

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2018

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.39019 of 2003

M.G.Karthikeyan

... Petitioner

Vs.

The Secretary to Government
Government of India/Bharat Sarkar
Ministry of Labour,
Sharam Mandralaya,
New Delhi 110 001.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to call for the records on the file of the respondent in connection with the order passed by him in his proceedings No.L-12012/91/2003 - IR (B-II) dated 18.08.2003 and quash the same and consequently direct the respondent to send the proposal before the Industrial Tribunal for adjudication by issuing a Writ of Certiorarified Mandamus or any other appropriate relief.

For Petitioner : Mr.K.Sannjay

For Respondent : Mr.Thirumalaisamy

सत्यमेव जयते
O R D E R

The prayer in the writ petition is to call for the records on the file of the respondent in connection with the order passed by him in his proceedings No.L-12012/91/2003 - IR (B-II) dated 18.08.2003 and quash the same and consequently direct the respondent to send the proposal before the Industrial Tribunal for adjudication by issuing a Writ of Certiorarified Mandamus or any other appropriate relief.

2. The petitioner was working as a Messenger i.e., last grade servant at Indian Overseas Bank and while he was in service a Show Cause Notice was issued and subsequently a Disciplinary Proceedings was initiated and the Disciplinary

Authority himself based on the charges of misconduct, conducted Departmental Enquiry, where the petitioner was permitted to peruse the documents relied upon by the department and ultimately the Disciplinary Proceedings ended against the petitioner. Aggrieved over the said disciplinary proceedings, which ended against him, as by virtue of that, he was removed from service, the petitioner filed a writ petition before this Court in WP.No.12567 of 1985. The said writ petition was finally disposed of by a learned Judge by passing a very detailed order on 08.09.1994 confirming the punishment inflicted on the petitioner.

3. Aggrieved over the said order passed by the writ Court, the petitioner filed an intra Court appeal in W.A.No.869 of 1995, which was also decided against the petitioner by the Division Bench of this Court by order dated 27.09.2001.

4. Meanwhile the petitioner suffered with the order in the disciplinary proceedings, as referred to above, had decided to raise an Industrial Dispute by invoking Section 2-A of the Industrial Disputes Act, and the matter was referred to the Central Government for reference for adjudication and it was considered by the Central Government and the respondent herein in the impugned order dated 18.08.2003 held that the issue raised in the Industrial Dispute, i.e., dismissal of the petitioner from service by the Management of Indian Overseas Bank, has already been considered by the High Court of Madras and the matter had been decided on merits and therefore, the same matter cannot be subjected to adjudication by the Industrial Tribunal.

5. Aggrieved over the said order dated 18.08.2003 refusing to refer the matter to the Industrial Tribunal passed by the respondent-Central Government, the petitioner has chosen to file the present writ petition with the aforesaid prayer.

6. Heard Mr.K.Sannjay, the learned counsel appearing for the petitioner and Mr.Thirumalaisamy, the learned counsel appearing for the respondent.

7. It is submitted by the learned counsel for the petitioner that Section 2-A of the Industrial Disputes Act does not prohibit filing a writ petition with a similar prayer under Article 226 of the Constitution of India. It is also submitted that merely because the petitioner invoked the extraordinary jurisdiction of this Court and filed a writ petition, where he suffered with an order, it cannot be construed that his prayer raised in the industrial dispute under Section 2-A of the Industrial Dispute Act seeking reference of the industrial dispute to the Industrial Tribunal concerned for appropriate

adjudication, cannot be adjudicated.

8. No doubt the petitioner should have raised an industrial dispute at the first instance and no doubt the petitioner has also not been precluded from invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution. However, the petitioner has chosen the forum by filing the writ petition before this Court by invoking Article 226 of the Constitution and in the writ Court also the plea raised by the petitioner has been considered and a detailed order has been passed by the Court, having not satisfied with the said order, the petitioner preferred the intra Court appeal before the Division Bench where also the issue has been considered and the order of the writ Court was upheld and ultimately the order passed in the disciplinary proceedings, as confirmed by the writ Court and the Appellate Court against the petitioner, attained finality.

