(2008) 09 DEL CK 0153

Delhi High Court

Case No: Writ Petition (Civil) 6752 of 2008

Suresh Kumar		APPELLANT
	Vs	
Delhi Transport Corporation		RESPONDENT

Date of Decision: Sept. 25, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 10(4A)

Hon'ble Judges: Siddharth Mridul, J

Bench: Single Bench

Advocate: G.S. Charya, for the Appellant; Anand Nandan, for the Respondent

Final Decision: Dismissed

Judgement

Siddharth Mridul, J.
By way of this writ petition the petitioner assails the impugned award dated 4th July, 2007 passed by the Industrial Adjudicator. The brief facts as are necessary for the adjudication of the present writ petition are adumbrated as follows:

a. The petitioner(workman) was working as Retainer Crew Driver with the respondent(management) w.e.f. 8th July, 1988 and was brought on monthly rates of pay w.e.f. 13th April, 1989.

b. On behalf of the workman it was alleged that his services were terminated on 5th January, 1990 without any inquiry or explanation being called for from him. It was alleged on behalf of the workman that his services were terminated for the reason that he remained absent during the probation period.

c. The workman filed a statement of claim before the Industrial Adjudicator directly under the provision of Section 10(4A) of the Industrial Disputes Act, 1947 (ID Act).

d. The management contested the claim alleging that the workman was appointed as a Retainer Crew Driver w.e.f. 9th July, 1988 and did not perform his duties with

dedication. The workman had been warned on several occasions since he had a poor and irregular record during his probation period.

e. The management further alleged that the workman proceeded on unauthorized leave for 85 days w.e.f. 9th January, 1989 to 30th January, 1990 and did not submit even a leave application for 60 days of the said period. The management contended that the workman had been paid retrenchment compensation amounting to Rs. 2,636/-, even though, he had not completed 240 days of continuous service.

f. On the pleadings of the parties, the Industrial Adjudicator framed the following issues:

1. Whether the workman is entitled to reinstatement with back wages?

2. Relief.

g. Before the Industrial Adjudicator the workman placed on record his own affidavit Ex.WW1/A. On the other hand, the management examined Sh. S.K. Gupta as MW1 who placed on record his affidavit Ex.MW1/A alongwith documents Ex.MW1/1 to Ex. MW1/4.

h. The first issue considered by the Industrial Adjudicator was whether the claim was bad on account of delay and laches. In this behalf he came to a conclusion that it was an admitted case of parties that the workman was terminated on 5th January, 1990. It was further admitted by both parties that the claim was filed on 1st July, 2004. As such it was apparent that the claim had been filed after a period of 14 years. In this behalf the Industrial Adjudicator observed that it is a settled proposition of law that there is no limitation prescribed for raising an industrial dispute but that does not mean that unnecessary delay ought to be condoned without any proper explanation in that respect. The Industrial Adjudicator came to a conclusion that the delay of about 14 years had not been explained on behalf of the workman and was consequently fatal to the case of the workman. In this regard the Industrial Adjudicator relied upon the observations of the Supreme Court in the decision reported as S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, , wherein the Supreme Court, whilst dealing with the question of delay, observed as under:

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. It is true, as held in Shalimar Works Ltd. v. Workmen that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute, it does not mean that the dispute can be raised at any time without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal; even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly so when disputes relate to

discharge of workmen wholesale. A delay of 4 years in raising the dispute after even re-employment of most of the old workmen was held to be fatal in Shalimar Works Ltd. v. Workmen. In Nedungadi bank Ltd. v. K.P. Madhvankutty a delay of 7 years was held to be fatal and disentitled the workmen to any relief. In Ratan Chandra Sammanta v. Union of India 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 to any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in Daily Rated Casual Labour v. Union of India the Department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16.1.1990 they were refused to be accommodated in the scheme. On 28.12.1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the appellants deserve to be non-suited on the ground of delay.

The Industrial Adjudicator also placed reliance on the decision of the Supreme Court in Manager (Now Regional Director) R.B.I. v. Gopinath Sharma and Anr. (2006) vi AD 9 (SC) 415, where the Supreme Court, whilst dealing with the case of an employee who was discharged in July 1976 but whose dispute was referred for adjudication on 25th January, 1989, observed as follows:

19. This case, in turn, refers to the judgments in The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, and S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, . This Court held that even though there is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable that the disputes should be referred to as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen. This Court has held that a delay of four years in raising the dispute after even re-employment of most of the old workmen was held to be fatal in Nedungadi bank Ltd.''s case (supra) this Court held a delay of seven years to be fatal and disentitled the workmen to any relief.

20. In our opinion, a dispute which is stale could not be subject matter of reference.

The Industrial Adjudicator also relied upon the decision of the Supreme Court reported as Shiv Dass v. Union of India and Ors. 2007 (ii) AD (SC) 655, where the Supreme Court had observed that:

What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd etc. (1874) 5 P.C. 221 at page 239 was approved by this Court in The Moon Mills Ltd. v. M.R. Meher, President, Industrial Court, Bombay and Ors. AIR 1967 SC 1450 and Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, , Sir Barnes had stated:

Now the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, if founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.

