

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.09.2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.6019 of 2010
and
M.P.Nos.1 & 2 of 2010

State Bank of India,
Represented by its Deputy General Manager,
Region -1, Zonal Office,
Dr.Ambedkar Road,
Madurai - 625 002. Petitioner

...Vs..

- 1.State Bank Staff Union (CC),
Reg.No.883, Rep.by its Deputy General Secretary,
C/o.State Bank of India,
Zonal Office,
Madurai - 7.
- 2.The Central Government Industrial Tribunal cum Labour Court,
26, Haddows Road,
Shastri Bhavan, Chennai - 6. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned Award made in I.D.No.17 of 2008 dated 07.07.2009 on the file of the Central Government Industrial Tribunal Chennai (the second respondent herein) and quash the same as illegal and unsustainable.

For Petitioner : Mr.S.Kanniah

For Respondents : Mr.K.M.Ramesh for R1
Tribunal for R2

O R D E R

The award dated 07.07.2009, passed in I.D.No.17 of 2008 is under challenge in the present writ petition.

2. The writ petitioner is State Bank of India. The dispute was raised in favour of the employee one Mr.P.Murugan, joined in the services of the State Bank of India as Clerk. On account of

misconduct of bigamous marriage and claiming of excess T.A.Bills as well as Medical Bills for the second wife, the charge memo was issued on 14.09.1985. On initiation of departmental disciplinary proceedings, the petitioner was kept under suspension on 19.09.1985. The domestic enquiry was conducted by the Enquiry Officer against the delinquent employee and based on the report of the enquiry officer, on 19.09.1986, the Competent Disciplinary Authority imposed the punishment of dismissal from service. The appeal filed by the employee was also dismissed by the Appellate Authority on 12.01.1987. The employee filed W.P.No.6624 of 1987 and the High Court directed the authorities to furnish the copy of the enquiry report to the delinquent employee and proceed with the enquiry at the stage of second show cause notice. Further it is specifically observed by the Court that the disciplinary authority is empowered to decide ultimately as how to treat the period of service from the date of suspension till the final orders are passed. Accordingly, the matter is remanded by the disciplinary authority once again for reconsideration on 19.12.1991. The Appellate Authority took a lenient view and modified the punishment by ordering stoppage of increments for two years and the period of suspension from 19.09.1985 to 18.09.1986 was treated as suspension only and the intervening period spent out of banks service from 20.09.1986 to 21.01.1992 to be treated as break in service.

3. The learned counsel appearing on behalf of the writ petitioner made a submission that the employee accepted the modified punishment imposed by the Appellate Authority and accepted the same without any protest and joined duty at Melur Branch. At no point of time, the employee concerned approached the Appellate Authority for reviewing the order or to treat the intervening period as duty or otherwise. Contrarily, after a lapse of about 15 years, the employee raised an industrial dispute through Union by filing a Petition under Section 2(k) of the I.D.Act before the Assistant Labour Commissioner (Central) Madurai and challenged the orders passed by the Appellate Authority on 19.12.1991. The dispute was referred to the Industrial Tribunal cum Labour Court, Chennai in I.D.No.17 of 2008, the Industrial Tribunal passed an award holding that the Bank's treatment of the period of dismissal of the employee from 19.09.1986 to 28.06.1991, the date of reinstatement as break in service is not legal and the said period has to be treated as period of suspension only and not in break service. Against the said award the present writ petition is filed.

4. The learned counsel appearing on behalf of the first respondent Staff Union objected the writ petition by stating that intervening period must be treated as duty or atleast the period should be regulated enabling the employee to get the benefit of terminal and pensionary benefits. In other words, the

said period atleast would have been treated as a qualifying services for the purpose of pensionary benefits. Contrarily, the intervening period from 19.09.1986 to 28.06.1991 was treated as break in service had resulted in denial of monetary benefits and all other service benefits to the employee concerned. Thus, there is no irregularity in respect of the order passed by the Industrial Tribunal.

5. The learned counsel for the writ petitioner mainly on the ground that the Industrial Dispute ought not to have been entertained at all. The employee concern Mr. Murugan, accepted the modified order of the Appellate Authority dated 19.12.1991, and joined duty without any protest during the year 1991. He served and attained the age of superannuation on 30.09.2015, while he was in service he did not protest the order of the Appellate Authority for a considerable length of time. He admitted the orders in the years 1991 and was continuously serving till the year 2006 and thereafter raised the dispute through the Union, during the year 2006. Thus, the Industrial Dispute preferred before the Tribunal was highly belated and accordingly the dispute itself is liable to be rejected.

6. Though the Labour Court found that there was an enormous delay in raising the dispute, the Labour Court made an observation that the delay of 15 years cannot be said to be enormous. Such an observation is incorrect in view of the fact that 15 years long delay cannot be construed as a small delay and on that ground itself the writ petition is liable to be allowed.

7. This apart, the employee was issued with the charge memo more specifically regarding the misconduct of bigamous marriage and claiming of excess T.A. Bills as well as Medical Bills. As far as the allegation of misconduct of bigamous marriage is concerned, the same was proved before the Appropriate Authority and for the proved charges, the major penalty of dismissal was imposed. However, he filed a writ petition and it was disposed with a direction to remit the matter back to the disciplinary authority and to issue second show cause notice to the respondents therein by enclosing the copy of the enquiry report and thereafter pass the final orders. While reconsidering the issue the Appellate Authority had taken a lenient view and modified the punishment from that of the dismissal from service to the stoppage of increment for two years.

8. This Court is of the considered opinion that such a modification itself was a concession and the Appellate Authority undoubtedly had taken a lenient view and the employee was reinstated into service. Bigamous marriage is grave misconduct and in normal circumstances, if the charges are proved, the

employee is dismissed from service. But in the present case, the Appellate Authority while reconsidering the issue had taken a lenient view. Thus, reckoning the intervening period as break in duty cannot be said to be excess or disproportionate with the gravity of the proved charges against the delinquent employee. In the present case on hand, the delay is also enormous and the Appellate Authority passed the final orders in the year 1991 and the Industrial Dispute was raised in the Year 2006 after a lapse of 15 years and therefore, the dispute ought to have been rejected by the Labour Court on the ground of delay and laches. Contrarily, the Industrial Tribunal has taken a view that 15 years of delay cannot be construed as enormous which cannot be accepted by this Court, the 15 years of delay is undoubtedly enormous and the dispute ought to have been rejected on that ground.

9. Under these circumstances, this Court is of the considered opinion that the award passed by the Industrial Tribunal is not in consonance with the established principles as the modified punishment imposed on the employee itself was a concession and a lenient view was taken, that apart the Industrial dispute was raised after a delay of 15 years which is enormous and hence, the award dated 07.07.2009 passed in I.D.No.17 of 2018, is quashed and consequently the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Pns

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.State Bank Staff Union (CC),
Reg.No.883, Rep.by its Deputy General Secretary,
C/o.State Bank of India,
Zonal Office, Madurai - 7.

2.The Central Government Industrial Tribunal cum Labour Court,
26, Haddows Road, Shastri Bhavan, Chennai - 6.

+1cc to Mr.K.M.Ramesh, Advocate, SR.No.78560

+1cc to Mr.S.Kanniah, Advocate, SR.No.78317

W.P.No.6019 of 2010

and

M.P.Nos.1 & 2 of 2010

Kak(07/11/2019)