

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

CWP-2610-2003

Date of decision : 02.03.2023

Chief Engineer, Construction and another ...Petitioners

Vs.

Ramesh Kumar and another ...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Ms. Shivani Sharma, DAG, Punjab.

Mr. Sanjay Kumar, Advocate for respondent No.1.

MANOJ BAJAJ, J.

Petitioners have filed this writ petition under Article 226 Constitution of India seeking a writ in the nature of certiorari for quashing the award dated 19.03.2002 passed by respondent No.2, whereby industrial dispute raised by respondent No.1/workman under Section 10 (1) (c) Industrial Disputes Act, 1947 was decided in his favour, directing his reinstatement with continuity of service alongwith back-wages.

The facts in brief leading the writ petition are that the respondent No.1/workman was appointed by the petitioners on 01.01.1982 as Beldar, who was drawing salary of Rs.480/- per month, and he worked till 20.08.1986 when his services were terminated without any notice and retrenchment compensation.

Aggrieved against his removal from service, respondent No.1/workman raised industrial dispute on the ground that after his termination, new appointments were made and junior to him were also retained in service, therefore, termination order has been passed in violation of the

Industrial Disputes Act, 1947. It was prayed that the termination order of the respondent No.1 be set aside and he be reinstated with continuity of service with full back wages.

The respondent/employer was served on 23.11.2000, however, no written statement was filed despite availing several opportunities, therefore, vide order dated 02.01.2002, defence of the respondent was struck off.

After examining the pleadings and evidence on record, the Labour Court, Gurdaspur answered the reference in favour of the workman. Hence this writ petition.

Learned counsel for the petitioners has argued that the Labour Court has illegally accepted the claim of the respondent No.1 for reinstatement in service by ignoring the long delay on his part to raise the industrial dispute. Learned counsel has pointed out that as per the claim statement itself, respondent No.1/workman worked only for a small period w.e.f.01.01.1982 to 20.08.1986 as Beldar, but against the alleged termination, he raised the industrial dispute in the year 1996. He has further argued that the Labour Court Gurdaspur has not appreciated the evidence on record in proper manner, which has resulted in miscarriage of justice to the petitioners, therefore, interference is warranted by this Court.

The prayer is opposed by learned counsel representing respondent No.1/workman, who has argued that since the termination of the respondent No.1 is illegal, therefore, he was left with no remedy except to raise the industrial dispute. Further, according to learned counsel in terms of Section 10 (C) Industrial Dispute Act, 1947 no time-frame is provided for raising the dispute and this issue has been decided by the labour court in favour of the

workman, which does not call for any interference. He submits that in order to strike the balance, Labour Court has curtailed the relief of back-wages awarded to the workman, therefore, the impugned award does not warrant interference.

After hearing learned counsel, considering the averments and material on record, this Court finds that the respondent No.1 had worked only for a short period as Beldar w.e.f.01.01.1982 to 20.08.1986 and the cause of action had accrued to him when his services were dispensed with in the year 1986. Admittedly, the demand notice was served by the workman after a period of 10 years in 1996 and examining this background, the Labour Court returned the categorical finding that the claim raised by the workman is highly belated, but despite that it proceeded to order his reinstatement with back-wages. The relevant observation of the Labour Court read as under:-

“I have considered this submission made by the authorised representative of the workman and have also heard the learned authorised representative of the respondent. But I did not find myself in agreement with the authorised representative of the workman because the workman has not placed any document for approaching the respondent for the re-employment after termination of his services and there is also explanation on the file on behalf of the workman for not serving the demand notice within reasonable time. In my view, there was no justification in waiting the response from the respondent for re-employment of the workman for a period of more than 10 years. I therefore, hold that the workman is not entitled to back wages from the date of termination i.e.20th August 1986. Rather he is entitled to back wages with all other allied benefits from the date of demand notice i.e.30th December 1996 till he is actually reinstated. The workman shall report for duty as and when the award becomes enforceable at law.”

The above finding leaves no room for any doubt that the industrial dispute was raised by the workman after a period of ten years from the date of accrual of cause of action.

No doubt, the provisions of Section 10 of Industrial Disputes Act, 1947 do not contemplate any time frame for raising the dispute, but this aspect has already been examined by the Hon'ble Supreme Court in **Prabhakar Vs. Joint Director Sericulture Department and another**, wherein the belated industrial dispute raised by the workman was not entertained on the ground of laches and in this regard the following observations were made:-

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".

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. Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under [Section 2A](#) of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection.”

In view of the above decision of Hon'ble Supreme Court, this Court finds that the workman has failed to give any sufficient explanation behind the inordinate delay in raising the industrial dispute, much less the existence of the dispute during all these ten years, when he raised the demand notice. Thus, applying the above noticed principle, this Court has no hesitation

in holding that the impugned award is not based upon correct appreciation of facts and law on the subject, therefore, warrants interference by this Court under Article 226 Constitution of India.

Resultantly, the writ petition is allowed and the impugned award dated 19.03.2002 is set aside and the claim of the workman is dismissed.

(MANOJ BAJAJ)
JUDGE

02.03.2023

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No