

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

CWP-12792-2014 (O&M)
Date of Decision: 27.07.2023

THE EXECUTIVE ENGINEER, LEHAL DIVISION,
I.B. PATIALA AND ANOTHER

...Petitioners

Versus

ALAMGIR SHAH AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vipin Pal Yadav, Addl. A.G., Punjab
for the petitioners.

Mr. Ravi Gakhar, Advocate
for respondent No.1-workman.

HARSH BUNGER, J. (ORAL)

1. Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of *certiorari* for quashing the impugned Award dated 28.03.2014 (Annexure P-1) passed by the learned Industrial Tribunal, Patiala (here-in-after referred to as 'the Tribunal'); whereby the reference of industrial dispute raised by respondent No.1, herein (Alamgir Shah) regarding termination of his services has been answered in his favour and the petitioners have been directed to reinstate respondent No.1 with continuity of service.

2. Briefly, respondent No.1, herein (Alamgir Shah) raised an industrial dispute regarding termination of his services, which was referred for adjudication to the Tribunal below. In the statement of claim, respondent No.1 sated that he worked with the petitioners-department as Beldar from

15.03.1996 upto 14.03.1997 and his services were terminated on 15.03.1997. Respondent no.1 claimed that at the time of termination of his services, he was drawing Rs.750-1410/- p.m. as salary. Respondent no.1 pleaded that he had worked continuously for 240 days in the relevant calendar year and at the time of termination of his services, juniors to him had been retained in service and even new persons had been engaged by the Management. Therefore, it was claimed that the termination of services of respondent No.1 was contrary to the provisions of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'). Accordingly, prayer was made for reinstatement of respondent No.1-workman with continuity of service and full back wages.

3. The afore-said claim of respondent No.1 was contested by the petitioners herein on the plea that respondent No.1-workman was engaged vide Office order dated 12.09.1996 for 89 days on purely temporary basis and he worked from 12.09.1996 upto 28.11.1996 for 78 days and thereafter, his services were extended vide Office order dated 26.03.1997 for 89 days from 16.12.1996 upto 14.03.1997. It was stated that for the said period, respondent No.1 had been paid as per the rules and he had worked only for 167 days and except this, respondent No.1 had not worked with the petitioners-Management. It was stated that since the work for which the respondent No.1 was engaged, had finished; therefore, the Department did not require the services of respondent No.1-workman and as such, his services were not extended. It was stated that since the workman was engaged on temporary basis; therefore, there was no need for any charge-sheet/enquiry or compensation etc. It was next submitted that respondent No.1 was drawing Rs.2187/- p.m. The other averments of the statement of claim were denied and prayer for dismissal of the reference was made.

4. From the pleadings of the parties, the following issues were framed :-

“1. Whether the services of the workman were terminated illegally by the respondent ? OPW

2. Whether this reference is not maintainable and is bad in law ? OPM

3. Relief.”

5. The parties led their respective evidence in support of their claim.

6. The Tribunal below, vide an impugned Award dated 28.03.2014, answered the reference in favour of the workman by directing the petitioners herein to reinstate him with continuity of service but without back wages.

7. Being aggrieved against the afore-said Award dated 28.03.2014, the petitioners have filed the instant writ petition before this Court.

8. At the time of issuance of notice of motion in this case, the operation of impugned Award was ordered to be stayed till further orders.

9. Learned counsel for the petitioners submits that the Tribunal below has erred in law and facts in accepting the claim of respondent No.1-workman, despite the fact that the industrial dispute was raised by the workman after a long delay of more than nine years. It is stated that even as per the pleaded case of respondent No.1, his services were terminated on 15.03.1997; however, admittedly, the demand notice was served only on 22.08.2006. It is, therefore, submitted that the claim of respondent No.1 was a stale claim. It is further submitted that respondent No.1 had failed to prove on record before the Tribunal that he had rendered continuous service of 240 days with the petitioners; therefore, no relief has been granted to him under

Section 25-F of the 1947 Act. It is further submitted that the Tribunal below has wrongly passed the impugned Award by holding that as per Exhibit W-8, 47 employees mentioned in the said list, had joined after respondent No.1-workman and therefore, the provisions of Section 25-H of the 1947 Act were not followed. It is submitted by learned counsel for the petitioners that respondent No.1 was engaged for specific periods on purely temporary basis and after the work for which the respondent No.1 was engaged, was finished; thereafter, his services were not required and his services were not extended. It is submitted that the employer cannot be expected to wait for a daily wage. It is, therefore, submitted that the impugned Award be set aside.

10. Per contra, learned counsel appearing for respondent No.1 has opposed the prayer made on behalf of the petitioners by submitting that the Tribunal below has passed a well-reasoned and justified Award, which does not call for any interference by this Court. It is further submitted that at the time of terminating the services of respondent No.1-workman, the provisions of Section 25-H of the Act, 1947 were not complied with and the same have been duly established on record. In that view of the matter, it is submitted that the Tribunal below was justified in directing reinstatement of the workman with continuity of service but without back wages. Accordingly, prayer has been made for dismissal of the writ petition.

