

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 12-09-2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.A.No.1112 of 2016

M.R.Joseph ... Appellant / Petitioner

-vs-

- 1.Govt.of India,
Ministry of Labour,
represented by its Secretary,
Shram Shakthi Bhavan,
New Delhi-110 001.
- 2.Asst.Labour Commissioner (C) II,
Office of the Deputy Chief Labour Commissioner,
Shastri Bhavan,
26, Haddows Road,
Chennai.
- 3.Controlling Authority
Under the Payment of Gratuity Act 1972 and
Asst.Labour Commissioner (Central-II),
Office of the Deputy Chief Labour Commissioner,
Shastri Bhavan,
26, Haddows Road,
Chennai.
- 4.Neyveli Lignite Corporation Ltd.,
represented by its Director, H.R.,
Corporate Office,
Neyveli - 607 801.
- 5.Office of the Assistant Labour Commissioner (Central),
DA 2, BSNL Staff Quarters,
Jayanagar, Reddiarpalayam (PO),
Puducherry - 605 010. ...Respondents / Respondents

Appeal under Clause 15 of the Letters Patent against
the order of this Court, dated 29.04.2016, passed in
W.P.No.35675 of 2015.

Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari mandamus to call for the records in File No. L- 22015/2222/2014-IR (C-II) dated 22.01.2015 communicated through letter dated 24.06.2015 quash the same and direct the 1st Respondent to refer the dispute to the Central Government Industrial Tribunal Chennai.

For appellant : Mr.D.Prabhu Mukunth Arunkumar

J U D G M E N T

(Judgment of the Court was delivered by S.Vaidyanathan, J.)

Writ petitioner is the appellant.

2. The factual matrix of the case is that the appellant, who was an employee of the Neyveli Lignite Corporation Limited, was removed from service on 30.01.2002, on a series of charges, numbering four, including the one of having got married to one Mrs. Anthony Ammal as his second wife, and thereby contracting a bigamous marriage, in violation of the company's rules. After an enquiry, all the articles of charges have been held proved. The appellant has raised an industrial dispute in the year 2009 before the Labour Department, thereby making several representations. A perusal of the representations would make it clear that the appellant has raised the dispute with regard to non-payment of gratuity, which was adjudicated by the Assistant Labour Commissioner, namely, the Controlling Authority, under the Payment of Gratuity Act. The Controlling Authority has directed the employer to pay gratuity amount of Rs.2,28,498/- together with interest to the employee/appellant and the employee received the said amount without any protest. Thereafter, the petition of the appellant for raising an industrial dispute as against his removal from service ended in failure and the dispute was refused to be referred for adjudication, on the ground that there was an inordinate delay. He sent a representation, dated 17.08.2012, to the first respondent/Government to refer the dispute as regards his removal to the Industrial Tribunal and, thereafter, approached this Court vide W.P.No.26443 of 2014, which was disposed of on 08.10.2014, directing the Government to consider his representation. The said representation was also disposed of, but the Government has declined to refer the dispute for adjudication. Aggrieved over the same, he preferred W.P.No.35675 of 2015, which was dismissed by the learned single Judge, by an order, dated 29.04.2016. Hence, the present Writ Appeal.

3. The case of the appellant before us is that the learned single Judge ought to have quashed the order of the first respondent in declining to refer the dispute to the Tribunal and, consequently, referred the dispute to the Tribunal for adjudication.

4. We have gone through the records and also perused the order impugned carefully.

5. Admittedly, the appellant has raised the dispute nearly after a period of a decade from the date of his removal from service. It appears from the records that on the basis of the findings of the Controlling Authority, the appellant has raised a dispute. He has received the entire amount of gratuity, based on the order of the Controlling Authority, dated 30.07.2010, together with interest, without any protest. Having accepted and received the amount without any protest, the appellant/employee cannot raise a dispute, apart from the fact that there is an inordinate delay, which is staring at his face.

6. This Court, in a decision reported in 1987 (1) LLJ 458, *Management of Chandra Textiles Pvt. Ltd., Coimbatore v. N.Palanisamy & Others*, has held that in case an employee receives/accepts any amount under protest, it is open for him to challenge the same. In this case, when the employee after raising a dispute has accepted the entire amount of gratuity without any protest towards full and final settlement from the employer, the relationship of employee-employer comes to an end and he cannot agitate the issue further. Since the employees are approaching Labour Courts or Tribunals by raising disputes belatedly, the Central Government thought it fit to amend the Industrial Disputes Act, 1947. One of the Sections, which got amended is Section 2 (A), wherein the employee was permitted to raise a dispute within a period of three years and the said amendment came into effect from 15th September, 2010. Even though the said provision cannot be made applicable retrospectively for the cases of those employees who have been dismissed prior to that date, the cases of employees, whose services have been terminated three years prior to that date, can be protected, in the sense that they may be permitted to raise a dispute within a period of three years, of course, for which, still, a reference is needed, because, it is the case of termination/non-employment prior to the amended provision, which came into effect from 15th September, 2010. In this case, the appellant is out of time to seek redressal.

