

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.9640 and 9641 of 2016 &
W.M.P.Nos.8663 and 8664 of 2016

The Management of
Ashok Leyland,
Hosur.

... Petitioner in both W.Ps'

Versus

1.The Presiding Officer,
Labour Court, Salem.

... First respondent in both W.Ps'

2.A.Shanmugam

... Second respondent in
W.P.No.9640 of 2016

2.R.Krishnakumar

... Second respondent in
W.P.No.9641 of 2016

Prayer in both Writ Petitions: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records connected with I.A.No.140 of 2013 in I.D.No.30 of 2011 and I.A.No.141 of 2013 in I.D.No.31 of 2011, respectively, dated 12.10.2015, on the file of the first respondent i.e., the Presiding Officer, Labour Court, Salem.

For Petitioner in
both Writ Petitions: Mr.Sanjay Mohan
For Mr.S.Ramasubramaniam & Asso.

For Respondents in
both Writ Petitions: No appearance for R2

C O M M O N O R D E R

Heard Mr.Sanjay Mohan, assisted by Mr.S.Ramasubramaniam & Associates. Though notice to the second respondent was served, none appears for the second respondent.

2. The petitioner in W.P.No.9640 of 2016, has challenged the order passed by the Labour Court, Salem in an Interlocutory Application in I.A.No.140 of 2013 in I.D.No.30 of 2011 and the petitioner in W.P.No.9641 of 2016, has challenged the order

passed by the Labour Court, Salem in an Interlocutory Application in I.A.No.141 of 2013 in I.D.No.31 of 2011, dated 12.10.2015.

3. The dispute has been raised by the second respondent / workman (in both the Writ Petitions) under Section 2A of the Industrial Disputes Act, 1947 (hereinafter referred to as the "I.D.Act"). The Management filed Interlocutory Applications stating that the petitions are not maintainable, since the second respondent, is not a workman and he has not raised any Industrial Disputes before the Conciliation Officer, under Section 2A of the I.D.Act and the dispute is barred by limitation.

4. The second respondent-workman, resisted the Applications by contending that the said point could be decided in the main I.D. and not as a preliminary issue.

5. The Labour Court considered the contentions raised by both sides and observed that generally, in Industrial Disputes, the preliminary issue would be about whether the domestic enquiry conducted by the Management was fair and proper, if the tenability of the domestic enquiry is challenged by the workman. Therefore, the petitions filed by the Management were dismissed.

6. Thus, the reason assigned by the Labour Court for dismissing the petitions is on the premise that generally, the Labour Court will decide as a preliminary issue only with regard to the validity of the domestic enquiry.

7. In my view, the observation made by the Labour Court cannot be applied to all the cases uniformly. In fact, the Labour Court also has not conclusively stated that only the validity of the domestic enquiry can be considered as a preliminary issue, however, used the expression "generally". Therefore, the facts of each case have to be gone into independently, before the Labour Court can take a decision as to whether any issue has to be considered as a preliminary issue.

8. At this juncture, it would be useful to refer two decisions viz., one of the Karnataka High Court and another of the Hon'ble Supreme court. In the case of M/s.ITC INFOTECH INDIA LTD., Vs. Mr.Venkataramana Uppada, in W.P.No.27510 of 2015, dated 03.03.2016, the Karnataka High Court considered as to whether the plea of limitation of three years as prescribed under Section 2A(2) of the I.D. Act, being mandatory, whether the same could be condoned without taking recourse to Section 5 of the Limitation Act. The Karnataka High Court pointed out that the limitation of three years prescribed under Section 2A(2) being mandatory, the same cannot be condoned by taking recourse to Section 5 of the Limitation Act, which has no application to the provisions of the Industrial Disputes Act. In the case of

SRINIVASA RICE MILLS AND OTHERS Vs. ESI CORPN. [(2007) 1 SCC 705], the Hon'ble Supreme Court pointed out that the employer is entitled to raise the jurisdictional question before the Authority concerned and if it is raised, it should be decided as a preliminary issue. If these decisions are made applicable to the facts of the present case, the Management cannot be precluded from raising the preliminary objections to the very maintainability of the dispute before the Labour Court. However, it should not be misunderstood that at the first instance, the Labour Court has to decide these preliminary questions and they should proceed further with the matter. But, what the Labour Court has to do is to frame all the issues and take up the issues touching upon the jurisdiction of the Labour Court as well as the issues relating to limitation as a first among the several other issues which the Court may frame. In doing so, the Labour Court should consider as to the tenability of the plea raised by the petitioner-Management with regard to limitation. The issue as to whether the second respondent is a workman or not, is not purely a legal issue, but an issue involving both facts as well as law. Therefore, such issue would not strictly fall within the realm of a preliminary issue. However, limitation being a legal issue, especially, when the plea raised by the Management is based on a statutory provision, viz., Section 2A(3) of the ID Act, it is but appropriate for the Labour Court to decide the same as first among several other issues.

9. Accordingly, the above Writ Petitions are allowed on the above terms and the impugned orders are set-aside and the matters are remanded to the Labour Court to decide all the questions more particularly with regard to limitation as raised by the petitioner-Management as first among the several issues, as may be framed by the Labour Court. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court, Salem.

+2 cc to M/S.S.RamaSubramaniam, Advocate Sr.23235, 23234

W.P.Nos.9640 and 9641 of 2016 &
W.M.P.Nos.8663 and 8664 of 2016

ctk (CO)

srg (28/04/2016)



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