

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.10206 of 2021

A.John Eraiarasu

... Petitioner

-vs-

1. The Management

G.V.K.Emergency Management,
and Research Institute,
Health Visitors Training Institute,
Triplicane, Chennai 600 005.

2. The Project Director,

Tamilnadu Health System,
3rd Floor, DMS annex,
New Building 259 Anna Salai,
Teynampet, Chennai - 600 006.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the III Additional Labour Court, Chennai, pertaining to I.D.No.502 of 2015 dated 27.09.2019, quash the same and to direct the III Additional Labour Court, Chennai to adjudicate the Industrial Dispute I.D.No.502 of 2015 on merits.

For Petitioner : Mr.G.Purushothaman

सत्यमेव जयते
O R D E R

The Writ Petition is filed, to quash the proceedings pertaining to I.D.No.502 of 2015 dated 27.09.2019 and for a consequential direction to the III Additional Labour Court, Chennai to adjudicate the Industrial Dispute in I.D.No.502 of 2015 on merits.

2. According to the petitioner, the petitioner / workman has joined as Ambulance Driver in the first respondent office on 03.08.2009 on the salary of Rs.6,000/- per month and while he was discharging his duties sincerely, on 20.09.2010, he was suspended from service for the alleged act of misconduct and thereafter dismissed from service vide order dated 27.07.2012.

Hence, the petitioner raised an industrial dispute before the Conciliation Officer on 06.08.2012 and upon receipt of the conciliation failure report, dated 10.12.2012, he approached the Labour Court on 05.10.2015 by raising Industrial Dispute, which was taken up by the Labour Court in I.D.No.502 of 2015 and the Award of dismissal has been rendered on 27.09.2019.

3. It is the grievance of the petitioner that the Labour Court, without going into the merits of the matter, has rejected the claim of the Workman, on the ground that the Industrial Dispute raised by him is barred by limitation. The only plea taken by the petitioner was that the period of limitation has got to be calculated from the date of conciliation of the failure report and that the provisions of the Limitation Act will apply to condone the delay and that there was a delay of only for a period of two months. According to the petitioner, he has been examined and various Exhibits have been marked, apart from the fact that the Management also examined the witnesses and marked documents. It is prayed that the rejection of Industrial Dispute on the ground of time barred is liable to be set aside and the matter has got to be remitted to Labour Court on merits.

4. For the sake of convenience, the provisions of Section 2 (A) of the Industrial Dispute act, 1947 is extracted below:

¹[2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.-- ²[(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.]

³[(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).]

The following sub-section shall be added, namely:--

"(3) Notwithstanding anything in sub-sections (1) and (2), no such 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 if such dispute is not raised in conciliation proceeding within a period of three years from the date of such discharge, dismissal, retrenchment or termination:

Provided that the Labour Court or the Conciliation Officer, as the case may be, may consider to extend the said period of three years when the applicant workman satisfies the Court or Conciliation Officer that he had sufficient cause for not raising the dispute within the period of three years."

5. The provisions of the Act, more so, 2 (A) was amended w.e.f 15.09.2010 wherein the period of limitation has been prescribed and the employee has to approach the Labour Court, challenging the dismissal of non employment and like as contemplated under Section 2 (A) of the Act, within a period of three years from the date before the expiry of three years form the disengagement or dismissal from service or otherwise termination of service.

6. In this case, there is a delay in approaching the Labour Court and the petitioner has not knocked at the doors of the Court within a period of three years from the date of disengagement. When there is a time limit prescribed and that the limitation Act is not applicable, if the contention of the petitioner is accepted, then tomorrow, everyone will approach the Court that the provisions of CPC and Evidence Act will apply to prolong the industrial dispute not only for years, but for decades together. Since there is an outer time limit under

