SUPREME COURT OF INDIA

Haryana Land Reclamation and Development Corporation Ltd

Vs.

Nirmal Kumar

C.A.No.3961 of 2006

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

10.12.2007

JUDGMENT:

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the order passed by a Division Bench of the Rajasthan High Court at Jodhpur, dismissing the Special Appeal under Section 18 of the Rajasthan Ordinance 1949. By the impugned judgment the Division Bench upheld the order passed by the learned Single Judge.

2. Background facts in a nutshell are as follows: The respondent-workman filed a claim petition and sought a reference of the dispute raised by him to the Labour Court. The appropriate Government referred to the dispute for adjudication to the Labour Court, Hanumangarh. In the claim petition the respondent-workman alleged that he was employed by the appellant as watchman-cum-peon and his services were retrenched by the appellant illegally on 18.7.1991. The Labour Court after giving an opportunity to the appellant to discuss his claim and on consideration of evidence led by the parties came to the conclusion that the services of the respondent-workman was retrenched in violation of Rule 77 of the Rajasthan Industrial Rules, 1958 (in short the 'Rules'). The Labour Court also found that the reason for retrenchment as advanced by the appellant, that some amount was embezzled by the respondent-workman. was not established by the appellant. The appellant being aggrieved by the order passed by the Labour Court, filed a writ petition. The writ petition was dismissed by the learned Single Judge on 21.7.2000 as the learned Single Judge did not find any reason to interfere with the order passed by the Labour Court.

3. Learned counsel for the appellant submitted that the respondent was appointed on a daily-wage basis on 15.8.1988 and was retrenched on 18.7.1991 due to financial losses. This position is accepted. Respondent raised a highly belated claim in the year 1997 and reference was made to the Labour Court on 20.2.1997 under Section 10 of the Industrial Disputes Act, 1947 (in short 'the Act'). The learned Single Judge by a practical non-reasoned order dismissed the writ petition and as noted above, the writ appeal was dismissed.

4. The award in the case was made on 6.11.1997 and reinstatement was directed with back wages limited to 50% from the date of reference.

5. As noted above, the stand of the appellant is that there was a belated dispute raised by the respondent and on that score alone the reference has been dismissed. Learned counsel for the

respondent supported the order. It is noted that while issuing notice on the scope of adjudication was limited to quantum of back wages.

6. It may be noted that so far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.

7. However, certain observations made by this Court need to be noted. In Nedungadi Bank Ltd. v. K.P. Madhavankutty (2002 (2) SCC 455), it was noted at para 6 as follows: (SCC pp. 459-60)

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that th ere was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex facie bad and incompetent."

8. In S.M. Nilajkar v. Telecom District Manager [2003 (4) SCC 27], the position was reiterated as follows (at SCC pp. 39-40, para 17):

"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. It is true, as held in Shalimar Works Ltd. v. Workmen [(1960) 1 SCR 150] 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 and 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 (supra) . In Nedungadi Bank Ltd. v. K.P. Madhavankutty (supra) 1 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 [1993 Supp.(4) SCC 67] 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 some time in 1985-86 or 1986-87. Pursuant to the judgment in Daily Rated Casual Labour v. Union of India [1988 (1) SCC

67 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."

9. The above position was highlighted in Asstt. Engineer, CAD v. Dhan Kunwar, (2006) 5 SCC 481.

10. It is not in dispute that the appellant was suffering from huge losses from 1990 onwards. In fact, this aspect has been referred to by the Labour Court and has been accepted.

11. Considering the facts, we restrict the back wages to Rs.10,000/- to be paid within a period of two weeks from today, if not already paid.

12. The appeal is accordingly disposed of with no order as to costs.