

In the High Court of Judicature at Madras

Reserved on : 04.06.2015
Dated : 10.06.2015
Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.156 of 2015
and M.P.No.1 of 2015

Citibank N.A.
Rep. by its Head of Employee Relations
Mr.B.Senthilnathan,
No.2, I Floor,
Club House Road,
Anna Salai, Chennai-600 002. .. Appellant

Vs.

1.T.R.Ramesh
2.The Appellate Authority
Under Section 41 of Tamil Nadu Shop
& Establishments Act viz.,
The Deputy Commissioner of Labour,
Teynampet, Chennai. .. Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 22.12.2014 and made in W.P.No.11542 of 2013 by the learned Judge of this Court.

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus forbearing 2nd respondent herien from proceeding with TSE.No.3/11 on his file.

For Appellant : Mr.Sanjay Mohan
for M/s.S.Ramasubramaniam & Associates

For Respondents : Mr.M.Vaidyanathan

J U D G M E N T

M.VENUGOPAL, J.

The Appellant/Petitioner has focused the intra Court Writ Appeal before this Court as against the order dated 22.12.2014 passed by the Learned Single Judge in W.P.No.11542 of 2013.

2.The Learned Single Judge while passing the impugned order on 22.12.2014 in W.P.No.11542 of 2013 in para 18 inter-alia observed the following:

"... this Court is of the view that :- (i) The first respondent has filed a case in TSE No.3 of 2011, on the file of second respondent herein to set-aside the termination order which has been issued by the writ petitioner herein. The issue of employment of first respondent is of paramount importance and also the case in TSE No.3 of 2011 is pending for more than three years at a partly heard stage. Therefore, the said case should be disposed of on merits within a stipulated period, since the first respondent is an aggrieved person and he is entitled for speedy trial as per Article 21 of the Constitution.

(ii)The appeal preferred before the Deputy Commissioner of Labour is the proper legal forum available under law to set aside the order of termination by Citibank against the first respondent. It is also seen that no damages are claimed before the Deputy Commissioner of Labour nor can they be claimed. This Court is of the view that the suit before the Learned Single Judge in Madras High Court is for damage for treatment meted out to the first respondent by Citibank and this suit does not cover or question the veracity or correctness of the order of termination by Citibank against the first respondent. As such, this Court opines that the above two cases are not parallel proceedings.

(iii)It is only the Deputy Commissioner of Labour, who can adjudicate on the appeal filed by the first respondent seeking to set aside his termination order by Citibank. The Deputy Commissioner has no jurisdiction or authority to award damages. The High Court, on the other hand is the competent Court to conduct the suit where the first respondent has sought damages from the Bank. Therefore, these are two different legal cases at two different but appropriate forums.

(iv) It is also seen that the first respondent herein has been terminated from service in the year 2011 and now the case is pending adjudication for a period of about 4 years. As such, if the said case is disposed of at the earliest on merits, the interest of the writ petitioner would not be, in any way, prejudiced.

(v) The Labour Court Judgment, if passed after trial in TSE No.3 of 2011, will offer the most suitable solution to decide the civil suit in C.S.No.81 of 2013, which is pending on the file of this Court. The verdict of the Labour Court will not dent any of the characteristics of civil suit. Besides this, if the Civil Suit is disposed of before deciding the Labour Court Case, it has a distinct possibility of raising lacuna." and resultantly, dismissed the Writ Petition.

3. Further, the Learned Single Judge while dismissing the Writ Petition had directed the Second Respondent/Appellate Authority (The Deputy Commissioner of Labour, Teynampet, Chennai) to dispose of the pending appeal in TSE.No.3 of 2011 on merits and in accordance with law, within 45 days from the date of receipt of the copy of the order etc.

4. The Learned counsel for the Appellant/Petitioner submits that the Learned Single Judge should have appreciated that the issue pertaining to the allegations of victimisation and harassment during service leading to termination were known in respect of the civil suit where the claim was for damages and in appeal under the Tamil Nadu Shops and Establishment Act, 1947, to set aside the order of termination of service. Further, it is the plea of the Appellant that the trial in both the forums centres around the same set of 'FACTS and ISSUES'.

5. That apart, it is represented on behalf of the Appellant that the Civil Suit stands listed for examination of witnesses on several occasions before the Learned Master of this Court.

6. Advancing his arguments, the Learned counsel for the Appellant urges before this Court that the Learned Single Judge ought to have taken into consideration that while the relief claimed in the suit and the Tamil Nadu Shops and Establishment Act appeal were different, the cause of action on the basis for success or failure by either party was the same.

7.Added further, it is the stand of the Appellant that trial on the same issues could not be conducted at the same time in two different forums where the evidence of both sides would be common as regards the allegations of Victimisation and alleged colourable exercise of power during service leading to termination of the service.

