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W.P. No.27248 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.27248 of 2009

V.Aruna

... Petitioner

Vs.

1.The Branch Manager
Tamil Nadu Industrial Investment Corporation, (TIIC)
Coimbatore South Branch,
Kings Complex, Anjappar Road, Coimbatore 641 018.

2.The Managing Director,
Tamil Nadu Industrial Investment Corporation, (TIIC)
692, Annasalai, Nandanam,
Chennai 600 035

3.The Board of Directors,
Tamil Nadu Industrial Investment Corporation
rep., by its Chairman,
692, Annasalai, Nandanam,
Chennai 600 035

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,

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praying for issuance of Writ of Certiorarified Mandamus, directing to call for the records relating to the impugned order of the 3rd respondent herein proceeding no. Procds.No.Admn/dw/2001-2002 confirming the orders of the 2nd respondent in proceeding no. Procds.No.Admn/dw/2001-2002 dated 11.12.2001 dismissing the petitioner from service and quash the same as illegal and direct the respondents herein to reinstate the petitioner into service with all back wages, service and attendant benefits.

For Petitioner : Mr.Nithiesh

For Respondents : M/s.K.V.Sundararajan

ORDER

The brief facts that are relevant for disposal of this writ petition are as under:

The petitioner herein was appointed as Officer Technical in the Respondent/Corporation on 17.11.1990 and while working as such she was subjected to disciplinary proceedings on various charges resulting in imposing the punishment of dismissal from service in proceedings No. Procds.No.Admn/dw/2001-2002 dated 11.12.2001. It was thereafter, the petitioner filed an appeal before the 2nd respondent on 09.01.2002 and the said appeal was considered by the 2nd respondent and the same was rejected, by order dated 09.04.2002 confirming the original order of punishment



passed by the Disciplinary Authority. It is aggrieved by the original order of punishment dated 11.12.2001, as confirmed by the 2nd respondent through proceedings dated 09.04.2002, the petitioner filed the present writ petition in the year 2009. As this writ petition has been filed after a lapse of seven years, this Court intends to examine as to whether there was any justification for the petitioner in approaching this Court at a belated stage i.e., after lapse of seven years. The petitioner tried to explain the delay in approaching this Court in the year 2009 assailing the order passed on 09.04.2002 in paragraph No.9 of the affidavit which reads as under:

"9. I submit that aggrieved by the final order dated 11.12.2001 of dismissal from service I preferred a statutory appeal on 9.1.2002 under Rule 6.24. of the 9. Service Rules of the Corporation to the Board of Directors of the Corporation TIIC There was no communication or notice of any sort regarding the appeal I filed for more than six yeares which was ever communicated to me by the 3rd respondent. But much later on 5.12.2008, the 2nd respondent called me to receive the termin benefits in a cheque dated 3.12.2008 which I received under protest and witho prejudice to my appeal dated 9.1.2002. Consequently I made a representation 18.12.2008 to the 2nd respondent enquiring the status of my appeal for which reply came vide letter



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dated 31.12.2008 informing that the final order in the appeal has already been communicated to me how ever a copy of the same was again being dispatched to me along with this letter. I stoutly deny that the said o dated 9.4.2002 on my appeal to the 3rd respondent was ever served on me. So called service referred to in the recent letter dated 31.12.2008 is denied and is to strict proof of the same. Hence in all respects so far I am concerned, the order dated 9.4.2002 in the appeal was served on me only recently on 5.1.20 by speed post and hence there is no laches on the part of the petitioner to approach this Hon'ble Court.

2.As against the same, the respondents filed a counter affidavit stating that the order passed by the 2nd respondent dated 09.04.2002 was communicated to the petitioner at the available two addresses, by registered post, on 10.04.2002 and also stating that the petitioner was gainfully employed in USA and settled with her husband and on returning from USA in the year 2008, the petitioner claimed for settlement of terminal benefits by submitting the representation on 08.07.2008 and accordingly the said amounts were settled by the respondent/Corporation and an amount of Rs.3,8,599/- was paid to the petitioner through proceedings dated 03.12.2008.



