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W.P.No.40967 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.40967 of 2016

- 1.M.Subramanian (Died)
- 2.Manikka Nachiyar Keerthiga
- 3.Srinidhi (Minor)

(P2 & P3 substituted as LR of deceased
first petitioner vide order dated
15.09.2023 made in WMP.26440/2023
in WP.40967/2016 by MDIJ)

... Petitioners

Vs.

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

- 2.The Chief Manager
ICICI Bank Limited
4th Floor, Arihant Insight
No.24, South Phase
Ambattur Industrial Estate,
Ambattur,
Chennai – 600 058.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to
issue a Writ of Certiorarified Mandamus, calling for the records of the



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first respondent in connection with the award pronounced in I.D.No.17 of 2011 dated 12.02.2014 and quash the same and direct the second respondent management to reinstate the petitioner in service with full back wages, continuity of service with all other attendant benefits.

For Petitioners : Mr.T.Ramkumar

For Respondents : R1 – Court
Mr.Sanjay Mohan for R2
for M/s.Ramasubramanian Associates

ORDER

The deceased first petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent in connection with the award passed in I.D.No.17 of 2011 dated 12.02.2014 and to quash the same and direct the second respondent management to reinstate the petitioner in service with full back wages, continuity of service with all other attendant benefits.

2.The case of the deceased first petitioner is that the petitioner joined the service of the second respondent Bank on 08.12.1989 as a



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sub – staff. During the year 1997, the petitioner was transferred to Paganeri Branch and he got married during November, 1998. Thereafter, the petitioner's wife died at the time of delivery along with the unborn baby and the petitioner became mentally sick and hence the petitioner made representation to the second respondent to transfer him to some other branch in and around Sivagangai District, however, the second respondent vide order dated 03.09.1999 transferred the petitioner to Thirupur Branch.

3.The further case of the deceased first petitioner is that the petitioner performed second marriage during December, 1999 and since the petitioner wanted to take care his mother and wished to stay along with his wife at the time of delivery, the petitioner made representation dated 05.08.2001 to the second respondent seeking to transfer him to nearby branch in and around Sivagangai District, however, the petitioner received a letter dated 19.12.2001 from the second respondent stating that he had been unauthorizedly absenting from duty and the Management is giving a final chance to him to resume duty at Thirupur Branch on or before 31.12.2001. Hence, the petitioner reported for duty at the Thirupur Branch on 31.12.2001, but he was not allowed to resume duty. Thereafter, the petitioner



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sent letters stating that he was interested to continue in the service of the second respondent, however, vide order dated 04.02.2002, he was terminated from service.

4.The further case of the deceased first petitioner is that challenging the termination order, the petitioner raised industrial dispute under Section 2-A of the Industrial Disputes Act and thereafter the matter was referred to the first respondent and his claim was rejected by the first respondent. Challenging the same, the petitioner has filed this writ petition.

5.The learned counsel appearing for the petitioners submitted that the first petitioner joined the service of the second respondent Bank on 08.12.1989 as a sub – staff and discharged his duties sincerely for more than ten years and during the year 1997, he was transferred to Paganeri Branch and he got married during November, 1998. Thereafter, the first petitioner's wife died at the time of delivery along with the unborn baby and he suffered untold hardship and hence he made representation to the second respondent seeking to transfer him to some other branch in and around Sivagangai District, however, the second respondent vide order dated



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03.09.1999 transferred him to Thirupur Branch.

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6.The learned counsel appearing for the petitioners further submitted that the first petitioner performed second marriage during December, 1999 and since he wanted to take care his mother and wished to stay along with his wife at the time of delivery, made representation dated 05.08.2001 to the second respondent seeking to transfer him to nearby branch in and around Sivagangai District, however, he received a letter dated 19.12.2001 from the second respondent stating that he had been unauthorizedly absenting from duty and directing him to resume duty at Thirupur Branch on or before 31.12.2001. The first petitioner reported for duty at the Thirupur Branch on 31.12.2001, but he was not allowed to resume duty and hence he sent letters stating that he was interested to continue in the service of the second respondent, however, vide order dated 04.02.2002, he was terminated from service. Challenging the same he raised industrial dispute, however, the first respondent without considering the factual aspects, mechanically rejected his claim, which is not sustainable one.

7.The learned counsel appearing for the second respondent



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submitted that the first petitioner was a chronic absentee and since he was unauthorizedly absent for duty from 25.11.2000, the second respondent as a last chance sent letter dated 19.12.2001 directing the first petitioner to resume duty at Thirupur Branch on or before 31.12.2001. Even thereafter, the first petitioner did not report duty and hence, he was terminated from service by treating his unauthorized absence from duty for the period from 25.11.2000 to 04.02.2002 as voluntary abandonment of service.

8.The learned counsel appearing for the second respondent further submitted that the first petitioner was terminated from service during the year 2002, however, he raised industrial dispute only during the year 2011 after a lapse of nine years and eleven years from the date of his un-authorized absence. The issue was elaborately considered by the first respondent and the first respondent, by following the decision of the Hon'ble Apex Court reported in **2005 1 LLJ 297 [Haryana State Cooperative Land Development Bank Vs. Neelam]**, rightly rejected the claim of the first petitioner, which cannot be interfered with.

9.Heard the arguments advanced on either side and perused



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the materials available on record.

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10.The facts in the present case is not in dispute. Admittedly, the first petitioner joined the service of the second respondent Bank on 08.12.1989 as a sub – staff. He was unauthorizedly absent for duty from 25.11.2000 and the second respondent as a last chance sent letter dated 19.12.2001 to the first petitioner directing him to resume duty at Thirupur Branch on or before 31.12.2001. Even thereafter, the first petitioner did not report duty and hence, he was terminated from service by treating his unauthorized absence from duty for the period from 25.11.2000 to 04.02.2002 as voluntary abandonment of service.

11.Further, though the first petitioner was terminated from service during the year 2002, he did not take steps immediately to raise industrial dispute and he raised industrial dispute only during the year 2011 after a lapse of nine years and eleven years from the date of his un-authorized absence. The issue was elaborately considered by the first respondent and the first respondent, by following the decision of the Hon'ble Apex Court reported in **2005 1 LLJ 297 [Haryana State Cooperative Land Development Bank**



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Vs. Neelam], wherein, it has been held that 'the Labour Court considering the conduct of the workman in approaching the Court after more than seven years to be a relevant factor for refusing to grant the relief cannot be said to be an irrelevant one' rightly rejected the claim of the first petitioner. Hence, this Court is not inclined to interfere with the impugned award.

12.The writ petition is dismissed. No costs.

15.09.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

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