



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.03.2017
Delivered on : 11.04.2017

WEB COPY

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THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P. (MD) .No.4269 of 2017

Ravikumar

... Petitioner

Vs.

1.The Management,
Tamil Nadu State Transport Corporation,
Tirunelveli Division,
Vannarapettai,
Tirunelveli - 627 003.

2.The Presiding Officer,
Labour Court,
Tirunelveli.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari and Mandamus calling for the records pertaining to the order passed by the 2nd respondent in I.D.No.64 of 2014 on 20.06.2016 and quash the same as illegal and consequently direct the 2nd respondent to decide the Industrial Dispute in I.D.No.64 of 2014 afresh on merits within stipulated time.

For Petitioner : Mr.T.A.Ebenezer

For Respondents : Mr.K.Sathiyasingh
Standing Counsel for TNSTC

O R D E R

The above Writ Petition has been filed challenging the order passed by the second respondent in I.D.No.64 of 2014, dated 20.06.2016 and for consequential direction to the second respondent to decide the Industrial Dispute in I.D.No.64 of 2014 afresh on merits within the stipulated time.

<https://hcservices.ecourts.gov.in/hcservices/>
2.The case of the petitioner in the Writ Petition are as follows:-



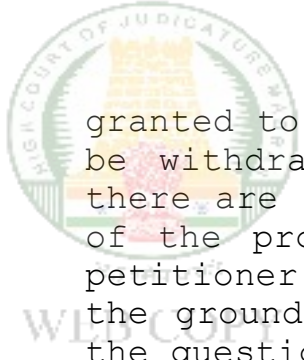
2.1. The petitioner was working as a driver in the first respondent Corporation from 04.12.1996. While he was in Thoothukudi Depot, he was dismissed from service on 04.04.2005 on the charges of unauthorised absence from 24.08.2004 to 10.10.2004. On 31.07.2007, the management accorded approval for the petitioner's dismissal from the Joint Commissioner of Labour (Conciliation), Chennai. However, the petitioner raised an industrial dispute before the second respondent / Labour Officer, Thoothukudi, on 02.01.2014 in which a failure report was given on 25.03.2014. The petitioner filed an industrial dispute in I.D.No.64 of 2014 before the second respondent. However, the second respondent dismissed the petition filed in I.D.No.64 of 2014 on the sole ground of limitation by applying Section 2A(3) of Industrial Disputes Act introduced by the provisions of industrial disputes (Amendment) Act 2010. Challenging the said order of second respondent, the petitioner has filed the present Writ Petition.

3. The learned Counsel for the petitioner submitted that the limitation prescribed as per 2010 amendment is not applicable in the case of petitioner who was dismissed from service before the amendment came into force. It was his further submission that the amended provisions of Section 2A(2) and 2A(3) of the Act does not repeal Section 10 of the Act. Since Section 10 remains in the statute book, the petitioner can approach the Labour Court by raising the industrial dispute, in view of the *non abstanti* clause. The Labour Court failed to consider that the petitioner can seek remedy either under Section 10 of Industrial Disputes Act or under the amended provisions of Sections 2A(2) of the Act.

4. The learned Counsel for the petitioner contented that Section 2A(1) was already available in the Act even before the date of amendment in Section 2A. Sub-section (2) and (3) of Sub-section 2A have been inserted by way of amendment with effect from 18.08.2010. By the amendment, the right of individual workman prevailing before the date of amendment cannot be snatched away, unless the amended provisions specifically state that the individual workman can raise industrial disputes only before the Labour Court and cannot raise the dispute under Section 10 of the Act. Since the legislative enactment is meant for the benefit of the workmen, the amended provisions of Section 2A(2) and Section 2A(3) should not be interpreted against the interest of the workman. The second respondent failed to consider the position that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. The second respondent ought not to have concluded that there would be implied repeal of Section 10 by the amended provisions of Section 2A(2) of the Industrial Disputes Act.

