2025:PHHC:036386

113 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7389-2025 (O&M)
Date of Decision : 18-03-2025

PARAMJEET KUMAR .....Petitioner

VERSUS

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, BATHINDA AND OTHERS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Arshnoor Singh Chugh, Advocate
for the petitioner.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the challenge is to the award passed by the Labour Court dated 24.01.2025, copy of which has been appended as Annexure P-6 by which, the claim raised by the petitioner is with regard to the termination of his services by the respondents vide order dated 19.12.1997 (Annexure P-3) has been rejected.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The petitioner-Workman was working as a Chowkidar in the office of Excise and Taxation, Kotkapura since October, 1993. On 08.05.1995, the petitioner-Workman was appointed as a Peon and he continued working as such when his services were terminated by the respondent on 14.08.1997 (Annexure P-3). The said order was challenged by the petitioner-Workman by filing CWP No.12766 of 1997 and the same was allowed vide order dated 20.10.1997 stipulating therein that as the said order

of termination dated 14.08.1997 has been passed without giving any opportunity of being heard to the petitioner-Workman therefore, appropriate order be passed by the respondents by giving due opportunity of hearing to the petitioner-Workman.

4. Thereafter, in accordance to the order of this Court, a show cause notice was issued to the petitioner-Workman on 03.12.1997 and petitioner-Workman filed a reply to the said show cause notice on 15.12.1997 and ultimately an order was passed by the respondents terminating his services on 19.12.1997 (Annexure P-3). The said order of termination was not challenged by the petitioner-Workman for a period of two decades and the demand notice was raised in the year 2018 qua the order dated 19.12.1997 (Annexure P-3). The challenge against the order dated 19.12.1997 (Annexure P-3) has been raised on the ground that opportunity of personal hearing was not granted the petitioner-Workman, which is contrary to the direction given by this Court while passing order dated 20.10.1997 in CWP No.12766 of 1997 hence, the termination order dated 19.12.1997 (Annexure P-3) passed by the respondents is bad in law.

5. After appreciating the facts as well as evidence brought on record, reference raised by petitioner-Workman has been rejected by the Labour Court, which award dated 24.01.2025 (Annexure P-6) is under challenge before this Court.

6. Learned counsel appearing on behalf of the petitioner-Workman submits that though concededly there is an inordinate delay of two decades in raising the demand against the order terminating the services of the petitioner-Workman dated 19.12.1997 (Annexure P-3) but, the same cannot be a ground to deny the benefit qua the illegal termination of the

petitioner-Workman from his service as, the order of termination dated 19.12.1997 (Annexure P-3) was passed without giving opportunity of "personal hearing" to the petitioner-Workman, as was directed by this Court vide order dated 20.10.1997 under CWP No.12766 of 1997.

7. I have heard learned counsel for the petitioner and have gone through the records of the present case with his able assistance.

8. Qua the said argument, it may be noticed that initially the order of termination of services of the petitioner-Workman passed on 14.08.1997 (Annexure P-3) was set aside on 20.10.1997 by the Division Bench of this Court while passing order in CWP No.12766 of 1997. The ground raised was that without any reason or giving any opportunity to show cause, the order of termination dated 19.12.1997 (Annexure P-3) has been passed and the Division Bench of this Court vide its order dated 20.10.1997 held that the respondents are at a liberty to pass an appropriate order after giving due opportunity of hearing to the petitioner-Workman.

9. It may be noticed that acting upon the direction of this Court, the petitioner-Workman was issued a show cause notice on 03.12.1997 and he filed the reply to the said show cause notice on 15.12.1997 and after considering the said reply, the order terminating services of the petitioner-Workman dated 19.12.1997 (Annexure P-3) was passed.

10. In the facts and circumstances of the present case, once a show cause notice was issued to the petitioner-Workman and the same was replied by the petitioner-Workman, it cannot be said that the order terminating the services of the petitioner-Workman dated 19.12.1997 (Annexure P-3) was passed without giving due opportunity of hearing. The word "hearing" is being interpreted by the petitioner-Workman as a personal hearing.

11. It may be noticed that the personal hearing is not needed once a show cause notice was issued to petitioner to which, the petitioner-Workman had already replied. The same comprises as the personal opportunity of hearing.

12. The personal hearing was not required to be given in every circumstance especially when, the grievance of the petitioner-Workman had already been raised by him in his reply to the show cause notice, which reply has been duly considered by the respondents while passing an order terminating the services of the petitioner-Workman on 19.12.1997 (Annexure P-3).

