

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.8413 of 2019

K.Settu

..Petitioner

vs

The Assistant Engineer,
Office of Tamil Nadu Electricity Board,
Kethanpatti, Natrampalli Taluk,
Vellore District.

..Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the Principal Labour Court, Vellore District, vide in I.D.No.92 of 2013, dated 29.01.2015 and quash the same and consequently, direct the respondents to reinstate the petitioner as a Mazdoor on par with his juniors with all consequential benefits.

For Petitioner : Mr.S.N.Ravichandran

For Respondent : Mr.Anand Gopalan
For M/s.T.S.Gopalan & Co

सत्यमेव जयते
O R D E R

The Award dated 29.01.2015 passed in I.D.No.92 of 2013 is sought to be quashed in the the present writ petition.

2. The writ petitioner was engaged as a Contract Labourer by the respondent Electricity Board in the office of the Assistant Engineer(O&M), Kethandapatti, Vaniyampadi from 05.06.1995. The writ petitioner states that he was continuously employed as Contract Labourer and working without any break in service. The petitioner states that he was identified as Contract Labourer as

on 08.08.1998 and was paid ex-gratia payment. Along with the petitioner, one Thiru.R.Dilli, Thiru.K.Raman, Thiru.R.Kumar, Thiru.M.Ramesh, M.Arul and Thiru.K.Manokaran were also employed as Contract Labourers. The petitioner along with others were identified as on 30.01.2005. Under these circumstances, Mr.Dhandapani, along with 81 others, including the petitioner filed a petition before the Inspector of Labour, Thiruvannamalai under Section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act, 1987, claiming permanency. The Inspector of Labour also passed an award on 24.03.2003 and directed the Board to grant permanent status to the petitioner and 76 others from the respective date of completion of 480 days. The respondent filed W.P.No.18863 of 2004, challenging the Award of the Inspector of Labour. The writ petition was dismissed by an order dated 06.07.2004 and the Writ Appeal No.3410 of 2004 was filed. During the pendency of the writ appeal, the petitioner met with an accident of electrocution on 16.05.2007 during the course of employment. He was taken to the Government Hospital by the Board officials and an FIR was registered. The petitioner made representations, requesting the authorities to initiate action against the board officials and further the petitioner was denied employment from 05.06.2007. In view of the fact that he was denied employment from 05.06.2007, the petitioner filed W.P.No.7571 of 2008 for a direction. During the pendency of the litigation, a 12(3) Settlement was agreed regarding the absorption of Contract Labourers. Consequently, the Board issued B.P.(FB).No.44 dated 06.09.2007. Meanwhile, the Writ Appeal No.1302 of 2004 etc., batch was also dismissed by the Hon'ble Division Bench on 24.10.2008, in view of the 12(3) settlement. After the dismissal of the appeals filed by the Electricity Board, the B.P.(FB).No.44 dated 06.09.2007 was implemented and Contract Labourers were absorbed.

3. The petitioner states that his case alone is discriminated despite the fact that he was identified as a Contract Labourer and paid ex-gratia payment. The petitioner was denied of employment from 05.06.2007 onwards. Thus, he raised an Industrial Dispute in I.D.No.92 of 2013 before the Labour Court, Vellore. In view of the fact that the petitioner raised an Industrial Dispute in the year 2013, he had withdrawn the writ petition filed by him in W.P.No.7571 of 2008 on 25.09.2014. Thereafter, the Industrial Dispute was proceeded by the Labour Court and the same was dismissed on 29.01.2015 mainly on the ground of delay. Thus, the petitioner is constrained to move the present writ petition, challenging the said Award.

4. The learned counsel appearing on behalf of the writ petitioner states that for all purposes, the petitioner was identified as a Contract Labourer and therefore, he is entitled to avail a benefit of B.P.(FB).No.44 issued pursuant to the 12 (3) Settlement. However, the writ petitioner met with an accident on electrocution and a criminal case was also registered and thereafter, the officials denied employment to the petitioner. Thus, the case of the writ petitioner is to be considered along with other similarly placed Contract Labourers with reference to B.P.(FB).No.44.

5. Regarding the findings of the Labour Court that there was an enormous delay in raising the Industrial Dispute and as per the amended Section 2(A), wherein, a three year period is introduced, the Industrial Dispute raised by the writ petitioner cannot be entertained. Relying on the said amended provision, the Labour Court dismissed the Industrial Dispute raised by the writ petitioner.

6. In this regard, the learned counsel for the writ petitioner states that the Hon'ble Supreme Court of India held that there cannot be any limitation for raising an Industrial Dispute in such matters, wherein the workman was terminated or not provided with an employment. In the present case, the petitioner was denied employment with effect from 05.06.2007. Thereafter, the writ petitioner filed a writ petition in the year 2008 and in the year 2013, he raised an Industrial Dispute and in the year 2014, he had withdrawn the writ petition. Thus, the findings of the Labour Court regarding the delay is unacceptable and consequently, the Award is liable to be scrapped.

