SUPREME COURT OF INDIA

Kuldeep Singh

Vs.

G.M., Instrument Design Development and Facilities Centre

C.A.No….of 2010

(P.Sathasivam and Dr.B.S.Chauhan JJ.)

03.12.2010

JUDGMENT

P.Sathasivam, J.

1. Leave granted.

2. This appeal is filed against the judgment and order of the High Court of Punjab & Haryana at Chandigarh dated 31.10.2006 in CWP No. 8774 of 2005 wherein the Division Bench of the High Court confirmed the award passed by the Labour Court, Ambala and dismissed the writ petition filed by the appellant herein for reinstatement with full back wages and other consequential benefits.

3. Brief facts:

> "(a) It is the case of one Sh. Kuldeep Singh, the appellant/workman, that on 08.10.1990, he was appointed as Data Entry Operator on daily wages and he worked as such till 28.11.1991 and thereafter on ad-hoc basis and worked up to 26.05.1992 without any break when his services were terminated by the Instrument Design Development and Facilities Centre (IDDC)-the respondent/management herein. According to him, no notice or compensation in lieu thereof was given for terminating his services though he had worked for 240 days in the preceding 12 months. According to the appellant workers junior to him were retained and even fresh appointments were made after the termination of his services which is in violation of provisions of Sections 25F to H of the Industrial Disputes Act, 1947 (in short "the Act").
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> (b) It is the case of the respondent/Management that the appellant/workman was working on daily wages to meet the exigencies of work and his contract of employment was on day to day basis and that the workman did not render duty for requisite number of days in the 12 preceding months as claimed. It was further denied

that any worker junior to the appellant was retained in service or any fresh appointment was made.

(c) On 12.12.2003, the Labour Court, after adverting to the reference made by the Governor of Haryana as to the non-employment of the appellant and after framing necessary issues has held that the respondent/Management is an industry within the meaning of Section 2(j) of the Act and found that the workman rendered the duty for more than 240 days in the 12 preceding months but the Management terminated his services without complying with the provisions of Section 25F of the Act, so the order impugned is illegal, null and void and deserves to be set aside. Having found so on the material issues 1, 5 and 6 in favour of the workman, however, on the ground of delay in raising the demand and finding that the reference is bad and incompetent being raised so belatedly dismissed the claim of the workman.

(d) Aggrieved by the dismissal of his claim, the workman filed Civil Writ Petition No. 8774 of 2005 before the High Court of Punjab & Haryana at Chandigarh. By the impugned judgment dated 31.10.2006, the Division Bench of the High Court by holding that the unexplained inordinate delay has rendered the dispute in question as patently stale accepted the award of the Labour Court and dismissed the writ petition. Questioning the same, the workman has filed the above appeal by way of special leave."

4. Heard Mr. B.S. Mor, learned counsel for the appellant/workman and Mr. Shishpal Laler, learned counsel for the respondent/Management.

5. The point for consideration in this appeal is whether the Labour Court and the High Court justified in rejecting the claim of the workman merely on the ground of delay when the Labour Court concluded in categorical terms that the termination of the services of the workman by the Management without complying with the provisions of Section 25F of the Act is illegal, null and void and deserves to be set aside.

6. It is not in dispute that the appellant was terminated from service w.e.f. 26.05.1992. It is the claim of the workman that he has worked as Data Entry Operator from 08.10.1990 to 28.11.1991 and thereafter, on ad hoc basis from 28.11.1991 to 26.05.1992 and since he had worked for more than 240 days in the 12 preceding months and his juniors were retained in service and fresh appointments were also made after his termination, the act of the Management is in violation of the provisions of Section 25 F to H of the Act.

7. After prolonged correspondence, the Governor of Haryana in exercise of power conferred under Section 10(1)(c) of the Act, has made the following reference between the appellant/workman and the respondent/Management to the Labour Court, Ambala for adjudication by way of notification bearing No. 62638 dated 22.11.1999:

"Whether the termination of services of the workman Kuldeep Singh is valid and justified, if not so, to what relief including back wages is he entitled?"

