

MANAGEMENT OF M/S DALMIA CEMENT (BHARAT) LTD. 19
v. STATE OF HARYANA AND OTHERS
(Augustine George Masih, J.)

Before Augustine George Masih, J.

MANAGEMENT OF M/S DALMIA CEMENT (BHARAT)
LTD.,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. No. 545 of 1986

27th January, 2009

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—S.10—High Court sanctioning and approving Scheme of Amalgamation—Neither workman was in service nor employee of petitioner on date of High Court order—No claim of workman relating to employment pending—No relationship of employer and employee between petitioner and workman—Delay of about 8 years in putting forth demand—Demand raised by the respondent after a delay of more than 7 years is ex-facie bad and incompetent, therefore, reference not maintainable—Petition allowed, award passed by Industrial Tribunal entitling reinstatement quashed.

Held, that as per clause (12) the employees of the transferor company, who on the date of the order of the Court sanctioning the Scheme has been passed, would become the employees of the transferee company and none else. In the light of specific clause dealing with the employees and in the light of the admitted facts that on the date when the High Court passed the order i.e. on 5th November, 1980, respondent No. 3 was not in service nor was he the employee of the petitioner. Even no claim *qua* his services or relating to his employment was pending either with the transferor company or any Authority under the Industrial Disputes Act, 1947. It is an admitted position that the demand notice is dated 27th April, 1981 which is after the order of amalgamation was passed by the Delhi High Court on 5th November, 1990. Therefore, I have no hesitation in holding that there is no relationship of employer and employee between the petitioner and respondent No. 3.

(Paras 13, 14 and 15)

Further held, that it is not in dispute that the services of the respondent-workman were terminated on the ground of his absence of more than 8 days as per certified standing order No. 16 of M/s Telesound India Limited and not on the basis of the registration of an F.I.R. for theft. The claim for non-compliance of the provisions of the Industrial Disputes Act while terminating his services or for challenging his termination on the ground that it was not in accordance with the Standing Order or the Industrial Disputes Act was not dependent either on the F.I.R. or on the outcome of the criminal trial which followed the registration of the F.I.R. It was purely an independent cause of action which had accrued to the workman, which has been taken as a ground by the workman while putting forth his demand on 27th April, 1981. Therefore, the cause of action arose to the workman on his termination in September, 1973. It is not in dispute that the first demand which has been put forth by the workman is through his demand notice dated 27th April, 1981. That being the position and there being a delay of more than 7 years in raising a dispute with no cogent and reasonable explanation forth-coming from the side of the respondent, this Court has no option but to hold that the claim was stale and there was no industrial dispute in existence on the date the demand notice was submitted. This dispute, which is stale, therefore, could not be subject matter of the reference under Section 10 of the Act. Demand raised by the respondent for raising an industrial dispute after a delay of more than 7 years is *ex-facie* bad and incompetent and, therefore, the reference was not maintainable before the Labour Court.

(Paras 19 and 20)

P. K. Mutneja, Advocate *for the petitioner*.

D. S. Nalwa, Additional Advocate General, Haryana.

R. S. Sihota, Sr. Advocate with H. P. S. Ishar, Advocate *for respondent No. 2*.

AUGUSTINE GEORGE MASIH, J.

(1) Through this order, I propose to decide C.W.P. No. 545 of 1986 and 546 of 1986 [**Management of M/s. Dalmia Cement (Bharat) Ltd., Ballabgarh (Haryana) versus State of Haryana and others**]

wherein the petitioner has challenged award dated 12th April, 1985 (Annexure P-1) passed by the Industrial Tribunal, Haryana Faridabad, holding that the termination of services of respondent No. 3-workman was neither justified nor in order and as such, he was entitled to reinstatement but without back-wages from the respondent for the reasons given under issue No. 3.

(2) For the sake of convenience, the facts are being taken from C.W.P. No. 545 of 1986.

(3) In the claim statement filed on 23rd November, 1981, the workman has stated that he was employed by the petitioner-management but his services were terminated without any prior notice, charge-sheet or enquiry and further that no compensation as per the Industrial Disputes Act, 1947 was granted to him, which would vitiate termination order being illegal, thereby entitling the workman to reinstatement with full back-wages. The stand of the petitioner-management before the Labour Court was that there was no relationship of employer and employee between the parties. The Management did not terminate the services of the claimant. The services of the workman were terminated by M/s Telesound India Ltd., as per Certified Standing Order No. 16, applicable to the establishment on account of his continued and unauthorized absence for more than 8 days. The scheme of amalgamation of M/s Telesound India Ltd. with Dalima Cement (Bharat) Limited was sanctioned by the High Court of Delhi according to which no liability had been placed on the petitioner-management *vis-a-vis* the employee of M/s Telesound India Limited who was not the employee of the said Company on the date on which the order of the Delhi High Court sanctioning the scheme of Amalgamation was passed, on 5th November, 1980/5th December, 1980. Another ground which was taken by the petitioner-management was that the claim has been made by the respondent-workman in the year 1981 i.e. after a lapse of 8 years from the date his name was removed from the rolls of establishment by M/s Telesound India Limited, Ballabgarh, as the date of termination of the respondent is dated 1st September, 1973. The claim, therefore, is highly belated and the reference is not maintainable. On the basis of the