7. Though the learned counsel for the appellant has relied upon the decisions in *Nedungadi Bank Ltd. v. K.P.Madhavankutty & Others*, (2000) 2 SCC 455; and *U.P.State Road Transport Corporation v. Babu Ram*, (2006) 5 SCC 437, in support of his case, in our considered opinion, they are all cases, which were prior to the amendment. Even then, in the said cases, the Supreme Court has held that if the dispute is stale, it cannot be the subject matter of reference. Of course, in one case, the Apex Court has held, that in case of delay in raising a dispute, it can be considered only for the purpose of denying backwages, while adjudicating the case on merits. Therefore, none of the judgments referred to by the appellant would be applicable to the facts of this case, as,

in this case, apart from the delay in raising the dispute, the appellant has received the entire amount without any protest. The Court cannot come to the rescue of the persons like the appellant, who woke up from slumber, belatedly.

8. The learned single Judge has held, that in the instant case, nothing prevented the appellant from raising the dispute at the appropriate time and, therefore, the first respondent rightly observed that the dispute has been raised belatedly after a lapse of nine years and the said order of the first respondent, dated 13.12.2011, remained unaltered till-date, since this Court did not set aside the order in the earlier Writ Petition, though the appellant sought for such a prayer. Eventhough the order denying to refer the dispute is an administrative act and need not be quashed and a mandamus to direct the Government to make a reference would lie, no grounds much less genuine grounds to interfere with the order passed by the first respondent, dated 22.01.2015, and for a consequential direction to the first respondent to refer the dispute to the Central Government Industrial Tribunal-cum-Labour Court for adjudication, are made out. The learned single Judge has further held that when the petitioner has raised a claim challenging the forfeiture of gratuity, the authority adjudicated the same and held in favour of the appellant and that he has received the entire payment, which is stated to be a full and final settlement of all his claims. Hence, we find no reason to interfere with the order impugned herein, as the learned single Judge has rightly arrived at the above conclusions.

9. Writ Appeal is, accordingly, dismissed. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

dixit

To

1.The Secretary,
Ministry of Labour,
Govt.of India,
Shram Shakthi Bhavan,
New Delhi-110 001.

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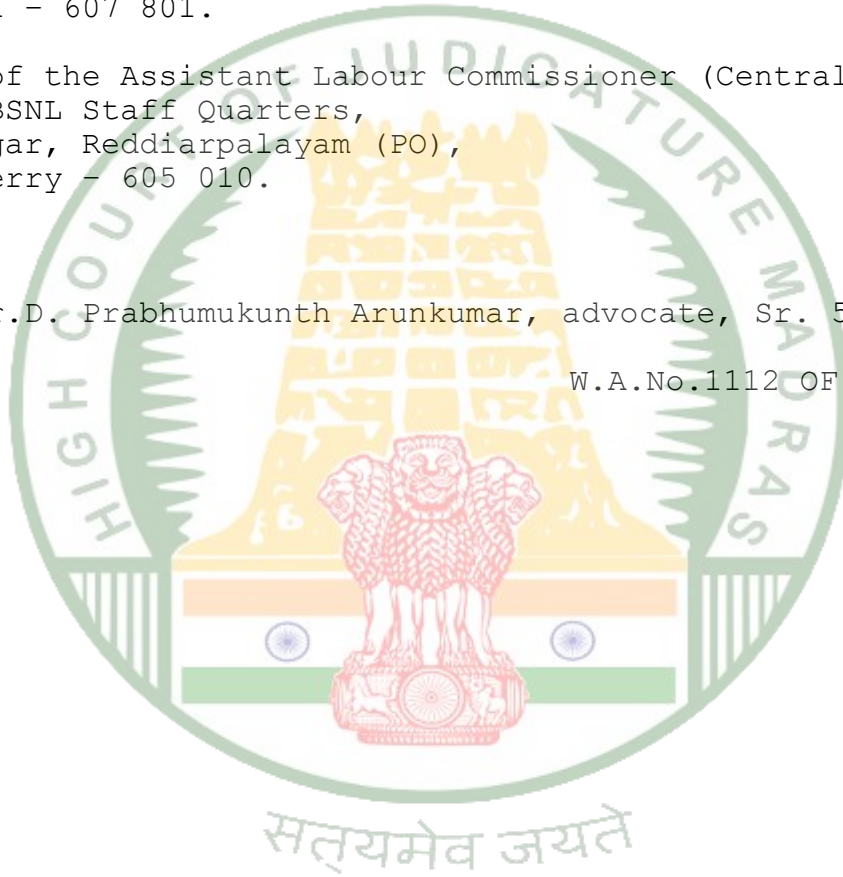
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1 cc to Mr.D. Prabhumukunth Arunkumar, advocate, Sr. 51937

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