

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.02.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.33340 of 2013

K.Nambirajan

...Petitioner

Vs.

1. The Presiding Officer,
I Additional Labour Court,
Chennai - 600 104.

2. The Management
Tamil Nadu State Transport Corporation,
(Villupuram) Ltd.,
Villupuram District.

3. The General Manager,
Tamil Nadu State Transport Corporation,
(Villupuram) Ltd.,
Villupuram District

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for records of the second respondent, relating to the award, dated 05.07.2013, passed by the first respondent in I.D.No.27 of 2012, and to quash the same, and consequently, to direct the respondents 2 to 3 to reinstate the petitioner in service with continuity of service, back wages, etc.,

For Petitioner : Mr.Balan Haridass,
for Mr.J.Muthukumaran

First Respondent : Labour Court

For Respondents 2 and 3 : Mr.P.Paramasivadoss

O R D E R

The challenge in this Writ Petition is to the award passed by the I Additional Labour Court, Chennai, in I.D.No.27 of 2012, dated 05.07.2013, whereby, the dispute raised by the petitioner/workman was dismissed on the ground of delay and laches.

2. Heard the learned counsel appearing for the parties.

3. The following are relevant facts for disposal of this Writ Petition:-

i) The petitioner was working as a Driver in the respondent/State Transport Corporation, and while driving the Bus on 08.10.2003, it met with an accident, as a result of which, a person riding the two-wheeler, was killed. The respondent/Management appears to have orally terminated the petitioner from service without conducting any enquiry, or issuing show cause notice. Regarding the said accident, a criminal case was registered against the petitioner for offence under Sections 279 and 304-A I.P.C., which was taken on the file of Judicial Magistrate No.II, Kancheepuram, and assigned Calendar Case No.301 of 2005. The learned Judicial Magistrate, by judgment, dated 24.08.2006, acquitted the petitioner from the criminal charges. Thereafter, the petitioner is stated to have given representations for reinstatement of service along with backwages. Since the representations did not evoke any response, the petitioner raised Industrial Dispute, before the First Additional Labour Court, Chennai, being I.D.No.27 of 2012, questioning his non-employment.

ii) Before the Labour Court, the petitioner examined himself as W.W.1, and marked 9 documents, as Exs.W.1 to W.9. On the side of Management, five documents were marked as Exs.M.1 to M.5, and no witnesses were examined.

iii) The Labour Court, based on both oral and documentary evidence, framed the following questions for consideration:-

a) Whether the termination of the service of the petitioner by the respondent/Management on the basis of the accident occurred on 08.10.2013, is justified?,

and

b) Whether the petitioner is entitled to claim reinstatement in service with continuity of service and backwages and other benefits?

iv) Both the questions a) and b) were decided in favour of the petitioner. However, the Labour Court took upon itself, another issue with regard to the delay in approaching the Labour Tribunal. The Labour Court found that the dispute has been raised by the petitioner only after 2012, and there is a delay of about 7 ½ years. Though the Labour Court agreed with the factual issue raised by the petitioner, and held the same in his favour, the dispute was rejected in toto on the ground of delay. It is pertinent to point out at this juncture that the respondent/Management did not raise any issue relating to delay aspect, in their counter statement, therefore, the petitioner had no occasion to explain the delay in approaching the Tribunal, and the petitioner's case is that, until the Criminal Court concluded

the criminal proceedings initiated against him, the petitioner had been pursuing the same; and after the criminal case ended in his acquittal, he has been regularly approaching the authorities by way of representations seeking for reinstatement in service; and thereafter, the petitioner raised the dispute before the Conciliation Officer; and only thereafter, the dispute was raised before the Labour Court. The Labour Court agreed with the contention raised by the petitioner, but, dismissed the dispute on the ground delay and laches.

4. Therefore, what has to be seen is that, whether the dispute can be thrown out on the ground of delay and laches. It is settled legal position that law of limitation is founded on a public policy and it is not intended to destroy the rights of the parties, but to see that the party does not resort to any dilatory tactics, and deliberately approach the forum belatedly. The case on hand is relating to an industrial dispute, wherein, the workman/petitioner has approached the Labour Court stating that he has been unjustly terminated from service. Though the Labour Court agreed with the contention raised by the petitioner, it denied the fruits of the award on the ground delay and laches. The Hon'ble Supreme Court in the recent decision of (Jasmer Singh Vs. State of Haryana and another) reported in (2015) 4 S.C.C. 458 considered the issue relating to the applicability of the period of limitation for approaching the Labour Tribunal, and taking into consideration the earlier decision in the case of (Ajaib Singh Vs. Sirhind Cooperative Marketing Cum Processing Service Society Limited and another) it was held as follows:-

" On issue No. 3, after adverting to the case of State of Punjab v. Kalidass and Anr. in C.W.P. No. 1742 of 1996, wherein the High Court has observed that the workman cannot be allowed to approach the Labour Court after 3 years of termination of his services, upon which reliance placed by the respondent-employer with reference to the said plea the Labour Court has rightly placed reliance upon the judgment of this Court in Ajaib Singh v. Sirhind Co-operative Marketing-cum-Processing Service Society Ltd. and Anr.[1] in which it is observed by this Court that there is no period of limitation to the proceedings in the Act. Accordingly, Issue No. 3 is answered against the respondent-management. The relevant paragraph from Ajaib Singh's case (supra) are extracted herein below: "10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the

labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....."

5. The above referred decision would squarely cover the case on hand, and it has to be held that the impugned award is neither tenable nor sustainable. Accordingly, the Writ Petition is allowed, the impugned award is set aside, and the matter is remitted to the Labour Court for fresh consideration in accordance with law. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

sd

To

1. The Presiding Officer,
I Additional Labour Court,
Chennai - 600 104.
2. The Management
Tamil Nadu State Transport Corporation,
(Villupuram) Ltd.,
Villupuram District.
3. The General Manager,
Tamil Nadu State Transport Corporation,
(Villupuram) Ltd.,
Villupuram District

1 cc to Mr.P. Paramasivadosh, Advocate, Sr. 8710
1 cc to Mr.J. Muthukumar, Advocate, Sr. 8408

Writ Petition No.33340 of 2013

SKV (CO)
kk 25/2