



W.A.No.114

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.11.2022

DELIVERED ON : 02.12.2022

CORAM:

**THE HON'BLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE K. KUMARESH BABU**

**W.A.No.114 of 2013
and M.P.No.1 of 2013
and C.M.P.Nos.15208 & 15277 of 2022**

The Asst.General Manager, Region-1,
State Bank of India,
57, 57/1, Kamarajar Salai,
Madurai – 625 009.

... Appellant

Vs.

1.The Presiding Officer,
Central Government Industrial Tribunal Cum – Labour Court,
Chennai.

2.M.Sivaraman

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the
order passed by this Court in W.P.No.39 of 2012 dated 30.08.2012

For Appellant : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.

For Respondents : R1- Labour Court
Mr.K.M.Ramesh
for Mr.R.Sivakumar for R2



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JUDGMENT

(Judgment of the court was delivered by K.Kumaresh Babu).

This intra court appeal has been filed by the Management being aggrieved against the Common Order passed affirming the Award made in I.D.No.23 of 2008 dated 22.06.2011 made by the first respondent herein.

2.The brief facts of the case are as follows:

(i)The second respondent herein joined the services of the appellant bank on 25.11.1970 as a subordinate staff and on 01.11.1982, he was promoted as a clerk. In view of certain irregularities, a charge memo was issued to him on 17.11.1989, the second respondent has submitted his explanation denying the charges leveled against him. However, not being satisfied with the explanation an enquiry was directed to be held. On completion of the said enquiry, the Enquiry Officer had submitted his Report dated 31.12.1990 holding that the fifth charge was not proved and the second charge to the extent that the second respondent had man-handled the Accounts Manager and caused damage to the letter was not proved *inter alia* holding that the other charges were proved.



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(ii) Thereafter, the Disciplinary Authority sent a show cause notice dated 08.02.1991 to the second respondent, enclosing a copy of the Enquiry Officer's Report and called upon the second respondent to submit his explanation.

(iii) At this juncture, the second respondent had initiated a suit in O.S.No.457 of 1991, seeking for a declaration that the second show cause notice dated 08.02.1991 is null and void and for a grant of permanent injunction restraining the bank from enforcing the same. Originally an *ex parte* order of injunction was passed on 14.03.1991 which was vacated on 01.04.1992. The Disciplinary Authority by order dated 28.01.1993 dismissed the respondent from service. The suit filed by the second respondent came to be dismissed on 09.07.2003 which was unsuccessfully challenged by the second respondent in A.S.No.239 of 2003, as the said appeal came to be dismissed on 17.05.2005.

(iv) Thereafter, the second respondent raised an industrial dispute on 23.05.2005, challenging the order of dismissal dated 28.01.1993. As the conciliation proceedings failed, the Government of India referred the



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industrial dispute regarding the employment of the second respondent for adjudication by the Industrial Tribunal by its order dated 14.05.2008. The dispute was taken on file by the Industrial Tribunal in I.D.No.23 of 2008. It is pertinent to note that in the meantime the second respondent had reached age of superannuation on 01.03.2005. Documents were marked on either side, however, no oral evidence was let in before the Industrial Tribunal. The Industrial Tribunal by its Award dated 22.06.2011 in I.D.No.23 of 2008, modified the punishment of dismissal from service into an order of compulsory retirement. The said Award was challenged by the appellant bank by filing a Writ Petition in W.P.No.39 of 2012 and the second respondent workman had filed a Writ Petition in W.P.No.2101 of 2012. The learned Judge after considering various facts had affirmed the Award passed by the Industrial Tribunal. Being aggrieved against the same, the appellant bank had preferred the present appeal and the workman second respondent had not preferred any appeal.

3.Heard Mr.Anand Gopalan, learned counsel for the appellant and Mr.K.M.Ramesh, learned counsel for the second respondent.



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4.Mr.Anand Gopalan, learned counsel for the appellant would submit that the dispute itself has been raised after a long period of 12 years for which no reasons have been given by the workman. Even though the appellant had raised the issue of delay, both the Industrial Tribunal and the learned Single Judge have brushed aside the issue of delay. The learned Single Judge has held that the workman second respondent was pursuing his remedy before another forum and therefore, there is no question of delay.

5.Learned counsel for the appellant would vehemently contend that the learned Single Judge had wholly misunderstood the scope of the proceeding that was pending before the Civil Court. The subject matter of challenge before the Civil Court was the second show-cause notice and not the order of dismissal. The order of dismissal had been challenged by way of raising an industrial dispute after a long period of 12 years. Therefore, he sought interference with the Award and the order in the Writ Petition on that ground alone.

