* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 6904/2008

% Judgment delivered on: 24.02.2010

Shri Naresh Kumar ..... Petitioner
Through: Mr. Anuj Agarwal, Advocate

versus

Municipal Corporation of Delhi ..... Respondent
Through: Mr. Himanshu Upadhyay and Mr. Nitin Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the impugned award 20.10.2007 passed by the Ld. Labour Court in I.D No. 1260/2006 wherein the reference was answered against the workman.

2. Brief facts relevant for deciding the present petition are that the petitioner joined the respondent corporation as Beldar on 15.09.1996 and was terminated from his service on 29.05.1997. Thereafter, on 27.10.2006, the petitioner raised an industrial dispute bearing ID No.1260/2006 and vide order dated 20.10.2007 the same was decided against the petitioner workman. Feeling aggrieved with the same, the petitioner has preferred the present appeal.

3. Mr. Anuj Aggarwal, counsel for the petitioner submits that the petitioner had joined the employment of the respondent MCD as a Beldar on 15.09.1996 and he was terminated from his service on 29.05.1997 without giving any reason and without following the procedure prescribed under Section 25-F of the I.D.Act. Counsel for the petitioner further submits that the respondent MCD produced one witness, Mr. Bharat Bhushan Bajaj, in support of their defence, who in his cross-examination clearly admitted the fact that no chargesheet was issued against the petitioner nor any procedure under Section 25F of the I.D. Act was followed by the respondent before terminating the services of the petitioner but the said admission on the part of the said

witness was ignored by the Ld. Labour Court. Counsel further submits that the Ld. Labour Court did not consider the ratio of the judgment of the Apex Court in ***Sriram Industrial Enterprises Ltd. Vs. Mahak Singh & Ors. AIR 2007 SC 1370*** wherein it was held that once the workman has discharged his initial onus to prove the factum of employment and period of employment then the onus would shift upon the management to prove to the contrary. The contention of the counsel for the petitioner is that the petitioner workman sufficiently proved on record that he had worked for more than 240 days preceding the date of his termination. Explaining the delay in raising the industrial dispute by the petitioner workman, counsel for the petitioner submits that the delay of about 7-1/2 years took place on the part of the petitioner for raising the dispute as time and again he was being given assurance by the respondent that the management would favourably consider his case but since the respondent management failed to keep its word, therefore ultimately the petitioner raised the industrial dispute after a gap of 7 ½ years. Counsel thus submits that the petitioner had sufficiently explained the delay on his part. Even in the case of proven delay, the

counsel contended that at the most the Ld. Labour Court could have moulded the relief of either denying the full back wages or allowing part back wages. In support of his arguments counsel for the petitioner placed reliance on the judgment of the Apex Court in ***Ajaib Singh Vs. Sirhind Cooperative Marketing-cum-Proceessing Service Society Limited & Anr. (1999) 6 SCC 82*** and ***Director, Fisheries Terminal Division Vs. Bhikubhai Meghajibhai Chavda 2009 (13) SCALE 636.***

4. Refuting the said submissions of the counsel for the petitioner, counsel for the respondent, on the other hand, supported the findings given by the Ld. Labour Court in the said award. Counsel submits that the petitioner was engaged on daily wages w.e.f. 15.09.1996 and he worked only upto 14.10.1996 on the post of Beldar, and therefore, he did not complete 240 days continuous service with the respondent. Counsel thus submits that once having not completed 240 days of service, it was not obligatory upon the respondent to have followed the procedure laid down under Section 25-F of the I.D. Act. Counsel further submits that there was a delay of seven-and-a-half years in raising the said Industrial Dispute and since no explanation was given by

the petitioner for such a long delay, therefore, the said dispute became stale. Counsel thus submits that no fault can be found with the findings given by the Ld. Labour Court and in any case the same cannot be termed as illegal or perverse in the eyes of law.

5. I have heard counsel for the parties and perused the records.

6. It is a settled legal position of law that the initial onus, to prove that he has worked for a continuous period of 240 days preceding the date of his alleged termination is on the workman. It is further not in dispute that for applicability of Section 25-F of the I.D. Act, the workman, either through oral or documentary evidence has to discharge the initial onus for proving the factum of his employment with the management for a continuous period of 240 days. In the event of not being in possession of any documentary evidence he can very well summon the documentary evidence from the management or from any other statutory authorities where the management has shown the employment of the workman. After the discharge of the initial burden by the workman the onus would shift on the respondent management to

