Supreme Court of India Nedungadi Bank Ltd vs K.P. Madhavankutty And Ors on 28 January, 2000 Bench: S. Saghir Ahmad, D.P. Wadhwa CASE NO.: Appeal (civil) 638 of 2000

PETITIONER: NEDUNGADI BANK LTD.

RESPONDENT: K.P. MADHAVANKUTTY AND ORS.

DATE OF JUDGMENT: 28/01/2000

BENCH: S. SAGHIR AHMAD & D.P. WADHWA

JUDGMENT: JUDGMENT 2000 (1) SCR 459 The Judgment of the Court was delivered by D.P, WABHWA, J. Leave panted. The Nedungadi bank Ltd. ('Bank' for short) is the appellant. The Bank is aggrieved by the judgment dated August 5, 1988 of the Division Beach of the Kerala High Court pased in Writ Appeal whereby it set aside the judgment of the learned single Judge dated January 24, 1995 allowing the writ petition of the Bank and quashing the reference made by the Central Government under Section 101 of the Industrial Disputes Act (for short the 'Act'). The refernce of the Industrial dispute was as Follows :- "Whether the action of the management of Nedungadi Bank Ltd. in dismissing Shri K.P. Madhavankutty from service w.e.f. 11.8.1972 is justified? If not, to what relief the workman concerned is entitled to?"

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1. Reference of disputes of Board, Courts or Tribunals. - (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, - (a) ..... (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication : Provided that where he dispute relates to any matter specified ia the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Govern-ment may.if it so thinks fit, make the reference to a Labour Court under clause (c) : Provided further ..... Provided also ..... ". We may refer to circumstances which led the Central Government to make the reference. Respondent was working as a clerk with the Bank. He had put in ten years of service. Disciplinary proceedings were initiated against him for having misappropriated a sum of Rs. 1,185 and falsifying the books of the Bank. After conclusion of the inquiry he was served with a memo dated October 13, 1972 to show cause as to why punishment of dismissal from service be not awarded to him in the light of the grave misconduct proved against him. Respondent admitted his guilt and prayed for mercy. His plea was examined. However, considering the circumstances of the case he was dismissed from the service of the Bank with effect from August 11,1972. Respondent filed appeal to the Board of Directors of the Bank. He admitted to have committed the misappropriation, expressed unconditional regret and prayed that highest penalty of dismissal from service be not imposed on him. His appeal was dismissed by order dated January 30,1973. The appellate authority was of the view that on considera-tion of

the entire circumstances it was felt that in the interest of the Bank it was not desirable to retain the respondent in the service of the Bank. The matter rested at that. Respondent got whatever benefits were due to him under the rules of the Bank. Then, after a period of about seven years 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 January 17, 1980 wherein it was demanded that respondent be reinstated. The ground was that two other employees, who were dismissed, were later reinstated. Respondent in the meanwhile filed an application before the State Government on May 24,1979 under Section 10 of the Act. It was rejected by the State Government on the ground that appropriate Government in relation to the Bank was the Central Government. On October 31, 1980 respondent moved the Assistant Labour Commissioner of the Central Government for relief, who by order dated March 11, 1981 held that there was no scope for formal proceedings under the Act since the matter was one which arose way back in 1972. 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. High Court by its order directed the Assistant Labour commis-sioner to send his report under Section 12(4)2 of the Act to the Central Government. In pursuance to the order of the High Court the Assistant Labour Commissioner sent his report to the Central Government for consideration. Central Government declined to make any reference under Section 10 of the Act by order dated January 1, 1983. This led the respondent again to file a writ petition in the High Court which was disposed of by order dated November 14, 1983 with a direction to 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 February 21, 1989, upheld the order of the learned sngle Judge and observed as under:"The apprehension expressed by the learned counsel for the ap-pellant 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 Govern-ment 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 justifica-tion 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 on 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 12. Duties of conciliation officer. - (4) If no such settlement is arrived al, 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 ascertain-ing 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. 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." Now the Central Government made the reference which has been reproduced above. This time the bank felt aggrieved and challenged the reference by filing writ petition, which by order dated January 24,1995 was allowed by the learned single Judge and on appeal filed by the respondent Division Bench validity of the reference was upheld. Law does not prescribe any time limit for the appropriate govern-ment 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 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 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 circumstan-ces they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was ex facie bad and incompetent. In the present appeal it is not the case of the respondent that the disciplinary proceedings, which resulted in his dismissal, were in any way illegal or there was even any irregularity. He availed his remedy of appeal under the rules governing his conditions of service. It could not be said that in the circumstances industrial dispute did arise or was even ap- prehended after lapse of about seven years of the dismissal of the respon- dent. Whenever a workman raises some dispute it does not become industrial dispute and appropriate government cannot in a mechanical fashion make the reference of the alleged dispute terming as industrial dispute. Central Government lacked power to make reference both on the ground of delay in invoking the power under section 10 of the Act and there being no industrial dispute existing or

even apprehended. The pur-pose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace and defeats the very object and purpose of the Act. Bank was justified in thus moving the High Court seeking an order to quash the reference in question. It was submitted by the respondent that once a reference has been made under Section 10 of the Act a Labour Court has to decide the same and High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court. That is not a correct proposition to state. An administra- tive order which does not take into consideration statutory requirements or travels outside that it is certainly subject to judicial review limited though it might be. High Court can exercise its powers under Article 226 of the Constitution to consider the question of very jurisdiction of the Labour Court. In national Engineering Industries Ltd. v. State of Rajasthan, (1999) 9 SC 377 this Court observed : "It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute and none apprehended which could be subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the industrial dispute, which could be examined by the High Court fa its writ jurisdiction. It is the existence of the industrial tribunal which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended appropriate government lacks power to make any reference." We, therefore, allow the appeal, set aside the impugned judgment of the Division Bench and restore that of the learned single Judge. However, there shall be no order as to costs.