



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2018

CORAM :

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS. JUSTICE R.THARANI

WA (MD) No.1159 of 2016

J.Kalyani ... Appellant/Petitioner

Versus

- 1.The Presiding Officer,
The Central Government Industrial
Tribunal cum Labour Court,
Chennai.
- 2.The Branch Manager,
National Insurance Company Limited,
East Main Street,
Pudukkottai.
- 3.The Regional Manager,
Regional Office,
National Insurance Company Limited,
No.684, Trichy Road, Coimbatore ... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 04.08.2014 made in W.P.(MD)No.6068 of 2012 on the file of this Court.

Prayer in WP(MD). 6068/ 2012 :

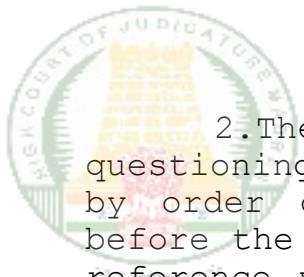
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records relating to the order of the 1st respondent in Industrial dispute No.13/2009 dated 20.10.2011 and quash the same as arbitrary, illegal and consequently direct the 2nd respondent to re-instate the petitioner with all benefits.

For Appellant : Mr.K.Baalasundharam,
For Respondents : Mr.T.S.Gopalan for RR2 & 3

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM,J)

Heard Mr.K.Baalasundaram, learned counsel for the appellant
and Mr.T.S.Gopalan, learned counsel for the respondents 2 and 3.

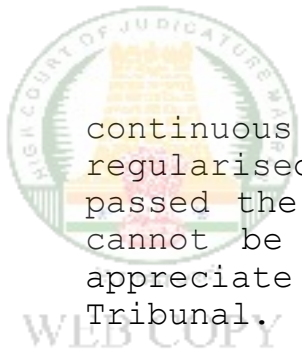


2.The appellant raised a dispute before the Central Government questioning her termination from service. The Central Government, by order dated 13.10.2008, referred the matter for adjudication before the Central Government Industrial Tribunal/Labour Court. The reference was taken on file as I.D.No.13 of 2009. The respondent Management did not appear before the Central Government Industrial Tribunal, which resulted in an exparte award dated 15.06.2009. The Management filed petition in I.A.No.86 of 2009 to set aside the exparte award and contest the matter on merits. The appellant filed counter affidavit resisting such prayer. However, the Central Government Industrial Tribunal allowed the application and restored I.D.No.13 of 2009 on its file and heard the matter on merits.

3.Before CGIT, the appellant examined herself as W.W.1 and marked 5 documents as Exs.W1 to 5. The respondent Management had examined 2 witnesses viz., M.Ws.1 and 2 and marked 20 documents as Exs.M1 to 20. The CGIT, after considering oral and documentary evidence, dismissed the claim petition on the ground that there is no termination of the appellant from service and cessation of her engagement was brought about out of her own volition by not offering herself to be engaged for duty after 07.07.2006. The appellant filed W.P.(MD) No.6068 of 2012, challenging the award of the CGIT dated 20.10.2011. The writ petition was dismissed by the impugned order dated 04.08.2014.

4.The learned counsel for the appellant vehemently contended that in the light of the decision of the Hon'ble Supreme Court in AIR 2009 Supreme Court 309 - Divisional Manager, New India Assurance Co. Ltd., V. A.Sankaralingam, even a part-time employee falls within the definition of workman is entitled to raise a dispute. However, it is submitted that vital documents, which were requested to be produced by the Management by filing an application before the CGIT was not considered and this Court should direct the respondent Management to produce those documents.

5.So far as the decision of the Hon'ble Supreme Court in the case of Divisional Manager, New India Assurance Co. Ltd., the issue, which arose for consideration in the said judgment does not arise in the present appeal. The question was whether there was wrongful termination of the appellant from service. The Labour Court, on considering the factual position held that Section 25(F) of I.D.Act, 1947 is not attracted. The Writ Court considered the matter in depth, took note of the oral and documentary evidence placed before the CGIT and held that the respondent Management abolished the post of part-time sweepers in the year 1999. When those persons, who were engaged as part-time sweepers were converted as full time sweepers, the Court noted that even as per the admitted stand of the appellant, she was engaged in the year 2001. Therefore, on the factual material placed before the CGIT, the Writ Court come to the conclusion that the appellant cannot be treated as part-time sweeper. Further, the Writ Court pointed out that there is no evidence to the effect that the appellant was engaged for a



continuous period as required under the I.D.Act for being regularised. Thus, after considering the manner in which the CGIT passed the award, this Court held that the writ Court jurisdiction cannot be converted into an appellate jurisdiction so as to re-appreciate the entire evidence, which were placed before the Tribunal. We find no error in the order passed by the Writ Court.

6.The learned counsel for the appellant contended that the Labour Court erred in not taking note of the I.A. filed by the appellant in I.A.No.76 of 2010 and those documents should be called for by this Court. We do not accede to the same for 2 reasons. CGIT found that 3 documents, which the appellant sought for to be produced by the Management had absolutely no relevance to the adjudication of the dispute, which was referred by the Central Government to CGIT. To the said effect, an order was passed by CGIT on 29.12.2010. We find there is no error in the said order. Apart from that, at this stage of the matter, the question of directing the Management to produce certain records, which were all not relevant to the dispute as referred to the adjudication is not feasible of acceptance. Thus, for the above reasons, we find that there is no error in the order passed by the Writ Court.

7.Accordingly, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

+1CC to Mr.K.Balasundharam, Advocate, SR.No. 58882

+1CC to Mr.T.S.Gopalan, Advocate, SR.No. 58552

WA (MD) No.1159 of 2016
26.03.2018

ARUL

AM//JC/SAR 1/17.04.2018/3P/3C