7. The learned counsel for the writ petitioner relied on the Judgment of the Hon'ble Supreme Court of India in the case of Ajaib Singh Vs. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd. & Another decided on 8th April, 1999. The judgment of the Madhya Pradesh High Court in the case of M.P.State Road Transport Corporation Vs. Jaiprakash Narayan Tiwari & Ors. Dated 7th December 1993 is also cited. In the case of C.Gupta Vs. Glaxo-Smithkline Pharmaceuticals Ltd., reported in (2007) 7 SCC 171, the Court held that the amendments regarding the limitation must be implemented prospectively and retrospective effect and such amendment regarding limitation cannot be held against the workman. The learned counsel for the writ petitioner cited the judgment in the case of P.Sarathy Vs. State Bank of India, reported in (2000) 5 SCC 355, to establish that no limitation can be insisted upon for the purpose of entertaining an

Industrial Dispute.

8. This Court is of the considered opinion that all the above judgments cited by the learned counsel for the writ petitioner is of no avail to the petitioner in view of the fact that all the judgments were decided by the Hon'ble Supreme Court and other High Courts before the date of amendment i.e., on 15.09.2010. Undoubtedly, the amendment regarding the three year limitation period is implemented prospectively and such a limitation cannot be implemented retrospectively.

9. In the present case on hand, even applying the limitation period of three years from the date of amendment on 15.09.2010, the Industrial Dispute ought to have been raised before 15.09.2013. However, the Industrial Dispute admittedly was raised after 15.09.2013 and therefore, this Court cannot find fault with the Labour Court in rejecting the Industrial Dispute on the ground of delay as Section 2(A) of the Industrial Dispute Act was amended with effect from 15.09.2010 and the limitation period of three years was introduced.

10. In view of the fact that all the judgments were delivered prior to the amendment, those judgments cannot be applied as far as the present writ petition is concerned and prior to the amendment, there was no limitation period under the Industrial Disputes Act and therefore, the Apex Court as well as the High Court held that merely on the ground of limitation, the Industrial Dispute cannot be dismissed. The present case cannot be decided, applying the legal principles settled prior to the issuance on the amendment on 15.09.2010, prescribing three year limitation period under Section 2(A) of the Industrial Disputes Act.

11. The learned counsel appearing on behalf of the respondent disputed the contentions raised by the writ petitioner and said that the Labour Court has rightly rejected the Industrial Dispute. The Industrial Dispute was filed beyond the three year limitation period. The petitioner's contention was that he was dismissed from service on 16.05.2007. The amendment of Section 2(A), introducing three year limitation period was implemented with effect from 15.09.2010, the petitioner filed the Industrial Dispute before the Labour Court on 30.10.2013. Thus, the dispute is hit by the period of limitation, prescribed under Section 2(A) and therefore, the dispute is not maintainable.

12. It is contended that when the statute itself prescribes the period of limitation by way of an amendment, with prospective effect, even taking into consideration, the date of amendment i.e., 15.09.2010, industrial dispute ought to have filed before 15.09.2013. However, the Industrial Dispute in the present case was filed after three years from the date of amendment and for all the reasons, the findings of the Labour Court, rejecting the Industrial Dispute on the ground of limitation is in accordance with the amended Section 2(A) of the Industrial Disputes Act and there is no infirmity.

13. The learned counsel for the respondent further states that the petitioner has made a claim for benefit in terms of the settlement. As early as 25.11.2012, the same was rejected as the petitioner was not entitled to the benefit in terms of the settlement. In this regard, the learned counsel referred the reply dated 07.11.2012, wherein it is stated that "It is informed that the Board has issued orders vide (P).B.P.(FB). No.44, (Adm.Br.) dt.6.9.2007 that the Contract labourers those who were engaged continuously as on 5.1.98 and were identified as on 8.8.98 by the committee and were given ex-gratia from the year 1997-98 onwards and the ex-gratia payment given for the year 04-05 and 05-06 were absorbed as per 12(3) settlement. Thiru.K.Settu has not worked continuously and not turned up for duty from 16.05.2007. Hence, his request for absorption in the Board is not feasible of compliance. It is also informed that a detailed reply in this regard has already been sent to Th.K.Settu by the SE/Thirupathur on 9.11.2012. Vide TNEB/12 DT.20.11.20112."

14. Thus, it is made clear that a reply was received by the writ petitioner during the year 2012 itself that he is not entitled for the benefit of settlement and therefore, he cannot be brought under the regular establishment by way of permanent status.

