

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2015

CORAM

THE HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

W.A.No.1915 of 2012

S.Kannan

... Appellant/

vs.

1.The Special Officer,
Dharmapuri District Central
Co-operative Bank Ltd.,
Dharmapuri.

1st Respondent/petitioner

2.The Presiding Officer,
Labour Court, Salem

... 2nd Respondents /2nd Respondent

Writ Appeal filed under Clause 15 of the Letters Patent Act against the order dated 18.2.2011 made in W.P.No.32505 of 2006. Writ petition filed seeking for a writ of certiorari, calling for the records in respect of the order passed by the second respondent Labour Court, Salem in I.D.No.328/1998 dated 17.11.2004, communicated to the petitioner on 29.6.2006 and quash the same.

For Appellant

..

Mr.N.Thiagarajan

For respondents

सत्यमेव जयते

Mr.M.R.Ragjavan for R1

JUDGMENT

(Judgement of the Court was made by V.RAMASUBRAMANIAN, J.)

The appeal arises out of an order of a learned single Judge, allowing the writ petition filed by the Management and setting aside the award passed by the Labour Court.

2. Heard Mr.N.Thiagarajan, learned counsel for the appellant and Mr.M.R.Raghavan, learned counsel for the first respondent.

3. The appellant herein was appointed in the first respondent Bank as an Attender way back on 22.11.1961 and subsequently, promoted as Inspector in 1964. He was placed under suspension on 6.3.1969 and was issued with a charge memo on 23.4.1971. The departmental enquiry was conducted and on the basis of the enquiry report dated 20.3.1971, the appellant was issued with a show cause notice dated 7.8.1972. After considering the explanation offered by him, an order of dismissal from service was passed on 27.1.1973. The appellant did not challenge the order of dismissal in any legal forum.

4. There was also a criminal case initiated, at the instance of the employer. In the said criminal case, the appellant was acquitted by a judgement, dated 31.12.1982. On the basis of the acquittal, the appellant started seeking reinstatement. Since there was no response, the appellant raised an industrial dispute, in I.D.No.1135 of 1993, on the file of the Labour Court, Vallore. It was transferred to the Labour Court, Salem, and re-numbered as I.D.No.328 of 1998.

5. Finding that the appellant had already reached the age of Superannuation on 31.07.1990 itself, the Labour Court came to the conclusion that there could be no relief of reinstatement. However, based upon the order of acquittal passed by the criminal Court, the Labour Court passed an award directing the first respondent Management to grant all terminal benefits as on 31.07.1990.

6. Aggrieved by the said award, the first respondent Management filed a writ petition in W.P.No.32505 of 2006. The writ petition was allowed by the learned Single Judge, forcing the workman to come up with the above appeal.

7. We do not find any infirmity in the order of the learned single Judge. The order of dismissal from service was passed way back on 27.1.1973, after initiation of departmental proceedings. The order of dismissal was not challenged by the appellant before any forum. According to the appellant, he filed an appeal, the fate of which is not known.

8. It is relevant to point out that the order of dismissal dated 27.1.1973 was in pursuance of disciplinary proceedings and not on the basis of the criminal case parallely initiated against the appellant. The judgement of the criminal Court came after almost 10 years of the order of dismissal, only on 31.12.1982. Since the criminal case did not have any bearing upon the order of dismissal, it was not taken note of by the Management.

9. After 11 years of the order of acquittal and after about 20 years of the order of dismissal, the appellant raised a dispute. By the time he raised a dispute, he had already reached superannuation on 31.07.1990. Therefore, the Labour Court could not have directed the Management to treat the order of acquittal passed by the criminal Court as eclipsing the order of dismissal passed by the Management.

10. As stated earlier, the dismissal was not on the basis of the pendency of criminal case. It was in pursuance of disciplinary proceedings initiated by the Management. Therefore, the appellant could not have claimed the benefit of order of dismissal postfacto.

