2023 STPL(Web) 18 HP
HIGH COURT OF HIMACHAL PRADESH

(HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, JUDGE AND HON'BLE MR. JUSTICE SATYEN VAIDYA, JJ.)

GHUNGHRIYA RAM

Petitioner

VERSUS

HIMACHAL PRADESH STATE ELECTRICITY BOARD LIMITED AND OTHERS

Respondents

CWP No.3057 of 2023-Decided on 06.07.2023.

Labour Law, Industrial Dispute
Industrial Disputes Act, 1947 – Section 2A(3) - Industrial Dispute – Delay of 24 years in approaching labour court – Reasonable Period - by no stretch of imagination it can be said to be a reasonable period – No relief can be granted.

Advocate(s): For the Petitioner : Mr. Surender Sharma, Advocate.
For the Respondents : Ms. Sunita Sharma, Senior Advocate with Mr. Dhananjay Sharma, Advocate.

JUDGMENT

Tarlok Singh Chauhan, Judg e (Oral)- Notice. Mr. Dhananjay Sharma, Advocate, appears and waives service of notice on behalf of the respondents.

2. The petitioner claims to have worked with the respondents on daily wage basis with effect from 1993 to 1994 when his services came to be terminated. No steps were taken by the petitioner to assail the termination order and it is only somewhere in the year 2018 that the petitioner approached the Labour Commissioner for referring the dispute to the Court. However, the said request was declined by the Labour Commissioner, constraining the petitioner to file an application under Section 2-A (2) of the Industrial Disputes (Amendment) Act, 2010 before the Presiding Judge, H.P. Industrial Tribunal-cum-Labour Court, Shimla, (for short 'Tribunal'), wherein he prayed for the following relief: "It is therefore respectfully prayed that directions may kindly be issued to the respondents to re-instate the claimant in service along-with all consequential benefits/relief(s) of back-wages, seniority, continuity and regularization of service and the cost of the petition may kindly be awarded in favour of the claimant in the interest of law and justice."

3. The petition was contested by the respondents by filing reply wherein preliminary objections regarding no cause of action, petitioner having not approached the Court with clean hands and there being no industrial dispute, were raised. On merits, it was averred that the petitioner was engaged as a casual labour by the respondents from 21.08.1993 to 20.10.1994, whereafter, the petitioner left the job on his own sweet will and had even otherwise not completed 240 days in a year. The services of the petitioner were never terminated, but the petitioner himself had abandoned the job and never turned back and therefore, the question of violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947, (for short 'Act') does not arise.

4. The learned Tribunal on 07.04.2022 framed the following issues:

> "1. Whether the termination of the services of the petitioner by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? If so what relief of service benefits the petitioner is entitled to? OPP.
>
> 2. Whether the claim petition filed by the petitioner is neither competent nor maintainable in the present form, as alleged? OPR.
>
> 3. Relief."

5. The learned Tribunal considered the matter in detail and eventually dismissed the petition by holding that since the petitioner had directly approached the Court after expiry of 24 years from the date of his termination, therefore, the claim was not maintainable and as such the petitioner was not entitled to any relief.

6. Aggrieved by the award, the petitioner has filed the instant petition for grant of the following substantive reliefs:

> "(i) That the impugned Annexure P1, dated 2nd January, 2023, the award passed by the learned Industrial Tribunalcum- Labour Court, Shimla, may kindly be set-aside;
>
> (ii) That the respondent-Board may kindly be directed to reinstate/re-engage the petitioner in services with effect from the year 1994 and to regularize the services of the petitioner with all consequential benefits; or in the alternative;
>
> (iii) The case of the petitioner may kindly be remanded back to the learned Industrial Tribunal-cum-Labour Court, Shimla for its adjudication on merits."

7. We have heard the learned counsel for the parties and have gone through the records of the case.

8. Section 2-A of the Act reads as under:

> "2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.-
>
> [(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.
>
> (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).