pleadings of the parties, following issues were framed by the Labour Court :—

- “(1) Whether there was a relationship of employee and employer between the parties ? OPW
- (2) Whether the Management was liable for the claim of the workman in view of the order of Hon’ble Delhi High Court ? OPW
- (3) Whether the claim was belated and if so, to what effect ? OPM
- (4) Whether the termination of services of Shri Shish Ram was justified and in order ? If not, to what relief is he entitled ? OPM
- (4) On the basis of the evidence adduced by the parties, the Labour Court has answered the reference in favour of the workman and against the petitioner-management.

(5) Counsel for the petitioner-management contends that the award dated 12th April, 1985 (Annexure P-1) passed by the Labour Court is not in accordance with law and, therefore, deserves to be set aside. He submits that there was no relationship of employee and employer between the petitioner-management and respondent No. 2 workman. He submits that respondent No. 2 was never the employee of the petitioner-management. He states that the petitioner, on the basis of the order dated 5th November, 1980 passed by the High Court of Delhi, came into picture and as per the Scheme of Amalgamation as sanctioned by the Court became the successor of M/s Telesound India Limited. He submits that the workman was employed by Telesound India Limited and his services were terminated on 1st September, 1973 also by M/s Telesound India Limited. As per clause (12) of the Scheme of Amalgamation the liability of the petitioner with regard to the employees of the transferor company i.e. M/s Telesound India Limited was specified. He submits that during the proceedings before the Delhi High Court, list of 137 employees (Annexure P-4) was produced which was taken to be the employee strength on the date of approval of the scheme of amalgamation by the Delhi High Court i.e. 5th November,

1980. On this basis, he submits that as on the date of amalgamation, respondent No. 3 was not an employee of the transferor company. The petitioner-management company was not his employer nor was the respondent its employee. Clause (12) of the Scheme of Amalgamation is reproduced here-in below :—

“12. All the employees of the Transferor Company on the date on which the order of the Court sanctioning the scheme is passed, will become the employees of the transferee company with effect from the Transfer Date without any break or interruption in service and on terms and conditions not less favourable to them.”

He states that M/s Telesound India Limited has not been impleaded as a party respondent and, therefore, the reference would not survive because claim, if any, was against M/s Telesound India Limited which had employed the workman and had terminated his services.

(6) On the other hand, counsel for the respondent-workman submits that as per clause (2) of the Scheme of Amalgamation on the date of transfer, all debts, liabilities, duties and obligations of the transferor company stood transferred to the transferee company and in the light of this, the claim of the respondent-workman would lie against the petitioner as it has stepped into the shoes of the original employer. Clause (2) of the scheme of amalgamation is reproduced therein below :—

“2. With effect from the Transfer Date, all debts, liabilities, duties and obligations of the Transferor Company shall stand transferred without any further act or deed to the Transferee Company pursuant to the provisions of Section 394 of the said Act, so as to become the debts, liabilities and duties and obligations of the Transferee Company. It is hereby made clear that mortgages/ charges created by “Telesound” on its assets in favour of the secured creditors will continue after the “Transfer Date” on the assets of “Telesound” taken over by “Dalmia Cement” and the said mortgages and charges will not be extended to the assets of other Divisions

and undertakings of “Dalmia Cement”. It is hereby further clarified that neither “Dalmia Cement” nor any of its Directors and Officers will be liable or responsible in any way for the omissions, commissions and statutory defaults made by “Telesound” up to the date of its amalgamation with “Dalmia Cement”.

(7) Counsel for the petitioner in response to this assertion of the counsel for the respondent states that clause (2) deals with the financial liabilities of the transferor company and the transferee company. He submits that where there is a specific clause (12) dealing with the employees, the same would hold the field and nothing more and nothing less can be read into it. All rights and liabilities as far as the employees are concerned, would flow from clause (12) of the Scheme. Since clause (12) specifically states that all the employees of the transferor company on the date on which the order of the Court sanctioning the scheme is passed, will become the employees of the transferee company with effect from the transfer date and the respondent not being in service of the transferor company on the date of the order of Court sanctioning the scheme, he could by no stretch of imagination be termed as an employee of the petitioner-company.

