



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Writ Petition(MD)Nos.6396 of 2015 and 3422 of 2018

M.Ganesan ... Petitioner in W.P.(MD).No.6396 of 2015

Vs.

1. The Presiding Officer,
Labour Court,
Madurai.

2. The Management,
Sree Vadivambigai Textiles Mills Private Limited,
Sakkanthi,
Sivagangai. ... Respondents in W.P.(MD).No.6396 of 2018

Prayer in W.P.(MD).No.6396 of 2015: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records pertaining to the award dated 30.12.2014 passed by the first respondent in I.D.No.670 of 1989 and quash the same.

For Petitioner : Mr.K.Suresh Kumar

For R2 : Mr.M.E.Ilango

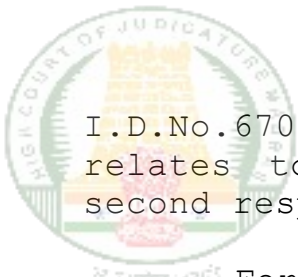
The Management,
Sree Vadivambigai Textiles Mills (P) Limited,
Sakkanthi,
Sivaganga District. ... Petitioner in W.P.(MD).No.3422 of 2018

Vs.

1. The Presiding Officer,
Labour Court,
Madurai.

2. M.Ganesan ... Respondents in W.P.(MD).No.3422 of 2018

Prayer in W.P.(MD).No.3422 of 2018: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the impugned award dated 30.12.2014 passed by the first respondent in



I.D.No.670 of 1989 and quash the same as illegal insofar as it relates to its finding that the charges levelled against the second respondent were not proved.

For Petitioner : Mr.M.E.Ilango

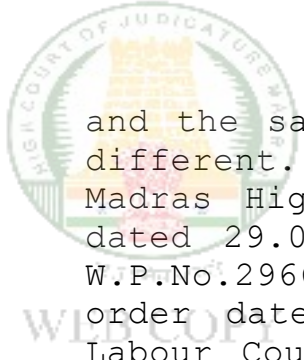
For R2 : Mr.K.Suresh Kumar

C O M M O N O R D E R

The petitioner in W.P.(MD).No.6396 of 2015 Thiru M.Ganesan was employed in Sree Vadivambigai Textiles Mills (P) Limited, Sakkanthi, Sivaganga District as apprentice since 1982. A Mill employee by name K.Sekar was stabbed in the stomach on 27.08.1987 around 10.00 p.m. in the Mill premises, when he was taking rest. In this regard, a criminal case was registered. The Mill Management issued a show cause notice to the said Ganesan on 29.08.1987, calling upon him to offer his explanation as to why disciplinary action should not be taken against him. After conducting domestic enquiry, the said Ganesan was dismissed from service along with three others. The dismissed workmen raised industrial dispute. I.D.Nos.122, 497 and 499 of 1989 filed by the other three workmen were jointly tried by the Principal Labour Court, Madurai. I.D.No.670 of 1989 filed by Thiru M.Ganesan came to be tried by the Additional Labour Court, Madurai.

2. Totally six workmen were involved in the misconduct in question. A domestic enquiry was conducted by the Management. Two of the workmen did not challenge the action taken by the Management. Four workmen raised industrial dispute. Three I.D.Nos.122, 497 and 499 of 1989 came to be jointly tried by the Principal Labour Court which held that the domestic enquiry conducted by the Management was not fair. Therefore, the Management let in fresh evidence before the Labour Court in the aforesaid I.D.Nos. In the mean while, the Additional Labour Court which tried I.D.No.670 of 1989, filed by Thiru M.Ganesan, held that the dismissal order passed by the Management was justified and that the domestic enquiry was also fairly conducted. Later, the Principal Labour Court also passed a common award dated 19.04.1993, justifying the dismissal of the three workmen, who were before it. In fact, a finding of fact was rendered by the Principal Labour Court to the effect that it was Thiru M.Ganesan, who stabbed the said K.Sekar and caused him injury.

3. The Principal Labour Court upheld the order dismissing the three workmen after holding that the domestic enquiry was not fair and after analysing the fresh evidence adduced by the Management before it. But the Additional Labour Court had passed an award dated 29.08.1991, holding that the domestic enquiry was fairly conducted and that Thiru M.Ganesan was rightly dismissed. Though the conclusions arrived at by two Labour Courts were one



and the same, the routes which they traversed independently were different. The aggrieved workmen filed writ petition before the Madras High Court. W.P.No.11570 of 1994 was dismissed by order dated 29.01.2002. The matter had since attained finality. But W.P.No.2966 of 1992 filed by Thiru M.Ganesan came to be allowed by order dated 04.08.1999, on the ground that when the Principal Labour Court had already held that the domestic enquiry was not fair, a different view could not have been taken by the Additional Labour Court. The learned Judge observed that the benefit of the finding given by the Principal Labour Court should be extended to M.Ganesan also as the finding of the Labour Court was with reference to the same enquiry. The enquiry was an indivisible one.

4. This Court is of the view that such a conflicting finding could have been very easily avoided, if only the Management or the workers had taken steps to have a joint trial of all the four I.D.Nos. Because three I.D.Nos. were tried by one Court and the remaining I.D.No. was tried by another Court, a difference in result had arisen.

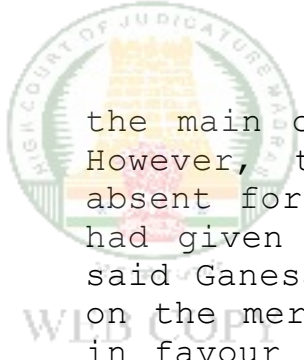
5. The fact remains that W.P.No.2966 of 1992 filed by Ganesan was allowed on 04.08.1999 and the matter was remanded to the file of the Additional Labour Court. It was made clear that the Management would be entitled to let in evidence before the Labour Court to substantiate the charge against Ganesan and it would be equally open to Ganesan to let in further evidence. It was observed specifically that the parties are at liberty to raise all the contentions that are available to them under law.