<https://hcservices.ecourts.gov.in/hcservices/>

5. The learned counsel further submitted that the Labour Court failed to consider the legal position that facilities

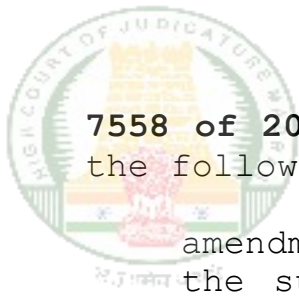


granted to the workman under the existing provisions of law cannot be withdrawn by virtue of any amendment to the statute. Though there are several other grounds raised touching the interpretation of the provisions of statute and on the legal principles, the petitioner has not, during his argument, convinced this Court that the grounds raised by him in the Writ Petition have relevance to the question of limitation.

6. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the first respondent.

7. The bare facts which are not in dispute before this Court are as follows:-

7.1. The petitioner joined the service of the respondent as driver on 04.12.1996 and his service was regularized on 01.03.1999. The management issued charge memo on 19.09.2004. A domestic enquiry was ordered and the Enquiry Officer submitted his enquiry report on 02.12.2004. The petitioner was dismissed thereafter on 04.04.2005. The order of dismissal was also approved by the Joint Commissioner in A.P.No.70 of 2005 on 31.07.2007. However, with a considerable delay, the petitioner filed application under Section 2A(2) of the Industrial Disputes Act on 15.09.2014. Hence, the petitioner has approached the Labour Court nearly nine years after his dismissal. It was only in the above circumstances, the question of limitation was *suo motu* raised by the Labour Court and answered against him. As a result, the application filed by the petitioner in I.D.No.64 of 2014 was dismissed. The Labour Court has elaborately considered the scope of amendment and the amended Section 2A of the Industrial Disputes Act. The case of the petitioner before the Labour Court was that the amendment come into force only in the year 2010 and the petitioner was dismissed in the year 2006, long prior to the amendment. Hence, it was contended by the petitioner before the Labour Court that the amended Act will have no application to his case. It was also contended by the petitioner before the Labour Court that the State Government has empowered the workman under Tamil Nadu Act 5 of 1988 to raise in industrial dispute. That right cannot be superseded by the amendment introduced by the Central Government. The learned counsel for the petitioner has not raised this point before this Court. He also submitted further that Section 2A as applicable to the State of Tamil Nadu by an earlier amendment to Section 2A cannot be taken as repealed by virtue of amendment introduced in 2010 to Section 2A of the Act. Insofar as the State of Tamil Nadu is concerned, the State amendment would prevail. It was in the above line, the learned counsel for the petitioner argued that the limitation prescribed as per the Central amendment is not applicable to the petitioner. The learned counsel for the petitioner in this regard relied upon <https://www.mca.gov.in/cases/judgments> judgment of this Court in the case of **S. Gunasekaran and others v. The Government of Tamil Nadu in W.P.Nos.1949 and**



7558 of 2010. The learned counsel for the petitioner relied upon the following passage in the said judgment:

"25. In respect of the contention that the amendment of the State legislature was repugnant due to the subsequent Central amendment, it has to be examined with the law relating to repugnancy and the scope of Article 254(2) in this regard. Under Article 246 of the Constitution, the subject matter of law that can be made by the Parliament and the legislature of the State are delineated. Under Article 246(2), the Parliament as well as the legislature of the State has power to make laws with reference to any matters enumerated in the List III of the Seventh Schedule of the Constitution known as the concurrent list. Item 22 deals with employment and unemployment. It is an admitted fact that the law relating to the present legislation comes under List III which is the concurrent list. When once the State legislature received the assent of the President, then in terms of Article 254(2), it will prevail over any Central legislation in that State. Even though it was argued that subsequent law made by the Parliament was to prevail, the proviso to Article 254(2) only enables the Parliament to make law at any time with reference to the same matter including the law adding, omitting, varying or repealing the law so made by the legislature. In the present case, nothing is seen from the Central Act 24/2010 that it was intended to omit or vary or repeal the law made by the State legislature. On the other hand, the Parliament made law for the entire country and did not even intend to eliminate the State enactment."