(8) He submits that on amalgamation of a company, a new entity comes into existence. Under the order of amalgamation made on the basis of the High Court order, the transferor company ceases to be in existence in the eyes of law and it effaced itself for all practical purposes. After amalgamation of two companies, the transferor company ceases to have any entity and the amalgamated company acquires a new status and it is not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets. For this submission, counsel relies upon a judgment of the Hon’ble Supreme Court in the case of **Saraswati Industrial Syndicate Ltd. versus Commissioner of Income Tax (1)**.

(9) A perusal of this judgment would show that this proposition has been laid by the Hon’ble Supreme Court but it has further been said that the amalgamation order and the Scheme made thereunder would

(1) 1990 (Supp.) S.C.C. 675

be the guiding force for determining the liabilities of the parties. Therefore, to determine as to whether there was any relationship of the employer and employee, the Scheme of Amalgamation as approved by the Delhi High Court would be the relevant document from where all the rights and liabilities of the parties would flow.

(10) Counsel for the respondent has relied upon a judgment of the Hon'ble Supreme Court in the case of **Karnataka Power Transmission Corporation Ltd. and another versus Amalgamated Electricity Co. Ltd. and others (2)** to submit that the liability of the company would be the same as that of the predecessor. For the same proposition, he also relies upon a judgment of the Hon'ble Supreme Court on **Workman Represented by Akhil Bhartiya Koyla Kamgar Union versus Employers in relation to the Management of Industry Colliery of M/s Bharat Coking Coal Ltd. and others (3)** and submits that the successor company who has stepped into the shoes of its predecessor would be liable as if the predecessor would have been liable. He argues that by legal fiction the workman would be the employee of the petitioner as the liabilities would be of the petitioner as per the Scheme of Amalgamation. Since the claim of the workman was against M/s Telesound India Limited, whose rights and liabilities have been taken over by the petitioners, so all claims would lie against the present petitioner and it is for this reason that M/s Telesound India Limited has not been impleaded by the workman in the demand.

(11) The question in the present case is that there is a Scheme of Amalgamation as sanctioned and approved by the High Court from where all the rights and liabilities of the parties flow. Therefore, the determining factor would ultimately be the Scheme and we will have to fall back on it to decide the issue in hand.

(12) A perusal of Clause (2) of the Scheme would clearly indicate that it deals primarily with financial liabilities and the statutory obligations dealing with financial matters. It does not talk about the employees, more so when a specific clause has been provided in the Scheme itself which takes care of the employees.

(2) AIR 2001 S.C. 291

(3) AIR 2001 S.C. 1994

(13) A clause which specifically deals with a particular subject would be determinative of the rights or the liabilities of the transferee company and would determine the relationship, the rights and liabilities *qua* that subject which is governed by that clause. Since Clause (12) specifically deals with the employees, the liabilities and rights of the employees would be governed by this clause. As per this clause only, the employees of the transferor company, who on the date of the order of the Court sanctioning the Scheme has been passed, would become the employees of the transferee company and none else.

(14) In the light of this specific clause dealing with the employees and in the light of the admitted facts that on the date when the High Court passed the order i.e. on 5th November, 1980, respondent No. 3 was not in service nor was he the employee of the petitioner. Even no claim *qua* his services or relating to his employment was pending either with the transferor company or any Authority under the Industrial Disputes Act, 1947. It is an admitted position that the demand notice is dated 27th April, 1981 which is after the order of amalgamation was passed by the Delhi High Court on 5th November, 1990.

(15) In the light of the above, I have no hesitation in holding that there is no relationship of employer and employee between the petitioner and respondent No. 3.

(16) The next submission which has been put forth by the counsel for the petitioner is that although there is no relationship of employer and employee between the petitioner and respondent No. 3, but still the reference itself is not maintainable because of the delay involved in it. He submits that it was a stale claim which did not call for adjudication by the Labour Court. He submits that a specific ground to that effect was taken by the petitioner-management before the Labour Court and issue No. 3 was framed in this regard but the Labour Court has simply proceeded to make observations that the workman would not be entitled to back-wages and has, thus, failed to give a proper finding on the issue.

(17) Counsel for the petitioner submits that the order of termination of the workman is dated 1st September, 1973 and the demand notice is dated 27th April, 1981. No explanation whatsoever

