

(2014) 09 SHI CK 0117
High Court of Himachal Pradesh
Case No: CWP No. 6790 of 2014

Suresh Kumar

APPELLANT

Vs

H.P. State Electricity Board Ltd.

RESPONDENT

Date of Decision: Sept. 23, 2014**Hon'ble Judges:** Rajiv Sharma, J; Dharam Chand Chaudhary, J**Bench:** Division Bench**Advocate:** Chetna Thakur, Advocate, Vice Counsel, Advocate for the Appellant; Sharmila Patial, Advocate, M.A. Khan, Anup Rattan, Addl. AGs and Vivek Singh, Attri, Advocate for the Respondent

Judgement

Rajiv Sharma, J.

The petitioner was engaged on daily waged basis in the month of January 1997. He worked in this capacity till 2000. He was re-engaged in the year 2004 and was retrenched. He raised industrial dispute on 17.12.2012. The employer filed the reply to the demand notice. The Labour Inspector-cum-Conciliation Officer, Kangra, vide report dated 29.10.2013, submitted the failure report. According to him, the matter could not be settled during conciliation proceedings. The Labour Commissioner, vide order dated 24.4.2014, refused to make the reference to the Industrial Tribunal-cum-Labour Court on the pretext that the matter has become stale and was no more in existence. The Labour Commissioner while refusing to make the reference has also observed that the reason of submitting the claim after about 8 years is for the purpose of getting permanent employment in Government Department on the basis of claiming reinstatement from back date.

2. Their lordships" of the Hon"ble Supreme Court in the case of [Raghubir Singh Vs. General Manager, Haryana Roadways](#), have held that the State Government can make the reference at any time. Their Lordships have held as under:

"13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court

is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power u/s 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power u/s 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of [S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka](#), it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In [Ratan Chandra Sammanta and others Vs. Union of India and others](#),, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief..... "

(Emphasis laid by the Court)

14.1 In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

42. It is an undisputed fact that the dispute was raised by the workman after he was acquitted in the criminal case which was initiated at the instance of the respondent. Raising the industrial dispute belatedly and getting the same referred from the State Government to the Labour Court is for justifiable reason and the same is supported by law laid down by this Court in Calcutta Dock Labour Board (supra). Even assuming for the sake of the argument that there was a certain delay and

latches on the part of the workman in raising the industrial dispute and getting the same referenced for adjudication, the Labour Court is statutorily duty bound to answer the points of dispute referred to it by adjudicating the same on merits of the case and it ought to have moulded the relief appropriately in favour of the workman. That has not been done at all by the Labour Court. Both the learned single Judge as well as the Division Bench of the High Court in its Civil Writ Petition and the Letters Patent Appeal have failed to consider this important aspect of the matter. Therefore, we are of the view that the order of termination passed by the respondent, the award passed by the Labour Court and the judgment & order of the High Court are liable to be set aside. When we arrive at the aforesaid conclusion, the next aspect is whether the workman is entitled for reinstatement, back wages and consequential benefits. We are of the view that the workman must be reinstated. However, due to delay in raising the industrial dispute, and getting it referred to the Labour Court from the State Government, the workman will be entitled in law for back wages and other consequential benefits from the date of raising the industrial dispute i.e. from 02.03.2005 till reinstatement with all consequential benefits."

3. In the instant case also, the petitioner was being engaged intermittently and he was also made to work under the Contractor engaged by the employer in the year 2012. Though, there is also a delay in raising the industrial dispute but the Labour Court can always mould the relief taking into consideration the delay and laches.

4. In view of the definitive law laid down by the Hon"ble Supreme Court the impugned order dated 24.4.2014, Annexure P-4, is quashed and set aside. The Labour Commissioner, Himachal Pradesh, is directed to make reference to the Industrial Tribunal-cum-Labour Court within six weeks from today.