

Union of India and others Vs Sri Ram Misra and another

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Aug. 8, 2008

Acts Referred: Constitution of India, 1950 " Article 226

Industrial Disputes Act, 1947 " Section 25F

Limitation Act, 1963 " Article 137

Citation: (2009) 120 FLR 1

Hon'ble Judges: Devi Prasad Singh, J

Bench: Single Bench

Advocate: B.K. Shukla, for the Appellant; R.C. Tewari, for the Respondent

Final Decision: Dismissed

Judgement

Devi Prasad Singh, J.

Heard Sri B.K. Shukla, learned Counsel for the petitioners and Sri R.C. Tewari, learned Counsel for the opposite

party No. 1.

The present writ petition under Article 226 of the Constitution of India has been preferred against the impugned award rendered by Central

Government, Industrial Tribunal-cum-Labour Court, Lucknow.

The brief facts giving rise to the present writ petition are summarized as under:

The respondent-workman Sri Ram Misra was said to be engaged as Lineman under Senior Electrical Foreman, Gonda on 28.11.1983 and he

continued to work there upto 30.4.1987. A marching order was given to the respondent No. 1 on 30.4.1987. While passing the order dated

30.4.1987, neither any notice was given to the respondent No. 1 nor any compensation was paid in pursuance to the provisions contained in

section 25-F of the Industrial Disputes Act (Central) (in short the "Act"). It was also stated by the workman before the Labour Court that the

persons junior to him were retained and engaged at the time of adjudication of the controversy and are still continuing.

2. Before the Labour Court, the Management denied the continuity of duty of the respondent-workman from 28.11.1983 to 30.4.1987. It was

submitted by the petitioners before the Labour Court that the respondent No. 1 was engaged against sanctioned work on temporary basis and

after expiry of the period, his services were liable to be dispensed with. The defence taken by the petitioners before the Labour Court is that in

view of the Circular dated 18.12.1980, there was ban on fresh recruitments. Without prior approval of the General Manager, it was not open to

engage any person after 31.12.1980. It was also stated by the petitioners before the Labour Court that the respondent-workman was engaged

after imposition of the ban. The other submission made by the petitioners before the Labour Court was that the dispute was raised after more than

12 years.

3. While rendering the award, the Labour Court recorded a finding that engagement of private respondent as casual labour under the Electrical

Foreman is not disputed. The Management has not disputed the authenticity of the record of service as casual labour, which was filed before the

Labour Court. The entries were verified by the Electrical Foreman (Const.) from time to time. From the evidence on record, the Labour Court

recorded a finding that respondent workman had worked continuously for more than 240 days. The first plea of the petitioners that appointment of

the respondent-workman was illegal because of imposition of ban by Circular dated 18.12.1980, was repelled by the Labour Court on the ground

that in view of the statutory provisions, the workman acquired temporary status by virtue of working for more than 240 days. The appropriate

higher authority approved the private respondent's engagement on administrative side and it was done keeping in view the necessity to rationalize

and regulate the intake of casual labours. It has been further observed by the Labour Court that without prior approval of the General Manager,

the posts cannot be filled in view of the imposition of ban. The Labour Court recorded a finding that since the private respondent had continuously

discharged duty for more than 240 days, he shall be entitled to be protected in pursuance to the provisions contained in section 25-F of the

Industrial Disputes Act. On the question of delay, the Labour Court recorded a finding that the respondent- workman continuously pursued the

matter with the higher authorities and also sent legal notice through Advocate. However, ventilation of his grievance through political personality

was ill advised.

4. Sri B.K. Shukla, learned Counsel, appeared for the petitioners submits that in view of the provisions contained in section 10 of the Industrial

Disputes Act, it was not open for the Government of India to make a reference to the Labour Court. Learned Counsel for the petitioners has relied

upon a judgment of Hon'ble Supreme Court passed in Writ Petition (Civil) No. 71 of 1992: Rattan Chandra Sammanta and others v. The Union

of India and others 1993 (67) FLR 70 (SC) : (1991) SCLJ 229 (SC), decided on 13.5.1993. In the case of Ratan Chandra Sammanta (supra),

the Hon"ble Supreme Court ruled that the delay caused in approaching the Government for making reference deprive a person of his remedy

available under law.

