

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

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

W.P. No. 34772 of 2019

Parthasarathy

...Petitioner

-vs-

M/s. Souther Pins and Products Pvt. Ltd.,
Rep. by its Director A. Venkataramani,
A 1/C, Industrial Estate,
Marai Malai Nagar,
Chennai - 603 209.

Regd. Office
I P Rings Private Limited,
Rep., by its director A. Venkatramani,
D-11/12, Industrial Estate,
Maraimalai Nagar,
Kancheepuram District - 603 209.

...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Labour Court, Chennai in S.R. No. 6340/2017 in I.D. No. is pending and quash the order dated 07.12.2018.s

For Petitioner : Mr. U.Chandramouli

for M/s. Swaminathan Law Associates

For Respondent : Mr. Shivathanu Mohan Sanjay

for M/s. S.Ramasubramaniam Associates

O R D E R

(through video conference)

Heard Mr. U.Chandramouli, Learned Counsel appearing for the Petitioner and Mr. Shivathanu Mohan Sanjay, Learned Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was in the employment of the Second Respondent as Senior Member Purchase in the grade of JMM 4, was terminated from service by order dated 06.10.2014, which had

been received by him on 08.10.2014. Conciliation proceedings had taken place on the application dated 12.04.2017 made by the Petitioner, which ultimately ended in a failure as per letter Na. Ka. No. Aa337/2017 dated 27.06.2017 sent by the Conciliation Officer to the Petitioner and the Second Respondent. The Petitioner then invoked Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for short) and made a claim on 30.11.2017 against the Second Respondent in SR No. 6340 of 2017 for declaration that the notice of termination dated 06.10.2014 was null and void and reinstate him in service with continuity of service and backwages and other attendant benefits. The Principal Labour Court, Chennai (hereinafter referred to as the 'Labour Court' for short) by order dated 07.12.2018 in SR No. 6340 of 2017 found that in terms of Section 2-A(3) of the Act, which had come into force with effect from 15.09.2010, the claim could not be made after the expiry of three years from the date of termination, which lapsed on 06.10.2017, and rejected the same. Aggrieved thereby, the Petitioner has filed this Writ Petition.

3. Learned Counsel for the Petitioner placing reliance on the decisions of the Hon'ble Supreme Court of India in S.M. Nilajkar -vs- Telecom District Manager, Karnataka [(2003) 4 SCC 27], Kuldeep Singh -vs- General Manager, Instrument Design Development and Facilities Centre [(2010) 14 SCC 176] and Raghubir Singh -vs- General Manager, Haryana Roadways, Hissar [(2014) 10 SCC 301], contends that the Labour Court cannot refuse to entertain the industrial dispute on the ground of limitation and as its consequence, the impugned order has to be set aside and the Labour Court would have to decide the matter on merits. On a perusal of the aforesaid decisions cited by the Learned Counsel for the Petitioner, it is evident that those cases related to industrial disputes that were raised before the Labour Court under Section 10 of the Act, in respect of which no period of limitation has been prescribed. However, the Petitioner has not raised any industrial dispute under Section 10 of the Act in this case, but has invoked Section 2-A of the Act by filing an application without any order of reference from the appropriate Government.

4. It must be pointed out here that Section 2-A of the Act had been substituted with effect from 15.09.2010 as follows:-

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute:-

(1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment

or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."

Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

- (i) ITC Infotech India Ltd. -vs- Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)
- (ii) Management of Ashok Layland -vs- Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)
- (iii) Ravi Kumar -vs- Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)
- (iv) K. Settu -vs- Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A (2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A (2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced.

6. It would suffice to observe here that inasmuch as the impugned order relates to the claim made by the Petitioner under Section 2-A(2) of the Act, the aforesaid discussion upholding the impugned order is confined to that legal provision alone. Having regard to the contentions of the Learned Counsel for the Petitioner relying on the decisions of the Hon'ble Supreme Court of India under Section 10 of the Act, it is made clear that no opinion has been expressed by this Court on the correctness or entitlement of the Petitioner to pursue further remedy in the manner prescribed under Section 10 of the Act.

In the result, the Writ Petition is dismissed with the aforesaid clarifications. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vjt/dm

To

The Presiding Officer,
Principal Labour Court,
Chennai.

+1cc to Mr.S.Ramasubramanian, Advocate, S.R.No.32353

W.P. No. 34772 of 2019

VG II (CO)
KKV/29/10/2020