produce such cogent and reliable evidence so as to demolish the case of the workman. It is also no more *res integra* that mere filing of an affidavit alone would not be sufficient to prove the factum of employment or the duration of the period of employment for which the workman has worked with the management. The petitioner workman pleaded his employment with the respondent management from 15.09.1996 to 29.05.1997 while respondent management contended that the petitioner had worked only for a short period i.e. from 15.09.1996 to 14.10.1996. Based on the evidence led by both the parties, the Labour Court found that the documents placed on record, although not properly proved, but still did not in any way establish that workman worked for 240 days with the respondent management. The Ld. Labour Court further held that the petitioner did not file any application so as to summon the relevant records from the respondent management. In the absence of any documentary evidence proved on record by the petitioner workman and also due to the failure of the petitioner to have summoned record from the respondent management, I do not find any infirmity or perversity in the findings of the Ld. Labour Court holding that the petitioner failed

to prove the continuous employment with the respondent MCD for a period of 240 days preceding the date of his alleged termination.

7. Adverting to the second issue of the said claim not being stale, the submissions raised by the counsel for the petitioner in my view are equally devoid of any merit. The judgment of the Apex Court in the case of ***Ajaib Singh*** (supra) would not help the petitioner as in the facts of the present case the respondent management in their written statement has raised a preliminary objection on the very maintainability of the claim of the respondent workman being time barred. It would be pertinent here to refer to the judgment of the Apex Court in the matter of ***Haryana State Coop. Land Development Bank Vs. Neelam (2005) 5 SCC 91*** where while distinguishing the fact situation in ***Ajaib Singh's case (supra)*** it held as under:-

> "*In Ajaib Singh (supra), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the*

Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (supra), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court.

The decision of Ajaib Singh (supra) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. v. Uttam Manohar Nakate, JT [2005 (1) SC 303], and Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr. para 42 - (2005) 1 SCALE 385]".

8. As per the petitioner his services were illegally terminated on 29.05.1997 and he served the demand notice on the respondent management on 27.10.2004 i.e. after about seven-and-a-half years and the only explanation given by the petitioner for such delay is that he was waiting for the outcome of an Industrial Dispute raised by his colleague. Undoubtedly, the Industrial Disputes Act is a beneficial piece of social Legislation and the said Act was brought on the Statute book with the object to ensure social justice to both the employers and employees. It is true that no specific limitation has been provided under the Act for raising

an Industrial Dispute by the workman and as per the settled legal position the provisions of Article 137 of the Limitation Act having been not made applicable to the proceedings under the Industrial Dispute Act, the delay as such was thus not held to be fatal to the very maintainability of the claim. As per the view taken by the Apex Court in ***Ajaib Singh's*** **case** and in a catena of judgments the relief could be moulded either by declining the grant of back wages or to direct the payment of part of the back wages. The Apex Court also held that it is not the function of the courts to prescribe the limitation once the legislature in its wisdom had thought fit not to prescribe any period. In ***Nedungadi Bank Ltd Vs. K.P. Madhavankutty (2000) 2 SCC 455*** where also one of the Hon'ble Justice was Justice S. Saghir Ahmad who was also a member of the Bench in ***Ajaib Singh's*** **case,** the court opined as under:-

> *"6. 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 a lapse of about seven years of the 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."

9. It is trite that the courts and tribunals having plenary jurisdiction to exercise discretionary power to grant an appropriate relief to the parties. Undoubtedly, the prime objective of the Industrial Disputes Act is to impart social justice to the workman but the moot question is, "can this liberty of social justice extend to a workman who is least bothered to raise his claim for years together rendering his claim as stale?" Ordinarily a person who is thrown out of employment is expected to raise an Industrial Dispute questioning the termination of his service within a reasonable time, and if not within a reasonable time, then such a workman must offer some reasonable explanation for raising the dispute at a belated stage and then the Labour Courts and Tribunals can apply their judicial mind to determine as to whether the delay on the part of the petitioner workman can be

ignored or not. In the fact situation of the present case the respondent in the written statement took objection to the very maintainability of the claim of the petitioner on the ground of delay and laches and the Ld. Tribunal did not find the explanation given by the petitioner as sufficient for not raising the Industrial Dispute for about seven-and-a-half years. I do not find any illegality or infirmity in the order of the Tribunal and the explanation does not satisfy the judicial conscience of this court as to why he suddenly woke up after a slumber of seven-and-a-half years.

10. Hence, in the light of the aforesaid legal position, I do not find any merit in the present petition and the same is hereby dismissed.

February 24, 2010 **KAILASH GAMBHIR,J**
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