IN THE HIGH COURT OF MADHYA PRADESH, BENCH GWALIOR

Writ Petition No.2531/2015

Municipal Council Guna

Versus

Krishna Pal

Shri S.K. Jain, learned counsel for the petitioner.
Shri Shishir Saxena, learned counsel for the respondent

Present : Hon. Mr. Justice Vivek Agarwal

O R D E R
(13.07.2016)

Petitioner has filed this petition being aggrieved by order dated 03/06/2014 passed by learned Labour Court No.3, Camp Guna, Gwalior, whereby reference under Industrial Disputes Act filed by the respondent in the present petition has been accepted and order of retrenchment of the workman has been set aside by the concerning Labour Court without back wages.

2. The main objection which has been raised by the learned counsel for the petitioner is that section 2A has been inserted in the Industrial Disputes Act 1947 (in short "the Act") w.e.f 15/09/2010. Section 2A(3) of the Act provides that the application referred to in Sub-Section 2 shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in Sub-Section 1. According to the petitioner, since the services of the workman were dispensed with in the year 2000 and the reference was filed in the year 2012, therefore, the application, which was submitted by the respondent, was *prima facie* barred by time in the light of amendment in the Act

vide Section 2-A in which limitation has been prescribed, and therefore, dispute was not maintainable.

3. The learned counsel for the respondent/ workman has supported the order of learned Labour Court and has argued that prior to amendment in the Act and insertion of Section 2A, no limitation was prescribed and this amendment being prospective in nature can not be acted retrospectively. It is also argued that earlier workman had filed Case No. 100/2002, but in the light of State Government, Circular No.F/5-4/2003/One/3 Bhopal dated 21/01/2004, he had withdrawn the case hoping that in terms of the said circular, he will be reinstated in service. Accordingly, it has been urged that dispute filed by the workman is within the limitation.

4. The next limb of the argument of the petitioner is that burden to prove continuous service for 240 days was on the workman and that burden could not have been shifted on the employer. In this regard, learned counsel for the petitioner has relied on the decision of the Supreme Court in the case of **M.P. Electricity Board Vs. Hariram** reported in **2005(2) Vidhi Bhasvar 123**. Learned Labour Court has recorded a finding that the workman had worked in the petitioner's organization from 21/04/1994 to 13/01/2000 which is duly supported by the identity card, Ex.P/2, Matgadna admit card, Ex.P/3, P-4 and P-5 and muster rolls, Ex.P/18 to P/57. It has also come on record that no evidence was led by the present petitioner. Thus, the facts mentioned in the decision of **Madhya Pradesh Electricity Board (Supra)** are different from the present case. Thus, only issue which is to be examined in this case is regarding the amendment in the Act as to whether it is prospective or retrospective. In the case of **Keshvan Madhava Menon Vs. State of Bombay** reported in **AIR 1951 SC 128**, it has been held that “it is the cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective obligation”. It is also provided that the

rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. It is apparent from the language of Section 2A that the intention of the legislature to insert said amendment was to have implication of prospective nature. It is also true that right to challenge the retrenchment has been vested in the workman and prior to amendment in the Act on 15/09/2010, no limitation was prescribed for filing a dispute. In the light of this fact, a workman is entitled to file a dispute within three years of insertion of amendment providing limitation for filing the dispute for the first time. Admittedly, the workman had filed the dispute within three years of the amendment, and therefore, learned Labour Court has not faulted or committed illegality in allowing the dispute overruling the objection of the present petitioner regarding limitation.

5. In view of the aforesaid, petition fails and is dismissed.

(Vivek Agarwal)
Judge

ms/-