is forthcoming in the demand notice or in the claim petition for the delay nor has the workman in his statement given reasons justifying the delay in putting forth his demand. He submits that as there was no dispute and even if there was one, it was only in the year 1973 when the services of the workman were terminated. With the passage of time, the said dispute had become stale and, therefore, could not have been agitated by the workman-respondent No. 3. He relies upon a judgment of the Hon'ble Supreme Court in the case of **Nedungadi Bank Ltd. versus K. P. Madhavankutty and others (4)**. He submits that in the said case the dispute was raised against the dismissal by the workman after a period of 7 long years. The Hon'ble Supreme Court has held that although the law does not prescribe any time limit for the Appropriate Government to exercise its powers under Section 10 of the Industrial Disputes Act, 1947 but this power cannot be exercised at any point of time and to revive matters which had already been settled. The power of reference is to be exercised reasonably and in a rationale manner. There is no rational basis on which the Govt. has exercised powers in the said case after a lapse of 7 years of the order dismissing the workman from service. It has been further held that at the time when the reference was made, no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale cannot be the subject-matter of reference under Section 10 of the Act. It has further been observed that as to when a dispute can be said to be stale would depend upon the facts and circumstances of each case. Counsel for the petitioner relying on these observations of the Hon'ble Supreme Court states that the present dispute also is of same nature as there has been delay of more than 7 years in raising the demand. He further relies upon a judgment of the Hon'ble Supreme Court which also deals with the question of stale disputes i.e. **U.P. State Road Transport Corporation versus Babu Ram (5)**. There also the Hon'ble Supreme Court had held that delay cannot be condoned merely on conjectures and surmises and the onus would be on the workman to explain such delay.

(18) On the other hand, counsel for the respondent-workman has submitted that there was ample justification with the workman for

(4) (2000) 2 S.C.C. 455

(5) (2006) 5 S.C.C. 433

not approaching and putting forth his claim before 1981. He submits that the services of the respondent were terminated on 1st September, 1973 on the ground that he had absented from duty for more than 8 days. He submits that the then Management of M/s Telesound India Ltd. had got registered a First Information Report against the workman on account of theft in the company due to which he was arrested on 22nd August, 1973. He remained in judicial custody for 12/13 days because of which he could not come present on his duty. It was during this period that his services were terminated on 1st September, 1973 on the ground of absence for more than 8 days as per the Certified Standing Order No. 16 of M/s Telesound India Limited. Since his absence is attributable to the F.I.R. that was got registered by the Management of M/s Telesound India Limited which led to his arrest, he did not have any ground or reason for putting forth his demand unless a decision on the criminal case registered against him had come from the Court. He submits that the respondent was acquitted by the Court on 4th December, 1978. During the said interregnum, M/s Telesound India Limited was closed down in the year 1977. The right, if any, therefore, accrued to the respondent only on his acquittal on 4th December, 1978, on which date M/s. Telesound India Limited stood closed. The company petitions were going on in the High Court and till the finalization of the proceedings the workman could not prefer any claim against the company. Therefore, he waited for the amalgamation scheme which was being formulated and when the said scheme was finally accepted, sanctioned and approved by the High Court of Delhi on 5th November, 1980, he preferred a claim petition on 27th April, 1981. Counsel on the basis of these submissions states that there is no delay on the part of the respondent in putting forth his claim and even if it is assumed to be so, then also it cannot be attributed to the respondent. His claim was always alive but due to the reasons which have been submitted above he could not put a demand to that effect.

(19) I am afraid these submissions although may appear to be quite natural and justified but cannot be taken to be a reasonable explanation for condoning the delay. It is not in dispute that the services

of the respondent-workman were terminated on the ground of his absence of more than 8 days as per certified standing order No. 16 of M/s Telesound India Limited and not on the basis of the registration of an F.I.R. for theft. The claim for non-compliance of the provisions of the Industrial Disputes Act while terminating his services or for challenging his termination on the ground that it was not in accordance with the Standing Order or the Industrial Disputes Act was not dependent either on the FIR or on the outcome of the criminal trial which followed the registration of the F.I.R. It was purely an independent cause of action which had accrued to the workman, which has been taken as a ground by the workman while putting forth his demand on 27th April, 1981. Therefore, the cause of action arose to the workman on his termination in September, 1973. It is not in dispute that the first demand which has been put-forth by the workman is through his demand notice dated 27th April, 1981. That being the position and there being a delay of more than 7 years in raising a dispute with no cogent and reasonable explanation forth-coming from the side of the respondent, this Court has no option but to hold that the claim was stale and there was no industrial dispute in existence on the date the demand notice was submitted.

(20) This dispute which is stale, therefore, could not be the subject-matter of the reference under Section 10 of the Act. Demand raised by the respondent for raising an industrial dispute after a delay of more than 7 years is *ex-facie* bad and incompetent and, therefore, the reference was not maintainable before the Labour Court.

(21) In the light of the above, I do not feel it necessary to go into the question as to whether the termination of the services of the respondent-workman was in accordance with Certified Standing Order No. 16 of M/s Telesound India Limited or not.

(22) In view of what has been held above, the present writ petition is allowed and the impugned award dated 12th April, 1985 passed by the industrial Tribunal-cum-Labour Court, Haryana Faridabad (Annexure P-1) is hereby quashed.