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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-27049-2021 (O/M)

Date of decision : 26.07.2023

Paul Kaur

..... Petitioner

Versus

The Presiding Officer, Central Government Industrial Tribunal cum Labour
Court-II, Chandigarh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. N.K. Chhokar, Advocate
for the petitioner.

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HARSH BUNGER, J.

1. Petitioner (Paul Kaur) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking quashing of the award dated 21.02.2014 (Annexure P-4), passed by the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh (hereinafter referred to as 'the Tribunal') whereby the petitioner was proceeded against ex-parte and the claim of the petitioner was declined.

2. Briefly, the husband of the petitioner, namely, Dharam Singh was employed in the Indian Oil Corporation Limited (hereinafter referred to as 'respondent-Corporation') on 01.10.1966 as a Tank Truck Driver at Ambala Terminal, however, it is stated that no appointment letter was issued.

As per the petitioner, on 31.08.1994, the husband of the petitioner, while working at Ambala Terminal was found to have committed

a serious misconduct in the nature of theft/embezzlement while taking the product from HSD for delivery, whereupon FIR No. 129 dated 01.09.1994 was registered under Sections 420, 406, 120-B IPC at Police Station West, Chandigarh. On 21.04.1995, charge sheet was issued against Dharam Singh and his co-accused, namely, Darshan Singh, which was followed by a regular departmental inquiry against both of them and they were dismissed from service.

4. Husband of the petitioner, namely Dharam Singh alongwith co-accused Darshan Singh was convicted by the trial Court, however, on an appeal, learned Additional Sessions Judge, Chandigarh, set aside the conviction, vide its judgment dated 14.07.1999. Thereafter, it appears that on 15.02.2010, reference was made by the appropriate Government and claim statement dated 31.03.2010 (Annexure P-1) was filed by the petitioner, wherein respondent-Management was proceeded against ex-parte, however, subsequently, ex-parte proceedings were set aside and respondent-Corporation filed its written statement dated 12.12.2011 (Annexure P-2).

5. On 24.10.2013, learned counsel for the petitioner did not appear before the Tribunal below, accordingly, the petitioner was proceeded against ex-parte and the case was fixed for respondent-Corporation evidence.

6. On 21.02.2014, the Tribunal below passed the impugned award, whereby the claim of the petitioner was declined.

7. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this Court.

8. Learned counsel for the petitioner submits that the husband of

the petitioner, namely, Dharam Singh alongwith his co-accused Darshan Singh was acquitted by the learned Additional Sessions Judge, Chandigarh, vide judgment dated 14.07.1999 and thereafter, the co-accused of husband of the petitioner, namely, Darshan Singh, on acquittal, was reinstated in service on 26.03.2001 and, therefore, the petitioner seeks parity qua the said Darshan Singh. It is submitted that the husband of the petitioner, namely, Dharam Singh made a representation dated 24.11.1999 and he (Dharam Singh) expired on 26.3.2000.

It is contended that had the husband of the petitioner, namely, Dharam Singh remained in service then he (Dharam Singh) would have retired on 31.10.1999. It is submitted that the claim of the petitioner stands declined without going into the merit of the case and without considering the stand taken by the petitioner in the claim statement. It is submitted that no opportunity was granted to the petitioner to lead evidence, which is against principles of natural justice. Accordingly, prayer has been made for setting aside the award dated 21.02.2014 (Anenxure P-4) with a further prayer to remit back the case of the petitioner to the Tribunal below for afresh decision.

9. I have heard learned counsel for the petitioner and have perused the paper book with his able assistance.

10. Concededly, the claim petition was filed by the Petroleum Workers Union in pursuance to the reference made by the Central Government under Section 10 (1) (d) of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act').

11. As per stand taken by respondent-Corporation, the date of superannuation of Dharam Singh (husband of petitioner) was 31.10.1999 and he made a representation for his reinstatement only after he (husband of the petitioner Dharam Singh) crossed the age of superannuation and thereafter he expired on 26.03.2000.

As per the stand of respondent-Corporation, after the death of Dharam Singh, all the terminal benefits including employees contribution towards superannuation benefit fund scheme (SABF) were paid to his widow i.e. present petitioner.

