
(2005) 12 AHC CK 0076

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 3548 (S/S) of 1997

Kamlesh Kumar
Sharma

APPELLANT

Vs

Presiding Officer,
Central Government
Industrial
Tribunal-cum-Labour
Court and Others

RESPONDENT

Date of Decision: Dec. 7, 2005

Acts Referred:

- Defence of India Rules, 1962 - Rule 81A
- Industrial Disputes Act, 1947 - Section 25F, 25G, 25H, 33C
- Limitation Act, 1963 - Article 137

Citation: (2006) 7 AWC 6749 : (2006) 2 UPLBEC 1583

Hon'ble Judges: Rajiv Sharma, J

Bench: Single Bench

Advocate: Vijay Kumar Tripathi and H.S. Sahai, for the Appellant; H.G.S. Parihar, for the Respondent

Final Decision: Allowed

Judgement

Rajiv Sharma, J.

The Petitioner is assailing the order dated 3.3.1997 passed by opposite party No. 1.

2. It has been stated that the Petitioner was initially appointed by opposite party No. 2 in subordinate cadre on its Darwara Branch on 29.12.1981 on daily wage basis and by means of order dated 19.2.1982, he was transferred to Bhupiamau Branch and in pursuance thereof he reported his duties on 20.2.1982 where he worked till 6.12.1982. The Petitioner was re-employed at Dhingwas Branch on 23.5.1983 on daily wage basis where he worked till 10.7.1983 and thereafter he was transferred to Mohanganj Branch

where he joined on 13.7.1983 and has worked there till 15.8.1984 on which date he was relieved by the Manager, Mohanganj Branch and he was told that very soon he will be posted at some other branch.

3. Being aggrieved thereof, the Petitioner has initiated the proceedings inter alia on the grounds that the Petitioner comes within the definition of workman as provided u/s 25G of U.P. Industrial Disputes Act, 1947 and Bank is an industry and further since he has worked more than 240 days in a calendar year, as such his termination from service is in violation of Section 25F of the Industrial Disputes Act. He further submits that the Petitioner is not a junior-most employee in the Bank and as such his termination from service amounts to violation of the provisions of Sections 25G and H of the Industrial Disputes Act.

4. After the exchange of pleadings between the parties, the opposite party No. 1 vide order dated 3.3.1997 has dismissed the claim petition on the ground that there is delay of 10 years in seeking the remedy and there is no explanation rendered by the Petitioner and further the Petitioner is a daily worker and as such the principle of "no work, no pay" applies. Being aggrieved thereof, the Petitioner has preferred the writ petition inter alia on the grounds that prior to filing of the Claim Petition before opposite party No. 1, he moved representation to the Chairman of the Bank and he has been orally requested and also in writing to the authorities to allow him to join at appropriate post.

5. During the course of arguments, it has been urged that there is no time limit prescribed under the provisions of Industrial Disputes Act, 1947 to a workman seeking any relief of making a reference and in support of the aforesaid submission, counsel for the Petitioner has relied upon a judgment passed by the Apex Court in [The Swadeshi Industries Ltd. Vs. Its Workmen](#), wherein the Apex Court has held that the order of termination if bad, reinstatement cannot ordinarily be refused merely because a long time has elapsed. In another case, [Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another](#), the Apex Court has held that the provisions of Article 137 of Limitation Act are not applicable to the proceedings under the Act and the relief cannot be denied merely on the ground of delay. It has further been held that no reference to the labour court can be generally questioned on the ground of delay only.

6. On the other hand, learned Counsel for the opposite parties has placed reliance in a judgment passed by this Court in Special Appeal No. 210 of 1993 (S/B), *Girja Shanker Pandey v. Pratapgarh Kshetriya Gramin Bank and others*. This Court has held that "despite our questioning, the learned Counsel for the Appellant-Petitioner could not explain to us the reasons for which the Appellant-Petitioner could not approach this Court for good eight years. All that was stated was that some representations were made of which even no details were furnished before us. It is well-settled that a person who sleeps over his rights and does not act promptly or within a reasonable period, the Court does not come to the help of such a person.

