

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 13720 of 2022

Sri Manish Kumar Pandey

Versus

Union of India and Others

For the Petitioner : Ms. Mousomee Shome, Adv.
Mr. Subhajit Das, Adv.

For the Respondent Nos. 3 & 4/Bank of India

: Mr. S.M. Obaidullah, Adv.

Heard on : 21.01.2026

Judgment on : 04.02.2026

Ajay Kumar Gupta, J:

1. The petitioner has preferred this writ petition praying, *inter alia*, as follows: -

- “(a) To issue in the nature of mandamus commanding the respondent no. 1 to set aside the order dated 28.06.2019 being annexure P-7 to this petition and direction be given to the said respondent to refer the matter before the appropriate forum for adjudication of the dispute.*
- b) A direction would be given to the concerned respondent to send the order of reference to the Central Government Industrial Tribunal after framing the issue for adjudication of the dispute between the writ petitioner as well as the respondent bank.*
- c) Writ in the nature of Certiorari, commanding the respondents to produce all the relevant documents in connection with the matter so that conscionable justice may be rendered, after setting aside the order dated 28.06.2019 being annexure P-7 to this application.*
- d) Rule NISI in terms of prayers (a), (b) and (c) above.*
- e) An interim order with a direction upon the concerned respondent to send order of reference in accordance with law to the appropriate Tribunal.*
- f) And pass any order or orders, direction or directions as Your Lordship may deem fit and proper.”*

FACTS OF THE CASE

2. The brief facts leading to the filing of this writ petition are as follows:
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- a.** The petitioner was appointed as a clerk-cum-accounts clearance staff at the Bank of India, Garden Reach Branch, Kolkata, on 15th July, 1994. He was later transferred on 10th July, 2003 to the Kolkata Municipal Corporation Office of Bank of India.
- b.** While in service, the petitioner was alleged to have committed misconduct by failing to deposit certain amounts in customers' savings accounts within the stipulated time. On this allegation, the Bank issued a charge-sheet and conducted a departmental enquiry. Upon conclusion of the enquiry, the disciplinary authority imposed the punishment of compulsory retirement/removal from service under Clause 6(c) of the Memorandum of Settlement dated 10th April, 2002, by an order dated 26th March, 2004.
- c.** Aggrieved by the said order, the petitioner preferred an appeal before the Appellate Authority on 30th April, 2004 and made submissions on 26th May, 2004. However, the Appellate Authority, by an order dated 12th July, 2004, upheld the punishment imposed by the disciplinary authority.
- d.** Following the appellate order, the petitioner became unemployed and claimed to have suffered extreme financial hardship. After a considerable lapse of time, he submitted a representation dated 10th November, 2008 before the Chairman-cum-Managing Director,

Bank of India, Head Office, Bandra Kurla Complex, Mumbai challenging the Appellate Authority's order. As no response was received, the petitioner approached this Hon'ble High Court by filing a writ petition being W.P. No. 7589 (W) of 2011. The said writ petition was dismissed by the Hon'ble High Court on 15th May, 2018.

- e. Subsequently, the petitioner filed an application before the Central Government Industrial Tribunal under Section 2A (2) of the Industrial Disputes Act, 1947, in the year 2019. However, since the said provision had already been repealed in 2016, the application became infructuous. The petitioner also filed a review application dated 9th July, 2018 against the Appellate Authority's order, but the same yielded no result.
- f. Thereafter, the petitioner raised an industrial dispute by submitting a representation dated 11th December, 2017 before the Deputy Chief Labour Commissioner, Government of India, 5th Floor, 236, A.J.C. Bose Road, Kolkata – 700 020 alleging unlawful compulsory retirement. Against the said application in connection with the review of Appellate Authority's order, the Deputy Zonal Manager, Bank of India replied by his letter dated 13.07.2018 stating that there is no provision of bi-partite settlement for the

workman staff for review of the order passed by the Disciplinary Authority/Appellate Authority.

- g.** During conciliation proceedings, the Assistant Labour Commissioner issued a failure report dated 18th March, 2019 under Section 12(4) of the Industrial Disputes Act, 1947, acknowledging the existence of a dispute between the employer and employee.
- h.** Despite the failure report, the Ministry of Labour and Employment, Government of India, by order dated 28th June, 2019, refused to make a reference for adjudication. The refusal was primarily based on the ground of inordinate delay of about 13 years from the date of termination, relying on the Hon'ble Supreme Court judgment in ***Nedungadi Bank Ltd. v. K.P. Madhavankutty***¹.
- i.** The petitioner's review application against the refusal order was also rejected by the Ministry on 9th March, 2022.
- j.** Being aggrieved by the refusal of the appropriate Government to refer the industrial dispute for adjudication, the petitioner has filed the present writ petition challenging the order dated 28th June, 2019, contending therein that the refusal is illegal, arbitrary and beyond the administrative jurisdiction of the Government.

