

M. Ramanathan Vs. the General Manager, Heavy Vehicles Factory and Another

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Court : Chennai

Decided On : Aug-28-2012

Judge : K. Chandru

Appeal No. : W.P.No.15005 of 2008

Appellant : M. Ramanathan

Respondent : The General Manager, Heavy Vehicles Factory and Another

Advocate for Pet/Ap. : For the Petitioner: S.R. Rajagopal, Advocate. For the Respondents: R1, S.Y. Masood, Advocate.

Judgement :

(Prayer: This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records of the second respondent in I.D.No.88 of 2006, quash the order dated 6.12.2007 insofar as confirmation of charges framed and punishment imposed on the petitioner and direct the second respondent to make payment of full backwages and all attendant benefits inclusive of the terminal benefits.)

1. The petitioner has filed the present writ petition seeking to challenge an Award passed by the Central Government Industrial Tribunal-cum-Labour Court (for short CGIT), Chennai made in I.D.No.88 of 2006, dated 06.12.2007 and after setting

aside the same, seeks for a direction to make payment of full backwages and all attendant benefits including terminal benefits. By the impugned Award, the labour court held that the removal of the petitioner was legal and justified and he was not entitled for any relief.

2. The writ petition was admitted on 26.6.2008. On notice, the first respondent entered appearance. It is seen from the records that the petitioner was removed from service by an order dated 27.2.1971. Thereafter, he filed an appeal before the General Manager, Heavy Vehicles Factory, i.e., the first respondent herein. The appeal was rejected on 08.03.1971. The petitioner thereafter sent an appeal to the Government of India and the same was rejected on 21.2.1972. He subsequently had raised an industrial dispute before the Central Government Labour Department. The petitioner did not explain as to why he took more than 25 years for raising the dispute except by stating that he was making representations. On the report of failure sent to the Central Government, the Government of India, Ministry of Labour, by their order dated 16.2.1999 had referred the dispute for adjudication by the Tamil Nadu Industrial Tribunal, Chennai. The Tamil Nadu Industrial Tribunal took up the dispute as I.D.No.40 of 1999 and issued notice to both parties. The petitioner filed a claim statement during May, 1999. On notice, the first respondent had filed a counter statement during March, 2000. Thereafter, the evidence was let in. The Industrial Tribunal by an Award dated 31.1.2001 held that the removal of the petitioner was justified and he was not entitled for any relief.

3. Aggrieved by the same, the petitioner filed a writ petition being W.P.No.10709 of 2001. The said writ petition after notice to the first respondent was allowed in favour of the petitioner on technical ground, i.e., in view of the constitution of the second respondent and the Government of India's directive by an order dated 28.11.2000 that all matters where references have been made by the Central Government, be transferred to the second respondent Tribunal. Hence the State Tribunal lost its jurisdiction to continue the proceedings. Therefore, the award dated 31.01.2001 was set aside and the matter was remitted for fresh disposal by the second respondent CGIT. It is thereafter the second respondent took up the dispute as I.D.No.88 of 2006 and proceeded to dispose of the same by the

impugned Award dated 06.12.2007. The Tribunal held that the first respondent was an industry and the dispute was maintainable under the provisions of the Industrial Disputes Act. But on the question of merit of the case, it found that on 11.12.1970, the petitioner along with five others were suspended. The allegation was that the petitioner was absent from work without prior permission from the supervisory staff. The charge sheet was issued by the General manager. An enquiry was held in which witnesses were examined. It was stated in the enquiry that it was only at the instigation of the petitioner, the work was stopped during the relevant hour. The petitioner had clearly incited others to desist from doing their trade and it is a clear case of misconduct. The enquiry held against him was fair and proper. The charge sheet was issued by the appropriate authority. There is no rule that the subordinates cannot conduct the enquiry. The evidence recorded in the enquiry was not vitiated by any perversity. The work stoppage on 11.12.1970 was directly attributable to the petitioner. Hence he was not entitled for any relief.

4. Though, in the counter statement in paragraph 22, it was contended that since the removal took place in the year 1972 and the dispute raised after 25 years was not maintainable, the Tribunal did not go into the said issue for reasons best known.

5. This court is not inclined to interfere with the Award passed by the second respondent CGIT. The CGIT though did not go into the question of laches, but dealt with the merits of the case and held against the petitioner. Such a finding of fact cannot be interfered with by this court. In this context, it is necessary to refer to two decisions of the Supreme Court wherein the relief was declined on the ground of unexplained delay.

6. The Supreme Court in **Indian Iron and Steel Co. Ltd. v. Prahlad Singh**, reported in **(2001) 1 SCC 424** in paragraphs 10 and 12 had observed as follows :

"10. In our view on the facts of the case in hand the aforementioned two decisions were of no avail to support the case of the respondent. The learned Single Judge also found fault with the Tribunal as to the finding that the claim of the respondent was too stale to grant any relief when parties had not raised such a plea. When the Tribunal on proper and objective appreciation of the material on record found

that the claim was made by the respondent after 13 years, it was open to it to refuse relief to the respondent. Moreover, the Tribunal did not refuse relief merely on the ground of delay and laches as is evident from para 25 of the order extracted above, inasmuch as the Tribunal has recorded that even without considering the question of delay the respondent had lost his lien on his appointment.

12. Whether relief can be declined on the ground of delay and laches, depends on the facts and circumstances of each case. In this case the claim was made almost after a period of 13 years without any reasonable or justifying ground and there was nothing on record to explain this delay as held by the Tribunal. When the respondent did not make claim for 13 years without any justification and on merits also he had no case, the Tribunal did not rightly grant him any relief. Even otherwise the findings of facts recorded by the Tribunal in the light of the Standing Orders aforementioned cannot be said to be untenable or perverse."

7. Though subsequently the Supreme Court held that there is no yardstick for fixing any time limit for reference, yet in the judgment in **Asstt. Engineer, CAD, Kota v. Dhan Kunwar** reported in **(2006) 5 SCC 481** the Supreme Court had declined to grant any relief on the ground of delay. In paragraphs 3,6 and 9, the Supreme Court had observed as follows :

"3. Questioning the correctness of the award a writ petition was filed before the High Court. Learned Single Judge dismissed the same holding that merely because the claim was raised after about eight years, that did not disentitle the workman to get relief and the Labour Court was justified in awarding only 30% back wages. The orders of the Labour Court and the learned Single Judge were questioned by filing appeal before the Division Bench. By the impugned order the same was dismissed.

6. It may be noted that so far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.

9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, the learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons."

8. In the light of the above, this court do not find any case is made out by the petitioner. Hence the writ petition will stand dismissed. No costs.

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