15. Beyond the point of limitation raised in respect of filing a dispute before the Labour Court, the learned counsel for the respondent solicited the attention of this Court that even the present writ petition is filed after a lapse of four years and on that ground also, it is liable to be dismissed on the ground of laches. The Award of the Labour Court was passed on 29.01.2015 and the writ petition was filed on 19th March 2019, after a lapse of four years from the date of award. Thus, the writ petition is liable to be rejected on the ground of laches.

16. In respect of the amended Section 2(A) of the Industrial Disputes Act and introduction of three years limitation period, the learned counsel cited the judgment in the case of M/s. ITC Infotech India Ltd., Bangalore v. Mr. Venkataramana Uppada reported in 2016 SCC OnLine Kar 538, the Court held as follows:

"10. By Act 24 of 2010, Section 2A was renumbered as sub-Section (1) and by same Act i.e., Act 24 of 2010 sub-Section (2) and (3) came to be inserted after Section 2A(1) of the I.D. Act. The said amendment Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively.

11. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-Section (1) of Section 2A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2A lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub-Section (1).

12. A bare reading of above provision would indicate that a dispute covered under sub-Section (1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under Section 2A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. Sub-Section (3) of Section 2A would operate independently. The right available to the workman under Section 2A is not withstanding anything contained in Section 10 of the I.D. Act.

13. Thus, question which would arise for consideration in the instant case is; Whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition or in other words, if an application for condonation of delay

under Section 5 of the Limitation Act is filed, would it be maintainable and such delay can be condoned?

26. In view of the fact that sub-Section (3) of Section 2A having been held as mandatory and the said provision clearly indicating that in case of dismissal, discharge, retrenchment or termination, an application referred to in sub-Section (2) of Section 2 A to be made before the expiry of three years, i.e., on or before 10.02.2012 and same having not been made, respondent – employee cannot be heard to contend that delay is to be condoned. At the cost of repetition, it is to be held that on the expiry of three years period from the date of discharge, dismissal etc., the right to invoke Section 2A would stand extinguished.

27. In view of the aforestated discussion, this Court is of the considered view that Point Nos. (i) & (ii) has to be answered in the negative namely, Labour Court cannot entertain a claim petition filed under Section 2A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition."

17. The Madras High Court in the case of Ravikumar Vs. The Management, Tamil Nadu State Transport Corporation, reported in (2017) SCC Online Mad 20409, held as follows:

"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."

18. Considering the above judgments, which were delivered after the amendment, this Court is of an opinion that the Industrial Dispute was filed beyond the period of three years limitation. Thus, there is no perversity in respect of the findings of the Labour Court in rejecting the Industrial Dispute on the ground of delay.

19. In respect of the contention of the writ petitioner that he filed a writ petition, this Court is of an opinion that as per the petitioner, he denied employment from 05.06.2007, the petitioner filed the writ petition in the year 2008. The period of limitation was prescribed by way of amendment in the year 2010. The writ petitioner raised an Industrial Dispute after a lapse of three years from the date of amendment in the year 2013 and he had withdrawn the writ petition in the year 2014. Thus, the filing of the writ petition would not be a ground for waiving the period of limitation in favour of the writ petitioner. If such grounds are accepted, then the very sanctity of the limitation prescribed under the statute will be denied and in the present case, there was an enormous delay in pursuing the matter by the writ petitioner. Even as per his own statement, he was not provided with employment with effect from 16.05.2007. Thus, he would have pursued the matter vigilantly.

20. Even otherwise also, the Award of the Labour Court, which is impugned in the present writ petition was passed on 29th January 2015 and the present writ petition itself was filed on 19th March 2019. Thus, there was an enormous delay on four years even in filing the present writ petition, challenging the Award of the Labour Court passed in I.D.No.92 of 2013. Thus, the writ petition itself is liable to be rejected on the ground of laches. Even on merits, the Board sent a reply in the year 2012 that the case of the writ petitioner was considered and he was not eligible for permanent absorption on the ground that he had not worked continuously and not turned up for duty from 16.05.2007.

21. This being the factum, the writ petitioner has not established the fact that the ground of delay relied upon by the Labour Court for rejecting the Industrial Dispute is perverse. This apart, there is no convincing reason for filing the present writ petition, after a lapse of four years from the date of passing of the Award.

22. Under these circumstances, this Court has no hesitation in coming to the conclusion that the writ petitioner has not established any acceptable ground for the purpose of assailing the Award of the Labour Court. Consequently, the Award of the Labour Court dated 29.01.2015 in I.D.No.92 of 2013 is confirmed and the writ petition stands dismissed. However, there shall be no order as to costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Assistant Engineer,
Office of Tamil Nadu Electricity Board,
Kethanpatti, Natrampalli Taluk,
Vellore District.

2. The Presiding Officer
Principal Labour Court
Vellore

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