. The Sirhind Co-operative Marketing-Cum-Processing Service Society Ltd. &Anr.***(MANU/SC/0254/1999), relied upon by the petitioner, the management in that case did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act



only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in *Ajaib Singh* (supra), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court. The decision of *Ajaib Singh* (supra) has been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. Reference can be made to *Haryana State Coop. Land Dev. Bank vs Neelam*, Appeal (Civil) 1672/2002 dated 28.02.2005 .

15. Thus, in light of the above discussions, settled law and as per facts and circumstances of the present case, this Court finds that the workman have raised the industrial dispute belatedly after 27 years from his alleged termination and that the same is barred by delay and latches.
16. Therefore, present Writ petition is dismissed on grounds of delay and latches.

DINESH KUMAR SHARMA, J

AUGUST 17, 2022

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