CASE NO.:
Appeal (civil) 40 of 2000

PETITIONER:
MADAN PAL SINGH

RESPONDENT:
STATE OF UP. AND ORS.

DATE OF JUDGMENT: 06/01/2000

BENCH:
S. SAGHIR AHMAD & D.P. WADHWA

JUDGMENT:
JUDGMENT

2000 (1) SCR 69

The Judgment of the Court was delivered by D.P. WAJDHWA, J. Leave panted.

Appellant Madan Pal Singh is aggrieved by judgment dated October 7,1998 of the Allahabad High Court dismissing his writ petition filed under Article 226 of the Constitution. In the writ petition he had challenged the Award dated January 31, 1992 of the Labour Court, Ghaziabad holding that there is no industrial dispute between him and the New Okhla In-dustrial Development Authority (NOIDA) Ghaziabad. By order dated September 16, 1988 State of U.P. referred the fol-lowing question for adjudication by the Labour Court:-

"Whether the termination dated July 7, 1986 by the manage-ment employers of the workman Sri Madan Lal work agent is justified and legal? If not, to what relief the workman is entitled."

Labour Court, it appears, after recording all the evidence came to the conclusion that the management, i.e., NOIDA never employed Madan Lal; nor his services were terminated; and that there was thus no question of terminating the services of Madan Lal. It, therefore, held that Madan Lal was not entitled to any relief in the case. This mistake happened because in the reference order the name of the appellant Madan Pal Singh was mentioned as Madan Lal. The employer said that it, had no employee by the name Madan Lal working with it whose services could be alleged to have been terminated. Based on this plea the Labour Court gave the Award and denied any relief to the appellant Madan Pal Singh.

Facts which appear from the impugned judgment of the High Courts may be stated briefly.

Madan Pal Singh was employed as work agent by NOIDA on a day-to-day basis and was being paid Rs. 16 per day as wages. He worked during the period from July 1,1982 to August 7,1986. After August 7,1986 Madan Pal Singh was not given any employment. He approached the Conciliation Officer, Ghaziabad. In his application before the Conciliation Officer he committed mistake and mentioned his name as Madan Lal instead of Madan Pal Singh. He applied to the Conciliation Officer on March 9,1987 to correct his name. The mistake was, however not rectified and by order dated September 16, 1986 State of UP referred the dispute for adjudication to the Labour Court. The mistake in the name continued and, as as noted above, in the reference order name of the workman was mentioned as Madan Lal and not Madan Pal Singh. Parties filed their written statements before the Labour Court and led evidence.

If we now refer to the Award dated January 31,1992 it will be seen that application before the Conciliation Officer was filed by the appellant on May 20, 1986. The appellant had demanded for regulation of his services.

His services were terminated on July 8, 1986. He demanded from his employer, the NOIDA, on October 3, 1986 that he be taken back in service and paid full back wages. He termed his termination as unjustified and illegal. Since there was no response from the employers the appellant raised the industrial dispute. It was contended by the management that it was an Authority run by the State U.P. and had its own rules and regulations. According to management U.P. Industrial Disputes Act, 1947 was not applicable to them and that the workman was governed by the provisions of the Public Service Tribunal Act, 1976. It was, therefore, submitted by the management that the order of reference of the State of UP was liable to be rejected as the Labour Court had no jurisdiction to adjudicate on the order of reference. On facts the management alleged that Madan Pal Singh had been a casual labourer on daily wages on temporary basis from time to time and on the expiry of the limited period his services used to be terminated. It was also submitted that the appellant was never employed on any permanent post nor was he made permanent and since he was working as casual labourer, as and when required, his services were liable to be terminated at any time without giving any notice or reason. It was also submitted that appellant did not work continuously and that he worked with break from time to time it was further submitted that services of the appellant were not satisfactory and his services could not be con-tinued. There was no violation of any service rules in terminating the services of the appellant. Lastly, it was submitted that the appellant was gainfully employed and that evidence would be adduced for that purpose. In support of his case Madan Pal Singh examined himself. Evidence was led on behalf of the management In his statement Pratap Kumar, Pariyojna Abhiyanta on behalf of the management said that no one by the name Madan Lal was ever employed and services of no Madan Lal were ter-minated on July 8, 1986. In cross-examination, however, he admitted that he knew Madan Lal and Madan Pal who was present in the Court. He denied that Madan Pal's services had been illegally terminated.

When the appellant came to know that his name was written as Madan Lal in the reference order he wrote to the Joint Secretary to the Government of U.P. On September 19, 1991 for correction of the mistake. Appellant sought adjournment from the Labour Court on the ground that he was getting the reference amended. This was objected to by the employer. However, Labour Court, after hearing the parties, concluded that instead of Madan Pal the name of Madan Lal had been mentioned and that there was no dispute between Madan Lal and the management. It said that in spite of the time having been given to the appellant to get the reference amended and mistake rectified nothing was done till the date of the Award. It, therefore, held that there was no relationship between Madan Lal and the management and there was no industrial dispute existing till then. That being so there was no question of terminating the services of Madan lal and that due to ail these reasons the reference was bad. The Award was published on March 16,1992.

