(2014) 09 RAJ CK 0038

RAJASTHAN HIGH COURT (JAIPUR BENCH)

Case No: Civil Writ Petition No. 9556/2013

Hakim Singh		APPELLANT
	Vs	
Assistant Engineer and Others		RESPONDENT

Date of Decision: Sept. 3, 2014

Acts Referred:

- Constitution of India, 1950 - Article 12 - Industrial Disputes Act, 1947 - Section 25F, 25-G, 25-H

Hon'ble Judges: Mohammad Rafiq, J.

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mohammad Rafiq, J.�This writ petition has been filed by petitioner-workman against award dated 17.10.2012, whereby an industrial dispute referred to Labour Court, Bharatpur(hereinafter referred to as ''the Labour Court''), by appropriate government on 12.04.2007, was answered against the workman-petitioner. The terms of reference included the questions whether raising an industrial dispute after 18 years of removal from service by the workman is legal and valid and whether the workman worked under the employer in a calendar year for minimum 240 days for the period from year 1986 to 31.08.1988 and whether removal of petitioner-workman from service by respondents on 31.08.1988 was legal and valid and if not what relief was workman entitled to.

2. Contention of the petitioner is that he worked for continuous two years with the respondents and the Labour Court has declined to grant relief on the ground of delay of 18 years, but the petitioner has explained the delay satisfactorily which has not been considered by the Labour Court properly. It is contended that the respondent is the State within the meaning of Article 12 of the constitution of India and they are duty bound to follow the constitutional mandate. The petitioner is

entitled for giving the status of semi permanent but instead of giving the benefit, the services of the petitioner were illegally terminated by the respondents. The Labour Court has not considered the statement and affidavit filed by the petitioner and totally ignored the same. The nature of work was permanent and in respondent department other similarly situated persons were reinstated in the service and still working after the order passed by the court but the claim of the petitioner has wrongly been rejected by the Labour Court. The petitioner discharged his duties daily and worked 8 hours in a day. The petitioner has completed 240 days in a calendar year but this fact is totally ignored by the Labour Court. The petitioner is unemployed till date and is not having any other source of income to maintain his family. The respondents have not complied with the provisions of Section 25F of the Industrial Disputes Act, 1947. Hence, the impugned award is liable to quashed and set aside.

3. The Labour Court recorded a finding that the workman has challenge the termination with delay of 18 years and therefore the dispute became a stale and was no longer alive. It could not become a subject-mater of reference. The Labour Court has observed that delay has not been satisfactorily explained by the workman. It has been further observed that the officers of trade union misled the petitioner therefore, the delay occurred. The petitioner has contended in his affidavit that some workmen earlier raised dispute but the petitioner and other workmen did not raise the dispute and the petitioner was told by the officers of the trade union that the decision in the case of those workman shall apply to the case of the petitioner. It has been observed by the Labour Court that no workman can wait for 18 years on the basis of such assurance. The Labour Court, therefore finally answered the reference in the terms that the dispute having been raised with delay of 18 years and there being no explanation for such delay, petitioner-workman was not entitled to any relief.

4. The Labour Court in support of its award has relied on judgments of the Supreme Court in C.E. Ranjeet Singh Dham v. Shyam Lal, 2006(4) RLW Page 3171 ; Assistant Engineer, C.A.D., Kota Vs. Dhan Kunwar, ; U.P. State Road Transport v. Babulram, 2000 SCC(L&S) Page 1113 and judgment of Division Bench of this Court in the case of Gopi Lal Vs. State Of Rajasthan and Another, . In all the aforesaid judgments it was held by the Supreme Court as well Division Bench of this Court that if reference is made with enormous delay, the Labour Court can decline to grant any relief to the workman on that count alone.

5. The Labour Court has recorded that the workman has not been able to prove that he worked for 240 days in a calendar year preceding the date of his removal on 31.08.1988. The Labour Court relied upon the decision of the Hon''ble Supreme Court in the case of The Range Forest Officer Vs. S.T. Hadimani, wherein it has been held that the workman has to prove that he has worked for 240 days or more in a calendar year. It has been observed by the Labour Court that the workman has not

produced any evidence to prove his working for 240 days or more. He has not prayed for summoning the record from the respondent to establish said fact. It has been held by the Labour Court that when it is proved from the statement of the workman that he has not worked with the respondents, therefore, no inference can be drawn that the workman worked for more than 240 days in a calendar year preceding the date of his removal. Thus, there was no breach of provisions of Section 25-G and 25-H of the Industrial Disputes Act and removal of the petitioner-workman was legal and valid.

6. Having considered the contentions raised in the writ petition, material on record and the impugned award, I am of the opinion that the petitioner miserably failed to explain delay of 18 years. The Labour Court cannot be said to have erred in law in holding that the petitioner would not be entitled to any relief because he raised the dispute with delay of 18 years.

7. The Supreme Court in The Management of M/s. Indian Iron and Steel Co. Ltd. Vs. Prahlad, has held as under:--

"Whether relief can be declined on the ground of delay and laches, depends on the facts and circumstances of each case. In this case claim was made almost after a period of 13 years without any reasonable or justifying ground and there was nothing on record to explain this delay as held by the Tribunal. When the respondent did not make claim for 13 years without any justification and on merits also he had no case, the Tribunal did not rightly grant him any relief. Even otherwise the findings of facts recorded by the Tribunal in the light of the Standing Orders aforementioned cannot be said to be untenable or perverse.

Thus we find merit in the appeal. Hence it is allowed for the reasons stated above. The order of the learned single Judge and that of the Division Bench affirming the same impugned in this appeal are set aside and the award of the Tribunal is restored. Parties to bear their own costs in this appeal."

8. The Supreme Court in Sapan Kumar Pandit Vs. U.P. State Electricity Borad and Others, , made certain useful observation in para 15, which may be of relevance for deciding the present cases. It read as under:--

"15. There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons it does not cause the dispute to wane into total eclipse. In this case when the Government have chosen to refer the dispute for adjudication under Section 4K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether. The High

Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination."

9. In view of above, I do not find any infirmity or illegality in the impugned award.

10. In the result, the writ petition is dismissed.