



W.P.No.18459 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 22.11.2023

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

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1.D.Govindaswamy (Deceased)

2.P.Vijaya

3.Rajalakshmi

4.G.Lalitha

(P2 to P4 are substituted as
Lrs of Deceased P1 as per
order dated 16.11.2023 in
WMP.No.28284 of 2022 in
W.P.No.18459 of 2010 by NMJ)

... Petitioners

VS.

1.The Government of India,
Ministry of Labour,
Shram Mantralaya,
New Delhi.

2.The Assistant Commissioner of Labour (Central),
“Shastri Bhawan”,
Haddows Road,
Chennai.

3.Indian Overseas Bank,
No.763, Anna Salai,
Chennai – 2.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in connection with the impugned order dated 19.02.2009 and quash the same and direct the first respondent to refer the dispute for adjudication under Section 12(5) of the Industrial Disputes Act, 1947.

For Petitioners : Mr.T.Ramkumar

For R1 : Mr.R.Subramanian,
Central Government Standing Counsel

For R2 & R3 : Mr.K.Srinivasamurthy

* * * * *

ORDER

This Writ Petition is filed to call for the records of the first respondent in connection with the impugned order dated 19.02.2009 and quash the same and direct the first respondent to refer the dispute for adjudication under Section 12(5) of the Industrial Disputes Act, 1947.

2.The petitioner was employed in the third respondent bank in the year 1971 as a temporary messenger and was confirmed in service in the year 1977. The petitioner was suspended pending disciplinary proceedings on 11.09.1997. A charge sheet dated



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28.10.1997 was issued to the petitioner for misappropriation of funds. The petitioner submitted his explanation to the charge sheet on 25.11.1997. The additional charge sheet was issued on 13.04.1998 to which the petitioner submitted his explanation on 28.01.1997. Thereafter domestic enquiry was conducted. The Enquiry Officer held that the charges were proved. Based on the enquiry report, the third respondent issued the second show cause notice on 30.12.1998 calling upon the petitioner to attend the personal hearing on 11.01.1999. The petitioner was unable to attend the enquiry and requested the third respondent to grant him 15 days time to submit his explanation. The third respondent passed the dismissal order on 13.01.1999, dismissing the petitioner from service. Against the dismissal order the petitioner preferred an appeal to the Deputy General Manager (Appellate Authority) on 27.02.1999. The Deputy General Manager dismissed the appeal. Thereafter after a lapse of eight years the petitioner raised a dispute. The conciliation proceedings failed and the conciliation failure report was filed by the second respondent on 05.09.2008. Thereafter, the first respondent vide the impugned order dated 19.02.2009 declined to refer the dispute for adjudication. Aggrieved by the said impugned order, the petitioner has preferred this writ petition.

3.The third respondent employer/Bank filed its counter stating that the first



respondent had rightly declined reference as the petitioner raised the dispute belatedly (ie) 9 years after the dismissal order dated 13.01.1999 and the appellate order dated 08.12.1999. The 3rd respondent stated that the petitioner was involved in a serious misconduct of misappropriation and only after due departmental enquiry, he was dismissed from service. According to the third respondent if the belated dispute was referred for adjudication great prejudice would be caused to it as it would be handicapped in leading evidence because almost all the witnesses had retired from service. It was also submitted that the petitioner failed to give convincing reasons for the delay and therefore the impugned order could not be assailed.

4.The learned counsel appearing for the petitioner submitted that the Hon'ble Supreme Court in the case of Ajaib Singh Vs. Sirhind Coop. Marketing- cum- Processing Service Society Ltd. and another reported in 1999 (2) SCR 505 held that the delay cannot be cited as a reason for declining reference.

5.The learned counsel for the respondents 2 and 3 on the other hand relying on the Judgment of the Hon'ble Supreme Court in the case of Nedungadi Bank Ltd. Vs. K.P.Madhavankutty and Others reported in (2000) 2 SCC 455 submitted that delay can be taken as a ground to decline reference.



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6.I have heard both the learned counsels and I have perused the entire materials on record.

7.It is seen from the claim petition filed by the petitioner under Section 2-A of the Industrial Disputes Act, 1947, that the reason for the inordinate delay in raising the dispute given by the petitioner was that the union to which he belonged promised to take appropriate action on his behalf, but failed to keep up its promise. The petitioner believed that the union would take appropriate steps but the union did not take any action in respect of the petitioner's claim. It was only in January, 2008, when the petitioner met his co-employee, who was also an union activist that the petitioner could raise the dispute. A bare reading of the explanation offered by the petitioner shows that delay was only because of the Union which failed to take up his cause. The Affidavit is bereft of details on the steps taken by the petitioner during the said period like reminders, if any, sent to the Union for taking action in the form of letters etc. The averments clearly reflect that the petitioner was sleeping over his rights and woke up only in January, 2008 and raised the dispute.



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8. It is pertinent to note here that the learned counsel for the petitioner though submitted that the enquiry proceedings were vitiated and the findings of the Enquiry Officer were illegal and unlawful did not choose to file the Enquiry report or the enquiry proceedings. It is relevant to note here that the charge against the petitioner was misappropriation of funds. In the absence of the material documents like the charge sheet, explanation to the charge sheet, enquiry proceedings and the enquiry report, this Court is not able to find out if there are any merits in the petitioner's case for directing the 2nd respondent to refer the case de hors the delay. I am of the view that the contention of the learned counsel for the 3rd respondent that any reference at this length of time would cause grave prejudice to the bank is well founded. I am therefore of the view that the order of the first respondent cannot be faulted and the same deserves to be confirmed.

9. In the Judgment produced by the learned counsel for the petitioner in the case of Ajaib Singh, the Hon'ble Supreme Court on the facts of the case held that delay could not be a ground to decline reference. In the said case the fact was that the State Government referred the dispute to the Labour Court, which found the dispute to be time barred. But in the case on hand the reference itself was denied on the ground of delay. I am therefore of the view that the dictum in Ajaib Singh's case does not apply



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to the petitioner's case. It is trite that the decision of a Court should be read in the fact situation of the case.

10. In view of the above discussions, this Writ Petition stands dismissed.

However, there shall be no order as to costs.

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Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order
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To

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N.MALA, J.

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