



2023:DHC:9016



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

% **Pronounced on: 15th December, 2023**

+ **W.P.(C) 9810/2018**

MEGH KUMAR JAIN

..... Petitioner

Through: **Mr.S.N.Sharma, Advocate**
(Through VC)

versus

M/S INDIA OVERSEAS COPORATION AND ORS.

..... Respondents

Through: **Mr.Kanwar S.N., Advocate**
(Through VC)

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under Articles 226/227 of the Constitution of India, has been filed on behalf of the petitioner seeking the following reliefs:

“(a) issue an appropriate writ of mandamus/certiorari or a writ of like nature or order or direction quashing/setting aside the, impugned order dated 26.04.2018 passed by the Ld. Labour Court Dwarka in LIR No. 8666/16 and stay its operation.

(b)Direct the Management to pay back wages with consequential benefits from the date of termination of employment together with reinstatement with all consequential benefits. And/or



(c) further remand the matter/ the Ld. Labour Court Dwarka to decide it afresh in order to test the defence at the anvil of truthfulness by, deposition. Or, in the alternative draw a presumption against the Respondent/Management as provided in the s. 114 of the Evidence Act and reinstate the workman to mitigate the loss of wages during the rest of the period of wrongful termination. Or in the alternative to all above
(d) Direct the Management/Respondent to pay all the retiral benefits with proper contribution to Provident Fund for the past period and Award the cost of litigation in favour of Petitioner.
(e) issue an appropriate writ, direction or order granting him further reliefs as this Hon'ble Court deems fit and proper in the given facts and circumstances of the matter.”

FACTUAL MATRIX

2. The petitioner joined the respondent no. 1 organization as a cutting pattern master (in garment export factory of the respondent no. 2) on 6th March 1996. It has been stated by the petitioner that he was employed with the management at the last drawn salary of Rs. 14,400/- per month.
3. It has been further stated by the petitioner that he was the permanent employee of the management and that he was contributing towards provident fund scheme, and was also enrolled with ESI having employee code 6120, and insurance no. 11-4069299.
4. The services of the petitioner/workman were terminated w.e.f. 1st June 2011, vide letter dated 15th June 2011, wherein, it was stated that the workman had resigned from his services on 22nd April 2011. After the alleged illegal termination of the petitioner, he filed a complaint before the Labour Commissioner in respect of the leave encashment and other benefits.



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Further, at the time of illegal abrupt termination he was paid a cheque a Rs. 5,357/- in respect of wages for the month of May 2011.

5. Aggrieved by the said act of the Management, the petitioner issued legal notice dated 13th September 2011, to the management, and accordingly, filed a claim petition vide ID no. 244/2011, seeking reinstatement, however, the same was dismissed by the learned Labour Court vide Award dated 17th October 2014, on the grounds of maintainability since the petitioner had approached the Court directly and he had failed to follow the mandate of Section 2A of the Industrial Disputes Act, 1947 (hereinafter “ID Act”). The petitioner was granted liberty to file fresh claim after following the mandate given under the above said provision.

6. Accordingly, the petitioner/workman filed an application before the Conciliation Officer on 10th November 2014, who then gave a failure report dated 10th April 2015, under Section 2A (1) of the ID ACT. Thereafter, the petitioner filed LIR no. 8666/2016, before the learned Labour Court, wherein, the respondent management therein, took the objection that the petitioner’s claim was not maintainable since he worked as a production manager during his last tenure and as such he was not covered under the definition of workman as stipulated under Section 2(s) of the ID Act.

7. Further objection taken by the respondent management was that the petitioner approached the Conciliation Officer after the lapse of period of 3 years, and hence the same is not maintainable since the claim was filed on 29th June 2015, and the petitioner was terminated on 1st June 2011. The said claim petition was dismissed by the learned Labour Court vide the Award



dated 26th April 2018, and the petitioner has impugned/challenged the same under the extraordinary writ jurisdiction of this Court.

