

The Management Of Vs. The Secretary

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Court : Karnataka

Decided On : Aug-13-2018

Judge : P.S.Dinesh Kumar

Appeal No. : WP 10532/2008

Appellant : The Management Of

Respondent : The Secretary

Judgement :

W.P.No.10532/2008 1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE13H DAY OF AUGUST, 2018 BEFORE R THE HON'BLE MR.JUSTICE P.S. DINESH KUMAR WRIT PETITION NO.10532/2008 (L-TER) BETWEEN: THE MANAGEMENT OF M/S HEWELET PACKARD INDIA SALES+ PRIVATE LIMITED NO.24, SALARPURIA ARENA ADUGODI, HOSUR MAIN ROAD BANGALORE-560 030 REPRESENTED BY ITS LEGAL COUNSEL MR. ASHOK UPADHYA PETITIONER (BY SRI K.R.ANAND, ADVOCATE) THE SECRETARY MINISTRY OF LABOUR GOVERNMENT OF KARNATAKA VIKAS SOUDHA BANGALORE-560 001 MR K.N.KUMAR S/O K.K.NAGARAJ NO.2/1, VENKATASWAMAPPA LANE CHIKKAMAVALI BANGALORE-560 004 ...RESPONDENTS (BY SRI A.C.BALARAJ, HCGP FOR R1; SRI T.NARAYANASWAMY, ADVOCATE FOR R2) AND:

2. W.P.No.10532/2008 2 THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED

ORDER

/POINTS OF DISPUTE ANNEXURE-A DT.5.7.2006 ISSUED BY THE R1 THROUGH THE DEPARTMENT OF LABOUR NOW PENDING ADJUDICATION IN REFERENCE NO.34/2006. THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR

ORDER

S ON 28.06.2018, COMING ON FOR PRONOUNCEMENT OF

ORDER

S, THIS DAY, THIS COURT PRONOUNCED THE FOLLOWING:-

ORDER

This writ petition by the Management is directed against the order dated 5.7.2006 passed by the Government referring the dispute for adjudication to the Labour Court, which is pending consideration in Reference No.34/2006 before the III Additional Labour Court, Bengaluru.

2. Heard Shri K.R.Anand, learned Advocate for the petitioner, Shri A.C.Balaraj, learned HCGP for respondent No.1 and Shri T.Narayanaswamy, learned Advocate for respondent No.2.

3. Briefly stated the facts of the case as per averments in the claim petition are, second respondent-workman (workman for short) was appointed in the year 1991 by the petitioner. In appreciation of his performance, he was promoted W.P.No.10532/2008 3 to various higher posts, such as, Product Technician, Documentation Analyst and he was discharging various jobs pertaining to production work. He was transferred to Pondicherry w.e.f. 10.3.2001. He was getting ` 10,000/- as wages. On 31.10.2001, management terminated his services.

4. Workman filed a claim petition under Section 2A read with Section 12(1) of the Industrial Disputes Act, 1947 (ID Act for short) before the Labour and Conciliation

Officer, Division-6 at Bengaluru, contending inter alia, that he was illegally terminated. He was communicating with the management with a view to get back his job without approaching the Court.

5. Management filed its objections and requested to reject the petition.

6. The conciliation failed. By the order impugned, Government referred the dispute to the Labour Court. Before the Labour Court, workman filed his claim petition and the management filed its counter statement, contending inter alia that, the factory at Pondicherry was closed due to business exigencies and therefore, the management settled the accounts of the workman by paying ` 91,127/- on 31.10.2001. Thereafter, the management has challenged the impugned order in this writ petition in the year 2008. By order dated 6.8.2008, this Court has stayed the operation of the impugned order.

7. Shri K.R.Anand, for the Management, urged the following contentions in support of this petition: that labour Court in Bengaluru lacks jurisdiction to adjudicate the reference because, the services of workman were terminated whilst he was posted at Pondicherry; and that there is a delay of four years in initiating conciliation proceedings by the workman.