¹ AIR 2000 SC 839

SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel appearing on behalf of the petitioner submitted that the appropriate authority did not refer the industrial disputes to the appropriate forum, even though the Asst. Labour Commissioner issued a failure report dated March 18, 2019, under section 12(4) of the Industrial Disputes Act, 1947, acknowledging the existence of a dispute between the employer and the employees.
4. It was further submitted that, being the administrative power, the appropriate government cannot either decide the merits of the case or refuse to refer the disputes before the appropriate forum for adjudication on the ground of delay. The appropriate government ought to have referred the dispute before the appropriate forum for adjudication, even after exhaustion of all remedies by the writ petitioner, since the dispute, between the employer and employees, is purely industrial in nature, and the same must be decided before the appropriate forum in accordance with law. Such an opportunity did not avail by the writ petitioner to ventilate his grievances, and as such, the writ petitioner preferred this writ petition praying for relief as aforesaid.
5. It was finally submitted that the appropriate government was not justified in declining to refer an industrial dispute, arising out of the

termination of the petitioner, for adjudication by the Industrial Tribunal. If the grounds or reasons, based on which the government declined to refer, were irrelevant, extraneous or not germane to the determination, the party would be entitled for writ in the nature of mandamus. As such, the writ petitioner's prayer is to refer the dispute to the appropriate forum for adjudication on its merits.

6. Learned counsel appearing on behalf of the petitioner has placed reliance on the following judgments to support her contentions as aforesaid: -

*i. Ram Avtar Sharma & Ors. Vs. State of Haryana & Ors.*²;

*ii. Telco Convoy Drivers Mazdoor Sangh and Ors. Vs. State of Bihar and Ors.*³;

*iii. Sapan Kumar Pandit Vs. U.P. State Electricity Board and Ors.*⁴.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

7. Learned counsel appearing on behalf of the respondent nos. 3 and 4/Bank of India submitted that the petitioner was awarded the punishment of compulsory retirement from his service with superannuation when needed as applicable in terms of clause 6 (c) of

² AIR 1985 SC 915 : (1985) 3 SCC 189

³ AIR 1989 SC 1565 : (1989) 3 SCC 271

⁴ AIR 2001 SC 2562 : (2001) 6 SCC 222

Memorandum of Settlement dated 10th April, 2002, which confirmed the punishment order of the Disciplinary Authority.

- 8.** It was further submitted that the writ petitioner has exhausted all the available remedies from different forum and there is no chance of further adjudication of disputes. The writ petitioner has challenged the compulsory retirement before the Appellate Authority but unsuccessful. Thereafter, the petitioner preferred review application that was also turned down. Finally, the writ petitioner has filed writ Petition being W.P. No. 7589 (W) of 2011, which was dismissed by the Hon'ble High Court. Thereafter, having no other alternative, the writ petitioner, after expiry of long 13 years, raised an industrial dispute without any basis and explaining delay as such, the appropriate authority outrightly rejected his prayer for reference of the dispute before the appropriate forum, contending therein that a dispute should be raised within a reasonable time as such, dispute is not found to be fit to refer for adjudication.
- 9.** It was finally submitted that it is true that the law does not prescribe any time limit for the appropriate government to exercise its power for reference of an industrial dispute under the provisions of the Industrial Disputes Act, 1947. It is not that this power can be exercised at any point of time, and to revive matters which had since

been settled. Powers should be exercised reasonably and in a rational manner.

- 10.** Learned counsel appearing on behalf of the respondent nos. 3 and 4/Bank of India has placed reliance on the following judgments to bolster his submissions: -

i. Rajasthan State Industrial Development and Investment Corporation and Anr. Vs. Diamond & Gem Development Corporation Limited and Anr.⁵ particularly in paragraph nos. 15 and 16;

ii. The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Ors.⁶ particularly in paragraph no. 6;

iii. S. S. Balu and Anr. Vs. State of Kerala & Ors.⁷ particularly in paragraph no. 17.