8. The petitioner has filed the instant petition, wherein, he has raised the grounds in paragraph no. 'A to AA' stating that the impugned Award passed by the learned Labour Court is erroneous and has been passed against the settled principles of law. Rejoinder dated 4th January 2020 is also on record. The written submissions have been filed by the petitioner on 8th September 2023.

9. The respondent no. 1 & 2 have filed their common counter affidavit dated 18th March 2019, and have taken preliminary objections in paragraph no. '1 to 12' and have made reply to the grounds in paragraph no. 'A to D'. The written submissions have been filed by the respondent no. 1 & 2 on 5th September 2023.

SUBMISSIONS

(On behalf of the petitioner)

10. Learned counsel appearing on behalf of the petitioners submitted that the learned Labour Court erred in passing the impugned Award since it failed to take into consideration the entirety of the facts and circumstances of the instant dispute.

11. It is submitted that the learned Court below failed to appreciate the fact that he was forced to sign on the resignation letter, and that he was being subjected to humiliation and harassment by the management and therefore, the petitioner/workman was terminated illegally without any cause.



12. It is submitted that the petitioner falls under the definition of a ‘workman’ as provided under Section 2(s) of the ID Act, and the learned Court below erred by holding that the petitioner is not a workman since he worked in a supervisory capacity as a Production Manager.

13. It is submitted that the record of the petitioner has been manipulated by the respondent management and the respondent has resorted to make changes in the designation of the petitioner, thereby, aiming to wrongfully withhold the workman’s rightful retirement benefits.

14. It is submitted that the management has illegally denied the petitioner’s right to the retirement benefits despite him being entitled for the same. The management lacks the authority to withhold the workman’s retirement benefits, including gratuity, Provident Funder (hereinafter “PF”) and leave encashment. Further, during a cross examination of the management on 22nd January 2018, MW-1, had acknowledged the non-payment of gratuity, citing the absence of a demand from the petitioner/workman.

15. It is submitted that to circumvent the employer’s contributions to the PF, the management used to illegally maintain two separate registers. One register accounted for statutory PF deductions and corresponding employer contributions, while the second register recorded actual wages paid in cash to the workmen.

16. It is submitted that following the termination of the workman, an *ex-parte* inquiry, conducted after a prolonged impasse, was a mere cover up for the management’s illegal actions.



17. It is submitted that the management, in violation of labour laws, routinely subjected its workers to work for more than 12 hours of work per day, occasionally extending work hours past midnight without compensating them, and this can be verified via the records paled on file.

18. It is submitted that due to the harassment imparted by the management against the workmen, the petitioner was forced to resign, and the learned Labour Court failed to appreciate the same.

19. It is submitted that during the management's allegations of losses due to dereliction of duty are unfounded, concocted, and baseless. Therefore, any findings from the inquiry officer are absurd.

20. It is submitted that the termination by the management is evidently contrary to the objectives and provisions of the ID Act, specifically Section 2(ra) and the Fifth Schedule. The dismissal of the petitioner appears to be an act of victimization, lacking good faith, and based on false grounds. The termination disregards principles of natural justice, especially considering that other employees are still in the service of the management.

21. It is submitted that the respondent, by misrepresenting facts and manipulating the petitioner coerced the petitioner into signing a fraudulent resignation letter, hence the said resignation letter is void, and the learned Labour Court erroneously treated it as a valid resignation without considering the evidence and circumstances.

22. It is submitted that the learned Court below did not consider the submission of the workman and perfunctorily considered the designation written on the wage payment sheet without delving into the requirements of



the functions of a Manager as stipulated and mandated by the Hon'ble Supreme Court in a catena of judgments.

23. It is submitted that the impugned Award is arbitrary, unreasonable, irrational, and illegal, lacking proper reasoning. It cannot be sustained, especially considering the abundance of evidence contradicting it. The coercive termination of the petitioner lacks justification, as the impugned Award by the learned Court below does not provide a reason for such action, rendering it a non-speaking Award.