8. In support of his contentions, he has placed reliance on the following authorities: (i) Workmen of Shri. Ranga Vilas Motors (P) Ltd., v. Sri Rangavilas Motors (P) Ltd. and others reported in AIR 1967 SC1040 (ii) Prabhakar v. Joint Director, Sericulture Department and another reported in (2015) 15 SCC1 and W.P.No.10532/2008 5 (iii) Dharambir Singh v. M/s.Hindustan Uniliver Ltd. and Ors reported in 2015 LLR1136 9. Shri T.Narayanaswamy, for workman, opposing the writ petition submitted that workman was appointed at Bengaluru and he was transferred to Pondicherry and thereafter illegally terminated. Thus, the employee-employer relation continued at Bengaluru and therefore, the Labour Court at Bengaluru, shall have jurisdiction. On the point of delay, he submitted that, the workman did not have adequate resources and he was corresponding with the management with a hope to get back his job. He argued that, on the ground of delay, workmans rights cannot be frustrated. In support of his contentions on the point of delay, he placed reliance on the Judgment of Honble Supreme Court in

the case of Raghbir Singh v. General Manager, Haryana Roadways, Hissar reported in 2014 LAB.I.C.

4266. 10. I have given my careful consideration to the rival contentions of the parties and perused the material papers on record. W.P.No.10532/2008 6 11. In the conspectus of facts of this case, the following points arise for consideration: (i) Whether the Labour Court at Bengaluru has jurisdiction?. (ii) Whether conciliation proceedings were initiated belatedly?. Re-point (i): In the case of Workmen of Shri. Ranga Vilas Motors (P) Ltd., v. Sri Rangavilas Motors (P) Ltd. and others (supra), the workman was transferred from Bengaluru to Krishnagiri. The workman took a stand that as per the service condition, he could not have been transferred. Ultimately, management framed charges and removed him from service. Workman initiated conciliation proceedings. Upon failure of conciliation, a reference was made to the Labour Court to adjudicate the dispute. The Labour Court over-ruled the objections with regard to the jurisdiction and held that, the removal was illegal. The Management challenged the award passed by the Labour Court before the High Court and the High Court quashed the award and the workman challenged the same before the Honble W.P.No.10532/2008 7 Supreme Court. On the point of jurisdiction, the Honble Supreme Court has held as follows: 14. Therefore, the appeal must succeed unless the Company can satisfy us that the points decided against it should have been decided in its favour. This takes us to the other points. Mr O.P. Malhotra strongly urges that the State Government of Mysore was not the appropriate Government to make the reference. He says that although the dispute started at Bangalore, the resolution sponsoring this dispute was passed in Krishnagiri, and, that the proper test to be applied in the case of individual disputes is where the dispute has been sponsored. It seems to us that on the facts of this case it is clear that there was a separate establishment at Bangalore and Mahalingam was working there. There were a number of other workmen working in this place. The order of transfer, it is true, was made in Krishnagiri at the Head-Office, but the order was to operate on a workman working in Bangalore. In our view the High Court was right in holding that the proper question to raise is: where did the dispute arise?. Ordinarily, if there is a separate establishment and the workman is working in that establishment, the dispute would arise at that place. As the High Court observed, there should clearly be some nexus between the dispute