11. I have heard learned counsel for the respective parties and perused the paper book with their able assistance.

12. Apparently, as per the pleaded case of respondent No.1-workman, his services were terminated on 15.03.1997. It is not disputed that respondent No.1-workman raised an industrial dispute by serving a demand

notice on 22.08.2006, which is after a period of more than nine years. In para 3 of the writ petition, the petitioners have made the following averments :-

“3. That after a long delay of more than 9 years, the respondent No.1 served a demand notice dated 22.8.2006. Accordingly, the dispute was referred to Respondent No.2 for adjudication. The Respondent No.1 filed claim statement and upon notice, the petitioners-management filed reply controverting the plea of the respondent No.1.”

13. In response to the afore-said para No.3 of the writ petition, the respondent No.1-workman in its written statement has taken the following stand :-

“3. That the corresponding para of the petition needs no reply being matter of record except that there is no inordinate delay in serving demand notice as soon as the answering respondent became aware of the fact of making fresh recruitments by the petitioner/management he immediately served demand notice. Furthermore, after his illegal termination of service the answering respondent made several representations before the petitioner/management.”

14. In **“Prabhakar v. Joint Director Sericulture Department” 2015(4) SCT 493**, the Hon’ble Supreme Court while considering the plea of a stale claim, made the following observation :-

“28. In this process, let us first examine as to what would constitute 'industrial dispute' because of the simple reason that the appropriate Government has power to refer what is known as an 'industrial dispute' and likewise the Labour Court/Industrial Tribunal has jurisdiction to decide if there is an industrial dispute. We are not going into the entire gamut of what constitutes 'industrial

dispute' within the meaning of Section 2(k) of the Act. Our focus is only on the aspect that what can be referred should be the dispute which is existing and in praesenti when the reference is sought. To put it otherwise, if it no longer remains an industrial dispute or industrial dispute 'does not exist' at that time, there would not be any question on making reference or adjudicating the matter as it is not an industrial dispute.

29. Section 2(k) of the IDA defines 'industrial dispute' and it reads as under :

"'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons;"

30. As per Section 2A dispute relating to discharge, dismissal, retrenchment or termination of an individual are also deemed as industrial dispute and, therefore, an individual is given right to raise these disputes.

31. The term 'industrial dispute' connotes a real and substantial difference having some element of persistency, and likely, if not adjusted, to endanger the industrial peace of the community. The expression 'dispute or difference' as used in the definition, therefore, means a controversy fairly definite and of real substance, connected with the employment or non-employment or with the terms of employment or the conditions of labour of any person, and is one in which the contesting parties are directly interested in maintaining the respective contentions.

32. To understand the meaning of the word 'dispute', it would be appropriate to start with the grammatical or dictionary meaning of the term :

'Dispute': "to argue about, to contend for, to oppose by argument' to call in question - to argue or debate (with about or over), - a contest with words; an argument; a debate; a quarrel;

33. *Blacks law dictionary, 5th Edition, page 424 defines 'dispute' as under :*

" A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined."

34. *Thus, a dispute or difference arises when demand is made by one side (i.e. workmen) and rejected by the other side (i.e. the employer) and vice versa. Hence an 'industrial dispute' cannot be said to exist until and unless the demand is made by the workmen and it has been rejected by the employer. How such demand should be raised and at what stage may also be relevant but we are not concerned with this aspect in the instant case. Therefore, what would happen if no demand is made at all at the time when the cause of action arises? In other words, like in the instant case, what would be the consequence if after the termination of the services of petitioner on April 01, 1985, the petitioner does not dispute his termination as wrongful and does not make any demand for reinstatement for number of years? Can it still be said that there is a dispute? Or can it be said that workmen can make such demand after lapse of several years and on making such demand dispute would come into existence at that time. It can always be pleaded by the employer in such a case that after the termination of the services when the workmen did not raise any protest and did not demand his reinstatement, the*

employer presumed that the workmen has accepted his termination and, therefore, he did not raise any dispute about his termination. It can be said that workmen, in such a case, acquiesced into the act of the employer in terminating his services and, therefore, accepted his termination. He cannot after a lapse of several years make a demand and then convert it into a 'dispute' what had otherwise become a buried issue..."

15. When the case, in hand, is considered on the anvil of the afore-said legal position, it is a conceded case of the parties that the services of respondent No.1-workman were terminated on 15.03.1997 and he raised an industrial dispute by serving a demand notice dated 22.08.2006, which is after a gap of more than nine years. There is no material on record to show as to whether any grievance was raised or any action was taken by respondent No.1 during this long period of nine years, before submission of the demand notice by him. Respondent no.1 has only claimed the violation of the provisions of Section 25-H of the 1947 Act. It cannot be countenanced that a workman, who has slept for long nine years would suddenly wake up after a long slumber and take plea that new persons have been appointed after his retrenchment, as would be evident from the stand taken by respondent No.1 in para No.3 of his written statement to the instant writ petition. Moreover, it cannot be expected from any establishment to wait endlessly for a workman.

16. Keeping in view the above discussion, I am of the considered view that impugned award dated 28.03.2014 (Annexure P-1) passed by the Tribunal below is unsustainable in the eyes of law and claim made by respondent No.1-workman was a stale claim barred by gross delay and laches. Resultantly, the instant writ petition is allowed and the impugned

award dated 28.03.2014 (Annexure P-1) passed by the Tribunal below is set aside and claim of respondent No.1-Alamgir Shah is rejected.

17. The instant writ petition is accordingly disposed of in the afore-stated terms.

18. All pending application/s, if any, shall also stand closed.

July 27, 2023
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(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No