6.In support of his contention, relying upon the following judgments, the learned counsel for the bank submitted that if there is an unreasonable



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delay in raising an industrial dispute, then the claim of the workman should not be entertained:

(i)U.P.State Board Transport Corpn. Vs. Babu Ram (reported in (2006) 5 SCC 433).

(ii)U.P.State Road Transport Corporation Vs. Ram Singh and Another (reported in (2008) 17 SCC 627).

(iii)Assistant Executive Engineer, Karnataka Vs. Shivalinga (reported in (2002) 10 SCC 167).

(iv)Prabhakar Vs. Joint Director, Sericulture Department and Another (reported in (2015) 15 SCC 1).

(v)Asstt. Engineer, CAD, Kota Vs. Dhan Kunwar (reported in (2006) 5 SCC 481)

7.The next issued raised by the learned counsel for the appellant is that the Industrial Tribunal having not disturbed the findings of the Enquiry Officer should not have interfered with the punishment holding that it was disproportionate, considering the services put in by the workman and modifying the same into an order of compulsory retirement. According to him, the gravity of punishment should be taken into consideration not only



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on the delinquencies which were the subject matter of disciplinary proceedings but also on the basis of the past conduct of the workman concerned. In this case, according to him, the second respondent workman does not have an unblemished service, he had been punished earlier at least on two occasions. This aspect has been clearly overlooked by the Industrial Tribunal.

8.He would further submit that the learned Single Judge had re-appreciated the evidence which have been affirmed by the Industrial Tribunal in arriving at a conclusion different from the Industrial Tribunal to hold that the order of punishment of dismissal is excessive and fell into the same error as committed by the Industrial Tribunal that the order of dismissal of the second respondent depriving a terminal benefits of his long years of service is not warranted and therefore affirmed the Award of the Industrial Tribunal.

9.According to him, both the Industrial Tribunal and the learned Single Judge have erred in brushing aside the previous conduct of the second respondent workman. The impugned order passed in the Writ Petition, by



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reappreciating the evidence in writ proceedings under Article 226 has been deprecated by this Court as well as the Hon'ble Apex Court. He would plead that the scope of judicial review is restricted to see whether there is any perversity in the order impugned before it or arbitrariness or colourful exercise of power or in violation of principles of natural justice.

10.Mr.Anand Gopalan, learned counsel for the appellant would rely the following judgments to substantiate his contention in respect of exercise of power of judicial review under Article 226 of the Constitution of India:

(i)B.C.Chaturvedi Vs. Union of India and Others (reported in (1995) 6 SCC 749).

(ii)Union of India and Others vs. Subrata Nath (reported in 2022 SCC On Line SCC 1617).

11.Mr.Anand Gopalan would further submit that the Industrial Tribunal as well as the learned Single Judge had wholly failed to consider the previous conduct of the workman while exercising the powers under Section 11-A of the Industrial Disputes Act. This is not the first time the workman has been inflicted with the punishment for a delinquency. Even earlier, the



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workman had committed a delinquency. This Court in W.P.No.3935 of 1998 had upheld the punishment inflicted upon him. A remark has also been made by the learned Single Judge that the appellant management had dealt with the workman by taking a lenient view whereas he deserves a punishment of dismissal. Therefore, he would submit that both the Industrial Tribunal as well as the learned Single Judge erred in applying the principles of Section 11-A to modify the punishment of dismissal into an order of compulsory retirement. In support of his contention, he had relied upon the following judgments:

(i)Mahindra and Mahindra Ltd. Vs. N.B.Narawade (reported in (2005) 3 SCC 134).

(ii)Kerala Solvent Extractions Ltd. Vs. A.Unnikrishnan and Another (reported in (2006) 13 SCC 619).

(iii)Usha Breco Mazdoor Singh Vs. Management of Usha Breco Limited and Another (reported in (2008) 5 SCC 554).

12.Countering his arguments, Mr.K.M.Ramesh, learned counsel for the second respondent would contend that the learned Judge had rightly exercised the power of judicial review and has found that the charges were



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very flimsy and the same have not been proved and thereby rectified the Award passed by the Industrial Tribunal in respect of the charges. He would further submit that the second respondent workman had been diligently pursuing civil proceedings initiated by him challenging the second show cause notice issued. Even though the order of termination was passed in the year 1993, had the Civil Court held that the second show cause notice was legally not sustainable, then the order of termination would be held to be non-est. Therefore, the delay in challenging the order of termination cannot be put against the workman to hold that he would not be entitled to any relief. He would further submit that the learned Judge while dealing with the Writ Petition has extensively dealt with various charges and has arrived at a conclusion that the charges have not been substantiated. Hence, he prayed for dismissal of the Writ Appeal filed by the appellant bank.