In view of the judgments cited above and the facts and circumstances of the present case the Industrial Adjudicator agreed with the management, inasmuch as, he came to a conclusion that the claim filed on behalf of the workman was bad for delay and laches, as grant of relief to the workman, after such a long period of time had lapsed, would put the management in a difficult financial and administrative situation.

i. The Industrial Adjudicator also considered the issue of whether the workman had been terminated illegally and unlawfully for being unauthorizedly absent for 85 days. Referring to the decision of the Supreme Court in Delhi Transport Corporation Vs. Sardar Singh, , wherein the Supreme Court had dealt with the case of unauthorized absence of an employee from duty for a long period, the Industrial Adjudicator came to a conclusion that unauthorized absence from duty for a long period is a serious misconduct and furnishes a good ground for termination of service of a workman, more so when the absence is unduly long and without any reason. As such the Industrial Adjudicator came to a conclusion that the workman was guilty of serious misconduct.

3. Mr. Charya, learned Counsel appearing on behalf of the workman submits that the impugned award suffers from the vice of non-application of mind, inasmuch as, the Industrial Adjudicator, having come to a conclusion that the workman was guilty of serious misconduct, failed to appreciate that, in that event, the services of the workman could not have been discharged by the management without conducting an inquiry and without affording an opportunity to the workman to defend himself

in the inquiry.

4. I disagree with this contention made on behalf of the workman for the reason that in the case of a probationer if the conduct is found dissatisfactory or is contrary to the terms of the appointment, the management is at liberty not to continue with the services of the workman, so long as, the unauthorized absence amounting to misconduct is not inquired into. In other words, so long as, conduct of the workman is considered to be dissatisfactory on account of long and unauthorized absence, if this position serves as a motive for termination of the probationer''s service, it cannot be faulted with on that ground alone. It is not the case of the workman that the management conducted inquiry behind his back without affording him an opportunity of defending his action. It is also not the case of the workman that the order of termination referred to other documents which could contain material amounting to stigma and would thereby vitiate the order of termination. Therefore, the decision relied upon by the counsel for the workman, reported as AIR 1999 Supreme Court 983, is distinguishable in the facts and circumstances of the case, inasmuch as, in the present case the order of termination simpliciter did not contain any reference to other documents which could have contained material amounting to any stigma thereby vitiating the termination order.

5. Counsel for the workman also referred to the decision of the Supreme Court in V.P. Ahuja Vs. State of Punjab and Others, . This decision is also of no avail to the workman, inasmuch as, in that case the Supreme Court held that services of a temporary servant like a probationer could not be terminated arbitrarily in a punitive manner without complying with principles of natural justice. In the present case the termination of probation was on account of absence without any sanctioned leave during period of probation and not penal, inasmuch as, it was for dissatisfactory conduct of the workman. Further, even though the workman had not completed two hundred and forty days of continuous service, he was discharged after payment of retrenchment compensation. When the termination of the services of the probationer is on the ground of service being not satisfactory, the principles of natural justice are not attracted. [Ref: Chief General Manager, State Bank of India and Another Vs. Bijoy Kumar Mishra,

6. It is also observed that, in the present case, it is not the case of the workman that the order of termination is stigmatic. Therefore, it was not necessary for the management to conduct an inquiry into the unauthorized absence of the workman, insofar as, the unauthorized absence was merely motive for termination simpliciter and not the foundation thereof. It is also observed that, the workman had filed his claim directly before the Industrial Adjudicator after an unexplained delay of fourteen years, and was, therefore, guilty of laches.

7. The scope of judicial review in a proceeding under Article 226 of the Constitution of India is no longer res integra. This Court under the provisions of Article 226 of the Constitution of India cannot undertake the exercise of liberally reappreciating the

evidence and drawing conclusions of its own on pure questions of fact. The findings of fact recorded by a fact-finding authority duly constituted for the purpose cannot be interfered with as long as they are based upon some material relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken.

8. In the present case the findings of the Industrial Adjudicator are based on the appreciation of evidence produced before it. I am of the view that the findings cannot be said to be based on no evidence at all, so as to, warrant a re-appreciation of evidence, by this Court. The limitations on the jurisdiction of this Court are well settled. A writ in the nature of certiorari may be issued only if the finding of the Industrial Adjudicator suffers from an error or jurisdiction or from a breach of principles of natural justice or is vitiated by a manifest or apparent error of law. No such issue has been urged or established in the instant case on behalf of the workman. The Court will not countenance the picking of holes here and there in the award on trivial points and attempting thereby to frustrate the entire adjudication process before the Industrial Adjudicator on hypertechnical grounds as is being sought to be done by the workman in the present case.

9. For the foregoing reasons, I find no merit in the submissions made on behalf of the petitioner. The findings of the Industrial Adjudicator are based on material Constituting ample basis for the findings recorded and the reasonable findings are unexceptionable. The Award does not suffer from any infirmity so as to warrant interference by this Court. As a result the writ petition fails and is accordingly dismissed, but, with no order as to costs.