

In the High Court of Judicature at Madras

Dated : 17.12.2015

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.39649 of 2015 and MP.No.1 of 2015

M.Achudhan

...Petitioner

Vs

1.The Deputy Chief Inspector of
Factories, Authority under Tamil Nadu
Industrial Establishments (Conferment
of Permanent Status to Workmen) Act,
1981, Hosur, Krishnagiri District.

2.The Labour Officer, Krishnagiri,
Krishnagiri District.

3.The Management of Global Pharmatech
Pvt. Ltd., rep.by its Deputy General
Manager, Personnel and Administration,
32, SIPCOT Industrial Complex,
Hosur, Krishnagiri District-635126.

...Respondents

PETITION under Article 226 of The Constitution of India
praying for the issuance of a Writ of Certiorarified Mandamus to
call for the records of the second respondent dated 7.2.2013 and
31.3.2015 in proceedings No.NA.KA. ENN.Aa/213/12 and Aa thi mu
A/48/2015, quash the same and consequently direct the second
respondent to adjudicate the 2A Application dated 12.3.2012 and
review petition dated 30.1.2015 within a time frame.

For Petitioner : Mr.R.Jaikumar for
M/s.Fenn Walter Associates

For Respondents 1 & 2 : Mr.S.Diwakar, AGP

ORDER

Mr.S.Diwakar, learned Additional Government Pleader takes
notice for respondents 1 and 2. Heard Mr.R.Jaikumar, learned
counsel appearing on behalf of the learned counsel on record for
the petitioner. By consent, the writ petition itself is taken up
for final disposal without ordering notice to the third
respondent.

2. The petitioner, who is a workman under the third respondent - Management, has filed the above writ petition challenging the order passed by the second respondent - Conciliation Officer dated 7.2.2013 refusing to entertain the petitioner's application under Section 2A of the Industrial Disputes Act, 1947 on the ground that such an application is barred by res judicata. Further, the second respondent, by another order dated 31.3.2015, returned the review petition filed by the petitioner on the ground that W.P. No.4138 of 2011 is pending. The order dated 31.3.2015 has been challenged.

3. The reason for closing the review petition is on the ground that the third respondent - Management has filed a writ petition in W.P.No.4138 of 2011 before this Court challenging an order passed by the first respondent dated 4.2.2011 granting permanent status to the the petitioner - workman with effect from 12.4.2010. Further, the Management has obtained order of stay of the order dated 4.2.2011 and the said writ petition is still pending. The cause of action for the petitioner to approach the second respondent is on account of the termination of his service with the third respondent during the pendency of the petition before the first respondent. Though an order has been passed granting permanent status to the petitioner - workman, the same having been stayed by this Court in a writ petition filed by the third respondent - Management, the petitioner is entitled to independently agitate his claims challenging the order of termination dated 27.4.2010.

4. Thus, the challenge to the order of termination being an independent cause of action, the second respondent was not justified in closing the application filed by the petitioner under Section 2A of the said Act. Furthermore, the petitioner did not have an opportunity before ever the impugned order dated 7.2.2013 was passed.

5. In the light of the above, the writ petition is allowed and the impugned orders are set aside. The second respondent is directed to entertain the application under Section 2A of the said Act filed by the petitioner dated 12.3.2012, commence conciliation proceedings and conclude the same within two months from the date of receipt of a copy of this order. It is made clear that this Court has not gone into the validity of the order of termination nor expressed any opinion on the merits of the writ petition filed by the third respondent against the order granting permanent status to the petitioner, for which

reason, notice to the third respondent is waived. No costs.
Consequently, the above MP is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Deputy Chief Inspector of Factories,
Authority under Tamil Nadu
Industrial Establishments
(Conferment of Permanent Status to Workmen)
Act, 1981, Hosur, Krishnagiri District.

2.The Labour Officer, Krishnagiri, Krishnagiri District.

+1 cc to Mr.T.Fenn Walter Associates Advocate sr.68047

+1 cc to Government pleader Advocate sr.68311

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and MP.No.1 of 2015

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