24. It is further submitted that the learned Labour Court erred in stating that the Court does not extend the limitation prescribed in the ID Act, and it failed to take into account that Section 14 of the Limitation Act, 1963, allows for the exclusion of time when the workman was wrongly pursuing the remedy. Therefore, the determination of the petitioner's claim on maintainability issue should have favoured the petitioner, and the finding of the learned Court below is perfunctory.

25. It is therefore submitted that in view of the foregoing submissions, the instant petition may be allowed and the impugned Award be set aside.

(On behalf of the respondent)

26. *Per Contra* learned counsel appearing on behalf of the respondent no. 1 & 2 vehemently opposed the instant petition and submitted that the instant petition is liable to be dismissed being devoid of any merits.

27. It is submitted that the respondent's management, engaged in garment production and export, entrusted the petitioner initially with supervisory



responsibilities over 6-7 workmen due to his qualifications and experience in the garment industry, as well as due to him being known to the manager.

28. It is submitted that the petitioner effectively managed his duties and handled export activities in the absence of the active partner, Mr. Sushil Aggarwal, and recognizing the petitioner's capabilities, he was later appointed as the Production Manager. Therefore, the petitioner does not fall within the definition of a 'workman' as defined under the ID Act.

29. It is submitted that the petitioner engaged in providing consultancy to the competitors in the garment export trade, leading to neglect of his responsibilities, resulting in significant losses for the respondent. Despite being reminded of his duties and responsibilities, he unexpectedly tendered his resignation on 22nd April 2011, a critical time when his services were urgently needed for export consignments. Despite efforts by the respondent to persuade him to withdraw his resignation, the petitioner agreed to work until 31st May 2011, to fulfil immediate export needs and settle his dues before leaving the service.

30. It is submitted that the petitioner did not come to work post 30th May 2011, and apparently got engaged elsewhere. Despite patiently waiting and disbursing earned wages via a cheque, the respondent's request for due settlement proved futile, resulting in unwarranted litigation with the petitioner, initiated with ulterior motives.

31. It is submitted that the learned Court below did not err in rejecting the petitioner's contentions and there is no infirmity in its findings since the same has been passed in accordance with the law.



32. It is submitted that the learned Labour Court rightly reached to the conclusion that the claim petition filed by the petitioner is not maintainable since the same is time barred and contrary to the provisions of ID Act.

33. It is submitted that the petitioner approached the Conciliation Officer after the lapse of period of 3 years, and hence the same is not maintainable since the claim was filed on 29th June 2015, and the petitioner was terminated on 1st June 2011. The said claim petition was dismissed by the learned Labour Court vide the Award dated 26th April 2018, and the same has been rightly adjudicated.

34. In view of the aforementioned arguments, it is submitted that the instant petition may be dismissed.

ANALYSIS AND FINDINGS

35. The matter was heard at length with arguments advanced by the learned counsel on both sides. This Court has also perused the entire material on record. This Court has duly considered the factual scenario of the matter, judicial pronouncements relied on by the parties and pleadings presented by the learned counsel of the parties.

36. It is the case of the petitioner that he was terminated wrongfully and illegally and the learned Labour Court had failed to take into consideration the fact that he was coerced to give his resignation letter since he was being subjected to harassment and cruelty as he was being forced by the respondent management to work till late hours without any justified pay.



37. The petitioner contended that the learned Court below did not appreciate the fact that in view of Section 14 of the Limitation Act, 1963, where the amount of time spent in pursuing wrong litigation *bona fide* can be excluded, and hence the learned court below erred by holding that it cannot extend such time period. The petitioner has further contended that he is a 'workman' and the respondent management has falsely misrepresented the fact that the petitioner worked in a supervisory capacity as Production Manager, and the same has been done by manipulating the register and other records kept and managed by the respondent organization. In view of the said submissions, the petitioner has prayed for setting aside of the impugned Award.

