

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2018

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.8803 of 2009

V.Duraisamy

.. Petitioner

Vs.

1.The Labour Officer,
No.85, Shankar Nagar,
Salem-636 007.

2.The Management of No.1081, Kasturipatti
PACB, Nagichetti Patti Post,
Sankagiri Taluk,
Salem District-637 302.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying seeking for issuance of a Certiorarified Mandamus calling for the records pertaining to the order passed by the 1st respondent vide his proceedings No.OMU 870/2007, dated 12.11.2007 and quash he same and further direct the 1st respondent to proceed with the conciliation proceedings in accordance with law.

For Petitioner .. Mr.K.V.Shanmuganathan

For RR1 & 2 .. Mr.M.S.Palanaiswamy for R2
R1-Court.

ORDER

The petitioner has approached this Court seeking the following relief:

''To issue a Certiorarified Mandamus calling for the records pertaining to the order passed by the 1st respondent vide his proceedings No.OMU 870/2007, dated 12.11.2007 and quash he same and further direct the 1st respondent to proceed with the conciliation proceedings in accordance with law.''.
WEB COPY

2.The petitioner was in service of the second respondent Management since 1988 initially as Salesman and thereafter, he was promoted as Assessor in 1989. He was terminated from service on the basis of charges framed against him with effect from 10.12.1997. According to him, no proper enquiry was conducted before the order of termination was passed against him. Against the order of dismissal from service, the petitioner raised an industrial dispute. The second respondent Management participated in the conciliation proceedings and pending conciliation proceedings, the second respondent Management came forward to reinstate the petitioner in service and thereafter, Section 12(3) settlement was entered into on 18.09.1998 and thereafter, the petitioner was reinstated in service.

3.According to the petitioner, the second respondent Management had not kept their promise for granting all benefits while the petitioner was reinstated in service, as assured by them before the Conciliation Officer.

4.Having aggrieved by the action of the second respondent Management in not fulfilling the settlement entered into between the petitioner, without any benefits granted to him, the petitioner once again approached the Conciliation Officer seeking conciliation of the dispute between the petitioner as well as the second respondent Management. However, the Conciliation Officer vide proceedings, dated 12.11.2007, returned the conciliation stating that it would not entertain the conciliation proceedings, as the Section 12(3) settlement entered into between the petitioner and the second respondent Management is in place and not cancelled. The said proceedings of the Labour Officer/Conciliation Officer is put to challenge in the present writ petition.

5.The learned counsel for the petitioner would submit that it is not open to the Conciliation Officer to refuse to entertain the conciliation proceedings when Section 2(k) of ID Act was raised, particularly, on the ground shown in the impugned order dated 12.11.2007, for returning the conciliation proceedings, as he refused to entertain the same amounts to non-discharging his statutory responsibility. Such action is illegal and arbitrary and contrary to the provisions of Industrial Disputes Act, the same is liable to be interfered with.

6.Mr.M.S.Palaniswamy, the learned counsel, who had entered appearance for the second respondent, made his submissions. Learned counsel for the second respondent would submit that after the settlement was entered upon by both the parties, despite the same, the dispute was sought to be raised before the conciliation officer which was rightly returned as not entertainable.

7.However, the contention of the second respondent cannot be entertained both in law or on facts for the reason that under no circumstances, the conciliation officer can return the dispute as being not entertainable. It is always open to the conciliation officer to submit a failure report in case of non-settlement of dispute between the petitioner and the Management. However, it is certainly not open to him under law to return the conciliation proceedings stating that the same cannot be entertained for whatever reasons. Such action on the part of the conciliation officer opposed the very scheme of the ID Act and also denies the petitioner for redressing his grievance by way of adjudication process before the competent Labour Court/Tribunal.

7.In the above said circumstances, this Court is of the considered view that the impugned order of the Conciliation Officer dated 12.11.2007, is liable to be interfered with and therefore, the impugned proceedings are set aside. The first respondent/Labour Officer is directed to entertain the dispute and conciliate between the parties and submit a report as it deems fit in terms of the provisions of the ID Act. The Conciliation Officer /first respondent is also directed to pass orders finally on the conciliation proceedings within a period of four weeks from the date of receipt of a copy of this order.

8.With the above direction, this writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Labour officer, Labour Department,
No.85, Shankar Nagar,
Salem-636 007.

2.The Management of No.1081, Kasturipatti
PACB, Nagichetti Patti Post,
Sankagiri Taluk,
Salem District-637 302.

+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No.4545

+1cc to Mr.K.V.Shanmuganathan, Advocate, S.R.No.4897

W.P.No.8803 of 2009

RRK(06/02/2018)