13. Learned counsel for the petitioner-Workman further submits that the impugned order passed by the Tribunal rejecting the claim of the petitioner-Workman qua his termination is on the ground that the petitioner-Workman did not raised the grievance in a time bound manner as the same was passed in December, 1997. It is worthwhile to note that as per the judgment of the Hon'ble Supreme Court of India in Civil Appeal No.1852 of 1989 with Civil Appeal No.4772 of 1989 titled ***"State of Punjab Vs. Gurdev Singh and Ashok Kumar"*** decided on 21.08.1991, wherein it has been held that even a void order needs to be challenged within a period of 3 years. The relevant paragraph Nos.4, 8 and 11 of the said judgment is as under:-

> *"XXX.....4. First of all, to say that the suit is not governed by the law of limitation runs afoul of our Limitation Act. The statute of limitation was intended to provide a time limit for all suits conceivable. Section 3 of the Limitation Act provides that a suit, appeal or application instituted after prescribed "period of limitation" must subject to the provisions of Sections 4 to 24 be dismissed although limitation has not*

been set up as a defence. Section 2(J) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 2 (J) also defines, "prescribed period" to mean the period of limitation computed in accordance with the provisions of the Act The Court's function on the presentation of plaint is simply to examine whether on the assumed facts, the plaintiff is within time. The Court has to find out when the "fight to sue" accrued to the plaintiff. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fall within the residuary article. The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the Limitation Act. The residuary article is applicable to every variety of suits not otherwise provided for. Article 113 (corresponding to Article 120 of the Act 1908) is a residuary article for cases not covered by any other provisions in the Act. It prescribes a period of three years when the right to sue accrues. Under Art. 120 it was six years which his been reduced to three years under Article 113. According to the third column in Article 113, time commences to run when the right to sue accrues. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when then the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted [See (i) Mt. Bole v. Mt. Koklam and Ors., (AIR 1930 PC 270 and (ii) Gannon Dunkerley and Co. v. The Union of India (AIR 1970 SC 1433).

8. It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is

inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for.

11. The Allahabad High Court in Jagdish Prasad Mathur and ors. v. United Provinces Government (AIR 1956 All. 114) has taken the view that a suit for declaration by a dismissed employee on the ground that his dismissal is void, is governed by Article 120 of the Limitation Act. A similar view has been taken by Oudh Chief Court in Abdul Vakil v. Secretary of State and Anr., (AIR 1943 Oudh 368). That in our opinion is the correct view to be taken. A suit for declaration that an order of dismissal or termination from service passed against the plaintiff is wrongful, illegal or ultra vires is governed by Article 113 of the Limitation Act. The decision to the contrary taken by the Punjab & Haryana High Court in these and other cases (State of Punjab v. Ajit Singh (1988 (1) SLR 96) and(ii) State of Punjab v. Ram Singh (1986) (3)SLR 379) is not correct and stands over- ruled. .....XXX"

14. Reliance can also be placed upon the judgment of the Hon'ble Supreme Court of India in ***Nedungadi Bank Limited Vs. K.P. Madhavankutty*** *2000 (1) SCR 459,* wherein it has been held that though there is no time limit prescribed for an appropriate Government to exercise its power under the Industrial Disputes Act, 1947 but the power has to be exercised reasonably in a rational manner. The purpose of reference is to keep industrial peace in an establishment. The belated reference of the 7 years was thus held to be destructive to the industrial peace and defeated the very object and purpose of the 1947 Act. The relevant paragraphs read as under:-

"Law does not prescribe any time limit for the appropriate government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was ex facie bad and incompetent.

In the present appeal it is not the case of the respondent that the disciplinary proceedings, which resulted in his dismissal, were in any way illegal or there was even any irregularity. He availed his remedy of appeal under the rules governing his conditions of service. It could not be said that in the circumstances industrial dispute did arise or was even apprehended after lapse of about seven years of the dismissal of the respondent Whenever a workman raises some dispute -

> *it does not become industrial dispute and appropriate government cannot in a mechanical fashion make the reference of the alleged dispute terming as industrial dispute. Central Government lacked power to make reference both on the ground of delay in invoking the power under Section 10 of the Act and there being no industrial dispute existing or even apprehended. The purpose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace and defeats the very object and purpose of the Act. Bank was justified in thus moving the High Court seeking an order to quash the reference in question."*

15. Though, a strict Rule is not to be applied but, there has to be a reasonable explanation qua the inordinate delay so as to consider the claim even if, the same is raised after a delay. The petition-Workman cannot claim that for all intents and purposes, the decision has to be of the petitioner-Workman as to when he/she intends to approach the Court and the Courts are bound to adjudicate upon his claim on merits ignoring the inordinate delay even if, the same is not well explained hence, the said argument cannot be accepted keeping in view the judgment in ***Gurdev Singh's case (supra) and K.P. Madhavankutty's case (supra).***

16. Keeping in view the above, as no perversity has been pointed out in the award dated 24.01.2025 (Annexure P-6), no ground is made out for any interference in the facts and circumstances of the present case.

17. Present petition is dismissed.

18. Pending application, if any, also stands disposed of.

18-03-2025 **(HARSIMRAN SINGH SETHI)**
Sapna Goyal **JUDGE**

NOTE: Whether speaking: YES
Whether reportable: NO