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A copy of the postal receipt issued evidencing the communication of the order dated 09.04.2002 by registered post on 10.04.2002, issued by the concerned Postal Authority are placed before this Court.

3.It is after receiving the terminal benefits, the petitioner claimed to have submitted the representation requesting the respondents/Corporation to furnish the status of the appeal filed by her and in response to the same, the respondent/Corporation informed the petitioner that the appeal filed by her was already disposed of as early as on 09.04.2002 through letter No.TIIC/HO/F&R/EPF/2008-09 dated 03.12.2008 and a copy of the order dated 09.04.2002 was also communicated to the petitioner wherein it was stated as under:

"Please refer to the above. Vide reference third cited, the decision taken by the Corporation (appellate Authority) on your appeal was communicated to you by Registered post. Having known the fact that you were dismissed from service, you had requested the Corporation vide your letter dt. 08.07.08 to settle the terminal benefits and the Corporation paid the terminal benefits to you vide cheque No.584783, dated 03.12.08 drawn on Indian Bank, Chennai 600 035 and you also received the said cheque on 05.12.08.



Under the circumstances, now it is strange to receive a letter dated 18.12.08 from you stating that you had not received any reply from the Corporation on your appeal. Though the decision of the TIIC was already communicated to you vide reference third cited, we enclose a copy of the same."

4.Having received the above said communication and after a lapse of almost an year, the petitioner approached this Court on 19.12.2009 by filing the present writ petition, assailing the said order dated 09.04.2004. As against the postal receipts dated 10.04.2004 filed by the respondent. Learned counsel for the petitioner contended that there was a stamp a fixed on both the postal receipts mentioning as "Passed and Cancelled" and in the light of the said endorsement on the postal stamps, the registered post that was booked on 10.04.2002 was cancelled and therefore, the said receipt cannot be taken into consideration, in support of the respondents contention that the order, dated 09.04.2002 was communicated to the petitioner. However, the same was explained by the learned counsel for the petitioner stating that the said endorsement as "Passed and Cancelled" was made by the Office of the respondent/Corporation on reimbursing the expenditure incurred for having



sent two registered letters in order to avoid claiming the said amount being claimed second time and the said endorsement was not by the Postal Authorities. This Court is also aware of the procedure and the manner in which the booked registered articles / post can be cancelled. It is never by way of putting an endorsement on the receipts issued by the Postal Authorities but it is always by issuing separate receipt, after taking back the original receipts issued while booking the registered letter. Therefore, the contention of the learned counsel for the petitioner that the registered letter that was booked on 10.04.2002 was cancelled cannot be accepted. It is settled law that any communication made through a registered letter at a correct address is deemed to have been served on the addressee of such registered letter, under the provisions of the General Clauses Act. Therefore, the contention of the petitioner that the order passed by the Appellate Authority dated 09.04.2002 was served on the petitioner only in the year 2008 cannot be accepted. If that be the case, it is evident that the writ petition has been filed after a lapse of seven years of passing of the impugned order.

5.Be that as it may, a co-ordinate Bench of this Court on an earlier occasion, after having heard the matter at length and considering the



contention of the respondents, that the petitioner was gainfully employed abroad passed a judicial order dated 21.03.2024 directing for production of copy of the passport entries from the year 2002-2009. The said order reads as under:

"This petition is filed to call for the records relating to the impugned order of the 3rd respondent herein proceeding No.Admn/DW/2001-2002 confirming the orders of the 2nd respondent in proceeding No.Admn/DW/2001-2002 dated 11.12.2001 dismissing the petitioner from service and quash the same as illegal and direct the respondents herein to reinstate the petitioner into service with all back wages, service and attendant benefits.

2. The main ground taken by the learned counsel for the petitioner is that, petitioner filed an appeal against the order of disciplinary authority challenging the dismissal from service. The Appellate Authority, it is claimed that dismissed the appeal on 09.04.2002. However, the copy of the dismissal order was not received by the petitioner. She was not aware whether appeal was disposed or not. Therefore, there is a delay in filing the Writ Petition.

