



W.P.(MD).No.25554 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.25554 of 2022
and W.M.P(MD) No.19462 of 2022 and 15789 of 2023

The Management,
Formerly Bank of Madurai Ltd.,
Now ICICI Ltd.,
Mumbai – 400 051.

... Petitioner

Vs

1. S.Srinivasagam
S/o.V.Subbiah, Plot No.65, Karpaganagar,
8th Street, Madurai- 625 007.

2. The Joint Commissioner of Labour,
Ellis Nagar, Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order in TNSE IA 14 of 2022, dated 03.10.2022 on the file of the 2nd respondent and quash the same as illegal, ultra vires, unconstitutional and unsustainable

For Petitioner : Mr. V.Raghavachari, Senior Counsel
for Mr.S.Ramesh

For Respondents : Mr.S.Seenivasagam (R1)
R2- Court



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ORDER

The present writ petition has been filed challenging the impugned order in TNSE IA 14 of 2022 dated 03.10.2022 on the file of the 2nd respondent.

2.Heard, the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent. Perused the materials on record.

3.The first respondent was an employee of the Petitioner bank in the year 2001. He was serving at Vilangudi Branch at Madurai. Thereafter, he was transferred to Mumbai on regular transfer. The first respondent was placed under suspension by the competent authority followed by a charge sheet, dated 30.07.1999 issued by the disciplinary authority. An enquiry was ordered by the disciplinary authority and an enquiry was conducted after affording an opportunity to the first respondent in all the stages. In the meanwhile, there was replacement of enquiry officer and even thereafter, sufficient opportunity was given to the first respondent. Though the first respondent initially appeared and attended the domestic enquiry and later he decided not to appear before the



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enquiry officer. Ultimately, the enquiry officer held that the charges levelled against the petitioner were proved on 31.12.2001 following which, the disciplinary authority passed an order of dismissal of the first respondent from the service.

(ii).In the meanwhile, the first respondent filed a suit in O.S.No. 1215 of 2000 before the Principal District Munsif Court, Madurai seeking to declare that the disciplinary action initiated against him is malafide and to declare the charge sheet, dated 30.07.1999 as null and void and the appointment of an enquiry officer is in gross violation of Employees Regulation and also for permanent injunction to restrain the bank from proceeding further with the domestic enquiry. It is pertinent to make a mention that during the pending suit on 31.12.2001, the disciplinary authority has dismissed the petitioner. Thereafter, on 23.01.2017 the suit was dismissed on merits. The learned Principal District Munsif, Madurai relying upon the decision of this Court rendered in Tata Communications Ltd., Vs.Komalvalli, reported in **2012(3) MLJ 415**, had dismissed the said suit.

(iii).As against the Judgment and decree in O.S.No.1215 of 2000, the first respondent preferred an appeal in A.S.No.90 of 2017 before the II



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Additional Sub Court, Madurai. Concurring with the findings of the learned trial Judge, on 04.08.2021 the said appeal was dismissed on merits.

(iv).As against the same, the first respondent preferred a second appeal in A.S.No.2282 of 2022 before this Court. On 31.03.2022 and this Court dismissed the second appeal based on the findings that no infirmity or perversity in the concurrent Judgments and dismissed the second appeal. However, liberty was given to the first respondent to proceed against the final order and the appellate order in the disciplinary proceedings for re-dressal of his grievance in the manner known to law.

(v).The first respondent in view of the liberty given by this Court in the second appeal, had filed an application before the Joint Commissioner of Labour, Madurai, who is the second respondent herein, who is the authority under Section 41(2) of the Tamil Nadu Shops and Establishments Act (hereinafter referred to as 'the Act') along with an application in I.A.No.14 of 2022 to condone the delay of 20 years and 4 months in filing the appeal against the final order of dismissal, dated 31.12.2001. The second respondent by order, dated 03.10.2022 allowed the said I.A.No.14 of 2022 by condoning the delay of 20 years and 4 months in filing appeal as against the final order of dismissal, dated 31.12.2001 Challenging the same, this writ petition came to be filed.



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4.The learned counsel appearing for the first respondent filed a counter and submitted that there is no infirmity in the order of the second respondent in allowing I.A.No.14 of 2022. The question in this *lis* is only in respect of condonation of delay caused due to the pendency of civil suit, the first respondent did not file any application before the second respondent and on dismissal of the civil suit in the second appeal by this court, obviously, the only way out to the first respondent to resolve the issue is to file an application before the second respondent. The delay of 20 years and 4 months in filing the appeal against the final order of dismissal, dated 31.12.2001 is neither wanton nor wilful. If the delay is not condoned by the second respondent, the possibility of a meritorious matter being thrown away at the very threshold would happen. Therefore, the second respondent had allowed the petition to condone the delay. Hence, there is no infirmity in the impugned order has prayed to dismiss the petition.