38. In rival contentions, it has been submitted on behalf of the respondent that the petitioner was tasked with the supervisory responsibilities over 6-7 workmen due to his qualifications and experience. Further, recognizing the petitioner's capabilities, he was later appointed as the Production Manager. Therefore, the petitioner does not fall within the definition of a 'workman' as defined under the ID Act. It has been further contended that despite efforts by the respondent to persuade the petitioner to withdraw his resignation, the petitioner agreed to work until 31st May 2011, to fulfil immediate export needs and settle his dues before leaving the service, but the petitioner did not report to the work after 30th May 2011, and was found working for some competitor organisation of the respondent.

39. Finally, the respondent has submitted that the petitioner's claim before the learned Labour Court is time barred and against the statutory mandate of



the ID Act. The respondent has submitted that the petitioner approached the Conciliation Officer after the lapse of period of 3 years from the date of his termination, and much later when the petitioner's initial claim was dismissed in ID no. 244/2011, on the ground that he approached the Labour Court directly, without first approaching the Conciliation Officer. The respondent thereof submitted that in view of the above the petitioner's claim under the impugned Award is not maintainable since the claim was filed on 29th June 2015, and the petitioner was terminated on 1st June 2011. The said claim petition dismissed by the learned Labour Court vide the Award dated 26th April 2018, is right and there is no infirmity with the same.

40. Regarding the findings of the learned Labour Court that there was an enormous delay in raising the Industrial Dispute and as per the amended Section 2A of the ID Act, wherein, a 3year period is introduced, the Industrial Dispute raised by the writ petitioner herein, cannot be entertained. Relying on the said amended provision, the learned Labour Court dismissed the Industrial Dispute. The relevant extracts of the same are reproduced herein below:

“..4. After completion of the pleadings of the parties, vide order dated 19.01.2016, following issues have been framed:-

- 1. Whether the claimant is a workman within the definition of the Industrial Disputes Act?*
- 2. If yes, whether claimant has resigned or he was illegally terminated by the management?*
- 3. Whether the claim of the claimant is hit by latches or delay ?*
- 4. Whether the claim petition filed by the claimant is maintainable?*



5. Relief

No other issue arose or pressed and the matter was listed for workman evidence.

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9, First of all, the issue no. 4 is taken up. Issue no. 4:- Whether the claim petition filed by the claimant is maintainable? The onus of proving this issue is upon the workman is he has to prove that his claim petition is maintainable. The claimant in his evidence had deposed thatearher he had filed a claim petition vide I.D. No. 244/11 titled as Megh Kumar Jain Vs India Overseas Corporation & Anr. Which was dismissed on preliminary issue by the court of Sh. B.S. Chumbak, the then PO-LC-XVI vide order dated 17.10.2014 with the liberty to file the fresh claim. Hence, he has filed the application before the Conciliation Officer who provided the failure report dated 10.04.2015 under Section 2-A(l) of the Industrial Disputes Act.

10. In his cross examination, this witness has stated that he cannot say whether he had filed the claim before the Conciliation Officer on 10.11.2014. Management took preliminary objections in his evidence stating that the claim petition is not maintainable in view of the limitation prescribed in Sub-Section 3 of newly amended Section 2 (A) of the Industrial Disputes Act. In his evidence also, management has stated that the claimant in total disagreed to the relevant provisions of law has again approached the Hon'ble Court belatedly without adhering to the norms or seeking proper reference in a move to further harass the management wrongly despite the fact that the limitation bar of three years from the date of alleged termination of services ie., condition precedent of availing the provisions of Section 2-A (2) of the Act had lapsed and it was for the appropriate Government to consider the matter for proper reference, if any to the court and also that the conciliation officer failed to appreciate the material fact on record and mechanically engineered of issuing of failure report



instead of his recommendations to the appropriate Government for consideration.

11. Here, the certain facts are admitted. The claimant had earlier filed the petition on the same facts and same cause of action and before the predecessor of this court. That petition was dismissed on 17.10.2014. However, the claimant was given liberty to file the fresh claim in the labour court after following the provisions of Section 2-A (2) of the Industrial Disputes Act. In view of the liberty granted to the claimant, the claimant had approached the conciliation officer and conciliation officer had given failure report and thereafter claimant had filed this application.

