

(2018) 02 CHH CK 0138

Chhattisgarh High Court

Case No: Writ Petition (L) No. 26 Of 2018

Nakul Kaushik

APPELLANT

Vs

State Of Chhattisgarh
And Ors

RESPONDENT

Date of Decision: Feb. 7, 2018

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2A
- Constitution Of India, 1950 - Article 226

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: KPS Gandhi, Gary Mukhopadhyay

Final Decision: Dismissed

Judgement

P. Sam Koshy, J

1. The present petition under Article 226 of the Constitution of India has been filed assailing the order dated 26.12.2017 passed by the Assistant

Labour Commissioner, Bilaspur, rejecting the industrial dispute raised by the petitioner on the ground of delay and laches.

2. The facts relevant for adjudication of the case is that, the petitioner was appointed as daily wage worker in the year 1994 under the respondent

No.3. He continued in employment till January, 2001. Thereafter he was not given employment.

3. Though the petitioner was discontinued from employment w.e.f. 31.01.2001, for the first time he raised a dispute almost after about 17 years i.e. on

03.11.2017 before the Assistant Labour Commissioner, who vide impugned order dated 26.12.2017 (Annexure P/1) rejected the application only on the ground of delay.

4. True it is that the Labour Commissioner could not have decided the matter on the ground of delay and should have left the issue to be decided by

the court, but the factual matrix of the case cannot be ignored i.e. no justification or proper explanation has been provided by the petitioner explaining

the inordinate delay in raising the industrial dispute.

5. Another aspect which cannot be brushed aside is the fact that after discontinuance of the petitioner from service, in the year June, 2010, there is an

amendment which has been brought to Industrial Disputes Act by adding Section 2-A w.e.f. 15.09.2010. For ready reference, this amended provision

is reproduced herein as under :

2A. 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 in section 10, any such workman as is specified in sub-

section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein after the

expiry of 45 days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute,

and on receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as it if were a

dispute raised 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).

6. If for any reason, the petitioner could not raise industrial dispute by 15.09.2010, he ought to have subsequently raised a dispute within the period

specified by the amended provision of law. The petitioner in the instant case has not taken any steps for raising a dispute within the stipulated period

under the amended provision, neither has he tried to file a direct application before the Labour Court in the light of sub-section 2 of Section 2-A of the

Act.

7. Given the aforesaid factual matrix of the case, this court is of the opinion that the Assistant Labour Commissioner does not seem to have committed

any error while rejecting the application on the ground of delay and laches. Even otherwise, there is a judgment of this court in case of Municipal

Corporation, Rajnandgaon Vs. Narayan Lal Sinha, ILR 2016 Chhattisgarh 638, wherein it has been held that the dispute pertaining to termination and

dismissal has to be raised in the light of the amended provisions of under Section 2-A of the Industrial Disputes Act.

8. This court has also recently in case of Ramkrishna Das Vs. Municipal Corporation, Rajnandgaon (Writ Petition (L) No. 15 of 2018, decided on

25.01.2018) and two other connected petitions, has upheld the order of Labour Court, Rajnandgaon, rejecting the claim application of the petitioner on

the ground of delay and laches in the light of new amended provision of the Industrial Disputes Act.

9. This court thus does not find any merit in the petition. The same deserves to be and is hereby rejected.