

2024:PHHC:035233

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-5693-2024
Date of Decision: 12.03.2024

M/s Carte Blanche Solutions Pvt. Ltd.

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurugram and
another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. R.S. Mamli, Advocate
for the petitioner.

HARSH BUNGER J. (ORAL)

1. Petitioner – M/s Carte Blanche Solutions Pvt. Ltd. (hereinafter referred to as ‘the petitioner-Company’) has filed the present writ petition under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for setting aside order dated 01.02.2016 (Annexure P-6) passed by the learned Industrial Tribunal-cum-Labour Court-I, Gurugram (for short ‘the Tribunal’), whereby the evidence of petitioner-Company was ordered to be closed; as well as award dated 08.02.2016 (Annexure P-8) passed by the Tribunal, whereby the reference of industrial dispute raised by respondent No.2 – Kritika Chaturvedi, regarding

termination of her services, has been answered in her favour and she has been held entitled to reinstatement in service along with 40% back wages.

2. Briefly, respondent No.2 raised an industrial dispute regarding termination of her services. The said dispute was referred to the Tribunal below, for adjudication.

3. As per the claim statement of respondent No.2, she was appointed by the petitioner-Company w.e.f. 09.12.2011 on the post of Talent Acquisition Senior Specialist. It was claimed by respondent No.2 that her service record was very good; yet the petitioner-Company terminated her services on 16.03.2016 in an illegal manner without holding any enquiry and in violation of the provisions of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'). Respondent No.2 further claimed that she had sent a demand notice to the petitioner-Company, but with no result. Accordingly, she prayed for reinstatement in service along with back wages.

4. The aforesaid claim of respondent No.2 was opposed by the petitioner-Company by way of filing its written statement, wherein it was stated that respondent No.2 had been performing the duties in a managerial and supervisory capacity and, therefore, she was not a "workman" within the meaning of Section 2(s) of the 1947 Act. It was further stated by the petitioner-Company that services of respondent No.2 had never been terminated by the Company at any stage rather it was the respondent No.2 herself, who had resigned from the Company on 19.02.2013; and therefore, there was no violation of Sections 25-F, 25-G and 25-H of the 1947 Act.

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

"1. Whether the petitioner covered within the definition of "workman" as defined under Section 2(s) of the Industrial Disputes Act, 1947.

2. *Whether the services of the worker were illegally terminated? If so, to what relief, she is entitled to? OPW*

3. *Whether the reference is not maintainable in the present form? OPM*

4. *Relief.”*

6. Thereafter respondent No.2 led evidence in support of her case and examined herself as PW-1.

7. During pendency of the proceedings before the learned Tribunal below, the petitioner-Company failed to lead evidence, consequently, evidence of petitioner was closed vide order dated 01.02.2016 (Annexure P-6). It appears from the record that petitioner-Company was subsequently proceeded against *ex parte* vide order dated 04.02.2016 (Annexure P-7).

8. Upon considering the material/evidence available on record, the Tribunal below decided the reference in favour of respondent No.2 vide award dated 08.02.2016 (Annexure P-8).

9. Being aggrieved against the aforesaid award, the petitioner-Company has filed the instant writ petition before this Court.

10. Learned counsel for the petitioner-Company submits that the Tribunal below has erred in law and fact in deciding the reference in favour of respondent No.2 and reinstating her in service along with 40% back wages. It is submitted that the Tribunal below passed the award dated 08.02.2016 (Annexure P-8) without considering facts of the case and the documents produced on record. Learned counsel for the petitioner-Company contended that respondent No.2 was drawing a salary of more than Rs.18,000/- per month and was working in the capacity of managerial and supervisory cadre; accordingly, she was not a worker in the Company. It is further submitted that the petitioner-Company never terminated the services

of respondent No.2 w.e.f. 16.03.2013, rather respondent No.2 had herself resigned from the Company on 19.02.2013.

