HIGH COURT OF MADHYA PRADESH:
BENCH AT INDORE
W.P.No.2791/2017

(Karyapalan Yantri Lok Swastha Vs. Devendra Kumar Panwar)

Indore, Dated: 27.03.2019

Shri Arjun Pathak, learned counsel for the petitioner.

Shri M.K. Choudhary, learned counsel for the respondent.

With the consent of the parties heard finally.

The petitioner /Municipal Corporation, Ujjain has filed the present petition under Article 227 of the Constitution of India against the award dated 05.10.2016, passed by the Labour Court, Ujjain in Case NO.174/2014/ID Act (r) in favour of respondent directing reinstatement in to the service without backwages.

Facts of the case, in short, are as under:

On 16.08.2013, the respondent raised an industrial dispute under the Industrial Dispute Act, 1947 before the Conciliation Officer and Assistant Labour Commissioner, Ujjain. The present petitioner participated in the conciliation proceedings by denying the engagement of respondent as daily rated employee and also raised the issue of limitation raising the industrial dispute. The conciliation proceedings ended into a failure and vide order dated 19.05.2014, the conciliation officer has referred the dispute to the labour

Court by framing the terms of reference. The terms of reference are as under:

> *"क्या श्री देवेन्द्र कुमार पंवार पिता सत्यनारायण का आवेदन विलंब से प्रस्तुत किया जाना सकारण उचित है ? यदि हॉ तो क्या सेवानियुक्त का नियोजक द्वारा किया गया सेवापृथकीकरण वैध एवं उचित है यदि नही तो वे किस सहायता के पात्र है एवं इस सम्बन्ध में नियोजक को क्या निर्देश दिये जाने चाहिए ?"*

The labour Court registered it as Case No.174/2014 IDR and the respondent filed the statement of claim under Section 10 of the Industrial Dispute Act,1947 by submitting that he was engaged as a peon in 1989 in the Public Health Engineering Department, Sub-Division No.1. He worked there for 15 years and by oral order he was removed from the service on 01.08.2003. He has further submitted that he had completed 240 days of working in the preceding year and before termination the retrenchment compensation was not paid to him and one month notice or one month salary in lieu of the it was also not given. Before termination the permission from the Labour Commissioner was also not obtained and the principal of 'last come first go' was also not followed as certain employees engaged after him are still continuing in the services of the respondent, therefore, the termination is illegal and he is liable for reinstatement with backwages.

The petitioner has submitted a reply by submitting that the alleged termination took place on 01.08.2003

and the dispute is being raised after 11 years without giving any valid explanation. Hence, the same is not maintainable. There was a ban by the State Government in respect fact of engagement of employment in the Municipal Corporation, therefore, the respondent was not engaged as a daily rated employee. He did not produce any document in respect of his appointment and termination, therefore, he is not entitled for reinstatement.

In support of claim the respondent examined himself and one Kishan Rao More who worked alongwith him from 1989 to 2003. In defence, the petitioner examined Atul Tiwari an employee PHE section of petitioner . All the witnesses were cross-examined by the counsel appearing for the opposite parties. After carefully examining the evidence came on record the learned labour Court vide award dated 05.10.2016 has answered the reference in favour of respondent/workmen by directing the petitioner to reinstate him with backwages. Being aggrieved by the award dated 05.10.2016, the petitioner has filed the present petition before this Court.

Shri Arjun Pathak, learned counsel appearing for the petitioner submits that the industrial dispute raised by the respondent is hopelessly time barred. He has not given any explanation in respect of delay in approaching

the labour authorities and labour Court, therefore, the labour dispute does not exist and the respondent himself has waived his right to raise the industrial dispute. There was no employer-employee relation between petitioner and respondent. The respondent did not produce any evidence in respect of appointment, working and termination. The burden lies on him to establish his engagement and termination. The learned labour Court has wrongly shifted the burden upon the petitioner. In support of his contention Shri Pathak has placed heavy reliance over the various judgements passed by the Apex Court as well as this Court which are as under:

"***Prabhakar Vs. Joint, Diretor, Sericulture Department & Others, reported in AIR 2016 SC 2984, Workmen of Nilgiri Coop. Marketing Society Limited Vs. State of Tamil Nadu, reported in SC (2004) 3 SCC 514, Shailendra Kumar Vs. Division Forest Officer & Another (W.P.No.12249/2016), Nagar Palika Nigam, Ujjain Vs. Rajpal Singh (W.P.No.3645/2017), Range Forest Officer & Others Vs. S.T. Hadimani, reported in (2002) 3 SCC 25, Essen Deinki Vs. Rajiv Kumar, reported in AIR 2003 SC 38, M.P. Eletricity Board Vs. Manoj Kumar and Others, reported in 2006(2) MPLJ 432, Nagar Palika Nigam Vs. Banshi (decided on 23.03.2018)***"

Per contra Shri Mahesh. K. Choudhary, learned counsel appearing for the respondent by controverting the argument of Shri Arjun Pathak submits that the respondent worked from 1989 to 2003 as daily rated employee in various sections and divisions of petitioner. In cross-examination he has described in detail about his working with the respondent for 15 years. In support of his contention he examined a co-employee who has also supported his case. By order dated 21.02.2015 the labour Court directed the petitioner to produce the record pertaining to the engagement of daily rated employee but the said order was not complied with, hence the burden was rightly shifted upon the petitioner to prove that the corporation never engaged daily rated employees. So far as the issue of limitation is concerned, Section 10 of ID Act does not provide any limitation in approaching the labour Court by way of raising an industrial dispute, therefore, the labour Court has rightly entertained the industrial dispute between petitioner and respondent. Hence, no interference is called for in a writ petition under Article 227 of the Constitution of India and the petition is liable to be dismissed.