7. Before appreciating the rival contentions urged on behalf of the parties, it has to be noticed as to under what circumstances, the Act was enacted and what were the objectives sought to be achieved by its legislation. It cannot be disputed that the Act was brought on the statute-book with the object to ensure social justice to both the employers and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationship between the parties. It is a piece of legislation providing and regulating the service conditions of the workers. The object of the Act is to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life and by the process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The prosperity of the country in its turn, helps to improve the conditions of labour--Hindustan Antibiotics Ltd. v. Workmen. The Act is intended not only to make provision for investigation and settlement of industrial disputes but also to serve industrial peace so that it may result in more production and improve the national economy. In the present socio-political economic system, it is intended to achieve cooperation between the capital and labour which has been deemed to be essential for maintenance of increased production and industrial peace. The Act provides to ensure fair terms to workmen and to prevent disputes between the employer and the employees so that the large interests of the public may not suffer. The provisions of the Act have to be interpreted in a manner which advances the object of the Legislature contemplated in the Statement of Objects and Reasons. While interpreting different provisions of the Act, attempt should be made to avoid industrial unrest, secure industrial peace and to provide machinery to secure that end. In dealing with industrial disputes, the Courts have always emphasized the doctrine of social justice, which is founded on the basic ideal of socio-economic equality as enshrined in the Preamble of our Constitution. While construing the provisions of the Act, the Courts have to give them a construction which should help in achieving the object of the Act.

8. The history of the legislation with respect to the industrial disputes would show that for the first time in the year 1920 the Trade Disputes Act was enacted which provided for courts of enquiry and Conciliation Boards and forbade strikes in public utility service without a statutory notice in writing. The Act did not make provision for any machinery for settling of industrial disputes. The said Act was repealed and replaced by the Trade Disputes Act, 1929 which started the State intervention in the settlement of industrial disputes and armed the Government with the power which could be used whenever considered fit to intervene in industrial disputes. This Act was amended in the year 1938 authorising the Central and Provincial Governments to appoint Conciliation Officers for mediating in or promoting the settlement of industrial disputes. Shortly thereafter the Government of India promulgated the Defence of India Rules to meet the exigency created by the Second World War. Rule 81A gave powers to the Government to intervene in industrial disputes by referring them compulsorily to conciliation or adjudication by making the awards legally binding on the parties and by prohibiting strikes or lockouts during the pendency of the conciliation or adjudication proceedings. The Industrial

Employment (Standing Orders) Act, 1946 was enacted which made provision for framing and certifying of standing orders covering various aspects of service conditions in the industry. The Industrial Disputes Bill was introduced in the Central Legislative Assembly on 8.10.1945 which embodied the essential principles of Rule 81A of the Defence of India Rules and also certain provisions of the Trade Disputes Act, 1929 concerning industrial disputes. The Bill was passed by the Assembly in March, 1947 and became the law w.e.f. 1.4.1947. The present Act was enacted with the objects as referred to hereinabove and provided machinery and forum for the investigation of industrial disputes, their settlement for purposes analogous and incidental thereto. The emergence of the concept of a welfare State implies an end to the exploitation of workmen and as a corollary to that collective bargaining came into its own. The Legislature had intended to protect workmen against victimization and exploitation by the employer and to ensure termination of industrial disputes in a peaceful manner. The object of the Act, therefore, is to give succour to weaker sections of society which is a prerequisite for a welfare State. To ensure industrial peace and pre-empt industrial tension, the Act further aims at enhancing the industrial production which is acknowledged to be the lifeblood of a developing society. The Act provides a machinery for investigation and settlement of industrial disputes ignoring the legal technicalities with a view to avoid delays, by specially authorized courts which are not supposed to deny the relief on account of the procedural wrangles. The Act contemplates realistic and effective negotiations, conciliation and adjudication as per the need of society keeping in view the fast-changing social norms of a developing country like India.

9. After hearing the rival submissions of the learned Counsel for the parties, admittedly the provisions of Article 137 of the Limitation Act are not applicable to the proceedings under the Industrial Disputes Act nor there is any provision which prescribed the limitation within which the reference is to be made. Further the Apex Court has also held that the High Court was not justified in prescribing the limitation for getting the reference made or an application u/s 33C of the Act to be adjudicated. It is not the function of the Court to prescribe the limitation where the Legislature in its wisdom had thought it fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the Court cannot be stretched to authorize them to interpret law in such a manner which would amount to legislation intentionally left over by the Legislature. The only plea raised in defence was that no explanation for delay has been given in seeking the relief by the workman and further applying the principle of "no work, no pay" the Presiding Officer has rejected the reference. Such a plea was not sustainable after the reference was made by the Government.

10. In the circumstances, the writ petition is allowed. The impugned Award is set aside and the matter is remanded back to the Tribunal to decide afresh on merits.