5.No doubt, it is a case, in which, the first respondent had approached the second respondent, under Section 41(2) of the Act, after a



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prolonged period of 20 years and 4 months for filing an appeal as against the final order of dismissal passed against the first respondent, as early as on 31.12.2001. However, the reason attributed by the first respondent for the prolonged delay is that he has challenged the disciplinary proceeding, which was initiated against him in O.S.No.1215 of 2000, on the file of Principal District Munsif Court, Madurai and the same was dismissed and thereafter, the same was taken on appeal by the first respondent before the II Additional Sub Court, Madurai in A.S.No.90 of 2017, which was also dismissed by confirming the Judgment and decree of the trial Court.

6.Against which, second appeal in S.A.No.228 of 2022 was preferred by the first respondent before this Court, which was also duly dismissed by this Court, however, giving liberty to the petitioner to proceed against the final order before the appellate Authority in the manner known to law.

7.Taking advantage of the liberty given by this Court in the second appeal, the first respondent has filed an application under Section 41(2) of the Act before the second respondent along with the application to condone the



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delay of 20 years 4 months, in I.A.No.14 of 2022 in filing the appeal against the dismissal order passed against the first respondent on 31.12.2001.

8.However, on a careful perusal of the materials available on record would reveal that as early as on 23.01.2017, when the learned Principal District Munsif, Madurai dismissed the suit by observing that the entire matter has become infructuous, in view of the fact that the appeal preferred by the first respondent against the punishment imposed to him was dismissed on 31.12.2001 by the appellate authority. In view of the same, the learned trial Court concluded that the suit has become infructuous. However, the first respondent will not come under the definition of a labour, therefore, the suit is maintainable and the Civil Court has got jurisdiction to entertain the said suit. When the matter was dismissed as infructuous, observing that the Civil Court has jurisdiction to deal with the issue of disciplinary proceeding initiated as against the first respondent, he did not challenge the order of dismissal, dated 31.12.2001. The first respondent without filing a fresh suit, challenging the dismissal order passed in O.S.No.1215 of 2000 filed appeal before the II Additional Sub Court, Madurai in A.S.No.90 of 2017, and thereafter, preferred second appeal before this Court in S.A(MD)No.2282 of 2022 and the same was



dismissed. However, liberty was given by this Court in the second appeal to the first respondent to proceed against the final order.

9.The Hon'ble Apex Court in ***M. Durga Singh & Ors. Vs Yadagiri & Ors. reported in AIR 2018 SUPREME COURT 2104***. The relevant portion which is extracted as follows:

“20. In view of the above, we have no hesitation in concluding that the Special Court was fully justified in dismissing the land grabbing case filed by the appellants and the High Court was also justified in dismissing the writ petition filed by them. We find absolutely no reason to interfere with the views expressed and accordingly we dismiss the appeal with costs of Rs. 50,000/- on the appellants for taking several courts for a ride through continuous and fruitless litigation spanning several decades.”

10.Though the aforesaid case was with respect to litigation of approaching the Civil Court, which is a wrong forum honestly believing that the Civil Court has jurisdiction to entertain the suit instituted by them, the Hon'ble Apex Court had proceeded to dismiss the case as against the parties/ appellants by observing that the appellants had taken several Courts for a ride through continuous and fruitless litigation spanning several decades.



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11.However, in the case in hand, though the learned trial Court had categorically held that the Civil Court has jurisdiction to entertain the suit with respect to the service matter of the first respondent by its Judgment and decree, as early as on 23.01.2017, the first respondent never preferred to file a fresh suit, challenging the punishment inflicted on him, as a result of disciplinary proceeding initiated as against him.

12.On the contrary, without filing a fresh suit, the petitioner preferred an appeal as against a suit, which was dismissed as infructuous. Thereafter, filed the second appeal before this Court and fruitlessly conducted the litigation for more than 22 years and after a passage of 22 years of dismissal from service, he made up his mind to initiate action by challenging the punishment inflicted on him before the second respondent, for which, IA No.14 of 22 has been filed by the second respondent seeking to condone the delay of 20 years and 4 months in filing the appeal against the dismissal order, dated 31.12.2001. However, the second respondent without going into the details of the case and even without application of mind, proceeded to allow the petition seeking condonation of prolonged delay of 20 years and 4 months in preferring the appeal, by way of passing the impugned order, dated 03.10.2022. It is seen



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that the attitude of the first respondent in conducting the fruitless litigation for several decades and once again initiating proceedings before the second respondent, is purposeless.

13.In view of the same, this Court is inclined to quash the impugned order passed by the second respondent in TNSE IA 14 of 2022, dated 03.10.2022. Accordingly, this petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

15.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

The Joint Commissioner of Labour,
Ellis Nagar, Madurai.



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L.VICTORIA GOWRI, J.

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