8. Before considering the order of reference, it is worthwhile to refer Section 10 of the Act. Chapter-III of the Act speaks about reference of Disputes to Boards, Courts or Tribunals. We are concerned with Section 10 (1) which reads 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:

xxx xxxxx"

Based on the above provision, on the application of the workman, the Government of Haryana made the above reference to the Labour Court, Ambala. On receipt of the reference from the State Government, the Court assigned it as reference No. 254 of 1999. Both the workman and the Management filed their written statements before the Labour Court. The Labour Court, based on the claim of both the workman and the Management framed the following issues for trial:-

(1) Whether the termination of services of workman Kuldeep Singh is valid and justified? If not so to what relief including back wages is he entitled? (2) Whether the reference is not maintainable as alleged in preliminary objection No1 of the written statement? OPM

(3) Whether the respondent-Management is an industry, if so, to what effect? OPM

(4) Whether the reference is bad on account of delay and laches as alleged in preliminary objection No.2 of the WS? OPM

(5) Whether the workman was appointed on ad hoc basis and against a specific work and after the completion of work his services came to an end and if so, to what effect? OPM

(6) Whether the workman did not complete mandatory 240 days as alleged? OPM"

9. Before the Labour Court, both the parties led evidence in support of their respective claims. The workman, as WW-1, reiterated about his service particulars as stated in his claim petition and also marked documents A-E in support of his claim. On the other hand, one Balbir Singh, S.O., was examined as MW-1 on the side of the Management. Appointment letter of the workman was marked as Exs.M1 & M2. The relevant pages of the attendance register are marked as Exs. M3 to M16. MW-1 asserted that the Management never removed the workman from service and he has not rendered the duty for 240 days in the preceding 12 months. After considering the claim of both parties in the form of oral and documentary evidence, in respect of issues 1, 5 and 6, the Labour Court, in para 19, has concluded thus: "Workman rendered the duty for more than 240 days in the 12 preceding months, as I held above, but the Management terminated his services without complying with the provisions of Section 25F of the Industrial Disputes Act, so the order impugned is illegal, null and void and deserves to be set aside. Accordingly, issue Nos. 1, 5 & 6 are decided in favour of workman."

10. It is clear that the Labour Court, on appreciation of oral and documentary evidence, has concluded that the termination of the workman i.e. the appellant herein is illegal, null and void and deserves to be set aside. This finding has become final since the Management did not question the same by way of writ petition.

11. It is not in dispute that with regard to issue No.3, the Labour Court has concluded that the Management-the respondent herein is an industry within the meaning of Section 2(j) of the Act.

12. The Labour Court has concluded that the workman had raised the demand of reference after more than five and a half years of his termination and has not offered plausible and convincing explanation. On the other hand, it is the claim of the workman that though his services were terminated on 26.05.1992, all along, he was agitating the issue with the Government in one form or other and by making representation to various authorities. Having found the termination void and contrary to the provisions of the Act, the Labour Court dismissed the claim of the workman only on the ground of delay.

13. The appellant/workman has furnished the following information to show that after termination, he made several representations to various authorities. They are:

> “(i) Representation dated 10.06.92 to the Hon'ble Minister of respondents' department.
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> (ii) Representation dated 11.05.93 to the Chief Secretary of Haryana State.
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> (iii) Representation dated 7.12.94 to the General Manager, IDDC., Ambala
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> (iv) Representation dated 4.1095 to the General Manager, ID.D.C., Ambala

(v) Representation dated 16.7.96 to the Manager, HARTON, Chandigarh.

Besides that, he attempted for the same job twice as under:

(i) Applied and interviewed for the same post out of 4 vacancies advertised in the Tribune dated 19.09.92.

(ii) Applied and interviewed for the same post out of 60 vacancies in the Sunday Tribune dated 14.5.1995.

The factual details have not been seriously denied by the Management."

14. We have already noted that the Labour Court held that the appellant has completed 240 days in 12 preceding months and the respondent/Management terminated his services without complying with the provisions of Section 25(f) of the Act and that the order of termination dated 26.05.1992 is illegal, null and void and deserves to be set aside but only on the ground of delay rejected his claim in its entirety.

15. Let us consider whether the Labour Court and the High Court justified in rejecting the claim of the workman only on the ground of delay in making the reference, more particularly, when the Labour Court found that the termination is bad and contrary to the Act. It is not in dispute that there is no limitation prescribed for making reference to the Government under Section 10 of the Act. It is useful to refer to the decision of this Court in *Sapan Kumar Pandit vs. U.P. State Electricity Board and Others*[1], which is directly on the point in the case on hand. In that case, the appellant was appointed as a Clerk on 01.01.1974 in the Electricity Distribution Division, Mathura of the U.P. State Electricity Board, but his services were terminated on 17.07.1975. He raised an industrial dispute that the termination of his services was illegal. The State Government, by an order dated 29.03.1993, referred the dispute to the Labour Court for adjudication as per Section 4-K of the U.P. Industrial Disputes Act.