Learned counsel for the petitioner-Company contends that the Tribunal below closed the evidence of the petitioner-Company, vide order dated 01.02.2016, in an illegal and unlawful manner without affording proper opportunities to the Company; and thereafter, vide order dated 04.02.2016, the petitioner-Company was proceeded against *ex parte* by the Tribunal below as the counsel representing the petitioner-Company did not appear before the Court below on the said date; however, the same was a result of total miscommunication between the petitioner-Company and its counsel.

With the aforesaid submissions, learned counsel for the petitioner-Company has prayed for setting aside order dated 01.02.2016 (Annexure P-6) and award dated 08.02.2016 (Annexure P-8) passed by the Tribunal below.

11. I have heard learned counsel for the petitioner and perused the paper book with his able assistance.

12. The order (Annexure P-6) and the award (Annexure P-8), challenged by petitioner-Company in the instant case, were passed by the Tribunal below on 01.02.2016 and 08.02.2016, respectively, whereas the present writ petition has been filed on 27.02.2024 (as would be apparent from the Affidavit filed in support of writ petition); which is after a period of more than eight years from the date of passing of the aforesaid order and award.

13. In the case of ***“Er. Darshan Singh Bhullar Vs. Punjab State Electricity Board”*** reported as ***2011(3) S.L.R. 287***; a Division Bench of this Court held that the limitation as applicable in a Civil Suit would be

applicable to the writ petition also. In the case of “**Er. Darshan Singh Bhullar** (*supra*), it was held as under:-

“ - x - - x - -x-

2. ...The appellant has worked as Trainee Engineer in the shipping Corporation of India from 1982 to 1985 and then applied for direct appointment on the post of Trainee Engineer in the Punjab State Electricity Board- respondent. He was selected and appointed by the Board as Trainee Engineer. In that regard appointment letter dated 27.2.1986 (P.4) would be relevant. From the post of Trainee Engineer he was promoted as Assistant Engineer and then further to the post of Executive Engineer. The claim of the appellant that period of service from 1982 to 1985 spent as Trainee Engineer in the Shipping Corporation of India should be counted for the purposes of qualifying service for promotion has not been accepted on the ground that such claim was not made at the time of appointment in 1985-86. Even when the appellant was promoted as Assistant Engineer or Executive Engineer no such claim was made. Merely because one Gian Singh was given the benefit of service rendered by him in the PWD (B&R), Haryana in pursuance of Regulation 9(4) of Punjab State Electricity Board Service of Engineers (Civil) Regulations, 1965 would not ipso facto mean that the appellant would also be entitled to similar benefits. If any such benefit was available to the appellant then the cause of action had arisen in 1986 or at any time subsequently when he was promoted as Assistant Engineer. The appellant should have approached the Court within a reasonable time not exceeding three years from the date cause of action had arisen. In writ proceedings, the period of limitation of three years has been read by a judgement of the Constitution Bench of Hon'ble the Supreme Court rendered in the case of **State of Madhya Pradesh v. Bhai Lal Bhai AIR 1964 Supreme Court 1006**. The basic reason is that in writ proceedings the period of limitation cannot be more than the period prescribed for filing a civil

suit. Accordingly, we are of the view that the appeal does not merit admission and is thus liable to be dismissed.”

14. Hon'ble Supreme Court in the case of “**Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T. Murali Babu**”, 2014 A.I.R. (S.C.W.) 1142 has observed as under:-

“ - x - - x - - x -

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" - and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinise whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster

the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons who compete with Kumbhakarna or for that matter Rip Van Winkle. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

- x - - x - -x- ”

15. A perusal of the entire writ petition would indicate that no plausible reasoning is forthcoming as regards the reason for delay in filing the writ petition after a period of more than eight years of passing of the aforesaid order (Annexure P-6) and award (Annexure P-8); more so, in view of the well settled position of law that the limitation to file a writ petition is the same as applicable in the case of filing of a Civil Suit, i.e. three years.

16. In view of the above discussion, the instant writ petition challenging order dated 01.02.2016 (Annexure P-6) and award dated 08.02.2016 (Annexure P-8), having been filed on 27.02.2024, suffers from gross delay and laches and the same is accordingly dismissed.

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

12.03.2024
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No