11. Mr.N.Thiagarajan, the learned counsel for the appellant relies upon the decision of the Supreme Court in Kuldeep Singh vs. G.M.Instrument Design Development & Facilities Centre and Another (AIR 2011 Supreme Court 455). But in the said case, the Government made a reference under Section 10 of the Industrial Disputes Act, 1947, to the Labour Court. The Management raised a plea that the dispute was raised belatedly and was barred by delay and laches. It is in such circumstances that the Supreme Court pointed out the well settled proposition that there is no prescribed time limit for the appropriate Government to exercise its powers under Section 10 of the Industrial Disputes Act, 1947. Therefore, the said decision is of no application to the case on hand.

12. In the case on hand, it was not merely one of delay and laches. The appellant, after not having chosen to challenge the order of dismissal in any legal method, other than the claim of having filed an appeal, was not entitled to seek nullification of the order of dismissal on the basis of an order of acquittal passed by the criminal Court, after 10 years. Therefore, the learned single Judge was perfectly right in setting aside the award of the Labour Court. Hence, the writ appeal fails and the same is dismissed. No costs. सत्यमेव जयते

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

msk

To

1.The Special Officer,
Dharmapuri District Central
Co-operative Bank Ltd.,
Dharmapuri.

2.The Presiding Officer,
Labour Court, Salem

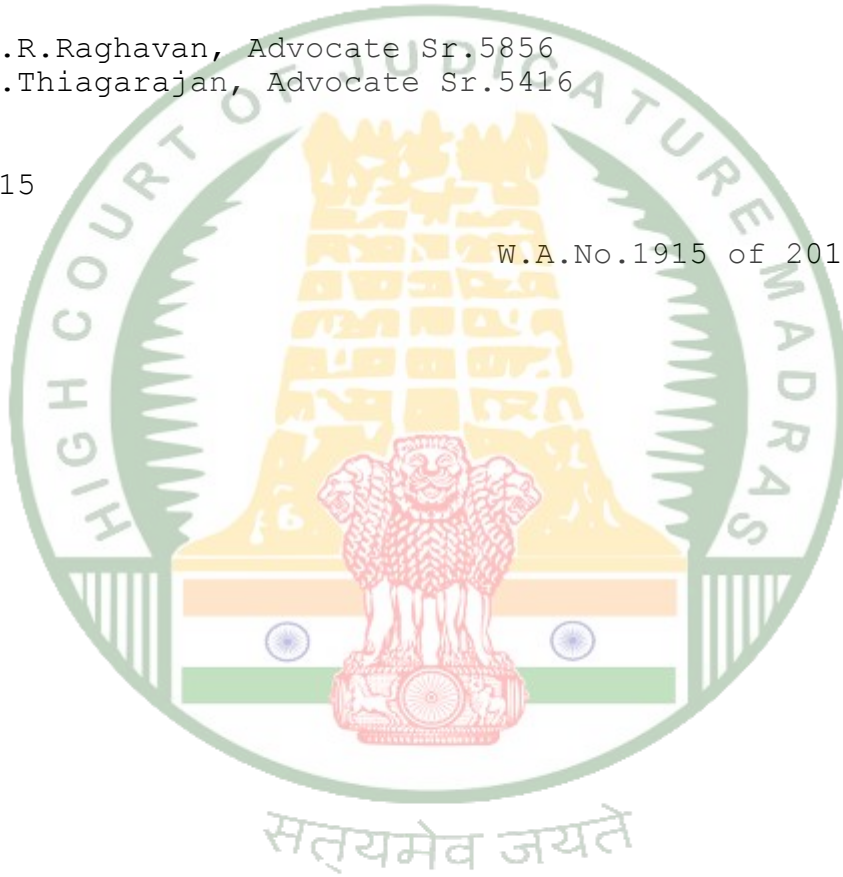
+1 CC to M/S.M.R.Raghavan, Advocate Sr.5856

+1 CC to M/S.N.Thiagarajan, Advocate Sr.5416

CO-RSI

ths : 21.02.2015

W.A.No.1915 of 2012



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