8.According to the Learned counsel for the Appellant on perusal of the plaint would latently and patently indicates a reference to the termination papers issued to the First Respondent on 01.02.2011, which according to the First Respondent is the culmination of the alleged harassment claimed by him.

9.In effect, the submission of the Learned counsel for the Appellant is that the cause of action as claimed by the First Respondent/plaintiff in the civil suit in C.S.81 of 2013 itself refers to the date of termination of his service viz., on 01.02.2011 when he was required to purportedly signed some papers which allegedly caused mental agony, hardships, necessitating a claim for damages.

10.The Learned counsel for the Appellant strenuously projects an argument that when the main suit C.S.81 of 2013 itself is ready for trial, plurality of proceedings should be avoided. Moreover, the main suit itself was posted for the First Respondent/Plaintiff to let in evidence and got adjourned to several dates. As such, it is unfair and unjust on the part of the First Respondent/Plaintiff to claim that his appeal TSE.No.3 of 2011 alone should proceed further.

11.While winding up his argument, the Learned counsel for the Appellant contends that it is proper for the First Respondent/Plaintiff to await till the disposal of the main civil suit namely, C.S.81 of 2013.

12.Conservely, it is the submission of the Learned counsel for the First Respondent that the Civil suit in C.S.No.81 of 2013 is not a substitute for an Appeal in T.S.E.No.3 of 2011 and in fact, a substitute remedy regarding legality of termination cannot be said to be lost because of the subsequent proceedings for damages in respect of the mental agony suffered.

13.Yet another argument advanced on behalf of the First Respondent is that the issue before the Appellate Authority relates to the correctness of termination only and no claim for damages or compensation is before the Deputy Commissioner of Labour, Chennai and in the suit C.S.81 of 2013, no relief for reinstatement is sought for by the First Respondent. Also that, only to civil limitation, the suit for damages for mental agony was filed during the year 2013.

14.It is to be borne in mind that the First Respondent had filed T.S.E.No.3 of 2011 before the Deputy Commissioner of Labour, Chennai, being the Appellate Authority as against the order of termination dated 01.02.2011 issued by the Appellant/Petitioner.

15.It is to be noted that a decision of the Civil Court is binding on the Appellate Authority/Deputy Commissioner of Labour, Chennai. However, the finding rendered by the Appellate Authority may not be binding on the Civil Court/High Court, even though the matter involved may be identical. In the considered opinion of this Court, a Civil Court may not have jurisdiction to enforce a 'Personal Contract'/'Contract of Employment' by or against an Employer. Further, in the absence of any statutory requirement, a Court of Law does not ordinarily compel an 'Employer' to recruit or retain in service an Employee not required by the Employer.

16.Be that as it may, on a careful consideration of respective contentions and also, this Court taking note of the fact that on the same set of facts concerning the Appellant/Bank and the First Respondent, based on the facts and circumstances of the case of the present case which float on the surface is of the considered view that there cannot be a legal bar for simultaneously/ contemporaneously to proceed further with an Appeal in T.S.E.No.3 of 2011 before the Competent Authority and pending Civil Suit in C.S.81 of 2013 before the Hon'ble High Court. In this regard, this Court fervently opines that it is neither possible nor advisable to adopt a hard and fast strait jacket cast iron formula. Moreover, a parallel enquiry by a Statutory Authority in a matter pending before a Civil Court does not necessarily ipso facto amount to Contempt of Court.

17.Looking at from the upshot of detailed and qualitative discussions mentioned supra, this Court holds that in view of the involvement of identical facts both in TSE.No.3 of 2011 and in the Suit in C.S.81 of 2013 before the concerned Authority and Hon'ble High Court pertaining to the Appellant and the First Respondent, this Court to prevent an aberration of justice and to promote substantial cause of justice, directs the proceedings in T.S.E.No.3 of 2011 before the Appellate Authority to proceed with the matter further and directs the Appellant and First Respondent simultaneously to proceed with the commencement of trial of the Civil Suit in C.S.81 of 2013. Viewed in that perspective, this Court sets aside the contra views taken by the Learned Single Judge in the order dated 22.12.2014 in W.P.No.11542 of 2013 and it is open to the respective parties to reap the benefits of ORDER/JUDGMENT to be arrived at on merits in the subject matter in issue.

18.With the above said observations and directions, the Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

DP

To

The Appellate Authority
Under Section 41 of Tamil Nadu Shop
& Establishments Act viz.,
The Deputy Commissioner of Labour,
Teynampet, Chennai.

1 cc to Mr.S. Ramasubramaniam, and Associates, Sr. 28271

1 cc to Mr.M.Vaidyanathan, Advocate, Sr. 28028

W.A.No.156 of 2015
and
M.P.No.1 of 2015

KSJ (CO)
kk 18/6



WEB COPY