12. Here, the case of the workman is that he had moved to the conciliation officer in view of the liberty given to file the fresh one against the management by the predecessor of this court. Thereafter, the claim petition is maintainable. However, the management had said that the claimant knew well the limitation for filing application to the labour court after moving to appropriate application to the conciliation officer is three years. Three years have been elapsed on 01.06.2014 itself from the of his dismissal while the claim has been filed in the court under Section 2 (A) of the Industrial Disputes Act on 29.06.2015.

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From the above Section, it appears that the single workman have been given liberty to move directly to the labour court for adjudication of the dispute referred to therein after the expiry of forty - five days from the date he has made the application to the conciliation officer. Time limit for moving application to the labour court is forty - five days after he had moved the application before conciliation officer. This is the minimum time taken by the conciliation officer. Act is silent in this respect whether the workman had participated in the



proceedings or not before the conciliation officer. Sub-Section 3 of the Act stated that limitation for filing the application to the labour court of the tribunal is three years from the date of discharge, dismissal, retrenchment or otherwise termination of service of the workman.

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14. Here, the services of the workman have been terminated on 01.06.2011 and he had filed the present application before this court on 29.06.2015 after expiry of one year. The court cannot extend any limitation. It is tl:-ie workman who has to follow the law. Section 10-A of the Act does not have any time limit for forwarding the reference to the labour court by the appropriate Government. After lapse of limitation, the workman should have approached to the appropriate Government for marking the reference after the expiry of three years from the date of discharge. Rather than he has chosen the same path as has been given by the court. Court does not extend the limitation period prescribed in the Act.

15. In view of the above discussion, the workman has failed to prove that his claim petition is maintainable. Hence, this issue goes against the workman and in favour of the management.

16. For this alone, the workman application is liable to be dismissed. However, other issues which has been framed by this court has to be decided.....”

41. Before proceeding with the adjudication of the dispute in the instant petition, it is prudent to first understand the relevant provisions of law applicable to the matter in hand. The relevant portion of Section 2A of the ID Act is extracted herein below:

“2. Definitions.—*In this Act, unless there is anything repugnant in the subject or context,—*

....



⁴ [2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—⁵ [(1)] Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.] 1

[(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).]”

42. Section 2A, reproduced above, has been brought under the Industrial Disputes Act, 1947, by way of Industrial Disputes (Amendment) Act, 2010, (24 of 2010), with effect from 15th September 2010, whereby, and where under, any employer discharges, dismisses, retrenches or otherwise



terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

43. The further provision as under sub section 2, to Section 2A, has also been inserted by the Act 24 of 2010, to the effect that notwithstanding anything contained in Section 10, any such workman as is specified in subsection (1) may, make an application directly to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

44. It further states under sub section 3 to Section 2A, that the application referred to in sub section 2 shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).

45. Since, the provisions of law have been discussed hereinabove.



Therefore, at this stage, it is imperative to note here that the learned Labour Court dealt with various issues in the claim filed by the petitioner such as the issue related to the maintainability of the petitioner's claim, whether the petitioner falls under the definition of a workman or not etc.

46. Before this Court, the respondent management had raised the preliminary objection with regard to the petitioner's claim and contended that the same is not maintainable in view of the bar of 3 years limitation period which has been imposed under sub section 3 of Section 2A of the ID Act.

47. As discussed above, the said sub section states that in case the conciliation officer has submitted its failure report, then the workman after forty-five days from the date of the officer's report and within a period of 3 years from the date of his termination may file his claim before the Labour Court.

48. This Court, therefore, deems it fit to adjudicate upon the issue, i.e., whether the petitioner filed his claim within the time period prescribed under the provision of Section 2A of the ID, and whether the learned Court below could have extended the time period as contended by the petitioner here.

49. Prior to incorporation of Section 2A, a workman had to necessarily depend upon the trade unions to espouse his cause for seeking reference under Section 10(1)(c) of the ID Act. The incorporation of Section 2A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under Section



10(1)(c) of the Act.

