



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

% **Date of order: 11th September, 2023**

+ **W.P.(C) 8630/2017**

JOGINDER KUMAR

..... Petitioner

Through: Mr. Sunil Kumar Jha, Advocate along
with petitioner in person

versus

MANAGING DIRECTOR NORTH WEST AIRLINES & ORS

..... Respondents

Through: M. Vidhya, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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) Set aside the Award dated 31.8.2010 passed by Ld. Presiding Officer, Central Govt. Industrial Tribunal No.1 Karkardooma Court Complex, Delhi in I.D. No. 67/2007
(b) pass such further order or orders as to this Hon’ble Court may deem fit and proper.”*

2. The petitioner was engaged to provide services of a loader to the respondent no. 1 by virtue of a contract of services signed between the respondent nos. 1 and 2. In 2002, the contract between the respondents was terminated, leading to termination of the services of the petitioner as well.

3. Aggrieved by the same, the petitioner raised an industrial dispute before the conciliation Officer, Government of NCT of Delhi, for



reinstatement of his services with the respondent no. 1 and the dispute was referred to the Labour Court, however, the dispute was not adjudicated due to objections regarding the jurisdiction of the said Court.

4. Thereafter, the petitioner filed a Writ Petition No. 177723/2005, whereby, the Coordinate Bench of this Court directed the appropriate Government to adjudicate the dispute between the petitioner and the respondent.

5. Pursuant to the directions of the Coordinate Bench, the matter was referred to the Labour Tribunal. The Labour Tribunal *vide* order dated 31st August, 2010 rejected the claim of the petitioner and held that the petitioner's engagement with the respondent no. 2 does not create a right to be employed with the respondent no. 1.

6. Aggrieved by the same, the petitioner has filed the instant petition.

7. The learned Counsel appearing for the petitioner submitted that the petitioner was employed as a loader by the respondent no.1 through a contractor, and was also issued gate pass and other letters which establishes his employment with the respondent no. 1.

8. It is submitted that the learned Tribunal wrongly held that the master and servant relationship between the petitioner and the respondent no. 1 cannot be established and simply ignored the fact that the petitioner was issued permission letters, gate passes Etc. by the respondent no. 1.

9. It is submitted that the termination of the services of the petitioner is violative of Section 25-F, G and H of the Industrial Disputes Act, 1947 read with Rules 76 and 77 of the Industrial Dispute (Central) Rules, 1957.



10. It is further submitted that the petitioner had suffered mental trauma due to said order and therefore, failed to file the Writ Petition on time.

11. Hence, in view of the foregoing submissions, the petitioner seeks that the present petition may be allowed and the impugned award be set aside.

12. *Per Contra*, the learned counsel appearing on behalf of the respondent no. 1 vehemently opposed the petition submitting to the effect that the present petition is barred by laches, being delayed by more than seven years from the date of the impugned Order passed by the learned Tribunal.

13. It is submitted that the respondent no. 1 had hired the respondent no. 2 for the purpose of providing loading services and respondent no. 2 was solely responsible for disbursing salaries to the employees.

14. It is submitted that there is no relationship between the petitioner and the respondent no. 1, and the petitioner was required to approach the respondent no. 2 after the contract between the respondents was terminated in 2002.

15. It is also submitted that at the time of joining the respondent no. 2, the petitioner had applied for transfer of the EPF Accounts, which establishes the relationship between the petitioner and the respondent no. 2.

16. Hence, in view of the foregoing submissions, the respondent no. 1 prayed that the instant petition be dismissed being devoid of any merit.

17. Heard the learned counsel for the parties and perused the records.

18. As per material on record, it is clear that the petitioner has preferred the instant petition against the impugned order after an inordinate delay of 7 years and has cited being in depression for such a delay. Therefore, it is



imperative to discuss the nature of delay, and whether such delay can be condoned based on the grounds raised by the petitioner.