12. It is not disputed that the reference/claim petition with regard to Dharam Singh came to be dismissed by the Tribunal below, vide award dated 21.02.2014 by observing that since the petitioner did not lead any evidence in support of her case and it cannot be said that Dharam Singh (husband of petitioner) was entitled to reinstatement at par with his co-employee Darshan Singh.

13. Although, reference/claim petition filed in respect of husband of the petitioner, namely, Dharam Singh was dismissed, vide award dated 21.02.2014 (Annexure P-4) on the ground that no evidence was led in support of the claim statement, it also needs to be noticed here that the instant writ petition has been filed before this Court in March, 2021 i.e. after a gap of more than 7 years from the date of passing of the impugned award i.e. 21.02.2014.

14. It is well settled that the period of limitation, as mandated for filing of the civil suit, is also attracted to the institution of writ petition before

this Court.

15. In *Jai Bhagwan v. Deputy Director, Sheep Production*, 2003 (3)

S.C.T. 851, this Court has held as under :-

“3. After hearing the learned State counsel and perusing the record, I am of the considered view that this petition filed on 13.1.1988 cannot be entertained because it challenges the order dated 2.6.1982, Annexure P-8 after a period of over five years. Orders Annexures P-4, P-5, P-6 and P-7 have been passed even earlier to the passing of order Annexure P-8. It is well settled principle of law that the period of 3 years prescribed for filing a suit would also be applicable to the filing of the writ petition. In State of Madhya Pradesh and another v. Bhailal Bhai, AIR 1964 Supreme Court 1006 a Constitution Bench of the Supreme Court has taken the aforementioned view. In a later judgment in the case of S.S. Rathore v. State of Madhya Pradesh, AIR 1990 Supreme Court 10 a Constitution Bench of seven Judges has taken the view that in service matters concerning Civil servants and others, the period of limitation would be initially one year with power to condone the delay of six months. The maximum period, therefore, prescribed would be 1½ years. The aforementioned observations are based on the provisions of Section 21 of the Administrative Tribunals Act, 1985 (for brevity, 'the Act'). Referring to the aforementioned provisions, it has been observed that the suits which are outside the purview of the Act, would be

governed by Article 58 of the Schedule appended to the Limitation Act, 1963. In other words, in no case, the period of limitation would be over three years. The observations of their Lordships in S.S. Rathore's case (supra) read as under :-

“It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.”

For the reasons stated above, the present writ petition is hopelessly time barred and cannot be entertained. Even otherwise, no one has put in appearance to prosecute the petition. Therefore, the writ petition is dismissed ...”

16. Further, in the case of *Er. Darshan Singh Bhullar v. Punjab State Electricity Board*, 2011 (4) S.C.T. 157, a Division Bench of this Court has held as under :-

“... If any such benefit was available to the appellant then the cause of action had arisen in 1986 or at any time subsequently when he was promoted as Assistant Engineer. The appellant should have approached the Court within a reasonable time not exceeding three years from the

date cause of action had arisen. In writ proceedings, the period of limitation of three years has been read by a judgment of the Constitution Bench of Hon'ble the Supreme Court rendered in the case of State of Madhya Pradesh v. Bhai Lal Bhai AIR 1964 Supreme Court 1006. The basic reason is that in writ proceedings the period of limitation cannot be more than the period prescribed for filing a civil suit. Accordingly, we are of the view that the appeal does not merit admission and is thus liable to be dismissed ...”

17. In *Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T. Murali Babu (2014) 4 SCC 108*, this Court opined as under :-

“13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others, AIR 1969 SC 329, the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum C. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp, (1874) 5 PC 221, which is as follows :-

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be

asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

15. *In State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc., AIR 1987 SC 251, the Court observed that it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. It has been further stated therein that if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.*

16. *Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court*

is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant “a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. A Court is not expected to give indulgence to such indolent persons-who complete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court could have thrown the petition overboard at the very threshold.”

18. Keeping in view the aforestated legal position, I am of the considered view that the instant writ petition filed after a gap of more than 7

years from the date of passing of the award dated 21.02.2014 (Annexure P-4)
is barred by delay and latches and accordingly, the same is dismissed.

19. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

26.07.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No