CASE NO.:
Appeal (civil) 89-90 of 1999

PETITIONER:
RAJA RAM MAIZE PRODUCTS

Vs.

RESPONDENT:
INDUSTRIAL COURT OF M.P. & ORS.

DATE OF JUDGMENT: 21/03/2001

BENCH:
S. Rajendra Babu & S.N. Variava

JUDGMENT:

L...I...T.....T.....T.....T.....T.....T.....T..J
[With C.A.Nos.92-93/99, 100-101/99, 94-95/99, 91/99, SLP(C) Nos. 14115/2000 & 14116/2000]

J U D G M E N T

RAJENDRA BABU, J. :

Three applications under Section 31(3) read with Sections 34 and 61 of the Madhya Pradesh Industrial Relations Act, 1960 [hereinafter referred to as the Act] were filed either on 12.4.1988 or 21.6.1988 by the workers as per the list enclosed to the applications. It is pleaded therein that the appellant is not allowing them to do their job and the same should be held to be illegal, mala fide and unjustified and direct the appellant to allow them to do their job forthwith and pay their wages for the period they were not allowed to do their duty. In the applications, it was alleged that on 22.8.1986 the appellant had filed a case [No.35/MPIR/1986] before the Labour Court, Durg praying that the strike resorted to by the workers with effect from 12.2.1986 may be held to be illegal and the workers may be directed to resume their duties. By an order made on 1.3.1986, the Labour Court directed the workmen, who were applicants in the applications, to resume their duties. However, the appellant was not allowing them to join duty though the workmen had reported for duty, and was also not paying any wages. It was alleged that the appellant had not issued charge sheet nor passed any order of termination of their services. Thus the action of the appellant in not allowing the workmen to resume their duties is wholly illegal, mala fide and unjustified, which amounts to unfair labour practice and the same is also in contravention of the Standing Orders and the Act. A written statement was filed in which preliminary objections were raised to the effect that the applications filed by the workmen are barred by limitation. It was asserted that the cause of action for the dispute, if at all, had arisen on 1.3.1986 when the Labour Court had directed the workmen not to continue the strike and to resume the work and the workmen sought to resume work but the same having been refused, an application is filed in the year 1988. The said application having been

filed beyond two years from 1.3.1986 is clearly barred by limitation and deserves to be dismissed on that ground alone. On merits also, several pleas were raised with which we are not concerned for the present.

The appellant examined 10 witnesses to support its case. None of the workmen who were applicants before the Labour Court examined themselves. However, they examined only witness WW-1 Bhimrao Bagde whose services had been terminated long back. Evidence of non-applicant witness No.3, Shamboo Dayal Gupta was taken note of by the Labour Court to the effect that it is correct to say that the workmen standing outside the factory were asking to take Dushyant Kumar who had been placed under suspension from duty and only then they would come for work only along with Dushyant Kumar. The said witness also stated that the said Dushyant Kumar was found sleeping in the Mill during working hours and after issuing a charge sheet was prevented from coming to duty. The Labour Court found that on 12.2.1986 charge sheet was issued to Dushyant Kumar and was prevented from joining duty, which was the cause of dispute. For about a month from 12.2.1986, the workmen were coming daily to the factory gate shouting slogans and preventing the other workers from coming to duty. The Labour Court found that the cause of action for the dispute arose from the time a show cause notice has been issued on 12.2.1986 to a workman, namely, Dushyant Kumar, who was prevented from entering the factory under the oral orders of the Factory Manager. Thereafter, it was found that the workmen had the legal status to come to the factory and demand allowing of the said Dushyant Kumar to enter the factory and not having permitted them the cause of action for this matter arose yet again. From 12.2.1986 for about one month, the workmen had been coming daily at the factory gate and shouting slogans and had been preventing the other workmen coming for duty. Thus even as late as April, 1989 they were making efforts to come back for duty and thus there was a recurring cause of action for them to resume duty and, therefore, the time prescribed under the Act neither started and nor ended and thus the application filed by the workmen was within the period of limitation. The Labour Court after consideration of the merits of the matter, by a common award made on 1.6.1995, allowed partly the application filed by the workmen and directed the appellant to allow 155 workmen to be allowed to resume duty or if the workmen do not want to join duty, to pay a compensation of Rs.17,500/- to each workman besides costs @ Rs.500/- per workman however, without back wages.