19. Section 5 of the Limitation Act, 1963 ('Act' hereinafter) provides for extension of prescribed period for filing an application under any provision except Order XXI of the Code of Civil Procedure, 1908 ('Code' hereinafter) thereby giving powers to the Court to admit the application by condoning the delay after the prescribed period of limitation. The said provision is reproduced herein:

*"Section 5. Extension of prescribed period in certain cases.
Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.
Explanation.--The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."*

20. On perusal of the aforesaid provision, it is clear that the phrase 'sufficient cause' is a necessary condition for the extension of the prescribed period under the Act. Therefore, the petitioner needs to satisfy the Court that there arose 'sufficient cause' for delay in not preferring the petition/application within the prescribed time.

21. The term 'sufficient cause' as mentioned in the provision has been interpreted in different manner by different Courts and it is well settled that the question of what constitutes sufficient delay cannot be laid down by hard



and fast rule, rather the same is to be decided by the courts on facts of the intervening circumstances of each case.

22. In the instant case, the petitioner has cited depression as a ground for delay of 7 years in filing the Writ Petition. It is well known that the underlying reasons for the introduction of law of limitation was to avoid unnecessary pendency in the Courts as well as to make the citizens vigil about their rights. In ***Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project, (2008) 17 SCC 448***, the Hon'ble Supreme Court revisited the principles under which the law of limitation was introduced and held as under:

“26. Basically, the laws of limitation are founded on public policy. In Halsbury's Laws of England, 4th Edn., Vol. 28, p. 266, Para 605, the policy of the Limitation Acts is laid down as follows:

“605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove the stale claim, and (3) that persons with good causes of actions should pursue them with reasonable Diligence.”

27. Statutes of limitation are sometimes described as “statutes of peace”. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. This Court in Rajender Singh v. Santa Singh [(1973) 2 SCC 705] has observed: (SCC p. 712, para 18)

“18. The object of law of limitation is to prevent disturbance or deprivation of what may have been



acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches.”

28. *In Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110 : AIR 1970 SC 898 : (1969) 2 SCR 824] this Court observed that this principle is based on the maxim “interest reipublicae ut sit finis litium”, that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression.*

29. *It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.*

30. *Public interest undoubtedly is a paramount consideration in exercising the courts' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the landlosers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act.*



Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest.”

23. On perusal of the aforesaid paragraphs, it is crystal clear that even though the aim of the Courts is to deliver justice to the aggrieved citizens, the citizens need to act vigilant and need to file the cases in a timely manner. Therefore, public interest, even though being a paramount consideration is still well within the bounds of the rules created for speedy and justiciable disposal of the disputes.

24. In the instant case, the petitioner filed the reference in 2004, and the case kept on meddling between the Central and State authorities till the time it was finally disposed of by the learned Tribunal in 2010. It is evident that the petitioner was aggrieved by the said decision of the Tribunal, however, failed to prefer the Writ against the said order in a timely manner and only acted upon the same after an inordinate delay of 7 years.

25. The petitioner has cited depression as the prime cause for not preferring the petition on time, however, this Court believes that the petitioner has failed to supplement the said ground with sufficient proofs which could establish the legitimacy of such claim. Therefore, a huge delay of 7 years cannot be condoned on the ground taken by the petitioner.

26. Now coming to the merits of the case, it is the case of the petitioner that he was removed from the services by the respondent no. 1 ultimately



violating his right as provided under Section 25-F, G and H of the Industrial Disputes Act, 1947 read with Rules 76 and 77 of the Industrial Dispute (Central) Rules, 1957. The respondent no. 1 has made the rival contentions and submitted that the petitioner was never employed by them, rather they were availing his services by virtue of an agreement signed between the respondent nos. 1 and 2.

27. In the impugned order, the learned Tribunal rejected the claim of the petitioner being an employee of the respondent no. 1 and had therefore rejected the claim made by him. The relevant paragraph of the said order is reproduced herein:

“3. Contest was given to his claim by the management pleading that there was no privity of contract between the claimant and the management. The contractor appeared before the Conciliation Officer and projected that the claimant was its employee, which led appropriate Government to reject his claim. Since the claimant projects in; his claim statement that his services were terminated by the contractor, he cannot claim relief against the management. The management projects that the claimant was an employee of the contractor, which fact has been projected by him in his claim statement. His services were terminated by the contractor, as per his own admission. He admits that his salary was being paid by the contractor, asserts the management. Under these circumstances, it does not lie in the mouth of the claimant to seek relief of reinstatement against the management. His claim statement is liable to be dismissed.