"Whether termination of the appellant on 17.07.1975 by the employer was proper and legal; if not so, to what reliefs the workman is entitled?"

The Labour Court took up the reference as Adjudication Case No. 158 of 1993. The respondent Board filed a writ petition before the Allahabad High Court assailing the aforesaid reference order and also praying for quashing the adjudication case pending in the Labour Court. The appellant was arrayed as Respondent No. 5 in the writ petition. A Single Judge of the High Court took the view that the delay is so inordinate that the dispute has ceased to exist by efflux of time and hence no reference under the U.P. Act should have been made. Accordingly, the order of reference passed by the Government was quashed by the High Court holding that the workman kept silent for more than 15 years and he woke up only after the petition of

other co-workmen was allowed and he made no efforts to get his dispute referred to the Industrial Tribunal or Labour Court. By holding so, allowed the writ petition of the Management. The decision further shows that along with the appellant, the Board retrenched ten other workmen. Though the Industrial Tribunal passed an award granting retrenchment compensation and certain further other reliefs, the Union was not satisfied with the said award and they filed a writ petition in 1980 before the High Court of Allahabad. On 28.04.1988, the High Court allowed that writ petition and held that retrenchment was bad in law and the workmen concerned are entitled to be reinstated. Though the Board filed special leave petition in this Court which was dismissed in 1989. According to the appellant, he was entertaining the expectation that the Board would extend the same benefit to him. He was proceeding with his request to the Board that he should be treated on par with eight workmen some of whom were reemployed by the Board. When the appellant found that this was not done, he approached the Conciliation Officer appointed by the State Government. His application for condoning the delay in initiating conciliation proceeding was disallowed by the Conciliation Officer. However, the Deputy Labour Commissioner went to his rescue as the delay was condoned and the conciliation proceedings were revived. This happened on 28.01.1992. It was in the aforesaid background that the State Government made the reference for adjudication on 29.03.1993. Section 4-K of the U.P. Industrial Disputes Act is almost in tune with Section 10 of the Industrial Disputes Act, 1947 and also there is no time limit fixed for making the reference for a dispute for adjudication. Considering the identical words i.e., "at any time" used in Section 10 (1) of the Act and Section 4 of the U.P. Industrial Disputes Act, considered the main question namely, "Was the industrial dispute in existence on the date of reference for adjudication?" While considering the same, a three-Judge Bench decision of this Court as to the scope of the very same provision, namely, Section 4-K of the U.P. Industrial Disputes Act was cited before the Bench. In *M/s Western India Match Co. Ltd. vs. The Western India Match Co. Workers Union and Ors.*[2], the learned Judges made the following observations:- "Therefore, the expression `at any time', though seemingly without any limits, is governed by the context in which it appears. Ordinarily, the question of making a reference would arise after conciliation proceedings have been gone through and the Conciliation Officer has made a failure report. But the Government need not wait until such a procedure has been completed. In an urgent case, it can `at any time', i.e., even when such proceedings have not begun or are still pending, decide to refer the dispute for adjudication. The expression `at any time' thus takes in such cases as where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed. As already stated, the expression `at any time' in the context in which it is used postulates that a reference can only be made if an industrial dispute exists or is apprehended. No reference is contemplated by the section when the dispute is not an industrial dispute, or even if it is so, it no longer exists or is not apprehended, for instance, where it is already adjourned or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in existence." Based on the interpretation of the three-Judge Bench, it was concluded:

"15. There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval, it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanised by the workmen or the union on account of other justified reasons, it does not cause the dispute to wane into total eclipse. In this case, when the Government has chosen to refer the dispute for adjudication under Section 4-K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination." After saying so, allowed the appeal of the workman and set aside the judgment of the High Court."

16. Learned counsel appearing for the Management heavily relied on the decision of this Court in *Nedungadi Bank Ltd. vs. K.P. Madhavankutty and Others*[3], particularly, the ultimate conclusion in para 6 which reads thus:

"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 there 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."

17. Though this decision lays down that law does not prescribe any time limit for appropriate Government to exercise its power under Section 10 of the Act, the Court has concluded that the said power is to be exercised reasonably and in a rationale manner. In that case, the Central Government exercised its power after a lapse of about seven years of the order dismissing the workman from service. A perusal of the said decision shows that the workman has not furnished adequate reasons/materials for such a long delay and the only ground

advanced by him was that two other similarly placed employees dismissed from service were reinstated.

