

**State Vs. Shankar Lal**

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**SooperKanoon Citation :** [sooperkanoon.com/771427](http://sooperkanoon.com/771427)

**Court :** Rajasthan

**Decided On :** Nov-02-2001

**Reported in :** [2002(95)FLR937]; (2002)IVLLJ167Raj; RLW2003(4)Raj2106; 2002(2)WLC79

**Judge :** P.P. Naolekar, J.

**Acts :** [Industrial Disputes Act, 1947](#) - Sections 10; [Constitution of India](#) - Article 226

**Appeal No. :** S.B. Civil Writ Petition No. 4345 of 2000

**Appellant :** State

**Respondent :** Shankar Lal

**Advocate for Def. :** Depak Goyal, Adv.

**Advocate for Pet/Ap. :** K.S. Chandel, Adv.

**Disposition :** Writ petition dismissed

**Judgement :**

**Naoleker, J.**

1. With the consent of the learned counsel appearing for the respective parties this matter is finally heard and disposed of.

2. Services of respondent No. 1, who was Chowkidar in Command Area Development, Kola, were terminated by order dated 30.5.1983, he raised the dispute of his termination before the Conciliation officer by an application dated 13.9.1993. The matter has been referred to the labour court for consideration of the industrial dispute including the question of delay of 10 years in raising the dispute. The labour court, by its order dated 26.6.2000, has directed reinstatement of respondent No. 1 but has not granted back-wages from 30.5.1983 onwards as the petitioner has not approached the labour Court immediately after the services have been terminated and approached the service tribunal after 10 years. Aggrieved by the said order the petitioner filed the present writ petition in this court.

3. It is submitted by the learned counsel for the petitioner that the petitioner at the very initial stage has raised an objection for raising an industrial dispute after 10 years and thus, the labour court should not have condoned the delay. It is further submitted that on reference should have been made to the labour court after the delay of 10 years.

4. In the matter of *Jai Bhagwan v. Management of the Ambala Central Co-operative Bank Ltd. (1)*, the Apex Court declined to set aside the order of reinstatement of the workman who was shown to have approached the Court after a prolonged delay. However, in the circumstances of the case, the court directed the workman to be reinstated in service with continuity from the date on which his services were terminated but having regard to the fact that he had raised the industrial dispute after a considerable delay without doing anything in the meanwhile he was not awarded the back-wages. The grant of half back wages from the date of termination of service until the date of order and full back wages from that date till his reinstatement was found fit in the circumstances to meet the ends of justice.

5. In the case of *H.M.T. Ltd. v. Labour Court, Ernakulam, (2)*, the Supreme Court has held that where there was delay of 14 years in invoking the jurisdiction of the Court, this Court found that instead of full back wages the grant of 60% of the back-wages upon the reinstatement of the workman would meet the ends of

justice.

6. In the case of *Ajaib Singh v. Sirhind Co-operative Marketing-cum-Processing Service Society Ltd.* (3), the Supreme Court has held that the provisions of Article 137 of the Schedule to Limitation Act, 1963, are not applicable to the proceedings under the Act and that the relief under it can not be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour Court or Board, dealing with the case can appropriately would the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination of dismissal.

7. Thus, it is clear that Article 137 has no application. The delay if it is found by the labour court, is in existence then the relief which is granted can be moulded considering the delay caused in making the reference. In the present case while granting reinstatement to the respondent No. 1 the labour court declined to grant back-wages from 30.5.1983 to 13.9.1993 and granted back-wages only 30%. Thus, the labour court has sufficiently modified the relief considering the fact that the industrial dispute was raised after 10 years.

8. In view the aforesaid, I do not find any reason to interfere with the order passed by the labour court. The writ petition is dismissed. However, in the facts and circumstances of the case there shall be no order as to costs.