

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2016

Date of Reserving the Order	Date of Pronouncing the Order
13.04.2016	29.04.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.35675 of 2015

M.R.Joseph

... Petitioner

Vs

1.Govt., of India,
Ministry of Labour,
Rep., by its Secretary,
Shram Sakthi Bhavan, Rafi Marg,
New Delhi.

2.Office of the Deputy Chief Labour
Commissioner (Central),
26, Haddows Road, Shastri Bhavan,
Chennai - 600 006.

3.Controlling Authority,
Under the payment of Gratuity Act 1972 and
Asst., Labour Commissioner (Central-II)
Office of the Deputy Chief Labour Commissioner,
Shasthri Bhavan, 26, Haddows Road,
Chennai - 600 006.

4.Neyveli Lignite Corporation Ltd.,
Rep., by its Director, H.R.,
Corporate Office,
Neyveli - 607 801.

5.Office of the Assistant Labour
Commissioner (Central)
DA2, BSNL Staff Quarters,
Jayanagar, Reddiarpalayam (PO),
Puducherry - 605 010.

... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for records in File No.L-22015/222/2014-IR (C-II), dated 22.01.2015, communicated through letter dated 24.06.2015, quash the same and direct the first respondent to refer the dispute to the Central Government Industrial Tribunal, Chennai.

For petitioners .. Mr.D.Prabu Mukunth Arunkumar

For Respondents .. Mr.F.B.Benjamin George for R4
Mr.Rabu Manohar CGSC for RR1,2,3 & 5

O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the first respondent, dated 22.01.2015, for a consequential direction to the first respondent to refer the dispute to the Central Government Industrial Tribunal-cum-Labour Court (CGIT) for adjudication.

2. The petitioner who was an employee of the Neyveli Lignite Corporation (NLC) was removed from service by order dated 30.01.2002. The petitioner's case is that after removal from service, he had been regularly making representations requesting for reinstatement and he raised a dispute on 26.03.2009, before the Assistant Labour Commissioner, Chennai, against the order removing him from service. The petitioner is also said to have raised a dispute on 29.06.2009, before the Controlling Authority under the Payment of Gratuity Act by filing an application in Form N. The industrial dispute raised by the petitioner against his removal from service ended in failure and it is stated that failure report was submitted to the Central Government and the dispute has not been referred to the Tribunal for adjudication. It is stated that the Controlling Authority under the Payment of Gratuity Act passed an order on 30.07.2010, that the petitioner is entitled to payment of Gratuity amount of Rs.2,28,498/- together with interest.

3. The petitioner taking a clue from the observations made by the Controlling Authority with regard to the charge of bigamy against the petitioner, raised a dispute before the conciliation officer questioning his removal which ended in failure and the Government by order dated 13.12.2011, declined to refer the matter for adjudication on the ground, it has been raised belatedly without any justification for such delay and it is not a case fit for adjudication. The petitioner sent a representation, dated 17.08.2012 to the first respondent to refer the dispute to the industrial Tribunal for which, there was no reply and he filed a Writ Petition in W.P.No.26443 of

2014, which was disposed of by order dated 08.10.2014, to consider the petitioner's representation and pass orders on merits and in accordance with law after issuing notice to the petitioner and conducting an enquiry, pursuant to which the impugned order was passed. The petitioner has challenged the impugned order contending that it is not in consonance with the direction issued by this Court in W.P.No.26443 of 2014, dated 08.10.2014, as no notice was issued to the petitioner and no enquiry was conducted before the impugned order was passed. It is therefore, submitted that the impugned order is in violation of the principles of natural justice. The petitioner relied upon the decision in the case of Ajaib Singh vs. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Anr., reported in (1999) 6 SCC 82 and Sapan Kumar Pandit vs. U.P., State Electricity Board & Ors., reported in (2001) 6 SCC 222.

4. The learned counsel for the first respondent by referring to the counter affidavit submitted that the petitioner raised a dispute as against his termination from service, however, the same was withdrawn by the petitioner. Thereafter, he filed an application for payment of gratuity and the authority computed the gratuity payable. However, the petitioner having not challenged his termination, cannot now seek to do it, by relying upon the findings rendered by the payment of gratuity authority which can at best be only with regard to the entitlement of gratuity. With regard to the alleged non-compliance of the directions in the earlier Writ Petition, it is submitted that the first respondent is not an authority appointed in accordance with Section 4 of the Industrial Disputes Act (I.D. Act) and cannot conduct enquiry or investigation on the industrial dispute or hold conciliation proceedings. Therefore, the first respondent to give effect to the order passed in the earlier Writ Petition, directed the third respondent to conduct an enquiry. Accordingly, enquiry was conducted after affording an opportunity to the petitioner and the findings were also communicated to the petitioner. Therefore, it is stated that the order and direction in the earlier Writ Petition was complied with in its letter and spirit and the impugned order has been passed in complying with the direction. Further, it is submitted that there is no provision under the I.D. Act to issue notice and conduct an enquiry upon failure report being submitted by the Conciliation Officer under Section 12(4) of the I.D. Act. Further, it is submitted that the petitioner is an officer and not a workman as defined under Section 2(5) of the I.D. Act and he is precluded from seeking any relief under the provisions of the I.D. Act.