9. If at all the petitioner feels aggrieved against the Division Bench order confirming the order of the writ Court, the remedy available to the petitioner is not before the Industrial Tribunal.

10. However, the petitioner had once again chosen to knock the doors of this Court seeking reference by the appropriate Government to the Industrial Tribunal by invoking the Industrial Dispute Act which was rightly rejected by the first respondent stating that the issue raised herein has already been settled by the detailed order of this Court.

11. In view of the aforesaid fact, the petitioner cannot have any grievance in the reasoning given by the first respondent, as he invited the order of this Court justifying the order of dismissal passed against him, by invoking the extraordinary jurisdiction under Article 226 and that order was upheld by the subsequent order of the Division Bench of this Court in an intra Court appeal at the instance of the petitioner and therefore, the said issue, which has already been concluded, cannot be re-opened by way of industrial dispute and as such, the said reason assigned by the first respondent in the impugned order is fully justifiable and sustainable and therefore, this Court feels that it does not require any interference.

12. In that view of the matter, the impugned order is sustained and the writ petition fails, accordingly the same is dismissed. No costs.

13. However, it is made clear that it is open to the petitioner to make fresh request to the Management concerned to consider his request for any service benefits pursuant to the

terms of bi-partite settlement under the Industrial Dispute Act and if such request is made by the petitioner, it is open to the Management concerned to decide the same and pass an order thereon on merits by taking into consideration the family circumstances of the petitioner.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

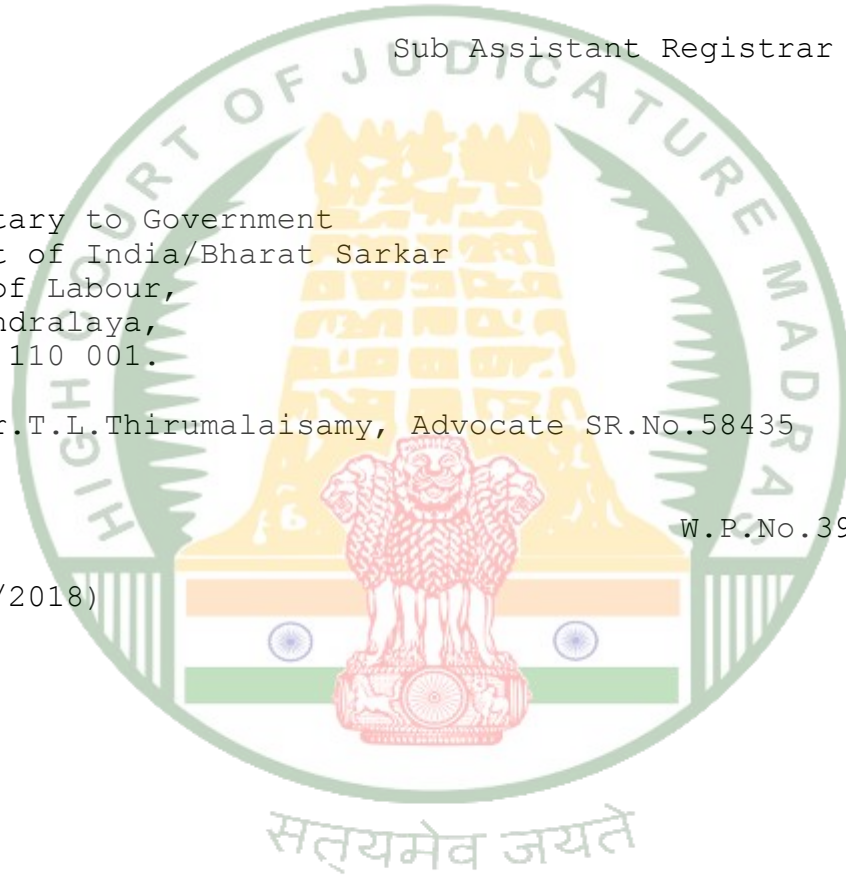
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To
The Secretary to Government
Government of India/Bharat Sarkar
Ministry of Labour,
Sharam Mandralaya,
New Delhi 110 001.

+1cc to Mr.T.L.Thirumalaisamy, Advocate SR.No.58435

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GMV (25/09/2018)



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