In support of his contention he has placed reliance over the various judgements passed by the Apex Court as well as by this Court in which it has been held that there is no limitation in respect of approaching the labour

Court by way of Industrial dispute. The burden lies on the employer to controvert the fact that the workmen did not work for more than 240 days in one calendar year. Once the workman has pleaded that he has worked for 240 days, then burden shifts on the employer to controvert. The judgements produced by Shri Choudhary are as under:

"***Krishi Upaj Mandi Committee, Mahindpur Vs. State of M.P. & Others (W.P.No.84/2011, decided on 08.05.2012), Jasmer Singh Vs. State of Haryana & Another, reported in 2015(4) MPLJ 5, State of M.P. Vs. Karan Singh (decided on 24.01.2019), Director, Fisheries Terminal Department Vs. Bhikhu Bhai Megha Ji Bhai Chawda, reported in 2010(2) MPLJ 30, Gopal Krishna Ketkar, reported in 1969 MPLJ 271, Ujjain Municipal Corporation Vs. Shri Dinesh and Another (decided on 18.07.2018)***"

I have heard learned counsel for the parties at length and perused the record and the judgement cited by the rival parties.

According to the respondent, he was engaged in the year 1989 as a Peon by the petitioner and worked upto 01.08.2003. He was terminated by an oral order but he remained silent and first time raised the industrial dispute on 16.08.2013 before the labour Officer/Conciliation Officer. The petitioner appeared

before the Conciliation Officer and raised the specific plea of limitation and in the terms of reference, the labour Commissioner has specifically framed the issue in respect of limitation. The learned labour Court answered the said reference by holding that there is no limitation prescribed in Section 10 therefore, the labour Court can entertain the dispute. In cross-examination the respondent has admitted that after termination in the year 2003, he remained silent and did not raised any dispute.

The Apex Court in a recent judgement passed in the case of ***Prabhakar Vs. Joint, Diretor, Sericulture Department & Others, reported in AIR 2016 SC 2984*** has held that if the dispute is raised after a long period it has to be seen whether that dispute still exist. If the workmen is able to give a satisfactory explanation for these latches and delaye and demonstrate that the circumstances discloses that the issue is still alive delay would not come in his way because the reason is that the law of limitation has no application. On the other hand if the dispute no longer remains alive and is to be treated as dead that it would be non-existent dispute which cannot be referred. The Apex Court has also held that in those cases where there is no agitation by a workmen against termination and the dispute is raised belatedly and the delay and latches remained unexplained it

would be presumed that he had waived his right into the act of termination. It can be treated as non-existent dispute. In such circumstances the appropriate Government can refuse to make a reference or in alternate labour Court/Industrial Court can also hold that there is no industrial dispute. Relevant portion of the aforesaid judgement is reproduced below below:

> ***"40. On the basis of aforesaid discussion, we summarise the legal position as under:***
>
> ***An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2A of the Act. Reference is made Under Section 10 of the Act in those cases where the appropriate Government forms an opinion that 'any industrial dispute exists or is apprehended'. The words 'industrial dispute exists' are of paramount importance unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute. Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary precondition.***

In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exist. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances discloses that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred. Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy Under Section 2A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending

for number of years and was ultimately dismissed on the ground that Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted."

(Emphasised supplied)

In view of the above, if the appropriate Government or the labour Court/Industrial Court is required to examine whether after the termination workmen has raised his voice against his termination or remained silent and if he remained silent and did not agitated then there is not 'industrial dispute' exists . In the present case also the respondent in cross-examination has clearly admitted that he did not raised any dispute '*उसके बाद मेरे द्वारा विभाग के विरूद्ध कार्य पर रखाने के लिये कोई कार्यवाही नही की। यह सही है कि १६.८.१३ को सहायक श्रमायुक्त के यहा आवेदन पेश किया था।*'

The respondent in his statement of claim as well as in evidence did not give any explanation in respect of 11

years' delay in approaching before labour authorities, therefore, the labour Court has wrongly recorded the findings in respect of issue of limitation and entertained the dispute on merit.

Therefore, in view of the law laid down by the Apex Court in case of ***Prabhakar (supra)*** there is no industrial dispute exist between respondent and petitioner, hence, he is not entitled for relief of reinstatement.

Since it has been established that respondent had worked 240 days in the establishment of petitioner and before termination he was not given any retracement compensation by the petitioner therefore the termination has rightly been declared illegal by the learned labour court. Hence impugned award is modified to the extent of grant of compensation of Rs 50,000/- (Fifty Thousand only) in lieu of reinstatement in order to do the complete justice between the parties. Petition is **allowed** in part and the impugned order dated 05.10.2016 is hereby modified .

No order as to cost.

(VIVEK RUSIA)
Judge

jasleen