and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose. This Court in *Indian Cable Co. Ltd. v. Its Workmen*, (1962) 1 Lab LJ409(SC) held as follows: The Act contained no provisions bearing on this question, which must, consequently, be decided on the principles governing the jurisdiction of Courts to entertain actions or proceedings. Dealing with a similar question under the W.P.No.10532/2008 8 provisions of the Bombay Industrial Relations Act, 1946, Chagla, C.J., observed in *Lalbhai Tricumlal Mills Ltd. v. Vin*, 1956-1 Lab LJ557 558 : (AIR1955 Bom 463 at p.464): But what we are concerned with to decide is: where did the dispute substantially arise?. Now, the Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court. But applying the well-known tests of jurisdiction, a court or tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject-matter of the dispute substantially arises within jurisdiction. In our opinion, those principles are applicable for deciding which of the States has jurisdiction to make a reference under Section 10 of the Act. Applying the above principles to the facts of this case it is quite clear that the subject-matter of the dispute in this case substantially arose within the jurisdiction of the Mysore Government. (emphasis in original) In the case of *Dharambir Singh v. M/s.Hindustan Uniliver Ltd. and Ors* (supra), workman was transferred to Faridabad. The unit at Faridabad remained without production and ultimately closed down. The workman was removed from service. A dispute was raised and the Labour Court at Delhi, directed reinstatement of workman with backwages and W.P.No.10532/2008 9 continuity of services. The management challenged the award of the Labour Court primarily on the ground that the Labour Court at Delhi did not have territorial jurisdiction as the workman at the time of his termination was posted at Faridabad. Upholding this contention, the writ petition was allowed. The workman challenged the order passed in the writ petition in a Letter Patents Appeal. A Division Bench of Honble High Court of Delhi in the case of *Bikash Bhushan Ghosh & Ors vs. Novartis India Ltd. & Anr.*, reported in (1983) 4 SCC156 and other authorities, upheld the order passed in the writ petition. The Division Bench, while considering the Judgment in the case of *Bikash Bhushan Ghosh* (supra), has held as follows:- 6. Supreme Court in *Bikash Bhushan Ghosh* (supra) applying the principles laid under Section 20 CPC held that the State

Government of the State where part of cause of action arose would also have jurisdiction to make a reference. The Supreme Court laid down the following principles to determine the jurisdiction:- The principles for determining jurisdiction are: (i) Where does the order of the termination of service operate?. W.P.No.10532/2008 10 (ii) Is there some nexus between the industrial dispute arising from termination of the services of the workman and the territory of the State?. (iii) The well-known test of jurisdiction of a civil court including the residence of the parties and the subject-matter of the dispute substantially arising therein would be applicable.

7. Supreme Court thus held that the situs of the employment of the workman would be a relevant factor for determining the jurisdiction of the Labour Court concerned. In the said case before the Supreme Court the termination orders which were served at Calcutta were not the only bone of contention but the transfer orders as well because the termination orders were passed for not obeying the transfer orders. It was held that if the transfer orders were set aside the appellants therein would be deemed to be posted in Calcutta. There being a direct nexus with the termination of their services at Calcutta it was held that State of West Bengal was the appropriate Government. In the case on hand, indisputably, workmans services were terminated while he was working at Pondicherry. Therefore, dispute, if any, would have arisen at Pondicherry. Thus, applying the ratio of the authorities referred to herein, I am of the considered view that, the Labour Court at Bengaluru, does not have jurisdiction. W.P.No.10532/2008 11 Re-point (ii): The workmans services were terminated on 31.10.2001. Management has taken a specific contention in the writ petition that, it has paid more than the compensation payable to the workman. It has precisely averred thus: 5. xxx xxx xxx. Keeping this in mind the Petitioner Company offered its employees compensation under the scheme which works out to more than the compensation payable to workmen on their termination as a result of closure.xxx xxx xxx 12. The above averment has remained un-controverted.

13. On the aspect of delay, the workman has averred thus in the claims statement: 13. The 1st party workman after the aforesaid illegal termination was very much dejected and desperated in life. Further, he was making hectic efforts to persuade