Appeals were preferred to the Industrial Court by the appellant and by workmen to the extent of denying back wages. The Industrial Court took the view that though the workmen used to come to the gate of the mill they were still not willing to do the work. The Industrial Court proceeded to hold that the cause of action had arisen on 1.3.1986, the date on which the Labour Court declared the strike to be illegal vide its order in petition No. 35/MPIR/1986 on 1.3.1986, when the workmen had a duty to resume the work and taking that date for filing the appeal, it was clearly barred by limitation under Section 62 of the Act and on that basis, the Industrial Court allowed the appeal, set aside the order of the Labour Court and dismissed the applications of workmen.

The matter was carried further to the High Court. The

High Court found that the workmen were insisting on their right to work and had resorted to strike demanding that although Dushyant Kumar had been served with a charge sheet, he should be allowed with the other workmen to enter the factory premises, while the stand of the employer was that but for Dushyant Kumar all other employees would be allowed to join their work and duties and the strike be ended. Proceeding on that basis, the High Court is of the view that the recurring cause of action arose because as and when employees reported for duty they were prevented from entering the factory. The High Court allowed the appeal filed by the workmen and set aside the order made by the Industrial Court and restored that of the Labour Court. Hence these appeals by special leave.

Two special leave petitions have been filed one by the workmen who have been appointed during the pendency of the proceedings before the courts and are fresh recruits while there is another special leave petition filed by the workmen who have been reinstated pursuant to the order made by the Labour Court since they have been appointed in the factory, they should be continued in service.

Mr. P.P.Rao, the learned Senior Advocate appearing for the appellant in C.A.Nos.89-90/99, submitted that the view taken by the High Court on the question of limitation is erroneous. He submitted that the starting point for limitation is when Labour Court allowed an application and gave interim directions holding that the strike to be prima facie illegal and asked the workmen to withdraw the same and report for duty. The period within which the application should have been filed at any rate would have been two years from that date as provided under Section 62 of the Act. Dr. Rajiv Dhawan, the learned Senior Advocate appearing for the appellant in C.A.Nos.92-93/99 and C.A.Nos.100-101/99, also supported him on this aspect of the matter and in particular pointed out that the concept of recurring cause of action would not arise in a case where the cause is complete on the date when the action is commenced in a court as in the present case. When the employer refused work to the employees the cause of action was complete and question of workmen going on demanding work again and again did not arise. On that basis, he contended that the view taken by the Labour Court and the High Court is erroneous. Mr. Yogeshwar Prasad, the learned Senior Advocate appearing for the respondents, submitted that in this case the Labour Court and the High Court have correctly held that there is no bar of limitation and the period of limitation had not commenced at all when the action was instituted by the workmen particularly when examined in the light of the fact that there was no order of termination of the services of the workmen nor was there any abandonment of work by the workmen from any particular date.

In our view, the Labour Court, the Industrial Court and the High Court have proceeded on a misapprehension of facts. As noticed earlier, the whole case put forth on behalf of the workmen before the courts below is that the appellant is not taking the workmen to duty though they have been reporting for duty. The action of the appellant in not allowing the workmen to resume their duty gives rise to the dispute in respect of which application before the Labour Court is filed. It is to redress this grievance the workmen had approached the Labour Court. Even as noticed by the Labour Court, the dispute in this regard between the parties

