

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.S.RAMESH

W.P.No.27192 of 2004

and

W.P.M.P.Nos.33089 & 9589 of 2005 and W.V.M.P.No.696 of 2005

The Director,
BCG Vaccine Laboratory,
Guindy,
Chennai.

... Petitioner

Vs

1. M.Mallikarjuna (Deceased)
2. The Presiding Officer,
Central Government Industrial
Tribunal - cum - Labour Court,
Chennai.
- 3.M.Sivakami
- 4.M.Udhaya Kumar
- 5.M.Bhuvaneswari
- 6.M.Saranya
- 7.Ragamma

... Respondents

(R3 to R7 substituted as Lrs of
deceased R1 as per Order of this
Court dated 04.03.2019 made in
WMP.No.20322 of 2018) सत्यमेव जयते

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari, calling for the records pertaining to I.D.No.60 of 2001 on the file of Central Government Industrial Tribunal - cum - Labour Court, the 2nd respondent herein, and to quash the award dated 10.03.2004 passed by the 2nd respondent Tribunal in I.D.No.60 of 2001.

For Petitioners : Mr.S.Arockiam

For Respondents : Mr.V.Ajay Khose, CGSC, for R3 to R7

O R D E R

The first respondent was employed as Director in the petitioner's laboratory and the appointment came to be terminated with effect from 01.12.1990, and his period of ad-hoc appointment came to an end. Challenging the same, the first respondent herein had raised an industrial dispute before the second respondent in I.D.No.60/2001 and by award dated 10.03.2004, the first respondent/employee's termination was held to be illegal and consequently, he was ordered to be reinstated along with 50% of the backwages. Challenging the same, the present writ petition has been filed by the employee.

2.The learned Standing counsel for the petitioner raised a ground stating that the Government of India cannot be termed to be an industry, as defined under Section 2(j) of the Industrial Dispute Act, 1947 and therefore, Industrial Dispute in respect of the employees employed by the Government cannot be maintained.

3.Countering the submissions, the learned counsel for the first respondent placed reliance on the decision of the 1997 (8) SCC Page 767 and stated that the law as on date is that the petitioner is an industry under the provisions of Industrial Dispute Act, and therefore, the dispute was maintainable.

4.In the Bangalore water supply case reported in 1978 (2) SCC Page 213 the Hon'ble Apex Court had laid down the dominant nature test for deciding whether an establishment is an industry or not. In the subsequent decision of the Hon'ble Apex Court reported in (1996) 8 SCC Page 489 in Theyyam Joseph case, the postal department was held to be not an industry. Likewise in the Bombay Telephone Canteen Employees Association case reported in 1997 (6) SCC 723, the telephone Department was held to be not an industry.

5.These two decisions came to be subsequently over ruled by the three Judges' Bench of Hon'ble Apex Court in the case of General Manager, Telecom Vs. A.Srinivasa Rao and others reported in 1997 (8) SCC Page 767 holding that telecom department of the Union of India is an industry within the definition of Section 2(j) of the Industrial Disputes Act, 1947 and further held that Theyyam Joseph and Bombay Telephone Canteen Employees Association did not lay down the correct law.

6.The decision in General Manager, Telecom Vs. A.Srinivasa Rao and others case cited supra, holds the field till date. As such, the ground raised by the learned Standing counsel for the petitioner does not deserve consideration and hence, I do not find any reason to interfere with the award passed by the lower Court.

7. Pending the writ petition, the first respondent/employee expired and is now survived by his legal heirs. As such, the legal heirs of the first respondent will be entitled to all the monetary benefits accrued in favour of the deceased/first respondent employee.

8. In the light of the above observations, respondents 3 to 7 namely the legal heirs of the deceased/first respondent are directed to make an appropriate representation to the petitioner seeking for all pensionary benefits in their favour. On receipt of such representation, the petitioner herein shall forthwith release the monetary benefits and extend the family pension in their favour, if they are otherwise qualified to, as expeditiously as possible, in any event, atleast within eight weeks from the date of receipt of a copy of this order.

9. The respondents 3 to 7 will also be entitled to withdraw any amount that might have been deposited before the second respondent herein, in connection with dispute in I.D.No.60/2001.

10. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Presiding Officer,
Central Government Industrial
Tribunal - cum - Labour Court,
Chennai.

+1cc to Mr.V.Ajay Khose, Advocate, S.R.No.27394
+1cc to Mr.S.Arockiam, Advocate, S.R.No.27263

W.P.No.27192 of 2004

SJ(CO)
CS/08/05/2019