9. A perusal of the aforesaid section would go to show that a dispute connected with or arising out of discharge, dismissal, retrenchment or otherwise termination of the services of the workman can be directly agitated by the workman under Section 2-A of the Act and it is not necessary that such dispute should be sponsored by the Trade Unions or a substantial number of workmen. However, what is required is that a workman, who has been discharged, dismissed, retrenched or terminated, as specified in sub-section (1) of Section 2-A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after expiry of 45 days from the date he has made an application to the Conciliation Officer of the appropriate government for conciliation of the dispute. Sub-section(3) of Section 2-A lays down the time limit for making such application to the Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal shall be made before expiry of three years from the date of discharge, dismissal or retrenchment or otherwise termination of his service as specified in sub-section(1). The right available to the workman under Section 2-A is not withstanding anything contained in Section 10 of the Act.

10. Now the moot question is whether the period of limitation as prescribed in sub-section (3) of Section 2-A of the Act is directory and not mandatory.

11. Similar question came up for consideration before the learned Single Judge of the Karnataka High Court in case titled M/S ITC Infotech India Ltd vs. Mr. Venkataramana Uppada (2016) ILR Karnataka 3041, wherein it was held as under:

> "13. Thus, question which would arise for consideration in the instant case is; Whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition or in other words, if an application for condonation of delay under Section 5 of the Limitation Act is filed, would it be maintainable and such delay can be condoned?

14. 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 I.D.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.

15. Section 10(4A) of the I.D. Act introduced by Karnataka Amendment Act 5 of 1988 enables an individual workman to challenge a termination order by directly applying to the Labour Court within six months from the date of communication of such order of termination.

16. The period of limitation for filing a petition before the Labour Court is six months from the date of communication of such order. A Division Bench of this Court has held in KSRTC Vs KHALEEL AHMED AND ANR reported in ILR 2002 (3) Kar 3827 that the period of six months prescribed under Section 10(4A) cannot be extended. It has been held by the Division Bench as under:

> "23. It seems quite clear to us that the State Legislature has incorporated sub- Section (4A) in Section 10 of the Act to provide a more expeditious remedy to the workman enabling him to redress his grievances without undergoing the ordeal of approaching any Labour Union and without approaching the State Government for referring his case to the Labour Court. Therefore, the remedy provided under sub-Section (4-A) is a remedy alternative to what is provided under sub-Section (1) of Section 10 of the Act. But the right created under the State Amendment is coupled with a condition that individual workman has to prefer application before the Labour Court within the time frame of six months fixed by the legislature. It is a statutory condition precedent for exercise of the right and availment of remedy under sub-Section (4-A) of Section 10 of the Act. Therefore, it has to be held that if an application is filed beyond the period of 6 months as prescribed under the above sub- Section, then it will be incumbent on the part of the Labour Court not to entertain such an application since the condition does not only bars the special remedy but it also strikes at the jurisdiction of the Labour Court to entertain such an application. Such an interpretation is in consonance with the general rule of interpretation of statute. Such construction will not also in any way prejudice the right of a workman to get his dispute resolved by a reference under sub-Section 10(1) of the Act provided the dispute sought to be raised do not become stale because of his inaction as held by the Supreme Court in the cases of Balbir Singh Vs Punjab Roadways, Indian Iron and Steel Co. Ltd., Vs Prahlad Singh and Telecom District Manager Vs A.A.Angali". (emphasis supplied)

17. In EXECUTIVE ENGINEER AND OTHERS VS LOKESH REDDY AND OTHERS reported in 2003 (3) LLJ 662 the point which came up for consideration was whether the period of limitation provided under Section 10(4A) of the Act is directory or mandatory and it came to be held that it was mandatory. It has been held as under: "40. In view of the discussion made so far, we respectfully disagree with the view taken by the learned single judge in the present matters in holding the period of limitation provided under Section 10(4-A) of the Act as directory and not mandatory and affirm the view taken in the case of Khaleel Ahmed (supra), which has already clarified the said position of law holding the period of limitation in Section 10(4-A) as mandatory. So, the view taken by the Labour Court and affirmed by the learned single judge in the matters relating to period of limitation provided under Section 10(4-A) of the Act, being contrary to the Division Bench decision of this Court in the Case of Khaleel Ahmed (Supra) cannot be sustained and consequently, the impugned awards in allowing the applications filed after about six years (and not within six months) under Section 10(4-A) of the Act should have been set aside by the learned single judge. Since that was not done by the learned single judge in the impugned order, our interference is required".