18. It is true that following the decision in Nedungadi Bank Ltd. (supra), another two-Judge Bench of this Court in *Haryana State Coop. Land Development Bank vs. Neelam*[4], accepted the similar claim of the Management and non-suited the workman on the ground of delay.

19. We have already pointed out that there is no limitation prescribed in the Act or in any other local Act prescribing such period. We have also referred to the materials placed by the workman. By making various representations from the day when his services were terminated and till his last representation dated 16.07.1996 to the Manager, HARTON, Chandigarh the workman has proved that he was agitating his termination one way or other with all the authorities concerned. The particulars furnished clearly show that the appellant/workman was fighting for his cause before the Management as well as with the State Government including the Chief Secretary and the Minister of the concerned Department. Ultimately, the State Government has made a reference on 22.11.1999 to the Labour Court for adjudication.

20. The view expressed in Sapan Kumar Pandit (supra) which is identical to our case has been considered and followed in the subsequent decision, namely, *S.M. Nilajkar and Others vs. Telecom District Manager, Karnataka*[5]. In both the decisions, the principles laid down in Nedungadi Bank (supra) have been considered and distinguished. We have already mentioned that in Sapan Kumar Pandit (supra), this Court followed the principles enunciated in three-Judge Bench decision of Western Indian Match Co. (supra). At this juncture, it is useful to remind and reiterate the finding rendered by the Labour Court on issue Nos. 1, 5 and 6 holding that the termination of the services of the workman/appellant herein without complying with the provisions of Section 25F is illegal, null and void and deserves to be set aside. Undoubtedly, the Management has to follow the provisions of the Act while effecting termination, in fact, which was accepted by the Labour Court and the Management has not challenged the same before any forum.

21. In view of the above, law can be summarized that there is no prescribed time limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is more so in view of the language used, namely, if any industrial dispute exists or is apprehended, the appropriate government "at any time" refer the dispute to a Board or Court for enquiry. The reference sought for by the workman cannot be said to be delayed or suffering from a lapse when law does not prescribe any period of limitation for raising a dispute under Section 10 of the Act. The real test for making a reference is whether at the time of the reference dispute exists or not and when it is made it is presumed that the State Government is satisfied with the ingredients of the provision, hence the Labour Court cannot go behind the reference. It is not open to the Government to go into the merit of the dispute concerned and once it is found that an industrial dispute exists then it is incumbent on the part of the Government to make reference. It cannot itself decide the merit of the dispute and it is for the appropriate Court or Forum to decide the same. The satisfaction of the appropriate authority in the matter of

making reference under Section 10(1) of the Act is a subjective satisfaction. Normally, the Government cannot decline to make reference for laches committed by the workman. If adequate reasons are shown, the Government is bound to refer the dispute to the appropriate Court or Forum for adjudication. Even though, there is no limitation prescribed for reference of dispute to the Labour Court/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, when disputes relate to discharge of workman. If sufficient materials are not put forth for the enormous delay, it would certainly be fatal. However, in view of the explanation offered by the workman, in the case on hand, as stated and discussed by us in the earlier paragraphs, we do not think that the delay in the case on hand has been so culpable as to disentitle him any relief. We are also satisfied that in view of the details furnished and the explanation offered, the workman cannot be blamed for the delay and he was all along hoping that one day his grievance would be considered by the Management or by the State Government.

22. In the light of the above discussion and conclusion, we set aside the award of the Labour Court insofar as holding that the reference by the State Government is bad and incompetent being raised so belatedly and dismissing the claim statement on this ground and the order of the High Court dated 31.10.2006 in C.W.P. No. 8774 of 2005 affirming the said order of the Labour Court and dismissing the writ petition filed by the workman. In view of the conclusion of the Labour Court with regard to Issue Nos. 1, 5 and 6 deciding in favour of workman holding that the Management terminated his services without complying with the provisions of Section 25F of the Act and the said order is illegal, null and void deserves to be set aside, we order reinstatement of the appellant- workman with consequential service benefits but without back wages within a period of eight weeks. Since the appellant is fighting for his survival for more than a decade, we award a cost of Rs.50,000/- to be paid by the respondent-Management directly to the appellant/workman within the same period.

23. The appeal is allowed to the extent mentioned above.

[1]*(2001) 6 SCC 222*
[2]*(1970) 1 SCC 225 = AIR 1970 SC 1205*
[3]*(2000) 2 SCC 455*
[4]*(2005) 5 SCC 91*
[5]*(2003) 4 SCC 27*