50. It is pertinent to note here that there is no iota of doubt that there is no bar with respect to the limitation period for an industrial dispute in case the same is referred to the Labour Court by the Appropriate Government under Section 10 of the ID Act, but since the proceedings before the learned Labour Court were conducted as per the process enshrined under Section 2A of the ID Act, hence, the issue mentioned herein above shall be discussed in terms of the same.

51. The law in regard to the limitation period mentioned under sub section 3 of Section 2A of the ID Act, has been discussed by a Coordinate bench of Karnataka High Court in the matter of **ITC Infotech India Ltd. v. VenkataramanaUppada, 2016 SCC OnLine Kar 538**, wherein, the following was observed:

“21. Thus, in the background of the dicta of the Apex Court in Naziruddin's case referred to supra, when Section 2A is perused, it would indicate that if the Legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words “at any time” instead of using the words “before the expiry of three years”. Though the words ‘at any time’ is found in Section 10(1), same is conspicuously absent in sub-Section (3) of Section 2A which would clearly depict the intention of the Legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2 A and as such Legislature did not employ the words ‘at any time’ in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words ‘before the expiry of three years’. Hence, to interpret



the period of limitation found in sub-Section (3) of Section 2 A as directory and not mandatory would amount to adding something which is not provided in the provision by the Legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made.

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27. In view of the aforesaid discussion, this Court is of the considered view that Point Nos. (i) & (ii) has to be answered in the negative namely, Labour Court cannot entertain a claim petition filed under Section 2A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

28. In view of the fact that provisions of Limitation Act, 1963 not being applicable or attracted to the Industrial Disputes Act, 1947, question of invoking Section 14 of the Limitation Act, 1963 to save the claim of the respondent — employee for the period spent before the wrong forum i.e., before the appropriate Government from the date of filing of application before Assistant Commissioner of Labour, Bangalore on 06.09.2012 to the date of withdrawal of the reference before Labour Court on 07.11.2013 also does not arise. Even otherwise, there is no explanation forthcoming for the delay in not raising the dispute from 11.02.2009 to 06.09.2012 i.e., from date of termination till the date of filing of application before the Assistant Commissioner of Labour, Bengaluru.

52. Furthermore, a Coordinate bench of the Madras High Court in the matter of ***K. Settu v. Tamil Nadu Electricity Board, 2019 SCC OnLine Mad 6562***, discussed the same aspect and held as under:

“8. This Court is of the considered opinion that all the above judgments cited by the learned counsel for the writ petitioner



is of no avail to the petitioner in view of the fact that all the judgments were decided by the Hon'ble Supreme Court and other High Courts before the date of amendment i.e., on 15.09.2010. Undoubtedly, the amendment regarding the three year limitation period is implemented prospectively and such a limitation cannot be implemented retrospectively.

9. In the present case on hand, even applying the limitation period of three years from the date of amendment on 15.09.2010, the Industrial Dispute ought to have been raised before 15.09.2013. However, the Industrial Dispute admittedly was raised after 15.09.2013 and therefore, this Court cannot find fault with the Labour Court in rejecting the Industrial Dispute on the ground of delay as Section 2(A) of the Industrial Dispute Act was amended with effect from 15.09.2010 and the limitation period of three years was introduced.

10. In view of the fact that all the judgments were delivered prior to the amendment, those judgments cannot be applied as far as the present writ petition is concerned and prior to the amendment, there was no limitation period under the Industrial Disputes Act and therefore, the Apex Court as well as the High Court held that merely on the ground of limitation, the Industrial Dispute cannot be dismissed. The present case cannot be decided, applying the legal principles settled prior to the issuance on the amendment on 15.09.2010, prescribing three year limitation period under Section 2(A) of the Industrial Disputes Act.

11. The learned counsel appearing on behalf of the respondent disputed the contentions raised by the writ petitioner and said that the Labour Court has rightly rejected the Industrial Dispute. The Industrial Dispute was filed beyond the three year limitation period. The petitioner's contention was that he was dismissed from service on 16.05.2007. The amendment of Section 2(A), introducing three year limitation period was implemented with effect from 15.09.2010, the petitioner filed the Industrial Dispute before the Labour Court



on 30.10.2013. Thus, the dispute is hit by the period of limitation, prescribed under Section 2(A) and therefore, the dispute is not maintainable.

