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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.28953 OF 2016

V. Kumar

... Petitioner

..Vs..

1. The General Manager
Indian Bank, Zonal Office
No.10, Kamaraj Salai,
Puducherry 605 010.
2. The Presiding Officer
Central Government Industrial Tribunal
Cum Labour Court
No.26, Haddows Road, 'Shastri Bhavan'
Chennai 600 006.

... Respondents

Prayer:-

This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the second respondent in I.D.No.43 of 2013 dated 03.01.2014 on its file and quash the same and pass orders on merits.

For Petitioner : Mr.P.Venugopal

For R1 : Mr.Jayesh B.Dolia

For R2 : Court

O R D E R

This Writ Petition has been filed, challenging the award dated 03.01.2014 of the 2nd Respondent in I.D.No.43 of 2013, by which the claim for Compulsory Retirement in the place of dismissal, was rejected.



2. It is the case of the Petitioner / Workman that he served under the 1st Respondent for the past 18 years without any stigma and he was dismissed from service with ulterior motive on the bald allegations. The 2nd Respondent, pursuant to the continuous absence, set the employee exparte and the reference was answered against him. Aggrieved by the same, the Petitioner / Workman is before this Court.

3. Learned counsel for the Bank / R1 contended that the charges against the Workman are very serious in nature, inasmuch as he had misappropriated the fund of the Bank. He failed to maintain utmost honesty and integrity in execution of his duty and therefore, the punishment imposed on the Workman is proportionate to the charges levelled against him, warranting no interference by this Court.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. Rule 10-B of the Industrial Disputes (Central) Rules, 1957, make it very clear that, when a party is absent, the Tribunal / Labour Court will have to proceed as if, the party is present and render a finding on merits. Dismissing the matter as default or setting the party exparte or passing a two line verdict, is not an Award at all in the eye of Law, unless otherwise the parties have entered into a settlement under Section 18(1) of the I.D.Act, 1947 or the Industrial Dispute raised by the Workman was withdrawn.

6. It is also seen that the unnumbered Interlocutory Application filed by the petitioner to condone the delay has been rejected at the threshold, on the ground that there is no proper explanation adduced in it. An affidavit was filed in support of the Application to condone the delay by the Counsel on record, stating that due to his resignation from the Partnership Firm, namely, M/s.Bright Sun Law Associates, he was under the impression that other partners would be taking care of the matter. In any event, unlike Rule 48 of the Tamil Nadu Industrial Disputes Rules, 1958, there is no similar provision available under The Industrial Disputes (Central) Rules, 1957, to the effect that an application to condone the delay has got to be filed within 15 days and in case of further delay, the application can be admitted, if the applicant shows sufficient cause for not preferring the application within time. For the sake of convenience, Rule 48 of the Tamil Nadu Industrial Disputes Rules is extracted hereunder.

"48. Ex-parte Proceedings. -

(1) If, without showing sufficient cause any party to



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proceedings before a Board, Court, Labour Court, Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal or the Arbitrator may proceed as if the party had duly attended or had been represented.

(2) The Board, Court, Labour Court, or Tribunal or an Arbitrator may, for sufficient cause, set aside, after notice to the opposite party, the ex-parte decision either wholly or in part, on an application made within 15 days of the ex-parte decision : Provided that an application may be admitted after the said period of 15 days, if the applicant satisfies the Board, Court, Labour Court or Tribunal or Arbitrator, as the case may be, that he had sufficient cause for not preferring the application within that period.

(3) An application under sub-rule (2) shall be supported by an affidavit."

7. This Court wants to emphasize that the aforesaid Rule will not be applicable to the Industrial Disputes (Central) Rules, 1957. When there is no time limit prescribed under the Act or Rules to restore the dispute on file, the Labour Court ought to have recalled the award, so as to pass an award on merits, after allowing the Workman to contest the matter. When the parties are absent, it is mandatory duty on the part of the Labour Court / Tribunal to call for the records from the Conciliation Officer and mark those documents as Court Exhibits. The Labour Court / Tribunal, based on the available records and after calling the party, who is present before the Court, to furnish all the relevant documents in support of his claim / case, can very well render a finding on merits. If such procedure is adopted by the Labour Court / Tribunal, even if one party is absent, it cannot be said to be an Exparte Award and it has got to be treated as the one to be passed on merit. The Central Government Industrial Tribunal can invoke Rule 23 also and the same is extracted below:

"23. Power of entry and inspection.—A Board, or Court, or any member thereof, or a conciliation officer, a Labour Court, Tribunal or National Tribunal, or any person authorized in writing by the Board, Court, Labour Court, Tribunal or National Tribunal in this behalf may, for the purposes of any conciliation, investigation, enquiry or adjudication entrusted to the conciliation officer. Board, Court, Labour Court, Tribunal or National Tribunal under the Act, at any time between the hours of sunrise and sunset and in the case of a person authorised in writing by a Board,



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Court, Labour Court, Tribunal or National Tribunal after he has given reasonable notice enter any building, factory, workshop, or other place or premises whatsoever, and inspect the same or any work, machinery, appliance or article therein or interrogate any person therein in respect of anything situated therein or any matter relevant to the subject-matter of the conciliation, investigation, enquiry or adjudication."

8. In the present case on hand, as the Labour Court / Tribunal has not followed the aforesaid steps and simply rejected the claim of the Workman, I find that it is not an award in the eye of law and therefore, the award is liable to be set aside by condoning the delay 566 days and remit the matter to the Industrial Tribunal / Labour Court to decide the matter on merits after affording an opportunity to the parties concerned.

9. Accordingly, this Writ Petition is allowed and the award dated 03.01.2014 of the 2nd Respondent in I.D.No.43 of 2013 is hereby set aside and the delay is condoned. The Labour Court shall call for the records from the Conciliation Officer for the purpose of marking it as Court Exhibits, proceed with the matter without adjourning it beyond seven working days at any point of time and thereafter, render a finding on merits and in accordance with law, as expeditiously as possible, but not later than six months from the date of receipt of a copy of this order. The parties are directed to co-operate with the Tribunal for speedy disposal of the matter.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dpq

To:

1. The General Manager
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2. The Presiding Officer
Central Government Industrial Tribunal
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+1cc to M/s.Aiyar & Dolia, Advocate, S.R.No.32830
+1cc to Mr.P.Venugopal, Advocate, S.R.No.32267

W.P.No.28953 of 2016

RP (CO)
PM/24/11/2021