(2005) 04 P&H CK 0025

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 11533 of 2004

Anil Kumar		APPELLANT
	Vs	
State of Haryana and Another		RESPONDENT

Date of Decision: April 25, 2005

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10, 25F

Citation: (2005) 106 FLR 838 : (2005) 140 PLR 579

Hon'ble Judges: Viney Mittal, J; H.S. Bedi, J

Bench: Division Bench

Advocate: R.N. Raina, for the Appellant; Anil Rathee, for the Respondent

Final Decision: Allowed

Judgement

Viney Mittal, J.

Petitioner Anil Kumar joined the service of Lottery Department, Government of Haryana as a Clerk with effect from March 17, 1994 on daily wage basis. The petitioner was permitted to continue upto May 31, 1995 in that capacity. However, his services were terminated with effect from June 1, 1995. It was claimed by the petitioner that while terminating his services neither any retrenchment compensation has been paid to him nor any notice of termination had been served. Accordingly, he claimed violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). A demand notice was served by him on November 17, 1999. On failure of conciliation proceedings, the matter was referred by the appropriate Government for adjudication to the Presiding Officer, Labour Court, Ambala (hereinafter referred to as the Labour Court).

2. The claim of the petitioner was contested by the respondents. The factum of his engagement with effect from 17, 1994 was admitted but it was maintained that he was engaged on a contractual basis. Since he was engaged for the process of checking of prize winning tickets and later on the aforesaid process having been

computerised there was no necessity to engage the workers/clerks for the aforesaid purpose. Accordingly, the respondents maintained that his services were no more required and had been discontinued. An objection was also taken that since the notice of demand had been served by the petitioner after the expiry of nearly 5 years, therefore, the reference was barred by limitation.

3. The learned Labour Court on adjudication of the evidence brought by the authorities on the record held that the petitioner-workman had rendered the service for a period of 293 days in twelve preceding months prior to his termination. It was also held that the services of the petitioner had been terminated without complying with the provisions of Section 25-F of the Act. Accordingly, the retrenchment of the petitioner was held to be illegal, null and void. However, the learned Labour Court held that since the demand notice had been issued by the petitioner after the expiry of more than 4-1/2 years and no explanation had been rendered by him with regard to the aforesaid delay, therefore, the petitioner was not entitled to any relief. On the basis of the aforesaid conclusion, the reference was declined. The award of the Labour Court dated December 10, 2003 has been appended as Annexure P.4 with the present petition and has been impugned before us.

4. We have heard the learned counsel for the parties and have also gone through the record of the case.

5. Sh. R.N. Raina, the learned counsel appearing for the petitioner has vehemently argued that once the Labour Court had come to the conclusion that the petitioner had worked for a period of 293 days in twelve preceding months prior to the date of his termination and further when the Labour Court had itself held that the provisions of Section 25-F of the Act had not been complied with, then the Labour Court should have ordered the reinstatement of the petitioner. As a matter of fact, reliance has been placed by the learned counsel on the observations made by the Labour Court when the aforesaid action of the management has been held to be illegal, null and void.

6. We may also notice that the learned counsel for the petitioner has stated that the petitioner gives up his claim for back-wages in case the order of reinstatement with continuity of service is passed by this Court.

7. In reply, the learned counsel for the respondents has stated the petitioner-workman has not given any explanation for the delay in filing the demand notice which had been issued after the expiry of a period of 4-1/2 years. On that basis, it has been contended that the Labour Court was absolutely justified in declining the reference and not giving any relief to the petitioner workman. The learned counsel has relied upon the judgment of the Apex Court in Nedungadi Bank Ltd v. K.P. Madvan Kutty 2000(1) S.C.T. 1088.

8. We have given our anxious consideration to the rival contentions of the learned counsel for the petitioner. In our considered opinion, the present petition deserves

to be accepted.

9. At the outset, we may notice the observations made by the Apex Court in Nedungadi Bank Ltd.''s case (supra).

"Law does not prescribe any time limit for the appropriate Govt. to exercise its powers u/s 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 reasonable and in a rational manner. There appears to us to be no rational basis on which the central govt. has exercised powers in this case after lapse of about 7 years or order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even set to have been apprehended. A dispute which is stale could not be the subject matter of reference u/s 10 of the Act. Demand raised by the respondent for raising the Industrial Dispute after 7 years of dismissal from service was held ex facie bad and incompetent."

10. It is apparent that the Apex Court has specifically noticed the fact that there is no time limit prescribed for the appropriate Government to exercise the powers u/s 10 of the Act for referring the dispute to the Labour Court. However, the Supreme Court has laid down that if a dispute has become stale by lapse of time, then the aforesaid subject matter could not be referred u/s 10 of the Act. In Nedungadi Bank Ltd.''s case (supra) the period of seven years was treated as a period sufficient to held that the industrial dispute had become stale. However, in the present case, the reference was made by the appropriate Government on the notice of demand issued by the petitioner-workman on November 17, 1999. No objection whatsoever was raised against the order of reference by the respondent-management. Although an objection was raised with regard to the reference being barred by limitation before the Labour Court but as held by the Supreme Court there is no period of limitation provided for referring the matter. The only question which has to be considered by the appropriate Government and even by the Labour Court is as to whether there has been such delay in raising the demand by the workman which could be treated as sufficient to hold that the industrial dispute had itself been rendered stale. In our considered opinion, the period of 4-1/2 years after which the demand notice has been issued by the petitioner-workman in the present case, cannot be treated to be such a period which could lead to a conclusion that the dispute had been rendered stale. No prejudice whatsoever has been shown to have been caused to the management. It is not the case of the management that by efflux of time, the old record had been unavailable or that the management had been relegated to a position wherein it was not possible for it to contest the claim of the workman. We further find that the Labour Court itself has come to a categorical finding of fact that the petitioner-workman had rendered 293 days of service in twelve months preceding prior to his retrenchment and that the provisions of Section 25-F of the Act had not been complied with. The Labour Court itself has termed the aforesaid retrenchment as illegal, null and void.

In view of the aforesaid discussion, we allow the present petition and quash the award Annexure P.4 and order that the petitioner-workman would be entitled to reinstatement in service with continuity thereof from the date of his retrenchment. However, since the learned counsel for the petitioner has specifically given up before us his claim with regard to the back wages, therefore, be would not be entitled to any back wages. No costs.