started from the time when the charge sheet was issued on 12.2.1986 to Dushyant Kumar as to why he should not be suspended at 8 a.m. and from 12.2.1986 when he was prevented from entering the factory under the oral orders of the Factory Manager while the workmen asserted that they along with Dushyant Kumar should have been permitted to join duty. This aspect was commented upon by the Industrial Court as not amounting to any willingness on the part of the workmen to do their work. There is some dispute as to whether the order made by the Labour Court on 1.3.1986 is binding on all the parties, as to that application only 29 persons had been impleaded as parties though the words all other workmen were also added. In the relief portion also, the prayer is confined only to 29 workmen. However that aspect of the matter need not detain us because even according to the workmen, as indicated in their application filed by them, it is clear that they understood the order of the Labour Court to be one made in respect of all the workmen. It appears that thereafter they started demanding that they should be given work. Otherwise, the period when the workmen had been refused work goes back to the date when they deemed to resume work with Dushyant Kumar who was prevented from resuming work. It is only thereafter they were also not allowed to join duty. When the workmen themselves understood the order of the Labour Court dated 1.3.1986 as directing them to resume their duties and thereafter though they have reported for duty, they have not been allowed to join their duty, the application filed in each of these cases is beyond the period of two years mentioned in Section 62 of the Act from 1.3.1986.

The aspects considered by the courts below whether there was abandonment of work by the workmen or termination of the services of the workmen are not all germane to the main issue at all. The courts have unnecessarily travelled at a tangent missing the essence of the matter.

Now we have to see as to whether the case put forth before the courts falls under which of the clauses provided under Section 62 of the Act. The largest period of limitation prescribed therein is two years and in cases of termination of services and other incidental matters lesser period of limitation has been prescribed. Therefore, even taking that two years period from the date of the dispute either taking the date on which when they were refused work when they made a demand that they should be allowed to do work with Dushyant Kumar or when they made a demand after the order made by the Labour Court on an interim application directing them to resume work or calling off the strike, the applications filed are beyond the period of limitation prescribed under Section 62 of the Act.

The concept of recurring cause of action arising in a matter of this nature is difficult to comprehend. In Balakrishna Savalram Pujari Waghmare & Ors. vs. Shree Dhyaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798, it was noticed that a cause of action which is complete cannot be recurring cause of action as in the present case. When the workers demanded that they should be allowed to resume work and they were not allowed to resume work, the cause of action was complete. In such a case the workers going on demanding each day to resume work would not arise at all. The question of demanding to allow to do work even on refusal does not stand to reason.

In that view of the matter, we think that the High Court and the Labour Court fell into an error in analyzing and understanding the matter. In this view, we think the view taken by the Industrial Court to the extent that the cause of action had commenced at any rate on 1.3.1986 is correct. Reckoning from that date, the period of limitation of two years had been over by the time the applications were filed.

However, Mr. Yogeshwar Prasad sought to put forth an argument that under Section 61 of the Act the powers of the Labour Court are set out which enable the Labour Court to deal with aspects of the matter to give various reliefs to the parties and one of them is to require any employee to withdraw a strike which is held to be illegal and for that particular relief there is no prescription of period of limitation. He submitted that in fact the workers had gone on strike and they had to withdraw the same after holding it to be illegal and, therefore, they had a cause of action. We are afraid this submission is plainly misconceived. The workmen cannot seek for a relief against themselves for withdrawal of strike by asking the Labour Court to hold it to be illegal and direction for resumption of duty. On the other hand, the case clearly put forth by the workmen in the application is that the cause of action is that the employer is not allowing the workmen to resume duty. Thus we are of the view that this contention is untenable.

Various other aspects of the matter were addressed before us and several decisions were referred to in support of their respective contentions, but in our view reference to any one of them is unnecessary in the view we have taken.

C.A.Nos.89-90/99, C.A.No.92-93/99 and C.A.Nos.100-101/99, therefore, stand allowed and the order made by the High Court setting aside the order of the Industrial Court and restoring that of the Labour Court and the application filed by the workmen before the Labour Court, shall stand dismissed. Consequentially, C.A.Nos. 91/99 and 94- 99/99 shall stand dismissed and the question of entertaining the special leave petitions or giving any reliefs in those cases will not arise in these proceedings. SLP (C) Nos. 14115/2000 and 14116/2000 shall stand disposed of as they have become unnecessary. In the circumstances of the case, the parties shall bear their own costs.