

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. No.3556 of 2003

G. Arivudai Nambi

Petitioner

vs.

- 1 The Secretary to Government
Ministry of Labour
Government of India
Shram Sakthi Bhawan
Rafi Marg
New Delhi - 1
 - 2 The Secretary to Government
Ministry of Civil Aviation
Government of India
North Block
New Delhi - 1
 - 3 The Assistant Commissioner of Labour (Central)
Shastri Bhavan
Haddows Road
Chennai
 - 4 The Airport Director
National Airport Authority of India
Madras Airport
Meenambakkam
Chennai 27
- Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records relating to the order passed by the first respondent in reference No.-L-11011/9/2002-IR(M) and setting aside the same and direct the first respondent to refer the said dispute for adjudication.

For petitioner Mr. A. Sirajudeen
Sr. Counsel for Mr. R. Rajamani

For R1 Mr. J. Madana Gopala Rao
Senior Panel Counsel for Central Government

For R4 Mrs. Chittira Gomathy
for Mr. C. Godwin

- - - -

ORDER

This writ petition has been filed challenging the order dated 05.12.2002 passed by the first respondent and for a direction to the first respondent to refer the dispute for adjudication.

2 Heard Mr. A. Sirajudeen, learned Senior Counsel appearing for the petitioner, Mr. J. Madana Gopala Rao, learned Senior Panel Counsel for the first respondent and Mrs. Chittira Gomathy, learned counsel for the fourth respondent.

3 According to the petitioner, he joined as Driver in the office of the Airport Director, National Airport Authority of India, Madras Airport on 01.03.1991 and he was illegally retrenched from service on 30.08.1994. In this regard, the petitioner raised an industrial dispute under Section 2-A of the Industrial Disputes Act, 1947 on 27.12.2001 before the Regional Labour Commissioner, Chennai. Since conciliation talks failed, the Regional Labour Commissioner sent a failure report dated 20.05.2002 to the Central Government. The Central Government, by order dated 05.12.2002, refused to refer the dispute to the Industrial Tribunal on the following short reasoning:

"The dispute was raised belatedly without furnishing adequate reasons to justify the delay."

Challenging the said order passed by the first respondent-Central Government, the petitioner is before this Court.

4 Mr. A. Sirajudeen, learned Senior Counsel appearing for the petitioner strenuously contended that the Central Government ought to have referred the matter to the Industrial Tribunal and ought not to have passed the impugned order in the light of Section 12(5) of the Industrial Disputes Act, inasmuch as the Central Government has no role to look into the merits of the case and has to merely refer the matter to the Industrial Tribunal without anything more.

5 The learned Senior Panel Counsel appearing for the first respondent and the learned counsel for the fourth respondent refuted the contentions of the learned Senior Counsel appearing for the petitioner.

6 The learned panel counsel appearing for the respondent brought to the notice of this Court, the judgment of the Supreme Court in Sudamdith Colliery of Bharat Coking Coal Ltd. vs. Workmen represented by Rashtirya Colliery Mazdoor Sangh [AIR 2006 SC 946] and an unreported judgment of the Supreme Court in Karan Singh vs. Executive Engineer, Haryana State Marketing Board [Civil Appeal No.4561 of 2007].

7 In Nedungadi Bank Ltd. vs. K.P. Madhavankutty and Others [(2000 (2) SCC 455)], the Supreme Court held as follows:

"6 Law does not prescribe any time limit for the appropriate government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time When the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was ex facie bad and incompetent."

(emphasis supplied)

8 In Sudamdith Colliery of Bharat Coking Coal Ltd., (supra) the Supreme Court has held as under:

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in Shalimar Works Ltd. v. Their Workmen (supra), that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even reemployment of the most of the old workmen was held to be fatal in Shalimar Works Limited v. Their Workmen (supra). In Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors. (supra), a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In Ratan Chandra Samanta and Ors. v. Union of India and Ors. (supra) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. . . ."

(emphasis supplied)

9 Further, the judgment in K.P. Madhavankutty (supra) has been followed in Karan Singh (supra).

10 In this case, in the petition before the Conciliation Officer, the petitioner has not stated any reason to explain the delay of 7 years. Even in the affidavit filed before this Court, the petitioner has not stated any reason for the delay, except saying that he was not aware of the legal rights.

11 Considering the facts and circumstances of this case, this Court is of the considered view that the refusal of the Government to refer the dispute to the Industrial Tribunal under

Section 10 of the Industrial Disputes Act, after the lapse of 7 years, cannot be said to be wholly illegal.

In the result, this writ petition is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1 The Secretary to Government
Ministry of Labour
Government of India
Shram Sakthi Bhawan
Rafi Marg, New Delhi - 1
 - 2 The Secretary to Government
Ministry of Civil Aviation
Government of India
North Block, New Delhi - 1
 - 3 The Assistant Commissioner of Labour (Central)
Shastri Bhavan
Haddows Road, Chennai
 - 4 The Airport Director
National Airport Authority of India
Madras Airport
Meenambakkam, Chennai 27
- +1 cc to Mr.J.Madana Gopala Rao Advocate sr 1525
+1 cc to Mr.C.Godwin Advocate sr 1000
+1 cc to Mr.R.Rajamani Advocate srl124

W.P. No.3556 of 2003

msm(co)
aa31/01/2017