

CWP-4538-2023 &
CWP-4852-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109+110

1. CWP-4538-2023
Decided on : 12.02.2024

Kulwinder Singh . . . Petitioner(s)

Versus

Presiding Officer, Industrial Tribunal and
Labour Court, UT, Chandigarh and another . . . Respondent(s)

2. CWP-4852-2023

Harjinder Singh . . . Petitioner(s)

Versus

Presiding Officer, Industrial Tribunal and
Labour Court, UT, Chandigarh and another . . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. R.K. Arora, Advocate and
Mr. Jugam Arora, Advocate
for the petitioner(s) (in both the cases).

Mr. Anil Sharma, Advocate and
Mr. Aarav Gupta, Advocate
for respondent No.2 (in CWP-4538-2023).

None for respondent No.2 (in CWP-4852-2023).

SANJAY VASHISTH, J. (Oral)

1. This order shall dispose of aforementioned writ petitions i.e.
CWP-4538-2023 and CWP-4852-2023, as the controversy involved in all
the aforementioned writ petitions is similar.

However, for the purpose of disposal of these writ petitions,
main/common order is being passed in CWP-4538-2023.

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2. **CWP-4538-2023**, has been filed by the petitioner – Kulwinder Singh (workman), for seeking quashing of award dated 10.02.2022 (Annexure P-1), published vide notification No.13/1/9844-HII(2)-2022/4823, in the Chandigarh Administration Gazette dated 01.04.2022, and **CWP-4852-2023**, has been filed by the petitioner – Harjinder Singh (workman), for seeking quashing of the same award dated 10.02.2022 (Annexure P-1 in CWP-4852-2023), published vide notification No.13/1/9843-HII(2)-2022/4522, in the Chandigarh Administration Gazette dated 28.03.2022, whereby, the industrial dispute raised by the petitioner(s) – workman (in both the writ petitions), have been declined by learned Industrial Tribunal-cum-Labour Court, UT Chandigarh (in short, ‘learned Tribunal’), by declaring the claim, as hopelessly time barred and bad for non-joinder for necessary party i.e. the Employment Exchange, UT Chandigarh.

3. Un-disputedly, petitioner(s) - workman remained in service as ‘Conductor’ with the Chandigarh Transport Undertaking (CTU) w.e.f. 15.10.1993 to 22.04.1994 only, however, the industrial dispute has been raised only in the year 2018.

4. Taking note of all the facts, learned Tribunal reached to the conclusion that the claim is hopelessly time barred, because, dispute has been raised after 28 years of the cause accruing to the petitioner(s) – workman and Employment Exchange, UT Chandigarh, which is necessary party, has not been impleaded as party to the *lis*.

5. In regard to the issue of delay, reliance has been placed upon

Nedungadi Bank Limited vs. K.P. Madhavan Kutty, 2000(3) Vol. 75 All

India Services Law Journal 22 (SC), wherein, the Hon’ble Apex Court, in

paragraph No.5 has observed, as under:-

“5. 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 rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the 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 an industrial was ex facie bad and incompetent.”

6. Counsel appearing on behalf of the Chandigarh Transport Undertaking – Management, also relies upon the judgment of the Hon’ble Apex Court rendered in **Chief Engineer, Ranjit Sagar Dam & anr vs. Sham Lal; 2006 AIR (Supreme Court) 2682 : Law Finder Doc Id # 122906,** wherein, the Hon’ble Apex Court, reiterated certain observations made in

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Nedungadi Bank Limited's case (*supra*), and refers to paragraphs No.9 & 10, which are reproduced as under:-

“9. So far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.

*However, certain observations made by this Court need to be noted. In **Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors. (2000 (2) SCC 455)** it was noted at paragraph 6 as follows:*

"6. 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 a lapse of about seven years of the 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

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dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex-facie bad and incompetent."

10. In **S.M. Nilajkar and Ors. v. Telecom District Manager, Karnataka (2003 (4) SCC 27)** the position was reiterated as follows: (at para 17)

*"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in **M/s. Shalimar Works Ltd. v. Their Workmen (supra) (AIR 1959 SC 1217)**, that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even reemployment of the most of the old workmen was held to be fatal in **M/s. Shalimar Works Limited v. Their Workmen (supra) (AIR 1959 SC 1217)**, In **Nedungadi Bank Ltd. v. K.P. Madhavankutty and others (supra) AIR 2000 SC 839**, a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In **Ratan Chandra Sammanta and others v. Union of India and others (supra) (1993 AIR SCW 2214)**, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the*

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*remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in **Daily Rated Casual Employees Under P&T Department v. Union of India (supra) (AIR 1987 SC 2342)**, the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal cum-Labour Court. We do not think that the appellants deserve to be non suited on the ground of delay."*

*The above position was highlighted recently in **Employers in relation to the Management of Sudamdih Colliery of M/s Bharat Coking Coal Ltd. v. Their Workmen represented by Rashtriya Colliery Mazdoor Sangh (2006 (1) Supreme 282).**"*