6. Following the said order of remand, the Additional Labour Court took up the matter only in the year 2012. Even though the Management was given liberty to adduce fresh evidence, in view of the finding that the domestic enquiry was not fairly conducted, the Management was at a real handicap. Out of the eight witnesses, who deposed before the Principal Labour Court, four passed away and the remaining four had also left service and their current whereabouts were not known. Therefore, the Management filed I.A.No.282 of 2012 for summoning the case records pertaining to I.D.Nos.122, 497 and 499 of 1989, so that the same could be taken note of while disposing of the I.D.No.670 of 1989. However, the Labour Court, by order dated 19.08.2013, dismissed the said I.A.No.282 of 2012. The said order of dismissal was challenged by the Management by filing C.R.P.No.2196 of 2013. By order dated 28.03.2014, the said Civil Revision Petition was allowed and the documents and evidence recorded in I.D.Nos.122, 497 and 499 of 1989 on the file of Principal Labour Court, Madurai were directed to be sent for and produced in I.D.No.670 of 1989. But the Labour Court took the stand that these documents can be marked only

<https://hcs.csls.gov.in/hcs/portal>

service agents, who were concerned witnesses.

7. The Labour Court by award dated 30.12.2014, held that



the main charge framed against the said Ganesan was not proved. However, the charge that the said Ganesan was unauthorisedly absent for few days was held to be established. The Labour Court had given a specific finding that the punishment imposed on the said Ganesan was grossly disproportionate and unfair. Even though on the merits of the matter, the Labour Court rendered a finding in favour of the worker, by the impugned award, the I.D. came to be dismissed on a technical ground.

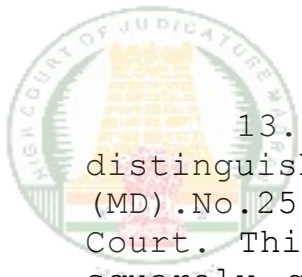
8. Contending that the Labour Court erred in dismissing the I.D., the worker has filed W.P.(MD).No.6396 of 2015. Assailing the findings, the Management has filed W.P.(MD).No.3422 of 2018.

9. Heard the learned counsel appearing for the dismissed employee as well as the learned counsel for the Management.

10. The learned counsel reiterated the grounds set out in the affidavit filed in support of the writ petitions. The learned counsel appearing for the workman also filed argument notes.

11. It is beyond dispute that the cause of action which led to the impugned action being taken arose on 27.08.1997. The said Ganesan was dismissed from service on 13.02.1988. It is beyond dispute that the cause of action arose prior to the Tamil Nadu Act 5 of 1988 which came into effect from 01.11.1988, whereby Section 2-A of the Industrial Disputes Act, 1947 was amended. Prior to such amendment, the Labour Court can take cognizance of an industrial dispute only if reference is made by the appropriate Government. In the absence of a reference from the appropriate Government, the Labour Court would not have jurisdiction to even entertain the dispute. It is true that this issue regarding the maintainability was not raised by the Management in the pleadings earlier. But then the jurisdiction of the Court does not depend on the consent or otherwise of the parties concerned. This is a matter that goes to the very root. A learned Judge of this Court by order dated 06.02.2012, in W.P.(MD).No.25630 of 2007 held that in cases which arose before 01.11.1988, it must have an order of reference of the State Government and it cannot be treated as direct dispute by the Labour Court. The workman can approach the Labour Court after the failure of the conciliation proceedings only after 01.11.1988.

12. This Court followed the judgment of the Honourable Supreme Court in **Avtar Singh Vs. Union of India and Others** reported in **(2007) 15 SCC 722**. As already pointed out that even though this vital aspect of the matter escaped the attention of the Labour Court which tried the I.D. at the first instance and this Court has allowed the writ petition filed by Ganesan, it is not a bar in the way of the Labour Court nonsuiting the employee on this ground.



13. The learned counsel for the employee tried to distinguish not only the decision of this Court rendered in W.P. (MD).No.25630 of 2007, but also that of the Honourable Supreme Court. This Court is of the clear view that both the cases would squarely govern the issue on hand. It is not the case of the dismissed employee that the Labour Court entertained the case on a reference being made by the Government. Admittedly, the State Government did not make any reference. The case arose prior to the Tamil Nadu Act 5 of 1988 which came into effect from 01.11.1988, whereby Section 2-A of the Industrial Disputes Act, 1947 was amended. Therefore, the Labour Court did not have any jurisdiction to even entertain the dispute and it rightly came to the said conclusion. But then it erred in entering into the merits of the matter. Such an exercise was not warranted in law. In fact, the issue as to jurisdiction should have been taken up as the preliminary issue. Having found the said issue in favour of the Management, the Labour Court ought to have nonsuited the employee then and there. There was no need for undertaking any further exercise of going into the merits of the matter. Hence, the W.P. (MD).No.6396 of 2015 filed by the workman is dismissed and the W.P.(MD).No.3422 of 2018 filed by the Management is allowed. No costs.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Madurai.

+ 2 ccs TO Mr.K.Suresh Kumar , Advocate in SR No. 67279,67280
+ 1 cc TO Mr.M.E.Ilango , Advocate in SR No. 67084

Akv
AE/SV MMS/SAR4/19.06.2018/5P/5C

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