

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCM-2296-LPA-2022 in/and
LPA-953-2022

Date of Decision: 11.01.2023

Balwinder Singh

.....Appellant

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWANPresent: Mr. Abhishek Khular, Advocate, for
Mr. J.S. Jaidka, Advocate,
for the applicant-appellant.

G.S.SANDHAWALIA, J. (ORAL)CM-2296-LPA-2022

By this application, the applicant-appellant seeks condonation of delay of 20 days in filing the Letters Patent Appeal.

Keeping in view the averments made in the application, which is duly supported by an affidavit of the appellant, the application is allowed and the nominal delay of 20 days in filing the appeal is hereby condoned.

CM stands disposed of.

LPA-953-2022

The present appeal is directed against the judgment of the learned Single Judge in CWP-19221-2022, decided on 30.08.2022, wherein the Award dated 16.12.2021 (Annexure P-9) passed by the Industrial Tribunal & Labour Court, Union Territory, Chandigarh was upheld.

The appellant-workman was aggrieved against the punishment which had been imposed upon him, i.e. stoppage of 10 increments with cumulative effect. The learned Single Judge found that the labour Court had held the enquiry, in accordance with the rules and on account of the non-examination of passengers travelling the bus, no benefit could be granted in view of the ratio of the judgment of the Apex Court in **Civil Appeal No. 7536 of 2021**, titled as **Uttar Pradesh State Road Transport vs. Gajadhar Nath**, decided on 08.12.2021. The passengers had not been issued tickets and they were de-boarding the bus. The members of the checking party having been duly examined in the inquiry, accordingly, it was held that the case of the employee was of no evidence and there was no allegation of *mala fide* against anybody levelled by the appellant in the entire process. Furthermore, the appellant has been granted ample opportunity of hearing by the punishing authority, as well as, by the appellate authority, therefore, the writ petition had dismissed.

Learned counsel for the appellant has argued that the stoppage of 10 increments are effecting his pension and therefore, he has a right as such to prefer a reference even at a belated stage and it is accordingly, submitted the order of the learned Single Judge dismissing the writ petition, is not justified.

We have perused the paper-book and find that the charge-sheet was issued on 28.10.1987 (Annexure P-1) regarding the incident which happened on 06.10.1987. The checking of the bus was done. Resultantly, the employee as such filed his reply dated 11.11.1987

(Annexure P-2) giving his explanation which was not found tenable and an inquiry officer was appointed. The appellant was given a chance as such to question the Government witnesses and he also produced in defence one Charan Singh. Eventually, the inquiry officer gave an adverse report (Annexure P-3) against the employee that the charges levelled against him were found to be true. The competent authority thereafter, examined the report noticing that the checking staff had clearly stated that the Conductor had collected the money from the passengers in advance but did not issue tickets to them. Accordingly, it came to the conclusion that the complainants were the Inspectors and the opinion given by the inquiry officer was correct. It was also noticed that the copy of the final report has been sent along with the show cause notice. The employee was heard before passing the order of punishment and he admitted that he will not do such mistake in future and he be forgiven this time and a chance be given to him to do his job. Resultantly, the punishment as such has been imposed on 18.07.1988 (Annexure P-4) by showing leniency and not dismissing him. He had filed a belated appeal during his service and eventually, vide order dated 04.01.1999 (Annexure P-6), his time barred appeal was dismissed by the Divisional Manager by noting that it was filed after a period of 06 years and 10 months, whereas, it had to be filed within 45 days as per Rule 17 of Part V of the Punjab Civil Service (Punishment and Appeal), Rules, 1970. However, after his retirement on 29.02.2012 he filed a representation that his yearly promotions be restored (Annexure P-5).

After a period of 03 years after his retirement, he approached the Labour Union which raised the demand as such and on the basis of which a reference was made as per the demand notice dated 24.04.2015 (Annexure P-7). Resultantly, the Award as such was passed wherein it was noticed that full opportunity has been given of being heard and he duly cross-examined the witnesses of the department. The Labour Court exercising jurisdiction of judicial review would not interfere with the findings of fact arriving at the departmental inquiry proceedings except in a case of *mala fide*. Thus, it was held that without any procedural lacuna there was no reason as such to interfere in the finding recorded and the Award was passed against the appellant which was subject matter of consideration before the learned Single Judge.

We are of the considered opinion that even the reference as such of the dispute was at a belated stage as the last order passed on the departmental side was on 04.01.1999, whereby his appeal has been dismissed being time barred. He had chosen not to raise the dispute before the Labour Court during his service till February 2012 and only after his retirement approached the Union. Apparently, he had been satisfied at that point of time.

The Apex Court in Nedungadi Bank Limited vs. K.P. Madhavankutty 2000 (1) SCR 459, has held that delayed reference is unjustified and without jurisdiction, though there is no time limit prescribed for the appropriate Government but power is to be exercised reasonably in a rational manner. The purpose of reference is to keep

industrial peace in an establishment. The belated reference of the 7 years was thus held to be destructive to the industrial peace and defeated the very object and purpose of the Act. The relevant paragraphs read as under:-

“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 lapse of about seven years of 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. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was ex facie bad and incompetent.

In the present appeal it is not the case of the respondent that the disciplinary proceedings, which resulted in his dismissal, were in any way illegal or there was even any irregularity. He availed his remedy of appeal under the rules governing his conditions of service. It could not be said that in the circumstances industrial dispute did arise or was even apprehended after lapse of about seven years of the dismissal of the respondent. Whenever a workman raises some dispute it does not become industrial dispute and appropriate government cannot in a mechanical fashion make the reference of the alleged dispute terming as industrial dispute. Central Government lacked power to make reference both on the ground of delay in invoking the power under [section 10](#) of the Act and there being no industrial dispute existing or even apprehended. The purpose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace and defeats the very object and purpose of the Act. Bank was justified in thus moving the High Court seeking an order to quash the reference in question.”

Resultantly, keeping in view the above the said principle was also applicable and apart from the fact that the official witnesses have been examined and had duly deposed before the inquiry officer and the appellant was associated with the departmental proceedings as such and on the basis of which the punishment had been imposed, no ground for interference is made out. The appellant had chosen not to file any department appeal during the said period of limitation asking for reduction of the punishment imposed, and could not raise a challenge of the 16 years

of dismissal of appeal against the order of punishment.

In such circumstances, the learned Single Judge has rightly declined the relief claimed by the appellant and has not interfered due to the facts and circumstances of the case.

In view of the above, we find no reason as such to take a different view in this appeal.

Consequently, the appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

January 11, 2023
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	No