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9. Various documents are relied by the claimant to establish relationship of employer and employee between him and the management. It becomes expedient to ascertain as to whether direct . relationship of employer an employee between the



management and the claimant was ever established. For ascertainment of that fact, the documents relied by the claimant are being appreciated. Ex.VWVI/5, Ex.WWI/8 and Ex.WW1/9, are letters written by Ekta Walia and John James to Manager, International Cargo , IGI Airport Terminal New Delhi, requesting him to allow the claimant to collect baggage on behalf of the management. Whether these documents give on inference that the claimant was an employee of the management? Answer lies in negative. As per contents of these documents, claimant was sent to collect baggage of passengers on behalf of the management. Authority given to claimant to collect baggage on behalf of the management would not go to establish a relationship of employer and employee between the management and the claimant.

10. Ex.WW1/7 is an appreciation letter written to the claimant by K.B.F.Steller, office manager. Shri Steller details that in recognition of claimant and his team's efforts to deliver excellent service to the passengers of the management with smile, as on the attached photographs and happy customers, he commends his exceptional efforts to make the management's work effective in practice. This document nowhere project that it was written by an employer to his employee.

Appreciation contained in the letter, referred above, simply lauds personal efforts of the claimant and his team members. Best results delivered by the claimant and his team got recognition. This recognition no where give an inference that the author of the letter is communicating with his subordinate. Appreciation contained there in was with a view to pet the back. Except this aspect, no other emotion is expressed in the letter. Hence it is concluded that the letter under reference is a courteous communication, addressed to a person who delivers results to customers of the management. Contents of this communication are not going to give an inference that there existed employer and employee relationship between the parties.



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18. As detailed above it is evident that there was no relationship of employer and employee between the claimant and the management. The claimant has not been able to establish that at any subsequent stage the management has established direct relationship of employer and employee with him. No evidence at all has been brought over the record to record a finding in favour of the claimant. Issue is, therefore, answered against the claimant and in favour of the management.”

28. On perusal of the aforesaid paragraphs of the impugned order, it is made out that the learned Tribunal had fairly referred to the evidence submitted by both the parties and then concluded that the petitioner's employment does not fall with the respondent no.1 rather he was engaged with the said respondent through a contractor where the directions as well as salaries were given only by the respondent no. 2.

29. Furthermore, it was rightly held that the appreciation letter issued by the respondent no. 1 does not amount to establishment of the petitioner's employment with the respondents and the said appreciation letters were merely issued to commend the good work done by the petitioner.

30. The question of circumstances under which a contract labour can be declared to be an employee is well settled. As per the decision laid down by the Hon'ble Supreme Court in ***SAIL v. National Union Waterfront Workers, (2001) 7 SCC 1***, there can be three classifications to term the labour as an employee of the principal employer. The said classifications are as follows: a) when the contract labour is engaged in connection with work



of an establishment where the contract labour is prohibited by a Court/Government's order, b) where the contract was found to be sham and nominal, and lastly c) when the discharge of the statutory obligation of maintaining a canteen in an establishment where the principal availed the services of the contractor.

31. In the instant case, the reasoning provided by the learned Tribunal in the impugned order makes it amply clear that the petitioner does not fall under any of the categories as enumerated and expounded by the Hon'ble Supreme Court. Neither is the contract entered between the respondents can be termed sham, nor was the respondent no. 1 barred by any Government/Court order to engage services of a contractor providing labours. Hence, the petitioner cannot be termed to be employed with the respondent no. 1 and the learned Tribunal rightly dismissed the claim.

32. Therefore, in light of the foregoing discussion, this Court does not find any merits in the case of petitioner and the petition is dismissed, firstly on the grounds of inordinate delay of 7 years and secondly, on merits as well.

33. Pending applications, if any, also stands dismissed.

34. Order be uploaded on website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 11, 2023

gs/av

Click here to check corrigendum, if any