12. It is contended that when the statute itself prescribes the period of limitation by way of an amendment, with prospective effect, even taking into consideration, the date of amendment i.e., 15.09.2010, industrial dispute ought to have filed before 15.09.2013. However, the Industrial Dispute in the present case was filed after three years from the date of amendment and for all the reasons, the findings of the Labour Court, rejecting the Industrial Dispute on the ground of limitation is in accordance with the amended Section 2(A) of the Industrial Disputes Act and there is no infirmity.

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18. Considering the above judgments, which were delivered after 14/18 the amendment, this Court is of an opinion that the Industrial Dispute was filed beyond the period of three years limitation. Thus, there is no perversity in respect of the findings of the Labour Court in rejecting the Industrial Dispute on the ground of delay.

53. The question of applicability of Section 2A of the ID Act, is attracted in the facts and circumstances of this case for the reason that the Section 2A applies only in the case of discharge, dismissal, retrenchment or otherwise termination. The fact herein, as per the record available, states that the termination of the petitioner comes under the definition of ‘discharge or dismissal or removal or otherwise termination’ and as such, Section 2A of ID Act, is applicable.

54. Further, Section 2A of the ID Act, prescribes the procedure ought to be followed in light of the facts of the instant dispute because as per the said section as provided under sub section 2-A thereof, the dispute has been



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raised before the Conciliation Officer in case no. No. ID/182/14/C0-1/ND/813, on 10th April 2014, wherein, the said officer submitted its failure report dated 10th April 2015.

55. Accordingly, the concerned workman/petitioner, as per the liberty granted to him, approached the learned Labour Court. Furthermore, subsection 3 of Section 2A provides that the application referred to in subsection (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).

56. In the case in hand, the petitioner was terminated from his service w.e.f. 1st June 2011. The petitioner, thereafter, filed his claim in ID no. 244/2011, which was dismissed on the ground of non-adherence to the mandate of Section 2A, and accordingly, the petitioner proceeded to file raise his dispute before the Conciliation Officer on 10th April 2014, which was decided on 10th April 2015. The petitioner, then, filed his claim in LIR no. 8666/2016, on 29th June 2015.

57. Upon perusal of the record, it is revealed that the claim of the petitioner was filed much beyond the expiry of period of 3 years and Section 2A of the ID Act which is for expeditious disposal of the dispute and under sub section 3, it has been provided to file “an application mandatorily within three years before the Labour Court or Tribunal from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)”, but admittedly the application was filed after lapse of 1 year after the expiry of 3 years from the date of termination of his services,



which is a violation of the statutory limitation period.

58. The law in regard to the delay and laches is well settled. It is fundamental principle in the administration of justice that the Courts will aid those who are vigilant and who do not sleep on their rights. Basically, if the party who is seeking reliefs moves the plea after considerable delay and is otherwise guilty of laches, the Courts in such circumstances would refuse to exercise the writ jurisdiction in favour of that party.

59. With regard to the same, it is noted that the petitioner herein has submitted that the limitation period could be condoned in view of Section 14 of the Limitation Act, 1963, but the petitioner has failed to produce any record as to any application filed by him either before this Court or before the learned Labour Court, thereby, seeking exclusion of the said time period. Moreover, the petitioner has failed to bring on record any evidence as to prove his due diligence and prosecution in good faith, therefore, not meeting the conditions enshrined in the said section.

60. The legal proposition behind the governance of interpretation of a Statute states that any such interpretation cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. Accordingly, it is contemplated that due to the express terms mentioned in the provision of Section 2A, the Limitation Act, 1963, cannot be said to be applicable.



61. Since, the position *qua* the law and fact on the issue of maintainability has been discussed; hence, this Court will briefly revisit the scope of interference of a writ Court.