3. In response to this submission, the learned



counsel for the respondent produced the postal receipt to show that copy of the Appeal Order was communicated to the address given by the petitioner. However, the postal acknowledgment card is not available. It is also admitted by him that respondent have not taken any steps for getting any certificate from the Postal Authorities with regard to the service or non service of the post.

4. The learned counsel for the respondent further submitted that, during the relevant period ie., from 2002 to 2008, petitioner was not in India and she was residing in abroad, probably in USA. If she produced her passport, it will be known whether she resided in India or resided outside of India during th period.

5. In the said circumstances, learned counsel for the petitioner is directed to produce the copy of the petitioner's passport having entries from 2002-2009.

6. Post the matter on 25.03.2024."

6. Thereafter, when the matter was listed before a Co-ordinate Bench on 25.03.2024, the learned Judge passed the following docket order:

This Court on 21.03.2024 directed the learned counsel for



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the petitioner to produce petitioner's passport for the period 2002 to 2008 to find whether petitioner was residing in USA.

2.The learned counsel for the petitioner seeks time till 28.03.2024 for production of copy of the passport.

3.Post the matter on 28.03.2024. If the petitioner fails to produce the documents required by this Court on that day, the matter will be decided on the available records."

7.It was thereafter, when the matter is once against listed before this Court on 14.11.2024 this Court passed the following order:

*Though the matter is listed finally, once again a request is made for accommodation. Hence, post the matter finally on **05.12.2024**, under the caption "For Orders".*

2.The petitioner is directed to comply with the order passed by this Court on 21.03.2024 and 25.03.2024 and produce his original passport. Unless the petitioner produces his original passport, the question of examining the matter on merits does not arise."

8.It was thereafter, the matter was listed on 05.12.2024 before this Court and on which date this Court having taken a note on the failure of the



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petitioner to comply with the order passed by this Court on 21.03.2024, directed the matter to be listed today(12.12.2024) before this Court.

9.The learned counsel for the petitioner appearing online /(through video conference) submitted that the petitioner has sent a whatsapp message to the learned counsel stating that the petitioner has acquired Canadian Citizenship and the Indian passport that was utilized by her during the year 2002-2009 was surrendered to the Indian Passport Authority and therefore, petitioner is not in a position to produce the same before this Court.

10.Taking into consideration, the overall circumstances and the specific contentions that were raised by the respondents in a counter stating that the petitioner was gainfully employed in abroad coupled with the submission made by the learned counsel for the petitioner today that the petitioner has already acquired a Canadian citizenship and seized to be an Indian citizen, this Court is convinced that the petitioner, having been aware of the order passed by the Appellate Authority as early as on 09.04.2002, but conveniently challenged the said order by submitting a fresh representation as though the petitioner became aware of the said appellate



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order in the month of the December 2008 and approached this Court after a lapse of a year thereafter. The attempt of the petitioner is nothing but sheer abuse of process of this Court, besides being an attempt to mislead this Court by suppression of fact. In the light of the above, this Court is of the considered view that this is not a case where, the descretionary jurisdiction of this Court under Article 226 of Constitution of India can be exercised.

11.In the circumstances, this Court is fully convinced that the writ petition is belatedly filed without sufficient reason and the same is liable to be dismissed on the ground of delay and laches, and also for want of bonafides.

13.Resultantly, the writ petition stands dismissed. There shall be no order as to costs.

12.12.2024

vsn

Index : Yes/No

Speaking Order : Yes/No



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To

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Kings Complex, Anjappar Road, Coimbatore 641 018.
- 2.The Managing Director,
Tamil Nadu Industrial Investment Corporation, (TIIC)
692, Annasalai, Nandanam,
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- 3.The Board of Directors,
Tamil Nadu Industrial Investment Corporation
rep., by its Chairman,
692, Annasalai, Nandanam,
Chennai 600 035



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MUMMINENI SUDHEER KUMAR,J.

Vsn

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