7.2. In the same judgement, the judgement of the Hon'ble Supreme Court in the case of ***T. Barai v. Henry Ah Hoe*** reported in **(1983) 1 SCC 177** is referred to. For convenience, the legal position reiterated in the said judgment is relevant and hence, the same is extracted as follows:

"15. There is no doubt or difficulty as to the law applicable. Article 254 of the Constitution makes provision firstly, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is repugnant to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in Clause (1), Clause (2)



engrafts an exception viz. that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to Clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the Presidents assent. Parliament may repeal or amend the repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the same matter. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together, e.g., where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed. In all such cases, the law made by Parliament shall prevail over the State law under Article 254(1)....." (Emphasis added) It is not clear as to how the said judgment will have any assistance to the respondent State when there is no repugnancy shown and that the two laws can possibly stand together. Further, the case referred to related to imposition of penal provisions and therefore, invocation of Article 21 arose in that case."

7.3. In view of the law stated by the Hon'ble Supreme Court, on the interpretation of Article 254(1) in the above manner, it has to be concluded that whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of repugnancy, be void. The proviso to Article 254(2) empowers the Union parliament to repeal or amend a repugnant State law even though it has become valid by virtue of President's assent. Parliament may repeal or amend the repugnant State law, either directly or by itself enacting a law repugnant to the State law with respect to the same mater. Even though the subsequent law made by Parliament does not expressly repeal a



State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made.

7.4. In view of the interpretation of the Hon'ble Supreme Court on Article 254 of Constitution, one of the contentions raised by the petitioner relying upon State amendment has no force and the limitation which was introduced by way of Sub Section (3) of Section 2A, the provision as introduced by the Central amendment is applicable to State of Tamil Nadu with full force.

8. The learned counsel for the respondent also relied upon a judgment of this Court in W.P.No.15552 of 2015 wherein a learned Single Judge of this Court has dismissed a similar Writ Petition filed by the workman who challenged the award passed by the Labour Court dismissing the claim statement made by the petitioner therein on the ground of delay. After referring to the amended provision, this Court has held as follows:

"The aforesaid provision infers that the workman must raise an industrial dispute before the Conciliation Officer and upon expiry of 45 days from the date of filing an application before the Conciliation Officer, the workman can move application to the Labour Court before the expiry of three years from the date of his dismissal. In any event, right conferred under Section 2A of the Act lapse immediately preceding the date of expiry of three years of the date of dismissal. Sub-section (3) of Section 2A operates independently, despite the continuation of the conciliation proceeding. While such being the settled provision, in the case on hand, the petitioner was dismissed from service on 06.08.2010. Thereafter, after a lapse of 4 years and 2 months, he filed an application under Section 2A (2) of the I.D. Act before the Labour Court only on 31.10.2014. At this juncture, the contention of the petitioner is that he was unable to file an application before the Labour Court, since his application filed before the Conciliation Officer was pending. Such contention of the petitioner cannot stand to legal scrutiny, for, Sub-Section 3 of Section 2A of the Act operates independently, despite the continuation of the conciliation proceedings. Therefore, he ought to have filed an application before the learned Labour Court with three years from the date of dismissal order passed by the first respondent Corporation on 06.08.2010."

9. The next submission was on the basis of Section 10 of the Industrial Disputes Act. It is not the legislative intent to confer an alternative remedy as the scope of Section 10 is different. The petitioner's application does not fall under <https://hcservices.com/On/haservices/> hence, he cannot rely upon Section 10 to save the limitation prescribed by Sub-section (3) of Section 2A of the Industrial Disputes Act.



10. For all the above reasons, this Court finds no merit in the present Writ Petition and hence, the Writ Petition is dismissed and the award of the Labour Court in I.D.No.64 of 2014, dated 20.06.2016 is confirmed. However, there is no order as to costs.

Sd/-
Assistant Registrar (Co)

/True copy/

Sub Assistant Registrar

To

1. The Management,
Tamil Nadu State Transport Corporation,
Tirunelveli Division,
Vannarapettai,
Tirunelveli-627 003.

2. The Presiding Officer,
Labour Court,
Tirunelveli.

+1 cc to Mr.T.A.Ebenezer , Advocate in SR.No. 51340

SRM
AE/RR/24.04.2017/7P/4C

Order made in
W.P. (MD) .No.4269 of 2017
11.04.2017