



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2021

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THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.Nos.2438 and 2470/2012

W.A.No.2438/2012 :

T.M.Ramamoorthy

... Appellant

-vs-

1. The Presiding Officer,
Additional Labour Court No.I,
City Civil Court Compound,
Chennai-600 104.

2. The Management,
Areva T& D India Company Limited,
No.19/1, G.S.T. Road,
Pallavaram, Chennai-43.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order in W.P.No.11692/2008 dated 10.07.2012 passed by a learned Single Judge.

W.P.No.11692 of 2008:-

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relevant to the order in I.D.No.146/2001 dated 24.12.2007 passed by the first respondent and quash the same as illegal, improper, unreasonable, arbitrary and against the rule of law, natural justice and against the Industrial Disputes Act, 1947 and thereby direct the second respondent to promote the petitioner as assistant Foreman in the existing vacancy in the second respondent's company and pay back all the service benefits in the promotion post.

For Appellant : Ms.PA.Chithramani

For 2nd Respondent : Mr.Anand Gopalan



W.A.No.2470/2012 :

T.M.Ramamoorthy

... Appellant

-vs-

WEB COPY

1. The Union of India
rep. by the Secretary to Government,
Labour and Employment Department,
New Delhi.
2. The Secretary to Government,
Labour and Employment Department,
Fort St. George, Chennai-600 009.
3. The Commissioner of Labour,
Government of Tamil Nadu,
Chennai-600 006.
4. The Presiding Officer,
Additional Labour Court No.I,
City Civil Court Compound,
Chennai-600 104.
5. The Management,
Areva T& D India Company Limited,
No.19/1, G.S.T. Road,
Pallavaram, Chennai-43.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order in W.P.No.9776/2008 dated 10.07.2012 passed by a learned Single Judge.

W.P.No.9776/2008:-

Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration, declaring Section 2(k) of the Industrial Disputes Act, 1947 as ultravires, unconstitutional and against the employee's interest.

For Appellant : Ms.PA.Chithramani

For Respondents : Mr.T. Arunkumar, Govt. Pleader
2 and 3

For 5th Respondent : Mr.Anand Gopalan



COMMON JUDGMENT

(Judgment of the Court was pronounced by T.RAJA, J.)

These Writ Appeals have been filed challenging the correctness of the Common Order dated 10.07.2012 made in W.P.Nos.9776 and 11692 of 2008 by a learned Single Judge of this Court.

2. The case of the appellant is that he was working as Operator in Cubical Gear Multi Motor Circular Centre (CGMMCC) in the respondent company as casual labour during the year 1975. At that time, there was a general agitation by the workers of the respondent company demanding to confirm their employment and there was a conciliation between the company and the employees which ended in failure. Thereafter, the appellant herein and the other workers raised an Industrial Dispute before the Industrial Tribunal which passed an award directing the respondent Management to employ the workers with back wages. Totally, there were 181 workers, out of whom the Industrial Tribunal directed to reinstate 131 employees with back wages and 50 without back wages. Aggrieved by the award, the respondent Management by way of appeal came before this Court unsuccessfully and after the dismissal of the Writ Petition, W.A.No.1235/1983 was also filed and the same was allowed by setting aside the order made in the Writ Petition. Thereafter, the Labour Union took up the matter to the Apex Court in C.A.Nos.596 and 597/2986. Finally, the Apex Court directed the respondent Management to allow the appellant and other workers to rejoin the company with continuity of service by its judgment dated 11.01.1990. The further case of the appellant is that after his reinstatement in the respondent Management, he sought for promotion and when the same was denied, he raised an industrial dispute.

3. In the industrial dispute raised by the appellant herein, the learned Additional Labour Court No.I, Chennai, has held that when the question of promotion has arisen, after the rejection of his claim by the Management, the appellant has to approach the Conciliation Officer and only after the failure report filed by the Conciliation Officer, if any, the appellant should have approached the Labour Court which he has not done. But, all of a sudden, he has approached the Additional Labour Court No.I, Chennai, on the basis of the observation given in the order passed by this Court in CRP.No.3680/2000, that too, he raised the Industrial Dispute only under Section 2-A of the Industrial Disputes Act, 1947. The learned Labour Court has also in paragraph 10 of its award made it clear that Section 2A is very clear that the workman in case of dismissal has to first approach initially conciliation proceedings and if no settlement is arrived before the Conciliation Officer and on the failure



report by the Conciliation Officer, then only, he has to approach the Labour Court. But, without even following any of these procedure required to be complied with, the appellant has wrongly approached the Labour Court. Therefore, the Labour Court has rightly come to the conclusion that the Industrial Dispute is not at all maintainable under Section 2A of the Act and dismissed the same. This award was also confirmed by the learned Single Judge. As against which, the present Appeals have been filed.

4. When the appeals were called today, learned Counsel for the appellant submitted that the appellant passed away during the pendency of these Writ Appeals. He further submitted that since Section 2-A of the Industrial Disputes Act gives cause of the action to the workman to raise an industrial dispute in a case where the employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer shall be deemed to be an industrial dispute.

5. In this context, it is relevant to extract Section 2-A here under :

[2-A.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 of 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.''



Therefore, Section 2A makes it clear that workman in case of dismissal, retrenchment or termination, has to firstly approach the Conciliation Officer and if no settlement is arrived at before the Conciliation Officer and on the failure report by the Conciliation Officer, then only, he has to approach the Labour Court.

6. Insofar as the present appeals are concerned, the appellant seeking promotion has approached the Labour Court straight away under Section 2-A of the Industrial Disputes Act, therefore, the same is not at all maintainable. Hence, we find no infirmity or illegality in the impugned order passed by the learned Single Judge of this Court. However, since it is stated by the learned Counsel for the appellant that the appellant is no more, the Writ Appeals are dismissed as abated. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Union of India,
Labour and Employment Department,
New Delhi.
2. The Secretary to Government,
Labour and Employment Department,
Fort St. George, Chennai-600 009.
3. The Commissioner of Labour,
Government of Tamil Nadu, Chennai-600 006.
4. The Presiding Officer,
Additional Labour Court No.I,
City Civil Court Compound, Chennai-600 104.

+1cc to the Government Pleader, S.R.No.28457 & 28456

W.A.Nos.2438 and 2470 of 2012

KV(CO)
PM(20/07/2021)