



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:09.12.2019

CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHABANU

W.P (MD) No.12089 of 2010

The Madurai District Co-operative Spinning
Mills Ltd,
Melur, Madurai District,
rep.by Administrator in-charge,
T.Susila

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, District Court Complex,
Madurai-625 020.

2.A.R.Palanivel,
No.3, S.S.V.Sala Street,
Pudhu Agraharam,
Melur.

3.P.Gandhimadhi
4.P.Natarajan
5.P.Tamilarasan
6.P.Gunaseelan
6.P.Shanthi
7.P.Eswari
8.P.Alagumeena

... Respondents

(R.3 to R.9- Substituted as LRs of the deceased 2nd respondent as per order dated 11.11.2014 in M.P.No.1 of 2014)

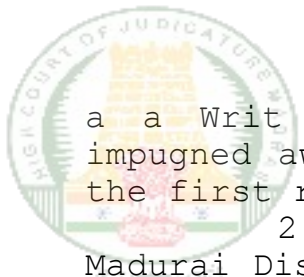
Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records pertaining to impugned award, dated 27.09.2007 in I.D.No.140/1997 on the file of the first respondent and quash the same.

For Petitioner : Mr.G.Manivannan
For R.1 : Court
For R.3 to 9 : Mr.T.R.Subramaninan

ORDER

This Writ Petition has been filed praying for issuance of

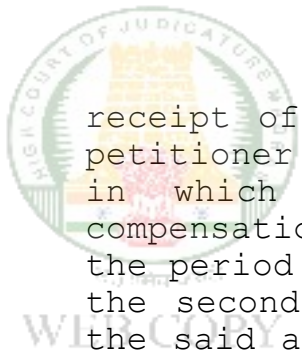
<https://hcservices.ecourts.gov.in/hcservices/>



a a Writ of Certiorari to call for the records pertaining to impugned award, dated 27.09.2007 in I.D.No.140/1997 on the file of the first respondent and quash the same.

2. The petitioner would aver among other things that the Madurai District Co-operative Spinning Mills Ltd., was functioning at Melur, Madurai District, and due to heavy loss, the petitioner's mills became defunct since 04.01.1999. All the workmen of the mills, settled their accounts by accepting the various VRS schemes launched by the Government of Tamil Nadu from 1999-2001. The second respondent, who was also one among such workmen, at the time of joining the petitioner mills has given his date of birth as 1938 and the same was recorded in Form No.2 of EPF Scheme and ESI records also and as per the record of age maintained by the petitioner mills, the second respondent due date of retirement is 31.12.1996 and accordingly, he was served with the order of retirement dated 28.12.1996 intimating about his retirement with effect from 31.12.1996. When the matter stood thus, originally, the 2nd respondent submitted resignation letter vide his letter dated 01.03.1985 and when he was relieved on the basis of the letter, he raised industrial dispute before the Labour Court, Madurai vide I.D.No.298/86. However, the Labour Court did not approve the management's acceptance of resignation of the second respondent and the labour court also noticed the discrepancy in the year of birth mentioned in the EPF Form as 1938 and found in ESI Form as 1948 and awarded reinstatement but without backwages as per award dated 12.08.1991. As per the said order, the second respondent rejoined the services and he was retired from services with effect from 03.12.1996. Further, the second respondent herein without filing a petition under Section 2A, before the Labour Officer, raised an industrial dispute, against the retirement describing as premature retirement and claiming that his year of birth is 1948 and claimed reinstatement with backwages and it was numbered as I.D.No.140 of 1997.

3. It is further stated that the second respondent has settled his provident fund account based on Form No.2, in which his year of birth is mentioned as 1938. The second respondent himself has written a letter to the petitioner mills dated 03.01.1997 admitting that he has been retired from services and requested for advance against gratuity and also got the same. While so, the second respondent's main reliance in the industrial disputes was about his year of birth and the first respondent herein has passed the impugned award dated 27.09.2007, directing the petitioner to pay 50% of backwages from 1.1.1997 to 31.12.2006 and this Writ Petition is against the award of the first respondent dated 27.09.2007. Due to the total closure of co-operative mills and non-availability of any administrative staff, no follow up could be had on the industrial disputes case and it is unfortunate that the mill in-charge officer also expired and there was none to receive any communication from the Court. Only recently the Directorate of Handlooms appointed the petitioner as administrator for attending



receipt of communication from the District Collector, Madurai, the petitioner came to know of the award passing of the I.D.No.140/1997, in which the first respondent has directed for payment of compensation at the rate of 50% of wages and attendance benefit for the period from 01.01.1997 to 31.12.2006 accepting the contention of the second respondent that his year of birth is 1948. Challenging the said action of the labour Court, the petitioner is before this Court.

