

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2020

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.NO.32836 OF 2016

S.Sampath

... Petitioner

-vs-

1. The Management of Sholingur Textiles Limited,
Arakonam Road,
Sholingur.
2. The Presiding Officer,
Industrial Tribunal,
Tamil Nadu, Chennai - 600 104.

... Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to Award dated 22.12.2015 passed by Industrial Tribunal, Chennai - 104 in Approval Petition No. 9 of 2011 and quash the same.

For Petitioner : Ms.S.Thamizharasi

For Respondents: Mr.S.Jayaraman (for R1)
R2 - Tribunal

O R D E R

(through video conference)

The Petitioner was in the employment of the Spinning Mill belonging to the First Respondent. He was dismissed from service by order 02.05.2005. Since there were industrial disputes in I.D. No. 1 of 2002, I.D. No. 3 of 2003 and I.D. No. 2 of 2004 pending before the Special Industrial Tribunal, Chennai (hereinafter referred to as 'the Tribunal' for short) then, the First Respondent made an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for short) before the Tribunal for approval of that action taken which was granted by order dated 22.12.2015 and the Petitioner has challenged the same in this Writ Petition.

2. Learned Counsel for the First Respondent submits that the Petitioner has an effective alternative remedy to challenge the order impugned in this Writ Petition, under Section 33-A of the Act, before the Tribunal and cannot prosecute this Writ Petition without resorting to that procedure. In this regard, reference may be made to the binding decision of the Constitution Bench of the Hon'ble Supreme Court of India in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., -vs- Ram Gopal Sharma [(2002) 2 SCC 244], which reads as follows:-

"14.if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication..."

3. There is no explanation from the Petitioner in the affidavit filed in support of the Writ Petition for not having resorted to that efficacious remedy. In this backdrop, it may be recapitulated here that the Hon'ble Supreme Court of India in CCE -vs- Dunlop India Limited [(1985) 1 SCC 260], has succinctly explained the legal position relating to the exercise of discretionary powers under writ jurisdiction as follows:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute...."

4. When the aforesaid legal position was pointed out, Learned Counsel for the Petitioner seeks permission of this Court to withdraw the Writ Petition with liberty to resort to the aforesaid procedure. She has also filed a memo dated 03.08.2020 to that effect, which is placed on record. It is made clear that having due regard to the pendency of this Writ Petition, for the purpose of reckoning limitation for pursuing

that legal remedy by the Petitioner, the period from the date of filing of the Writ Petition, viz., 16.09.2016 till today, viz., 04.08.2020, shall be excluded.

5. Accordingly, the Writ Petition is dismissed as withdrawn granting such liberty with the aforesaid observations. No costs.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

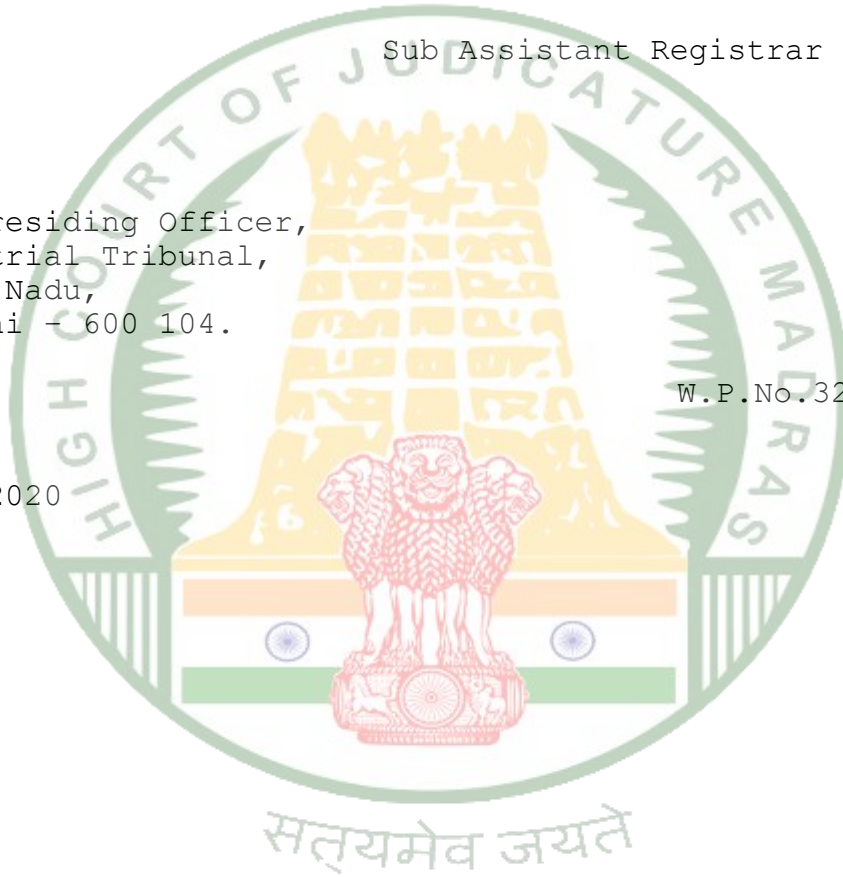
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To

1. The Presiding Officer,
Industrial Tribunal,
Tamil Nadu,
Chennai - 600 104.

W.P.No.32836 of 2016

SAI (CO)
CS/13/08/2020



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