HIGH COURT OF KARNATAKA

Bench: Justice Jyoti Mulimani

Date of Decision: 16 November, 2023

WRIT PETITION NO.40931 OF 2019 (L-KSRTC)

KARNATAKA

VS

C.D.RAMAIAH etc.

(R1(a), R1(b) & R1(c) ARE SERVED AND UNREPRESENTED)

Sections, Acts, Rules, and Articles Mentioned

Articles 226 and 227 of the Constitution of India

Section 2-A, Section 10 of the Industrial Disputes Act

Subject: Judicial review of an Industrial Tribunal's award concerning a disciplinary action case, focusing on the aspects of delay and laches in raising industrial disputes.

Headnotes:

Writ Petition – Delay and Laches – Challenging of Disciplinary Action:

Karnataka State Road Transport Corporation vs. C.D. Ramaiah & Ors. – Petition challenging the Industrial Tribunal's award setting aside disciplinary action – Tribunal's award based on delay condonation overruled due to substantial delay and laches in raising the dispute – Original disciplinary action confirmed. [Paras 2, 6-8]

Industrial Dispute – Adjudication of Delayed Claims:

Consideration of the delay in raising industrial disputes – Reference to the Hon'ble Apex Court's decision in Prabhakar vs. Joint Director, Sericulture Department and Another – Emphasis on the existence of an industrial dispute and the need for timely raising of disputes to avoid stale claims. [Paras 5-6]

Tribunal Award – Validity and Judicial Review:

Judicial scrutiny of the Industrial Tribunal's decision – Tribunal's condonation of delay in raising dispute found unjustified based on the Apex Court's guidelines in Prabhakar's case – Tribunal's award set aside, confirming the original order of punishment. [Paras 7-8]

Decision – Confirmation of Disciplinary Action:

High Court set aside the award of the Industrial Tribunal – Order of punishment dated 18.03.2003 against the respondent confirmed – Writ petition allowed in favor of the petitioner (Karnataka State Road Transport Corporation). [Para 8]

Referred Cases:

Prabhakar vs. Joint Director, Sericulture Department and Another reported in (2015) 15 SCC 1

- Sapan Kumar Pandit vs. U.P State Electricity Board and Others reported in 2001 AIR SC 2562

Representing Advocates

For Petitioner: Smt. Renuka H.R., Advocate

For Respondents: Unrepresented (R1(a), R1(b) & R1(c))

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, SEEKING CERTAIN RELIEFS.

THIS WRIT PETITION IS COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Smt.H.R.Renuka., learned counsel for the petitioner has appeared in person.

The notice to the proposed respondents 1 (a) to (c) was ordered on 24.05.2022. The notice was issued on 28.06.2022. A perusal of the office note depicts that notice to proposed respondents 1(a) to (c) was served and they are unrepresented. They have neither engaged the services of an advocate nor conducted the case as party in person.

2. The brief facts are these:

The respondent was a Driver in the establishment of the Corporation. On 18.08.2002, he was entrusted with the duty of driving the bus bearing

No.KA16-F06 booked on contract basis, he was permitted to carry only sixty adult passengers, he had unauthorizedly carried eight passengers. He was issued with Articles of charge alleging misconduct, he was also notified of his past conduct. He submitted his reply to the Articles of charge denying the charges. He was subjected to disciplinary inquiry, the inquiry officer after holding a detailed inquiry submitted his findings holding that the charges are proved. The respondent was furnished with findings of the inquiry officer vide second show cause notice. He submitted his reply to the second show cause notice. On 18.03.2003, the disciplinary authority accepted the findings of inquiry officer and imposed an order of punishment by reducing the basic pay by one stage permanently and the period of suspension was treated as such.

After a lapse of almost seven years, the respondent raised a dispute and the same came to be referred for adjudication to the Industrial Tribunal, Bengaluru in I.D.No.231/2010. The Industrial Tribunal held that the domestic inquiry conducted by the Corporation was not fair and proper. Hence, the parties led evidence on the merits of the case. The Industrial Tribunal vide award dated:20.04.2018 condoned the delay and set-aside the order of punishment. It is this award that is called into question in this Writ Petition on several grounds as set-out in the Memorandum of Writ Petition.

3. Learned counsel for the petitioner has urged several contentions. Heard, the contentions urged on behalf of the petitioner and perused the Writ papers with utmost care.

