

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2017

CORAM :

THE HON'BLE MR.JUSTICE T.RAJA

W.P.Nos.12135 and 15630 of 2015

and M.P.Nos.1 and 1 of 2015

D.Perumal ... Petitioner in W.P.No.12135/2015

A.Ragothaman ... Petitioner in W.P.No.15360/2015

vs.

1. The Presiding Officer
Principal Labour Court,
Vellore, Vellore District.
2. Thenkadapanthal Primary Agricultural
Co-operative Credit Society Ltd.,
Thenkadapanthangal Village. Respondents

Prayer in W.P.No.12135 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus, call for the entire records connected with the impugned order passed by the first respondent in I.A.No.100/2015 in I.D.No.167/2014, dated 30.03.2015 and quash the same and direct the first respondent to proceed and decide the dispute in I.D.No.167 of 2014 on the file of the first respondent in time frame fixed by this Court.

Prayer in W.P.No.15360 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus, call for the entire records connected with the impugned order passed by the first respondent in I.A.No.101/2015 in I.D.No.168/2014, dated 30.03.2015 and quash the same and direct the first respondent to proceed and decide the dispute in I.D.No.168 of 2014 on the file of the first respondent in time frame fixed by this Court.

For petitioner : Mr.S.N.Ravichandran in both WPs

For respondents : R1 - Court

Mr.P.S.Sivashanmughasundaram
for R1 in both WPs

COMMON ORDER

These writ petitions have been filed challenging the correctness of the impugned Awards passed by the learned Labour Court, Vellore in I.A.No.100 of 2015 in I.D.No.167 of 2014 and I.A.No.101 of 2015 in I.D.No.168 of 2014, dated 30.03.2015.

2. The learned counsel appearing for the petitioner assailing the impugned Awards heavily contended that the learned Labour Court has proceeded wrongly holding that the cause of action for the petitioners is clearly barred by limitation. When the period of limitation as computed by the Labour Court will apply prospectively from the date of amendment wrongly thinking that the petitioners were dismissed from service during the year 2006, namely on 18.07.2006 and 13.05.2006 respectively, it has held that the petitioners should have raised Dispute at least within three years from the date of amendment came into force, namely 15.09.2010. Again finding fault with the reasoning given in the impugned Awards, he would submit that since Section 2A (3) clearly prescribes a period of three years limitation from the date of dismissal, discharge, retrenchment or otherwise termination of services, the petitioners are entitled to file petition even beyond the period of three years. The reason is that the employees who have been dismissed from service at any time before 15.09.2010 will not be barred to file Industrial Dispute petitions even after the expiry of three years from the date of dismissal or at any time after expiry of three years.

3. He would further submit that the point of limitation contemplated under Section 2A(3) of the Act cannot be made applicable to those employees who have been dismissed from service before 15.09.2010, which is the date of said amendment. Again taking support from the Judgment of the Apex Court in Workmen of F.T & R.Co., v. The Management to say that Section 11A of the Industrial Disputes Act clearly empowers the labour court or Tribunal to reappraise the evidence or examine the correctness of the finding. Section 11A of the Act empowers the learned Labour Court to condone the delay. Such power has also been miserably overlooked by the Labour Court. As a result, the petitioners have been put to great hardship, therefore the impugned Awards has to be interfered with.

4. In the case of M.P.S.R.T Corpn v. J.N.Tiwari & Ors., reported in 1995 (I) LLJ 318, when a similar issue was considered, it has been held that since the services of the employee were terminated in the year 1973, when there was no period of limitation for approaching the employer or the Court, his application to the Labour Court filed in 1986 cannot be dismissed as barred by time and he would further submit that when an employee has made his application to the Labour Court,

after almost 13 years from the date of termination, although it is unduly long period of time, as there was no express bar of limitation, it is for the Labour Court to consider granting or not granting full or partial relief to the employee while dealing with the powers of the Labour Court, the Division Bench of the Madhya Pradesh High Court has categorically held that a vested right of approaching a court or forum for redressal without a bar of limitation cannot be taken away by a new enactment providing for a longer or shorter period of limitation.

5. But in the present case, these two Judgments cannot be made applicable for the following reasons.

6. It is not in dispute that the petitioners were dismissed from service on 18.07.2006 and 13.05.2006. Subsequently, Section 2(A) underwent an amendment. Since Section 2A (3) of the Act fix the period of limitation of three years from the date of limitation, petitioners should have filed Industrial Disputes Petition within a period of three years. But unfortunately, the petitioners slept over the matter for a period of almost 7 years and for the first time they raised Industrial Disputes only on 02.04.2013. However, after filing the Conciliation Report, they have filed the petition only on 09.02.2015.

7. It is relevant to extract Section 2(A)(3) of the Industrial Disputes Act, 1947 :

"2-A. Dismissal etc., of an individual workman to be deemed to be an industrial dispute -

(1)....

(2)...

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."

The State Government also has introduced an amendment making it clear that whether no settlement is arrived at in the course of any conciliation proceeding taken under this Act in regard to an industrial dispute referred to in sub-section (1), the aggrieved individual workman may apply, in the prescribed manner, to the Labour Court for adjudication of such dispute and the Labour Court shall proceed to adjudicate such dispute, as if, such dispute has been referred to if for adjudication. Since Section 2(A)(3) of the Act has to be read along with the amendment carried out by the Tamil Nadu Act.

8. As mentioned above, the petitioners who were dismissed from service on 18.07.2006 and 13.05.2006 respectively have not taken any efforts for a period of 7 long years. Only after

raising the Industrial Disputes, before the Labour Officer on 02.04.2003, after the failure report filed on 01.9.2004, they have filed the petition only on 09.02.2015. Therefore, this Court is not able to find any infirmity in the impugned Awards passed by the learned Labour Court. As a matter of fact, since the time of limitation shall be computed from the date of cause of action, in the present case although the amendment was introduced on 15.09.2010, the contention made by the petitioners that those 3 years limitation period starts from the period for the first time introduced through amendment w.e.f 15.09.2010 cannot be made applicable to the petitioners case as they were dismissed on 18.07.2006 and 13.05.2006 respectively is also bereft of any merits.

9. In view of the above, both these writ petitions fail and accordingly, the same are dismissed. However, no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The Presiding Officer
Principal Labour Court,
Vellore, Vellore District.
2. Thenkadapanthal Primary Agricultural
Co-operative Credit Society Ltd.,
Thenkadapanthangal Village.

+2cc to Mr.S.N. Ravichandran, Advocate, S.R.No.654 & 655

sr(CO)
md(2/03/2017)

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