13. In respect of his contention that question of delay in raising an industrial dispute is immaterial and had relied upon the following judgments:

(i) Jai Bhagwan Vs. Management of the Ambala Central Co-operative Bank Ltd. And Another (reported in (1983) 4 SCC 611).



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(ii) Ajaib Singh Vs. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Another (reported in (1999) 6 SCC 82).

(iii) Gurmail Singh Vs. Principal, Govt. College of Education and Others (reported in (2000) 9 SCC 496).

(iv) Sapan Kumar Pandit Vs. U.P.State Electricity Board and Others (reported in (2001) 6 SCC 222).

(v) Krishi Utpadan Mandi Samiti Through its Secretary, Anand Nagar Vs. Arvind Chaubey and Another (reported in (2002) 9 SCC 549).

(vi) S.M.Nilajkar and Others Vs. Telecom District Manager, Karnataka (reported in (2003) 4 SCC 27).

(vii) U.P.State Electricity Board Vs. Rajesh Kumar (reported in (2003) 12 SCC 548).

(viii) GM, Haryana Rodways Vs. Pawan Kumar (reported in (2005) 12 SCC 459).

(ix) Kuldeep Singh Vs. General Manager, Instrument Design Development and Facilities Centre and Another (reported in (2010) 14 SCC 176).

(x) Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar (reported in (2014) 10 SCC 301).



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14.He would also rely upon the following judgments to convince us that the exercise of power under Section 11-A of the Industrial Dispute Act in the present case as follows:

(i)The Workmen of Firestone Tyre And Rubber Co. of India Ltd. Vs. The Management And Ors. (reported in (1973) 1 SCC 813).

(ii)Mavji C Lakum Vs. Central Bank of India (reported in (2008) 12 SCC 726).

15.We have considered the arguments advanced by the learned counsel appearing on either side.

16.The main contention is that there has been an inordinate delay in raising a dispute under the Industrial Disputes Act, 1947 which has not been explained. It is further contention that the Industrial Tribunal while dealing with the industrial dispute had not gone into the aspect of delay. It was also contended by the appellant that the learned Judge had wrongly held that the second respondent workman had been diligently pursuing his remedies before the Trial Court and also the Appellate Court and therefore the industrial dispute cannot be thrown out at threshold on the ground of delay.



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17.From the facts narrated by the learned counsel appearing on either side, it could be seen that a second show cause notice was issued on 08.02.1991 and the workman was directed to submit his explanation. It is trite law that a show cause notice could not be challenged except in a case when the same has been issued by an Authority who is not competent to issue or has no jurisdiction to issue such show cause notice. In the present case, the said notice issued had been challenged in a civil proceeding. Even though, originally an order of interim injunction was granted against the appellant bank for not proceeding any further, the said injunction was thereafter vacated, after which an order of dismissal has been passed by the appellant bank as early as on 28.01.1993, this has not challenged by the second respondent workman.

18.It is not his case that it was not within his knowledge that the order of dismissal had been made. His averments in the affidavit that he has filed before the Appellate Court itself shows that the second respondent workman was aware of the order of dismissal dated 28.01.1993 and he has not chosen to challenge the said order. The challenge to the show cause notice and



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pendency of the same before a Civil Court cannot be construed as if the workman has been diligently pursuing his remedy as held by the learned Judge. The cause of action in that proceedings is a show cause notice which has already culminated into an order of dismissal. Once an order of dismissal is passed, a further cause of action has arisen for the appellant to challenge the same. He cannot claim pendency of a different proceeding on a different cause of action as cause to condone a delay in initiating another proceedings on a different cause of action. On that ground alone, the claim petition filed by the workman ought to have been rejected.

19.The Industrial Tribunal while passing the Award had not considered the aspect of delay. However, the learned Single Judge had held that the workman has been diligently pursuing his remedy before the civil Court and therefore, the industrial dispute cannot be thrown out at the threshold. The learned Single Judge has failed to see that the cause of action for the suit and cause of action for the industrial dispute are two separate proceedings. The learned Single Judge has also failed to note that when the show cause notice which was the cause of action for the suit had culminated into an order of dismissal, then such proceedings based on the show cause



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notice became infructuous. These aspects have not been adverted to by the learned Single Judge and on that ground alone an order of the learned Single Judge is liable to be interfered with.