the 2nd party Management to provide him job by giving up the unfair acts. The 1st Party workman has written various letters/communication to the head office requesting them to provide him job. He has done so with a view to get back his job without approaching any Court of law and to avoid the expenditure going to be incurred in that regard. The 1st Party workman has also sent various e-mail messages to the 2nd Party Management till recently requesting for job to avoid multiplicity of the proceedings. Further, the 1st W.P.No.10532/2008 12 Party workman was suffering from financial problems having no alternative source of livelihood. He is facing hardship all along to meet both ends. He was forced to incur huge debts to survive also. Hence, he could not approach the labour authorities immediately after the termination of his services and he was bonafidely persuading the 2nd Party Management to do justice to him. Even the 2nd Party Management also chosen to assure him orally several time to consider his request and to provide him job. Unfortunately, till today, no such steps are taken by the 2nd Party Management to provide job to the 1st Party workman. As such, some delay has been caused in approaching the labour authorities. 14. The Honble Supreme Court in the case of Prabhakar v. Joint Director, Sericulture Department and another (supra), has held as follows: 36. Thus, a dispute or difference arises when demand is made by one side (i.e. workmen) and rejected by the other side (i.e. the employer) and vice versa. Hence an industrial dispute cannot be said to exist until and unless the demand is made by the workmen and it has been rejected by the employer. How such demand should be raised and at what stage may also be relevant but we are not concerned with this aspect in the instant case. Therefore, what would happen if no demand is made at all at the time when the cause of action arises?. In other words, like in the instant case, what would be the consequence if after the termination of the services of the petitioner on 1-4-1985, the petitioner does not dispute his termination as wrongful and does not make any demand for reinstatement for a number of years?. Can it still be said that there is a dispute?. Or can it be said that W.P.No.10532/2008 13 workmen can make such demand after a lapse of several years and on making such demand dispute would come into existence at that time. It can always be pleaded by the employer in such a case that after the termination of the services when the workman did not raise any protest and did not demand his reinstatement, the employer presumed that

the workman has accepted his termination and, therefore, he did not raise any dispute about his termination. It can be said that workman, in such a case, acquiesced into the act of the employer in terminating his services and, therefore, accepted his termination. He cannot after a lapse of several years make a demand and then convert it into a dispute what had otherwise become a buried issue.

37. Let us examine the matter from another aspect viz. laches and delays and acquiescence.

38. It is now a well-recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity delay defeats equities. xxx xxx xxx 42.2. Dispute or difference arises when one party makes a demand and the other party rejects the same. It is held by this Court in a 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 W.P.No.10532/2008 14 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 exists. 42.3. 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 cease to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances disclose 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. (emphasis supplied) 15. In the light of specific un-controverted averment made by the management that, it has paid a sum of ` 92,127/-, which includes excess compensation of ` 42,000/- and in the absence of cogent reasons for delay, in my view, the ratio of the judgment in the case of Prabhakar (supra), is applicable to the facts of this case. The workman has received the compensation W.P.No.10532/2008 15 in the year 2001. He has complained to the Labour and Conciliation Officer of his wrongful termination in the year 2005. The demands, if any, made by the workman in the interregnum are not placed on record. Therefore, it is logical to infer that, the workman acquiesced into the act of employer in terminating his services and accepted the termination.

16. In the authority cited by Shri Narayanaswamy, in the case of Raghubir Singh (supra), the workman therein was arrested and sent to judicial custody in a criminal case on 15.9.1994. He was terminated on 21.10.1994. After his acquittal on 11.7.2002, workman approached the management to join his duty. He was informed that, his services stood terminated w.e.f. 21.10.1994. On facts, the Honble Supreme Court has recorded in paragraph No.19 that, since the workman was not found in his village residence nor did any one know his whereabouts, after making efforts to serve charge sheet for his unauthorized absence, his services were terminated. It has further recorded in paragraph No.42 that, the workman raised the dispute after he was acquitted in the criminal case. In contrast, in case on hand, W.P.No.10532/2008 16 there is no justifiable explanation for the delay in initiating conciliation proceedings.

17. Thus, this writ petition must succeed on both the grounds of jurisdiction and the delay.

18. In the result, the writ petition is allowed and the impugned order No.PE610LrJA2006dated 5.7.2006 passed by the Government of Karnataka (Annexure A) and all further proceedings thereon are quashed. Sd/- JUDGE No costs. cp*