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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-06-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

WA No.1417 of 2021

And

CMP No.8789 of 2021

C.Ravichandran

.. Appellant

-VS-

- 1.Indian Overseas Bank,
Represented by General Manager,
Central Office-Post Box No.3765,
Industrial Relations Department,
763, Anna Salai,
Chennai-600 002.
- 2.The Deputy General Manager,
Indian Overseas Bank,
Industrial Relations Department,
763, Anna Salai,
Chennai-600 002.
- 3.The Assistant General Manager,
Indian Overseas Bank,
Besant Nagar Branch,
E-140, 3rd Main Road,



Besant Nagar,
Chennai-600 090.

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.. Respondents

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Writ Appeal is preferred under Clause 15 of the Letters Patent against the order passed by this Court in WP No.11280 of 2020 dated 31.08.2020.

For Appellant : Mr.K.M.Ramesh,
Senior Counsel for Mr.V.Subramani.

For Respondents : Mr.K.Srinivasamurthy

J U D G M E N T

[JUDGMENT OF THE COURT WAS DELIVERED

BY S.M.SUBRAMANIAM, J.]

The present Intra Court Appeal has been instituted challenging the order dated 31.08.2020 passed in WP No.11280 of 2020.

2. The writ appellant instituted the writ proceedings challenging the order of termination. He was initially appointed as Part Time Sweeper in the respondent-Indian Overseas Bank and admittedly his services were confirmed by the respondent-Bank in a sanctioned post.



3. While ascertaining the genuinity of the School Certificate produced by the appellant, the respondent-Bank found that it was a bogus Certificate produced by the appellant at the time of securing employment in the respondent-Bank. Thus the order of termination was issued on 15.02.2013.

4. The learned Senior Counsel Mr.K.M.Ramesh appearing on behalf of the appellant would contend that the order of termination was issued in violation of Rules of Natural Justice. No opportunity of hearing was afforded to the appellant nor departmental disciplinary enquiry has been conducted providing opportunity to defend his case. Thus the writ order is to be set aside.

5. Mr.K.Srinivasamurthy, learned counsel appearing on behalf of the respondents would oppose by stating that the Writ Court rejected the writ petition mainly on the ground of laches. The order of termination dated 15.02.2013 was challenged after lapse of seven years. Therefore, there is no infirmity and thus the Writ Appeal is to be rejected.



6. In support of his contention, the learned counsel for respondents relied on the judgement of the Hon'ble Supreme Court of India in the case of **Nedungadi Bank Ltd vs. K.P.Madhavankutty and Others [(2000) 2 SCC 455]**, wherein in paragraphs 4 and 6, it has been held as under:-

“4. Then, after a period of about seven years the respondent served a notice on the Bank contending that he was discriminated as two other employees of the Bank under similar situation were reinstated in the service of the Bank. A notice was received by the Bank from the lawyer of the respondent on 17-1-1980 wherein it was demanded that the respondent be reinstated. The ground was that two other employees, who were dismissed, were later reinstated. The respondent in the meanwhile filed an application before the State Government on 24-5-1979 under Section 10 of the Act. It was rejected by the State Government on the ground that the appropriate Government in relation to the Bank was the Central Government. On 31-10-1980 the respondent moved the Assistant Labour Commissioner of the Central Government for



*relief, who by order dated 11-3-1981 held that there was no scope for formal proceedings under the Act since the matter was one which arose way back in 1972. The respondent then filed a writ petition in the High Court complaining that the Central Government did not pass any order in the matter on his application under Section 10 of the Act. The High Court by its order directed the Assistant Labour Commissioner to send his report under Section 12(4) [“12. Duties of conciliation officers.—(1)-(3)**(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.”] of the Act to the Central Government. In pursuance of the order of the High Court the Assistant Labour Commissioner sent his report to the Central Government for consideration. The Central*



Government declined to make any reference under Section 10 of the Act by order dated 1-1-1983. This led the respondent again to file a writ petition in the High Court which was disposed of by order dated 14-11-1983 with a direction to the Central Government to re-examine the matter. This order of the High Court was challenged by the Bank in writ appeal. The Appellate Bench, by order dated 21-2-1989, upheld the order of the learned Single Judge and observed as under:

“The apprehension expressed by the learned counsel for the appellant is that the direction of the learned Single Judge is capable of being interpreted as a command to the Central Government to make a reference under Section 10. It was also submitted that it is likely to be understood as conveying that the Central Government should not take into consideration all that has happened before the third respondent chose to set the industrial law into motion. We are inclined to take the view that there is no justification for this apprehension. The Central Government is required to examine as to whether an industrial dispute exists as on the date on which it is called upon to make the reference and



as to whether, in the circumstances, it is expedient or not to make the reference. For this purpose it will be well within its right to examine the entire facts of the case, including the fact that third respondent admitted his guilt and only pleaded for merciful treatment and accepted the amount due to him in full satisfaction of his claim. All those factors have a bearing on the question as to whether in spite of all these the industrial dispute still subsists meriting reference and also in regard to the question as to whether it cannot be said that, in the circumstances, it is expedient to refer the dispute to the Tribunal. It is also well settled that the question of delay and of the claim being stale or belated are also relevant factors to be taken into consideration in the matter of making an appropriate reference. We have no doubt that the Central Government will consider all these aspects objectively and take a decision on the question as to whether the dispute should be referred under Section 10 of the Act. Making the position clear as aforesaid, this appeal stands disposed of. No costs.”

6. Law does not prescribe any time-limit for



the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were



dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex facie bad and incompetent.”

7. Since the writ petition was rejected on the ground of laches of seven years, we are not inclined to interfere with the order passed by the Writ Court.

8. Though the learned Senior Counsel Mr.K.M.Ramesh for the appellant, would submit that the reasons furnished in the affidavit filed in support of the writ petition would be sufficient to condone the delay of seven years in filing the writ petition, we are not convinced.

9. Unconardonable delay cannot be condoned by High Courts in a routine manner. The reasons furnished for condoning enormous delay must be candid and convincing.

10. Though Limitation Act *stricto sensu* is not applicable in writ proceedings, the principle of reasonableness is to be adopted to



condone the delay.

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11. When an employee has been terminated from service in the year 2013 and filing writ petition in the year 2020, it is not entertainable and the Writ Court has rightly held that such writ petitions filed after prolonged delay of seven years, are not entertainable.

12. Accordingly, the writ order stands confirmed and the present Writ Appeal stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

(S.M.SUBRAMANIAM,J.) (C.KUMARAPPAN,J.)

10-06-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

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