18. As to whether the plea of limitation though not raised, is required to be considered by the Labour Court or not while adjudicating a claim petition filed under Section 10(4A), came up for consideration before the Division Bench in SMT.RUKMINIBAI AND OTHERS VS THE DIVISIONAL CONTROLLER, NEKRTC, BIDAR DIVISION, BY ITS CHIEF LAW OFFICER reported in ILR 2013 Kar 1024 and held that Section 3 of the Limitation Act 1963, is peremptory in nature and imposing a duty on the Court to dismiss the applications which are barred by limitation even if the plea of limitation is not raised. It has been held as under:

> "9. Section 3 of the Limitation Act, 1963, is peremptory in nature. It imposes a duty on the Court to dismiss the applications, which are barred by limitation even if the plea of limitation is not raised. If the claim petition is barred by time, the Court or an adjudicating authority has no power or authority to entertain such an application and decide it on merits. As stated, even in the absence of such a plea by the respondent or

> opponent, the Court or the authority must dismiss such an application if it is satisfied that the same is barred by limitation."

19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub- Section (3) of Section 2A does not appear to have a bearing to the provisions of sub- Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947. 20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

> "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 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. It is well settled that the real intention of legislature must be gathered from the language used."

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 2A 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 2A 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."

12. Noticeably, the above workman had initially filed writ appeal No.823 of 2016 before the Division Bench of the Karnataka High Court, however, the same was dismissed vide final judgment/order dated 14.06.2016. Aggrieved by the said judgment/order, the appellant therein preferred Special Leave Petition (C) No.27811 of 2016, however, the same was also dismissed by the Hon'ble Supreme Court by passing the following order: "We do not find any legal or valid ground for interference. The Special Leave Petition is dismissed vide order dated 07.10.2016."

13. Thereafter, the workman preferred a Review Petition (Civil) No. 3921 of 2016, however, the same was also dismissed by the Hon'ble Supreme Court by according the following reasons:

> "This Review Petition has been filed against the order dated 07.10.2016 whereby the Special Leave Petition was dismissed. We have perused the Review Petition as well as the grounds in support thereof. In our opinion, no case for review of the order dated 07.10.2016 is made out. Consequently, the review petition is dismissed."

14. The view taken by the Karnataka High Court has thereafter been followed by the Madras High Court in Writ Petition No. 9640-9641 of 2016 in case titled The Management of Ashok Leyland, Hosur vs. Presiding Officer, Labour Court, Salem, decided on 13.04.2016, Writ Petition (MD) No. 4269 of 2017 case titled Ravi Kumar vs. The Management, Tamilnadu State Road Transport Corporation and another, decided on 11.04.2017, Writ Petition No. 8413 of 2019 case titled K. Settu vs. Assistant Engineer, Office of Tamilnadu Electricity Board, decided on 20.09.2019.

15. We are in complete agreement with the aforesaid view(s).

16. Even otherwise, if the provisions of sub-section (3) of Section 2-A are considered to be directory, even then, it is more than settled that a workman is still required to approach the Industrial Tribunal or

Labour Court, as the case may be, within a reasonable period and the period of 24 years, by no stretch of imagination, can be said to be a reasonable period.

17. Accordingly, we find no merit in this writ petition and the same is accordingly dismissed, leaving the parties to bear their own costs. Pending application(s), if any, also stands disposed of.