4. The learned counsel appearing for the petitioner submits that the first respondent ought not to have placed undue reliance on the earlier award of the Labour Court passed in I.D.No.298/1986 in which the issue of focus was only on the right of the second respondent to withdraw the resignation and not the year of birth of the second respondent. The second respondent has categorically admitted that he was registered in the Employees State Insurance during the year 1974 and he was aged 26 years during 1974 and as per exhibit M1, Employees State Insurance declaration form and his son one Natarajan was aged 15 years on the date of declaration and he has 3 sons and 3 daughters ranging from the age 3 to 15 and inconsistency and practical impossible of one person to have become father of 15 years of old child at the age of 11 and on this ground alone, the findings of the first respondent are defective and patently extraneous. The petitioner counsel has submitted 15 nos of documents vide list of documents dated 12.11.2001 and the copy has been served on the second respondent's counsel on 13.02.2002 and all the documents were agreed to be marked by consent by the first respondent, but only six documents are found to have been marked as exhibits and thus due to procedural irregularities also the industrial disputes petition has to be set aside. In any event, despite the admitted facts that the petitioner mills have been remained closed from 04.01.1999 as per Ex.W.4, the first respondent ought not to have awarded any monetary benefits for the period from 1996 to 2006. The report of Employees State Insurance Corporation which was filed revealed the dubious nature of claim of second respondent. The respondent has failed to analyze the same. Therefore, he prays for setting aside the impugned order challenged in this Writ Petition.

5. *Per contra*, the learned counsel appearing for the respondents 3 to 9 would submit that the Court below after taking note of the points urged before it, it has passed the reasoned order, in which, no infirmity or illegality could be found and therefore, they pray for setting aside the order impugned in this Writ Petition.

6. Heard the learned counsel for the petitioner and learned counsel for the respondents.

7. As far as claiming of non-employment with the petitioner as per the Industrial Disputes Act, the second



respondent ought to have raised the industrial dispute before the Conciliation Officer (Labour Officer) and only after getting the failure report, he ought to have filed the Industrial Disputes petition as per Rule 25B(2) in prescribed form enclosing the conciliation failure report and in this case, no such conciliation itself has taken place and the mandatory pre-requisite stipulated under Section 25B(2) of the Tamil Nadu Industrial Dispute Rules, have not been complied with and the first respondent had straight away entertained the 2A petition filed by the second respondent which is legally impermissible and on this ground alone, the impugned award is liable to be set aside. The another flaw in the impugned order is that he has not obtained any civil court order about his disputed age of birth, since Civil Court is the competent to declare the correct age of birth. Further, he has chosen to file industrial disputes petition only after two years, that too, after receipt of benefits and that there are some corrections in the year of birth of the second respondent in the ESI Card of Ex.M1 that in the year 1985 itself he gave a petition dated 06.07.1985 admitting the left out service of 11 years only and based on his admission, the first respondent ought to have dismissed the industrial disputes petition, however, he has failed to do so and therefore, the award is bad in the eye of law. Further, the first respondent ought to have dismissed the industrial disputes on the ground that the second respondent has settled his provident fund accounts as per the Provident Fund form and he ought to have taken into consideration that as per Ex.M.11, marked in I.D.No.98/1986 in which, the Regional Provident Fund Commissioner has categorically informed the year of birth contained in the declaration is only 1938 and the first respondent ought to have applied the principles of estoppel and dismissed the industrial disputes petition filed by the second respondent. This fact also has not been properly appreciated by the first respondent.

8. In view of the foregoing reasons, the order impugned in this Writ Petition stands set aside and this Writ Petition stands allowed. However, there will be no order as to costs.

Sd/-

Assistant Registrar (CS-

/ True Copy /

Sub Assistant Registrar(CS-)

To

The Presiding Officer,
Labour Court, District Court Complex,
Madurai-625 020.

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