FINDINGS AND ANALYSIS OF THIS COURT:

- 11.** Having heard the arguments of the learned counsels appearing on behalf of the respective parties and upon perusal of the judgments referred by the parties, this Court finds that the core issue is whether the appropriate Government acted within the jurisdiction in refusing to make a reference on the ground of delay despite a failure report under section 12(4) of the Act.

⁵ (2013) 5 SCC 470

⁶ AIR 2000 SC 839

⁷ (2009) 2 SCC 479

- 12.** Admittedly, the writ petitioner was awarded a punishment for compulsory retirement from his service after thorough Department proceedings. A departmental proceeding was initiated against the writ petitioner with serious allegations. He was deputed to Kolkata Municipal Corporation by the Bank on July 10, 2003, with cash to the tune of ₹ 6,30,800/- for payment of KMC staff salary. After disbursal of an amount of ₹ 5,54,318/-, the petitioner held the balance cash amount of ₹ 76,482/- out of which he misappropriated an amount of ₹ 14,000/- on July 10, 2003 and later withdrew the same amount that is ₹ 14,000/- from his overdraft account no. 200091 with the branch, which was already overdrawn by approximately Rs. 19,000/- to meet the said shortfall and, thereafter, deposited ₹ 76,482/- with the branch. After culmination of departmental proceedings, the Disciplinary Authority punished him with compulsory retirement.
- 13.** He exhausted all remedies before the Appellate Authority and the Hon'ble High Court, but he was unsuccessful. His review application was also turned down. Thereafter, he approached after an efflux of 13 years for reference of an industrial dispute. Admittedly, there were disputes between the employer and employee, but the same could have been raised at the earliest, but the writ petitioner failed to raise

the same. After 13 years, such disputes cannot be adjudicated by the appropriate authority since it would be only academic. He must have approached within a reasonable time but failed.

14. The Hon'ble Supreme Court in ***Ram Avtar Sharma (Supra)*** and ***Telco Convoy Drivers (Supra)*** held that the Government cannot refuse reference by entering into adjudicatory domain. At the same time, in ***Nedungadi Bank Ltd. (supra)***, the Apex Court clarified that stale disputes ought not to be revived after long lapse of time and the power must be exercised reasonably.
15. In the present case, the punishment order was passed in March 2004 and the appellate order in July 2004. The industrial dispute was raised only in December 2017, i.e., after more than 13 years.
16. Significantly, the petitioner had already challenged the disciplinary action before this Court in W.P. No. 7589 (W) of 2011, which was dismissed in 2018. Thus, the issue had attained finality in writ jurisdiction.
17. The failure report under Section 12(4) of the Industrial Disputes Act, 1947 merely records the existence of a dispute; it does not curtail the discretion of the Government under Section 10 of the Industrial Disputes Act, 1947 to examine whether such a dispute deserves reference in view of delay, laches, and prior adjudication.

18. The refusal order dated 28th June, 2019 shows that the Government considered the chronology, the delay, and the judicial pronouncements. The ground taken is neither extraneous nor irrelevant but squarely based on binding precedent in ***Nedungadi Bank Ltd. (Supra)***.
19. The petitioner's reliance on ***Sapan Kumar Pandit (Supra)*** is misplaced. In the aforesaid case, the delay was explained, and no prior adjudication had taken place. In the instant case, the petitioner slept over his rights for over a decade and had already invoked writ jurisdiction unsuccessfully.
20. The judgments relied upon by the learned counsel for the petitioner are not at all applicable in the present facts and circumstances of this case since the same is distinguishable from the present case. Rather, the judgments relied upon by the Respondents are squarely applicable in the present case since the writ petitioner should have raised the disputes within a reasonable time but he raised disputes after he became unsuccessful from different forum in different stages.
21. Industrial adjudication is not meant to reopen matters that have attained quietus and where evidence would have become stale with passage of time.

- 22.** Therefore, this Court is of the opinion that there is an absence of sufficient grounds and reasons assigned by the Petitioner for his grievances after expiry of 13 years, now 16 years, after having exhausted all remedial measures. Therefore, this court also does not find any merit in the present case.
- 23.** Consequently, **WPA 13720 of 2022** stands **dismissed** without order as to costs.
- 24.** Connected applications, if any, are also, thus, disposed of.
- 25.** Interim order, if any, stands vacated.
- 26.** Parties shall act on the server copies of this Judgment downloaded from the official website of the High Court at Calcutta.
- 27.** Urgent Photostat certified copies of this Judgment, if applied for, be supplied to the parties upon compliance of all the necessary and legal formalities.

(Ajay Kumar Gupta, J)