4. The following points would arise for consideration:

1. Whether the Industrial Tribunal is justified in concluding that there is no delay and the dispute is not stale?

2. Whether the award of the Tribunal requires interference by this Court?

The facts are sufficiently stated and do not require reiteration. Suffice it to note that, the respondent came under a disciplinary proceedings and

was visited with an order of punishment back in the year 2003 i.e., on 18.03.2003. Strangely, he raised the dispute after a lapse of almost seven years.

5. Smt.H.R.Renuka., learned counsel appearing on behalf of the Corporation in presenting her arguments strenuously urged that there is an inordinate delay of almost seven years in raising the dispute. She relied upon the decision of the Hon'ble Apex Court in ***PRABHAKAR VS. JOINT DIRECTOR, SERICULTURE DEPARTMENT AND ANOTHER*** reported in ***(2015) 15 SCC 1*** to contend that the Hon'ble Apex Court has settled the law regarding delay and laches. Learned counsel submitted that she is not urging any contentions on the merits of the case and requested the Court to give finding only on delay and laches.

6. The issue revolves around the delay and laches. It is not in dispute that the delinquent came under a disciplinary inquiry on account of misconduct and he was visited with an order of punishment back in the year 2003 i.e., on 18.03.2003. Strangely, he raised the dispute in the year 2010. The Tribunal placed reliance on the decision of the Hon'ble Apex Court in ***SAPAN KUMAR PANDIT Vs. U.P STATE ELECTRICITY BOARD AND OTHERS*** reported in ***2001 AIR SC 2562***. The Tribunal condoned the delay solely on the ground that the respondent had approached the Conciliation Officer, which ended in a failure. The Tribunal concluded that the delay in raising the dispute is not intentional but it is bonafied. Hence, there is no delay and the dispute is not stale. This is incorrect. The reason is apparent. The reasons accorded to condone the delay are contrary to the law laid down by the Apex Court in ***PRABHAKAR***'s case.

It is pivotal to note that the Apex Court in ***PRABHAKAR V/S. JOINT DIRECTOR, SERICULTURE DEPARTMENT AND ANOTHER*** reported in ***(2015) 15 SCC page 1*** has laid down the law about delay and laches. In paragraphs 42.1 to 42.6 and 44, the Apex Court has held as under:

"***42.1.*** *An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2-A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that "any industrial dispute exists or is apprehended". The words "industrial dispute exists" are of paramount importance, unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute.*

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 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.

42.4. *Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the Labour Authorities seeking reference or did not invoke the remedy under Section 2-A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for a number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection.*

42.5. *Take another example. A workman approaches the civil court by filing a suit against his termination which was pending for a number of years and was ultimately dismissed on the ground that the civil court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement.*

At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that the dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum.

42.6. *In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an "existing dispute." In such*

circumstances, the appropriate Government can refuse to refer. In the alternative, the Labour Court/ Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted.

***44.** To summarize, although there is no limitation prescribed under the Act for making a reference under Section 10(1) of the ID Act, yet it is for the "appropriate Government" to consider whether it is expedient or not to make the reference. The words "at any time" used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the ID Act. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed in as much as unless there is a satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after a long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers' financial arrangement and to avoid dislocation of an industry."*

7. Reverting to the facts of the case, it is not in dispute that the order of punishment was passed on 18.03.2003. However, the respondent chose to challenge the order of punishment after a lapse of almost seven years. There is an inordinate delay in raising the dispute. The dispute had become stale as of the date of the adjudication. The Industrial Tribunal has over-looked this aspect of the matter and erroneously proceeded and condoned the delay. The Tribunal ought to have rejected the dispute on the grounds of delay and laches. In any view of the matter, the award of the Industrial Tribunal cannot be sustained. The Award of the Industrial Tribunal is otherwise erroneous and unjust. Since the dispute is rejected on the grounds of delay and laches, there is nothing to discuss on the merits of the case as requested by the counsel for the petitioner.

For the reasons stated above, the award of the Industrial Tribunal is liable to be set-aside. Accordingly, it is set-aside.

8. The Writ of Certiorari is ordered. The award dated:20.04.2018 passed by the Industrial Tribunal, Bengaluru in I.D No.231/2010 vide Annexure-J is quashed. The order of punishment dated:18.03.2003 is confirmed.

9. Resultantly, the Writ Petition is ***allowed.***