5. The learned counsel for the fourth respondent by referring to the counter affidavit filed by the fourth respondent submitted that the petitioner was removed from service on four serious charges, which were proved and the order of removal was passed on 30.01.2002. The petitioner did not file any statutory appeal against the order of removal. All that the petitioner did was to raise a dispute before the Assistant Labour Commissioner regarding forfeiture of his gratuity. The Controlling Authority took up the application on file adjudicated the same and held that the petitioner is entitled for the gratuity amount of Rs.2,28,498/- with interest. The petitioner received the entire amount in full and final settlement of all his claims and he accepted the order and did not file any appeal against the same. The petitioner belatedly raised a dispute under Section 2A of the I.D.Act questioning his removal from service, which ended in failure and the Government declined to refer the dispute for adjudication as being raised belatedly after a lapse of nine years. This order dated 13.12.2011, was challenged by the petitioner after nearly four years in W.P.No.26443 of 2014. The said Writ Petition was disposed of with certain directions, however, the order dated 13.12.2011, passed by the first respondent was not set aside. Further, it is submitted that the petitioner received the entire gratuity and also withdrew the earlier dispute raised by him under the provisions of the I.D.Act. Therefore, at this stage of the matter, the question of entertaining a dispute at the instance of the petitioner is not maintainable. In support of his contention, the learned counsel for the fourth respondent relied on the following decisions:-

(i) Nedungadi Bank Ltd vs. K.P.Madhavankutty & Ors., reported in (2000) 2 SCC 455

(ii) U.P.State Road Transport Corpn., vs. Babu Ram reported in (2006) 5 SCC 437

(iii) Dharappa vs. Bijapur Milk Producers Societies Union Ltd., reported in (2007) 9 SCC 109

(iv) Prabhakar vs. Joint Director, Sericulture Department & Anr., reported in CDJ 2015 SC 922.

6. Heard the learned counsels appearing for the parties and perused the materials placed on record.

7. The order which is impugned in this Writ Petition dated 22.01.2015, has been passed by the first respondent was pursuance to an enquiry, which was conducted on 19.12.2014, after affording an opportunity to the petitioner. The first

respondent has given five reasons for refusing to refer the matter for adjudication by CGIT. In this Writ Petition, it has to be tested as to whether the reasons are proper and germane.

8. The petitioner was terminated from service, by order dated 30.01.2002, for seven long years, the petitioner did not challenge the order of termination, and for the first time, raised a dispute before the Conciliation Officer during 2009. However, failure report was submitted on 30.09.2011, and the Government of India declined to refer the dispute by order dated 13.12.2011, stating that the dispute has been raised belatedly after a lapse of nine years without any justification for such delay. The petitioner did not take any steps to challenge the said order, but after about four years filed W.P.No.26443 of 2014, to quash the said order, dated 13.12.2011. This relief was not granted in the said Writ Petition, while disposing of the same by order dated 08.10.2014, in fact, the submission was the petitioner's representation was not taken into consideration and therefore, the petitioner was prompted to move the Court. Considering the limited scope of the prayer, the representation was directed to be considered after notice and after conducting enquiry. The first respondent who not being the competent authority to conduct any enquiry under the I.D.Act, rightly directed the Conciliation Officer to conduct an enquiry in which, the petitioner participated and a report was submitted on 19.12.2014, based on which the impugned order has been passed. Therefore, the impugned order is in compliance with the direction issued by this Court in the earlier Writ Petition.

9. The Hon'ble Supreme Court in the case of Nedungadi Bank Ltd vs. K.P.Madhavankutty & Ors., (supra), pointed out that the law does not prescribe any time limit for the appropriate Government to exercise its power under Section 10 of the Act and it can be exercise at any point of time, but to be exercised reasonably and rationally and in the said case, the Hon'ble Supreme Court found that exercise of power by the Central Government after a period of about seven years of the order of dismissal was passed without any rational. It was further pointed out that a dispute which is stale could not be subject matter of reference. In the instant case, nothing prevented the petitioner from raising the dispute at the appropriate time, but he did not choose to do so and therefore, the first respondent rightly observed that the dispute has been raised belatedly after a lapse of nine years. This order dated 13.12.2011, remains unaltered till date, since this Court did not set aside the order in earlier Writ Petition, though the petitioner sought for such a prayer.

10. That apart, when the petitioner had raised a claim challenging the forfeiture of gratuity, the authority adjudicated the same and held in favour of the petitioner and he

has received the entire payment, which is stated to be as a full and final settlement of all his claims.

11. Hence, for all the above reasons, the petitioner has not made out a case for interference and accordingly, the Writ Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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- +1 cc to Mr. Prabhu Mukanth Arunkumar Advocate sr.27642
+1 cc to M/s. F.B. Benjamin George Advocate sr.27937

W.P.No.35675 of 2015

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aa18/05/2016