Section 2 (A) of the Industrial Dispute Act and that the petitioner has not approached the Labour Court within a time as contemplated in the said Act, I find that there is no merit in interfering with the Award of the Labour Court, as it is perfectly justified and there is no perversity found in the Award. The contention that the plea of period of limitation has not been taken by the Management, may not be correct. In that connection, the paragraph 33 of the Award dated 27.09.2019 reads as follows:

"11. In the light of the above provision, the present case on hand taken for consideration. The crucial date of termination is 27.07.2012 and hence the petitioner ought to have filed this petition u/s. 2 (A) 2 within the period of three years from 27.07.2012 in accordance with sec.2(A)3 of the ID Act. On the other hand, the petitioner prepared the petition on 30th September 2015 and filed the same before this Court only on 05.10.2015. On the face of it the filing of this petition is beyond the period of limitation and the challenge raised by the respondents in their written arguments is tenable.

12. On that score this Court concludes that, the relief claimed by the petitioner were time barred and this point is answered accordingly."

7. In view of what is stated herein above, this Court has no other option but to hold that the petition is barred by Limitation. Hence, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

vum

To

1. The Management
G.V.K.Emergency Management,
and Research Institute,
Health Visitors Training Institute,
Triplicane, Chennai 600 005.

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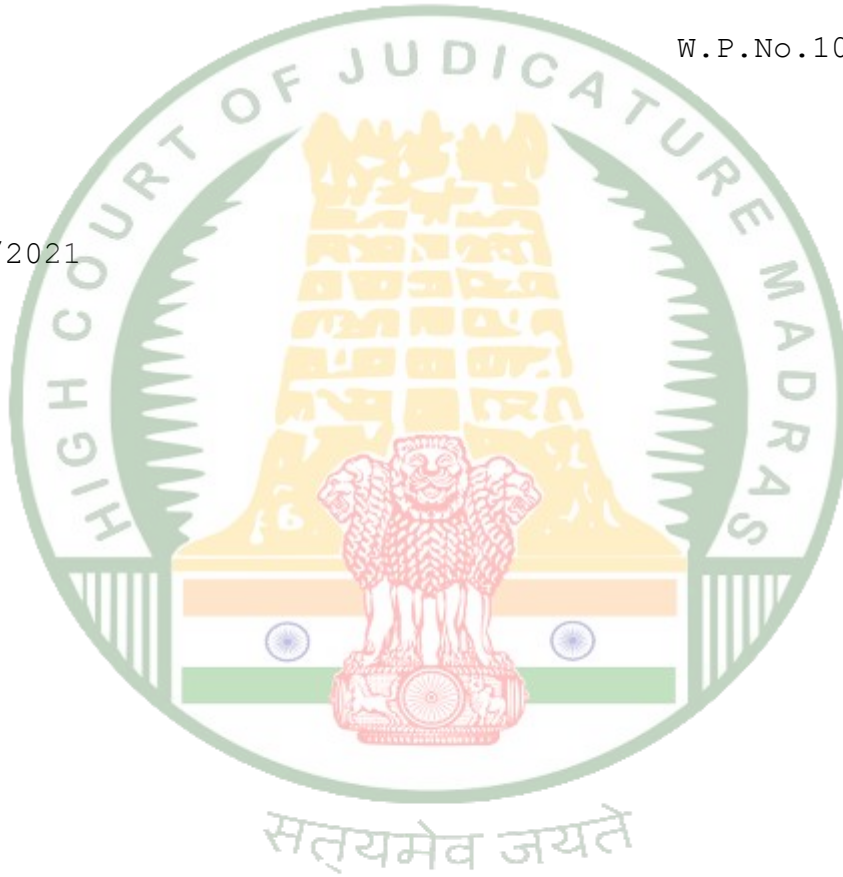
2. The Project Director,
Tamilnadu Health System,
3rd Floor, DMS annex,
New Building 259 Anna Salai,
Teynampet, Chennai - 600 006.

3. The III Additional Labour Court,
Chennai.

+lcc to Mr.G.Purushothaman, Advocate Sr.24915

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srg 09/07/2021



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