62. This Court in its writ jurisdiction can interfere with an Award of the Labour Court/Tribunal, only if it is perverse, or there is patent illegality, or if the award rendered is contrary to law, or if there is an error apparent on the face of the record. The jurisdiction of the Writ Courts while interfering with the awards of the Labour Court has been discussed in great detail by the Supreme Court in a plethora of cases including ***Syed Yakoob v. K.S. Radhakrishnan***, AIR 1964 SC 477 and ***Sadhu Ram v. DTC***, (1983) 4 SCC 156. In ***Syed Yakoob (Supra)*** it has been *inter alia* held as under:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be



reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque, Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, and Kaushalya Devi v. Bachittar Singh.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded on reasons which are wrong in law, the said conclusion can be



corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

63. The Hon'ble Supreme Court in the aforesaid case has held that the findings of fact recorded by a fact-finding authority (Tribunal) duly constituted for the purpose becomes final unless the findings are perverse or based upon no evidence. The jurisdiction of the High Court in such matters is quite limited. It is well-settled proposition of law that it is not for the High Court to constitute itself into an Appellate Court over Tribunals constituted under special legislations to resolve disputes of a kind, qualitatively different



from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those Tribunals. High Courts cannot interfere with the findings of jurisdictional facts which the Tribunal is competent to decide. Further, the Hon'ble Supreme Court in ***Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union***, (2000) 4 SCC 245, while enunciating a similar observation held as under:

“17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned Single Judge and in ordering restoration of the award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned Single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken, the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to



the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below.”

64. Bare perusal of the above enunciates that a writ is issued for correcting errors of jurisdiction committed by inferior courts or tribunals and such errors would mean where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

65. Similarly, if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ. In dealing with this category of cases, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is



within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ can be legitimately exercised

66. With regard to the instant petition, it is observed that the petitioner did not wake up from the slumber for almost a year. Therefore, without delving into discussions pertaining to the other issues dealt with by the learned Labour Court, the present petition is only being adjudicated *qua* the maintainability of the petitioner's claim before the learned Court below in light of the time bar imposed by the Statute.

67. In regard to a finding of fact recorded by the Tribunal, a writ can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Consequently, this Court is of the opinion that the jurisdiction to issue a writ is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court.

68. In light of the same, it is held that this very limitation would pertinently mean that the findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in a writ proceeding.

69. Accordingly, it is deliberated that there is no error of law which is apparent on the face of the impugned Award in the present petition which is liable to be corrected by way of issuance of a writ. In view of the undisputed facts mentioned in the foregoing paragraphs, this Court is of the considered view that there are no merits in the instant writ petition and the same is liable



to be dismissed.

CONCLUSION

70. The Court under its extraordinary power under Article 226 may intervene only where there is a grave injustice caused to the party before this Court and if a *mala fide* intention established but the Courts cannot interfere merely because of personal inconvenience caused to the petitioner.

71. The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It is well settled principle that the real intention of legislature must be gathered from the language used. Therefore, in the considered view of this Court and in view of specific bar as provided under sub section 3 to Section 2A, the claim filed before the learned Labour Court was not fit to be entertained by it due to the statutory bar imposed and the learned Labour Court rightly appreciated the law that it could not have possibly extended the limitation period prescribed under the Stature.

72. In view of the discussions of facts and law, this Court finds no force in the propositions put forth by the petitioner. It is hereby, held that there is no infirmity in the impugned order challenged by the petitioner, therefore, the present writ petition is liable to be dismissed since the same is not a fit case for interference under the extraordinary writ jurisdiction of this Court. It is prudent to state that this Court has not delved into the merits of the petitioner's dispute and the instant petition is being dismissed at the threshold.



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73. Therefore, it is held that there the learned Labour Court has rightly arrived at the finding with regard to the maintainability of the petitioner's claim filed under Section 2A of the ID Act, and in view of the same the impugned Award dated 26th April 2018, passed in LIR no. 8666/2016, by the learned Presiding Officer, Labour Court no. XVI, South West District, Dwarka Courts, New Delhi, is, hereby, upheld.

74. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.

75. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 15, 2023
gs/ryp/av