7. Again, submits that this Court (Punjab and Haryana High Court) while considering the same issue, has also relied upon **Nedungadi Bank Limited's case (supra)** and observed in **State of Punjab and others vs. Gurwinder Singh and another; 2009(4) RSJ 56 : Law Finder Doc Id**

#192602, as under:-

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“5. The factual position with regard to the delay in making the demand and claiming an industrial dispute has not been disputed. As per the assertion of the workman, his services were terminated on 8.9.1986. The demand notice is dated 17.10.1995. The delay is apparently of more than nine years. No explanation whatsoever has come on record which can be said to be justifiable for not approaching or claiming the dispute within a reasonable time before the Appropriate Government. The principles as enunciated by the Hon'ble Supreme Court in the case of Nedungadi Bank Limited Case (supra) and Chief Engineer, Ranjit Sagar Dam and another's case (supra), would be fully applicable to the present case. There is a lapse of more than 9 years in making a demand to the Appropriate Government. Therefore, by no stretch of imagination it can be said that a dispute could exist after such a long delay, moreso when no cogent reasons have come forth explaining the delay in making the demand notice. The stale claims cannot be said to form the basis of an industrial dispute and as a matter of fact, no industrial dispute can be said to have existed after a long period of 9 years from the date of termination. Thus, relying upon the ratio of the judgments, referred to above on the question of delay, the writ petition deserves to be allowed on this ground alone. In view of the above, the present writ petition is allowed. The impugned award dated 28.3.2008 (Annexure P-8) passed by the Labour Court, Bathinda is hereby set aside.”

8. In addition to what has been stated herein-above, counsel also submits that the present writ petition(s) is liable to be dismissed, because, true and correct facts have not been brought to the notice of this Court, as well as before the learned Tribunal. While referring to the order dated 02.07.2001 (Annexure P-5), passed by the Central Administrative Tribunal, Chandigarh Bench, in OA No.1000/PB/94, wherein, name of the petitioner –

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Kulwinder Singh (in CWP-4538-2023) is at Sr. No.15 and petitioner – Harjinder Singh is at Sr. No.11 (in CWP-4852-2023), in the memo of parties, and refers to the fact recorded in paragraph No.5 of the same, which is reproduced hereunder:-

“5. After filing of the O.A., the applicants filed MA 360/95 on 28.2.1995 seeking the relief that they be taken back on duty. This MA was disposed of by order dated 1.6.1995 by which their prayer was not granted, however, it was directed if any fresh recruitment takes places, there is nothing to prevent the applicants to apply for such recruitment, if they are eligible and qualified. Subsequently, the applicants filed MA No. 735/98 stating that the respondents were recruiting conductors and the recruitment scheduled for 3.9.98 be stayed. This MA alongwith two other similar MAs was rejected by order dated 31.8.1998. However, it was made clear that such selection/appointments, if any, made by the respondents, shall be subject to the final outcome of the OAs. Against this order dated 31.8.1998, the applicants approached the Hon’ble High Court by filing CWP No. 13951 of 1998 which was disposed of by order dated 2.9.1998 with the directions, “We find no ground to stay the process of selection. However, it is directed that while issuing appointment letters to the selected candidates, the 3rd respondent shall incorporate a specific condition that the appointments shall be subject to the final orders which may be passed by the Administrative Tribunal in the case filed by the petitioner regarding the validity of the orders of termination.....”

9. Thus, counsel for respondent No.2 – CTU, submits that in fact, the petitioners were well aware of the situation along with all the facts in the year 1998 itself, and now, to approach the Court at a belated stage, a concocted version has been prepared by moving an application under Right

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to Information Act, 2005.

10. When paragraph No.5 of the order passed by the Central Administrative Tribunal, Chandigarh Bench, is put to the counsel for the petitioner(s) – workmen, he expressed his inability, to give any plausible explanation, to say that he acquired knowledge *qua* all the facts in the year 2018 only.

11. This Court has gone through all the pleadings and the documents appended with the writ petition, heard both the sides and gone through the cited judgments also.

On going through the same, I do not find any substantial reason to deviate from the view point taken by the learned Tribunal. Thus, definitely, the industrial dispute is not entertainable further, as a very long period i.e. of about 28 years had already elapsed. Moreover, no explanation is available with the counsel for the petitioner(s) – workman, to the submissions addressed and facts pointed out by Mr. Anil Sharma, Advocate, representing respondent No.2 – Management (CTU).

Petition stands **dismissed** accordingly.

Besides, this Court was inclined to impose some cost upon the petitioner(s) – workman, but looking at the situation of the petitioners, being workmen (probably unemployed), no cost is being imposed.

(SANJAY VASHISTH)
JUDGE

February 12, 2024

J.Ram

Whether speaking/reasoned: ✓ Yes/~~No~~

Whether Reportable: ✓ Yes/~~No~~