

227 **IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-3025-2016 (O&M)
Date of Decision: 04th January, 2024**

The Executive Engineer, Water Supply and Sanitation (RWS) and another

..... Petitioners

Versus

Jeet Bahadaur and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

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

 Mr. Amarjit Singh, Advocate
 for respondent No.1.

HARSH BUNGER J.

1. Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India seeking quashing of impugned award dated 05.10.2015 (Annexure P-5) passed by the Presiding Officer, Industrial Tribunal, Amritsar (hereinafter to be referred as 'the Tribunal'), whereby the industrial dispute raised by respondent No.1 (Jeet Bahadur) regarding termination of his services has been answered in his favour.

2. Briefly, respondent No.1-workman (Jeet Bahadur) raised an industrial dispute regarding termination of his services by the petitioner-Department, which was subsequently referred for adjudication to the Tribunal.

3. In the claim statement, it was stated by respondent No.1-workman that he was employed against a permanent post as Mali-cum-Chowkidar and deputed at Patti where he continuously worked from 01.06.1992 up to 30.03.1995, when he was retrenched. It was the categorical case of respondent No.1 that after his retrenchment, new Chowkidars-cum-Malis were engaged. Respondent No.1-workman stated that his services have been terminated in violation of Section 25-H of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the 1947 Act'), therefore, he prayed that appropriate order be passed for re-employing him from the date when new watchmen-cum-Chowkidars/Malis were appointed.

4. The aforesaid claim of respondent No.1-workman was contested by the petitioner-Department by denying the averments of respondent No.1-workman that he was appointed as a permanent employee on 01.06.1992. It was stated that respondent No.1 was appointed as a daily wager in the year 1994 and he did not complete 240 days in a year. It was next submitted that respondent No.1 was engaged in Sub Division Patti in the month of May, 1994 and worked as daily wager from July, 1994 till February, 1995; and thereafter, he abandoned his job and remained absent. It was also stated that claim of respondent No.1 was time barred inasmuch as that respondent No.1 claimed that he had worked from 01.06.1992 till 30.03.1995 whereas the demand notice was served only in March, 2009.

5. From the pleadings of the parties, following issues were framed by the Tribunal:-

“(i) Whether the services of the workman have been terminated illegally and against rules. If so, its effect and whether he is entitled to any consequential benefits? OPW

(ii) Whether the reference is not maintainable? OPM

(iii) Relief”

6. Thereafter, both the parties led evidence in support of their case. The workman examined Gurpreet Singh, Clerk Water Supply, Patti as WW-1 and also examined himself as WW-2. On the other hand, the Managements examined Sh. Gurpreet Singh as MW-1.

7. The Tribunal below, vide its impugned award dated 05.10.2015 (Annexure P-5), granted the following relief to respondent No.1-workman:-

15. In view of the discussion, made on the above issues, the reference is answered in favour of workman and against the managements and the award is passed accordingly. The workman is ordered to be reinstated at the post of Mali-cum-Chowkidar from the date he was retrenched with back wages for three years and he will also be regularized from the date he was retrenched. The managements directed to reinstate him within two months of the publication of this award and pay him his 9% per annum interest from the date he was removed till payment is made. The workman shall report for duty within thirty days after publication of the award. Reader of this Tribunal is directed to forward three copies of this Award to Assistant Labour Commissioner/ Labour-cum-Reconciliation Officer, Amritsar as required under Section 15 of the I.D. Act read with Notification No.S.0.66/C.A.14/1947/S.17/2008 dated 1.10.2008.”

8. Being aggrieved with the aforesaid award dated 05.10.2015 (Annexure P-5), the petitioners have filed the instant writ petition before this Court.

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

10. After going through the impugned award dated 05.10.2015 (Annexure P-5), it is observed that the Tribunal has not returned any finding under Issue No.1. After referring to the depositions of workman in paragraph No.11 and the documentary evidence placed on record, the Tribunal in

paragraph No.13 has only observed as under:-

“13. Admittedly, after retrenchment of Jeet Bahadur round about 15 to 20 persons were employed as Mali cum Chowkidars by the managements, but no opportunity was given to the workman. Section 25-H of the I.D. Act reads as under:

"Re-employment of retrenched workman- where any workmen are retrenched, and the employer proposes to take into his employee any persons, he shall, in such manner as may be prescribed, given an opportunity to the retrenched workmen, who are citizens of India to offer themselves for re-employment and such retrenched workmen who offer themselves for re- employment shall have preference over other persons."

So, it is clear that managements violated the provisions of have Section 25-H of the I.D Act. It has been held by the Hon'ble Supreme Court of India in case Gauri Shanker Vs. State of Rajasthan (Supra), which was decided on 16.4.2015, that where there is non-compliance of section 25-F, 25- G or 25-H of the I.D. Act, the termination of the services of the workman can be void ab-initio and the workman has to be reinstated. This fact has been admitted by WW1 Gurpreet Singh, official of the managements. It is admitted that after retrenchment of Jeet Bahadur, about 15 to 20 persons were employed by the Managements, but no opportunity was given to him. The law of limitation will not be applicable in this case as the management of official of the managements. It is admitted that after-retrenchment of Jeet Bahadur, about 15 to 20 persons were employed by the managements, but no opportunity was given to him. The law of limitation will not be applicable in this case as the managements have violated the mandatory provisions of Section 25-H of the I. D. Act. So, it is clear that in view of the latest law laid down by the Hon'ble Supreme Court of India in Gauri Shanker's case (Supra), the workman is entitled to be reinstated alongwith back wages for

three years and he will also be regularized from the date he was retrenched. So, issue No.1 is held in favour of the workman and against the managements.”

A perusal of the above extracted findings would manifest that the Tribunal has not dealt with objections of the petitioners that the claim of respondent No.1-workman was a stale claim and barred by gross delay and laches. Tribunal below has simply observed that law of limitation will not be applicable. Tribunal below has lost sight of settled position in law that even in cases where Limitation Act is not applicable, the litigant/aggrieved party must approach the Court within a reasonable time.

11. In **“Prabhakar v. Joint Director Sericulture Department” 2015(4) SCT 493**, 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...”

12. In the instant case, a bare perusal of the paper book would suggest that even as per the pleaded case of respondent No.1, he worked only from 01.06.1992 to 30.03.1995; and concededly, he raised a demand notice only in March, 2009, i.e. after almost fourteen 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 fourteen years, before submission of the demand notice by him. Respondent No.1 has

only claimed the violation of provisions of Section 25-H of the 1947 Act. It cannot be countenanced that a workman who has slept for long fourteen years would suddenly wake up after a long slumber and take plea that new persons have been appointed after his retrenchment. Moreover, it cannot be expected from any establishment to wait endlessly for a workman.

13. Further, a perusal of the impugned award dated 05.10.2015 (Annexure P-5) would suggest that the Tribunal has not only granted reinstatement to respondent No.1-workman but also issued a direction that respondent No.1-workman would be regularized from the date he was retrenched, however, it is observed that neither in the demand notice nor in the claim statement, any relief of regularization was prayed for by respondent No.1-workman; and in the absence of any such prayer, there was no occasion for the Tribunal to issue a direction to regularize the services of respondent No.1-workman.

14. Keeping in view the above discussion, I am of the considered view that impugned award dated 05.10.2015 (Annexure P-5) 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 impugned award dated 05.10.2015 (Annexure P-5) is set aside and claim of respondent No.1-Jeet Bahadur is rejected.

15. The present writ petition is accordingly disposed of.

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

04th January, 2024

Apurva

**(HARSH BUNGER)
JUDGE**

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|--------------------------------|--------|
| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |