
(2000) 12 CAL CK 0025
In the Calcutta High Court
Case No : Writ Petition No. 3123 of 2000

Air India Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 08-12-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 33(2)

Citation : (2001) 91 FLR 94 : (2002) 4 LLJ 266

Hon'ble Judges : B. Bhattacharya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B. Bhattacharya, J.—In this writ application an employer has challenged an order dated May 18, 1999 issued by the appropriate Government thereby referring a dispute to the Central Government Industrial Tribunal in terms of Section 10(1) of the Industrial Disputes Act (hereinafter referred as "the said Act").

2. There is no dispute that the private-respondent/employee was dismissed from service on November 3, 1981 during the pendency of an industrial dispute as a result, such dismissal required post approval in terms of Section 33(2)(b) of the said Act. Accordingly, the employer filed appropriate application before the National Tribunal seeking approval for such dismissal. The said proceeding u/s 33(2)(b) of the said Act was pending till November 1, 1999 when ultimately, the National Tribunal has approved such dismissal.

3. During the pendency of the proceeding before the National Tribunal u/s 33(2)(b) of the said Act, the private-respondent approached the Conciliation Officer under the Industrial Disputes Act in the year 1997. Ultimately the appropriate Government has referred the dispute to the Central Government Industrial Tribunal on May 18, 1999 for determination whether the termination of service of the private-respondent was justified. As mentioned earlier such reference is the subject-matter of the instant writ application.

4. Mr. Chaudhury, learned counsel appearing on behalf of the employer has strongly relied upon the decision of the Apex Court in the case of *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, and has contended that this Court should quash such reference by relying the principle laid down in the aforesaid decision; in other words, Mr. Chowdhary contends that the claim being a stale claim, the appropriate Government acted illegally in referring such a claim before the Tribunal.

5. In the aforesaid case of the Nedungadi Bank Limited, the Apex Court was of the view that the reference made 7 years after dismissal of the employee should not be made. After going through the said decision it appears that in paragraph, 6 of the said decision the Apex Court has laid down the law on the aforesaid question, paragraph 6 is quoted hereunder:

"6. Law does not prescribe any time limit for the appropriate Government to exercise its powers u/s 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 lapse of about seven years of 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 u/s 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 u/s 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 industrial dispute was *ex facie* bad and incompetent."

6. As pointed out by the Apex Court in the aforesaid decision, as to whether a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, the Supreme Court proceeded, it would be rather incongruous that the reference could be made u/s 10 of the Act. In the circumstances, as prevailed in the said decision, it has already been pointed out that seven years after the dismissal of the employee the reference was made.

7. In the case before us although the employee was discharged in the year 1981, a proceeding for approval of such dismissal in terms of Section 33(2)(b) of the Act was pending and during the pendency of such proceeding the employee approached the Conciliation Officer in the year 1997. Therefore, it cannot be said for a moment that in this case the dispute had become final. In the case before the Supreme Court no such proceeding was pending.

8. Mr. Chowdhary next contends that pendency of a proceeding u/s 33(2)(b) of the Act did not preclude the employee from raising dispute earlier and as such, notwithstanding the fact that in the case before the Supreme Court no proceeding u/s 33(2)(b) of the Act was pending, the said decision squarely applies to the present case. In this connection, Mr. Chowdhary has relied upon a decision of the Bombay High Court in the case of S. Nagaraj and Others Vs. State of Karnataka and Another, In the said case the employee was dismissed in the year 1980. The post departmental appeal was disposed of in the year 1981. The proceeding u/s 33(2)(b) of the Act ended in the year 1984 and the employee approached for a reference in the later part of 1987. Thus, three years after the disposal of the proceeding u/s 33(2)(b) and seven years after the actual dismissal the employee approached for a reference. The learned single Judge of the said Court was of the view that no reference should have been made after the lapse of seven years from the date of dismissal.

9. With great respect to the learned Judge, I am unable to accept mat there was seven years delay in that case. In fact, as pointed out earlier, there was really delay of three years, that is to say, the time ran from the date of approval of the Labour Court u/s 33(2)(b) of the Act.

10. Be that as it may, after the decision of the Apex Court relied upon by Mr. Chowdhary, now there is no scope of further doubt that time should run from the date, the dismissal had become final. In my view, so long approval is not granted by the concerned Labour Court u/s 33(2)(b) of the Act and the same is being contested by the employee, it cannot by any stretch of imagination be (sic) argued that the decision had become final the moment the order of dismissal was passed. In this case, I have already indicated that the employee approached the Conciliation Officer during the pendency of the proceeding u/s 33(2)(b) of the Act and when such authority considered the case of reference the dispute was still pending before the Labour Court. Thus, I am unable to accept the contention of Mr. Chowdhury that in this case a stale claim has been referred to the Tribunal for determination.

11. Apart from the aforesaid fact, in my view, this Court should not entertain the writ application on the ground of delay of the petitioner itself. As mentioned above reference was made in the month of May, 1999. This Court has been given to understand that the petitioner has already appeared before the Tribunal and filed a written statement before such Tribunal Thereafter, this petition has been filed on November 29, 2000, that is to say, after the expiry of 18 months from the date of reference. Therefore, this writ petition should be dismissed on the ground of unexplained delay in moving this writ petition and also on the ground of acquiescence. In paragraph 23 of the application, the petitioner has explained the delay in moving this application. According to the averment made in the said paragraph, the petitioner had decided to file the instant writ application after the decision of the Apex Court in Nedungadi Bank Ltd. (supra) was published. In my view, the aforesaid reason cannot be said to be a valid explanation for

contending delay of 18 months.

12. I, thus, find that this writ application is bereft of any substance and accordingly, the same is dismissed. In the facts and circumstances of the case, there will be no order as to costs.

13. Since the same points are involved in the other two matters [W.P. No. 3122 of 2000 (Air India Ltd. v. Union of India and W.P. No. 3121 of 2000 (Air India Ltd. v. Union of India) which have appeared in the list as Item Nos. 13 and 14, these writ applications are also dismissed on the grounds mentioned aforesaid.

14. This order will thus govern the other two writ applications also.

15. All parties are to act on a signed xerox copy of this dictated order on the usual undertaking.