5. However, learned Counsel for the respondent-workman has relied upon subsequent judgment of Hon"ble Supreme Court in Ajaib Singh Vs.

The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, wherein the Hon"ble Supreme Court considered its

various earlier judgments and ruled that the provisions contained in Limitation Act provide that the bodies other than the Courts such as quasi

judicial Tribunal, Executive authorities may proceed with the case ignoring the legal technicalities, limitations, and procedural wrangles

notwithstanding the fact that such bodies or authorities may be vested with specified powers conferred on the Courts under the Code of Civil or

Criminal Procedure.

6. After considering various judgments of Hon"ble Supreme Court, in the case of Ajaib Singh, their Lordships proceeded to hold as under:

It follows, therefore, that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the

Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer, is

required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour

Court can be generally questioned on the ground of delay along. Even in a case where the delay is shown to be existing, the Tribunal, Labour

Court or Board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the

demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back

wages instead of full back wages. Reliance of the learned Counsel, for the respondent-management on the Full Bench judgment of the Punjab and

Haryana High Court in Ram Chander Morya v. State of Haryana is also of no help to him. In that case the High Court nowhere held that the

provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held ""neither any limitation

has been provided nor any guidelines to determine as to what shall be the period of limitation in such cases

However, it went on further to say that--

reasonable time in the cases of labour for demand of reference or dispute by appropriate Government to Labour Tribunals will be five years after

which the Government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay.

We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an

application u/s 33-C 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 Judges presiding

over 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 judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various

pronouncements of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the

purposes of invoking the jurisdiction of the Courts/Boards and Tribunal under the Act.

7. It was submitted by the learned Counsel for the respondents that the reference which was being made u/s 10 of the Act is based on satisfaction

recorded by the Government and the satisfaction by the Government is not open to judicial review. Once, the Central Government made a

reference of the controversy in question by framing issue to the Labour Court then neither for Labour Court nor for this Court it is open to

substitute the opinion of the Central Government by its own opinion or decision. Relevant portion from Para 10 of the Act is reproduced as under:

10. Reference of disputes to Boards, Courts or Tribunals--(1) [Where the appropriate Government is of opinion that any industrial dispute exists

or is apprehended, it may at any time], by order in writing:

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to the dispute, if it relates to any matter specified in the Second

Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the

Second Schedule or the Third Schedule, to a Tribunal for adjudication.

8. Thus, a plain reading of section 10 of the Act shows that the Act empowers the Central Government to refer a dispute at any time for

adjudication to Labour Court. The Legislature to their wisdom has used the word, "any time" while granting power to the Government or its

authorities to make a reference to the Labour Court u/s 10 of the Act. Once the statutory provisions empowered the Government to make a

reference without any fetter of time, it is not open to the Courts to reject the claim of the workman on the ground of limitation.

9. Keeping in view the statutory provisions contained in section 10 of the Act coupled with the judgment of Hon"ble Supreme Court in the case of

Ajaib Singh (supra), there appears to be no statutory limitation provided by the Legislature in the Industrial Disputes Act, which may create a

hurdle before the Labour Court to advance justice keeping in view the reference made by the Government. Accordingly, the argument advanced

by Sri B.K. Shukla, learned Counsel for the petitioners, to reject the workman"s claim on the ground of delay or laches seems to be not

sustainable.

10. There is one more reason which seems to justify the finding recorded by the Labour Court in the impugned award. A plea was taken by the

respondents" Counsel that subsequent appointees and juniors were retained in service, which seems to have not been denied categorically. On this

score also, the workman will have right to be benefited by impugned award rendered by the Labour Court, However, a close reading of Ajaib

Singh"s case (supra) reveals that inordinate delay in making reference for adjudication of dispute may not be a ground to reject the claim but it can

be a ground to mould the relief in appropriate manner. However, in the present case, since the Labour Court had recorded a finding long back in

the year 2000, it shall not be appropriate to mould the relief granted by the Labour Court to the extent it had directed for reinstatement in service.

However, the payment of interest is reduced to 8% on account of the fact that the controversy was adjudicated after lapse of about 12 years and

the payment of wages is maintained to 25%, as awarded by the Labour Court.

Subject to aforesaid directions, the impugned awarded of Labour Court does not call for interference of this Court. The writ petition is accordingly

dismissed. No order as to costs.