20. On an analysis of the various judgments relied upon by either side, it could be deciphered that delay by itself cannot be a sole reason to reject the industrial dispute. But, however, when the delay remains unexplained, it would have to be held against the workman. It is not the case that the second respondent workman was not aware of the order of termination. It is not also his case that he was ignorant of the fact that the order of termination has to be challenged. As stated supra, he had taken his chances in the challenge that he made against the show cause notice, in which, he failed. Even thereafter, he had not raised the industrial dispute immediately. Even after the dismissal of his appeal in the year 2003, he had raised a dispute only in the year 2005. Therefore, we are of the view that the second respondent workman was not diligent in pursuing his remedy and therefore, we conclude that the industrial dispute raised by the second respondent workman is hit by delay and laches.



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21.The learned Single Judge had proceeded to reappreciate the evidence based upon which the charges have been held to be proved by the Disciplinary Authority and which was not interfered with, by the Industrial Tribunal while passing the Award. The learned Single Judge fell in error in reappreciating the evidence without appreciating that the principles of standard proof is as to whether it satisfies the test of preponderance of probability. In this case, the Disciplinary Authority has found that certain charges have been proved which has not been disturbed by the Industrial Tribunal. The learned Judge without giving any finding that either the disciplinary proceedings or the Industrial Tribunal's finding on that aspect is perverse ought not to have reappreciated the evidence as if he is sitting on an appeal. The scope of judicial review under Article 226 is limited as has been held in various judgments by this Court as well as the Hon'ble Apex Court. In a recent judgment in Union of India and Others vs. Subrata Nath (reported in 2022 SCC On Line SCC 1617), the Hon'ble Apex Court after analysing the various judgments had held that the High Court ought not to have interfered with the findings of the fact recorded by the Disciplinary Authority more so when the same has not been disturbed by the Industrial



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Tribunal/Appellate Authority. In the case on hand, the Writ Court has reappreciated the evidence and disturbed the findings of the Disciplinary Authority, which were not interfered with by the Industrial Tribunal. This according to us, is contrary to the well established principle of judicial review and therefore, the impugned order of the learned Single Judge will have to be set aside on this ground also.

22.The invocation of Section 11-A of the Industrial Dispute Act to modify the punishment of dismissal into a compulsory retirement has not been properly exercised both by the Industrial Tribunal as well as the learned Single Judge. It is an admitted fact that the second respondent workman has earlier been inflicted with punishment for delinquencies that he had committed. In such cases, it would not be proper to invoke the power of Section 11-A. The exercise of the discretionary power under Section 11-A has been dealt with by various judgments of the Hon'ble Apex Court. It is time and again reiterated that such discretion can be exercised only when the punishment is found disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past



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conduct of the workman which may persuade the Labour Court to reduce the punishment. The aforesaid principle has been enunciated by the Hon'ble Supreme Court in Mahindra and Mahindra Ltd. Vs. N.B.Narawade (reported in (2005) 3 SCC 134). In the aforesaid judgment, the Hon'ble Supreme Court has also held that by way of sympathy alone the power under Section 11-A cannot be exercised and the punishment be reduced. In the present case, the first respondent has exercised such discretion sympathetically without assigning any reason whatsoever. The learned Single Judge has ventured a retrial and reappreciated the evidence which, we have held, is beyond the scope of judicial review under Article 226 of the Constitution of India. Further, the reasonings assigned by the learned Single Judge for confirming the discretion exercised is also on sympathetic grounds. Hence, we are of the view that the exercise of discretion under Section 11-A of the Industrial Dispute Act in the present case, is unwarranted in view of the past conduct of the second respondent workman.



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23.In the result, the Writ Appeal is allowed and the order made in W.P. No.39 of 2012 dated 30.08.2012 is set aside and the Award made in I.D.No.23 of 2008 dated 22.06.2011 is also set aside. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(R.S.M., J.) (K.B., J.)
02.12.2022

Index: Yes/no
Speaking order /non-speaking order
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To

The Presiding Officer,
Central Government Industrial Tribunal Cum – Labour Court,
Chennai.



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R.SUBRAMANIAN, J.
and
K. KUMARESH BABU, J.

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A Pre-delivery judgment in
W.A.No.114 of 2013

02.12.2022