

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 2747 of 2015.

Decided on: May 30, 2015.

Bhagi Devi.

.... Petitioner.

Versus

State of H.P. & ors.

..... Respondents.

Coram

The Hon'ble Mr. Justice Sanjay Karol, J.

The Hon'ble Mr. Justice P.S. Rana, J.

Whether approved for reporting?¹No.

For the Petitioner : Mr. R.S. Chandel, Advocate.

For the respondents : Mr. V.S. Chauhan, Addl. AG with Mr. Vikram Thakur, Dy. AG.

Sanjay Karol, J. (Oral)

It is the petitioner's grievance that vide impugned order dated 17th June, 2013 (Annexure P-1), respondents have wrongly rejected her claim on the ground of inordinate delay and latches.

2. Perusal of the impugned order reveals the solitary ground of rejection being delay. The apex Court in *Raghubir Singh*

¹ ***Whether the reporters of the local papers may be allowed to see the Judgment? yes.***

vs. *General Manager, Haryana Roadways, Hissar*, 2014 (10) SCC 301, has held as under:-

“13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10 (1) (c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10 (1) (c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of *S.M. Nilajkar & Ors. v. Telecom District Manager, Karnatak* 2003 (4) SCC 27 it was held by this Court as follows-

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High court was justified in denying relief to the appellants. We cannot agree In *Ratan Chandra Sammanta and Ors. v. Union of India and Ors.* 1993 AIR (SCW) 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....”

In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate

the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay.

Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

42. It is an undisputed fact that the dispute was raised by the workman after he was acquitted in the criminal case which was initiated at the instance of the respondent. Raising the industrial dispute belatedly and getting the same referred from the State Government to the Labour Court is for justifiable reason and the same is supported by law laid down by this Court in Calcutta Dock Labour Board. Even assuming for the sake of the argument that there was a certain delay and latches on the part of the workman in raising the industrial dispute and getting the same referenced for adjudication, the Labour Court is statutorily duty bound to answer the points of dispute referred to it by adjudicating the same on merits of the case and it ought to have moulded the relief appropriately in favour of the workman. That has not been done at all by the Labour Court. Both the learned single judges as well as the Division Bench of the High Court in its Civil Writ Petition and the Letters

Patent Appeal have failed to consider this important aspect of the matter. Therefore, we are of the view that the order of termination passed by the respondent, the award passed by the Labour Court and the judgment & order of the High Court are liable to be set aside. When we arrive at the aforesaid conclusion, the next aspect is whether the workman is entitled for reinstatement, back wages and consequential benefits. We are of the view that the workman must be reinstated. However, due to delay in raising the industrial dispute, and getting it referred to the Labour Court from the State Government, the workman will be entitled in law for back wages and other consequential benefits from the date of raising the industrial dispute i.e. from 02.03.2005 till reinstatement with all consequential benefits.”

3. Also the apex Court in *Jasmer Singh Versus State of Haryana and another*, (2015) 4 SCC 458, has held as under:-

“Issue 3

14. On issue No.3, after adverting to the case of *State of Punjab V. Kali Dass*, 1996 SCC OnLine P&H 1359, wherein the High Court has observed that the workman cannot be allowed to approach the Labour Court after 3 years of termination of his services, upon which reliance placed by the respondent employer with

reference to the said plea, the Labour Court has rightly placed reliance upon the judgment of this Court in *Ajaib Singh V. Sirhind Coop. ktg.-cum-Processing Service Society Ltd.*, (1999) 6 SCC 82, in which it is observed by this Court that there is no period of limitation to the proceedings in the Act.

15. Accordingly, Issue 3 is answered against the respondent management. The relevant paragraph from *Ajaib Singh (supra)* is extracted hereinbelow: (SCC p. 90, para 10)

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot 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 mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.””

4. In view of the settled position of law, the impugned order is thus legally not sustainable. Consequently, impugned order (Annexure P-1) is quashed and set aside with the direction to respondents No.1 and 4 to take appropriate action in accordance with law. Needful be positively done within a period of four weeks from the date of production of certified copy of the judgment.

5. With the aforesaid observations, present petition stands disposed of, so also pending application(s), if any.

**(Sanjay Karol),
Judge.**

**(P.S. Rana)
Judge.**

**May 30, 2015,
(vs)**