On March 24, 1992 State Government amended the reference and said that in place of the existing name of the workman Madan Lal, Madan Pal has been written and be read accordingly.

Appellant again approached the Labour Court and brought to its notice the amended reference and prayed that in the interest of justice necessary order be passed on the reference.

By order dated June 3, 1993 Labour Court noted that order dated March 24,1992 had been received from the State Government and that the appellant submitted application dated may 31,1992 for necessary action in the reference. This was objected to by the management on the ground that no amendment could be made after the Award had been given. Agreeing with the management the Labour Court rejected the application of the appellant. He then filed a writ petition in the High Court challenging the order of the Labour Court, which, as noted above, was dismissed by the impugned judgment.

High Court also observed that appellant was not employed to any regular post after selection in accordance with service rules of NOIDA and his employment was not on regular basis. His employment began in the morning and came to an end in the evening every day. After August 7,1986 appellant was not employed and thus for more than 12 years he was not in service of the management. High Court then went an to hold as under :

"Though the mistake was unintended and could have been rectified by the Conciliation Officer himself when it was brought to his notice but he failed to do so. The reference by the Government was made with the wrong name and for several years the petitioner did not care to get the reference amended. It was only when the respondent in his evidence contended that there was no employee by the name of Madan Lal that the petitioner woke up and moved the Government for rectification. Here again the Government was slow while the Labour Court was quick. The Labour Court decided the reference without waiting for the correction for a reasonable time. Then the petitioner filed this writ petition at his own ease on 13.1.1994. The Stamp Reporter reported that the writ petition was beyond 90 days by 133 days and it has remained pending in this Court for more than 4 1/2 years. The result is that more than 12 years have passed since the petitioner ceased to be employed by the respondent. The petitioner is a contributory to this abnormal delay and if the matter is sent back to the Labour Court it will take further time for the disposal of the matter on merits. The petitioner was merely a daily wager. Therefore, in view of this huge time lag I do not think it will be a proper exercise of the discretion of this court under Article 226 of the Constitution of India to interfere in this matter. The writ petition is, therefore, dismissed. The parties will, however, bear their own costs."

Nothing could be more unfortunate for the poor workman. Justice remained elusive, a far cry for him in spite of so much laws. Slow pace of bureaucracy on the one hand and rage for disposal by the Labour Court on the other led to injustice.

During the course of adjudication proceedings no one was in doubt about the identity of the workman that it was Madan Pal Singh. The management did not raise the preliminary objection about the validity of the reference on the ground that no workman by the name Madan Lal was in its employment and so the reference was bad. Evidence had been led before the Labour Court and it is only at the fag end of the proceedings that it was stated by the management that there was no Madan lal in its employment. No doubt, initially the fault lay on the workman himself when he gave wrong name and then did not pursue for correction of the name. There may have been causes for delay but it cannot be said that the appellant is solely to be blamed for all this. Tirelessly and single handed he has been fighting his case against the might of the State undertaking. If he was in fault to any extent in the delay of disposal of his case all these years and if ultimately he is found to be entitled to relief, the court can certainly mould the relief suitably. Equitable considerations can certainly be taken, into account in such a case.

When it came to its notice that the name of the workman was not correctly mentioned in the reference though there was no doubt about his identity the Labour Court itself could have sought correction of the refer-ence from the State Government, When the appellant approached the State Government for correcting the reference Labour Court certainly could have waited till the State Government amended the reference or otherwise. If the Labour Court did not possess jurisdiction inasmuch as there was no industrial dispute because there was no workman in respect of whom Industrial dispute was sought to be raised, the reference itself was non est and the award a nullity. When the reference had been amended jurisdiction stood conferred on the Labour Court and it could have held proceedings from the stage taking the reference to be valid from the date of its amendment. With the consent of the parties it could have relied upon the evidence which it had recorded before the reference was amended. Whatever the situation this

Court cannot permit injustice to perpetuate.

Accordingly, the impugned judgment of the High Court is set aside and so is the Award dated January 31, 1992 of the Labour Court. Matter will go back to the Labour Court to adjudicate the industrial dispute now between the workman Madan Pal Singh and the management being NOIDA. It shall take on record the evidence which had already been recorded earlier before the amendment of the reference and, if necessary, grant further opportunity to the parties to lead evidence. Matter being old we need not stress for the expeditious disposal of the reference by the Labour Court.

The appeal is allowed with costs which we quantify at Rs. 10,000 Costs shall be payable by the State Government for its not responding to the plea of the appellant in amending the reference in time and thus causing him sufferings and expense all these years.