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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.07.2021

Delivered on : 27.07.2021

CORAM :

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
AND

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.A.No.431 of 2020 & C.M.P.No.6634 of 2020

1.The Management of ICICI Bank Limited,
ICICI Bank Towers, Bandra-Kurla Complex,
Mumbai-400 051.

2.ICICI Bank Limited,
ICICI Bank Towers,
Plot No.24, South Phase,
4th Floor, West Wing,
Ambattur Industrial Estate,
Chennai-600 058.

.. Appellants/Petitioners

Vs

1.The Presiding Officer,
Central Government Industrial Tribunal cum
Labour Court,
Sastri Bhavan,
No.26, Haddows Road,
Chennai-16.

2.S.Ramanathan

.. Respondents/ Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent
against the order dated 14.02.2020 passed in W.P.No.7556 of 2013.

Prayer in W.P.No.7556 of 2013:

It is prayed that this Hon'ble Court may be pleased to issue appropriate Writs, Orders or Directions and more particularly issue a Writ in the nature of Certiorarified Mandamus, after calling for the concerned records from the 1st Respondent, quash the award dated 30.11.2012 passed in I.D.No.18 of 2011 in so far as not granting the relief of reinstatement with full back



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wages, continuity of service and other attendant benefits and consequently direct the respondent no.2 and 3 to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits and pass such other orders or directions as this Hon'ble Court may deem fit and proper in the circumstances of the case, award costs and render justice.

For Appellants : Mr.Sanjay Mohan for
M/s S.Ramasubramaniam & Associates

For Resondent : Mr.V.Prakash, Senior Counsel for
Mr.K.Krishnamurthy for R2

JUDGMENT

M.M.SUNDRESH, J.

The present writ appeal has arisen against the order dated 14.02.2020 passed in W.P.No.7556 of 2013 by the learned single Judge, who while confirming the order of termination passed by the appellants as approved by the Central Government Industrial Tribunal-cum- Labour Court, Chennai in Industrial Dispute No.18 of 2011 dated 30.11.2012, modified the award to one of voluntary retirement from that of compulsory retirement.

2.The second respondent was working as a Clerk with the appellants. He joined the office in the year 1980-23.01.1980. He was on leave from 04.09.2006, having suffered an heart attack. On 25.06.2009 an order of discharge was issued to the second respondent on the ground of sufferance from continued unabated ill health. Accordingly, the second respondent was discharged from services by issuance of salary in lieu of notice.

3.When the appellant joined his service regulations by name 'Bank of Madura Employees' Pension Regulations' was in force. This regulation defines 'date of retirement' to mean the date on which an employee attains the superannuation or he is retired by the bank or he voluntarily retires. The definition of 'retirement' would also mean a premature one and retirement by bank before attaining the age of superannuation. The regulation also provides for voluntary retirement scheme.

4.Chapter V deals with 'Classes of Pension'. Regulation 29 speaks of 'Pension on voluntary Retirement'. Regulation 31 talks about 'Compassionate Allowance'. Regulation 32 deals with 'Premature Retirement Pension' and Regulation 33 speaks of 'Compulsory Retirement Pension'. Of these, Regulation 33 paves way even for an employee compulsorily retired from service as a penalty to get the pension thereunder. The erstwhile Bank of Madura got merged with the appellants bank - ICICI Bank. The



appellants bank introduced early retirement option on 17.06.2003. The said scheme has not been extended after the year 2003, having expired decades ago.

5. With the abovesaid background, the second respondent raised a dispute before the first respondent -Central Government Industrial Tribunal-cum- Labour Court, Chennai, in Industrial Dispute No.18 of 2011. The Labour Court, while sustaining the order of discharge made by way of a termination, nonetheless modified it having found not being proportionate. The fact that the second respondent had put in more than 25 years of service which entitled him for pension was taken note of. He has been found to be qualified for pension having opted to undergo the scheme under the regulation of the year 1995. Accordingly, the termination was modified into one of compulsory retirement and consequently, the appellants were directed to pay the superannuation benefits from the date of discharge.

6. Before us, an affidavit has been filed giving instances by which 1995 scheme was applied to other persons including one, who was punished between the year 2013-2019. This factum has not been disputed by the learned counsel appearing for the appellants.

7. Both the appellants and the second respondent challenged the award passed by the first respondent before the learned single Judge by filing writ petitions in W.P.Nos.7556 of 2013 and 26647 of 2013 respectively. The learned single Judge, while upholding the findings on merit qua the reasons behind the discharge, modified the award passed while taking note of the extraordinary power available under Article 226 of the Constitution of India by granting the relief of voluntary retirement instantly. A finding has been rendered that what was imposed on the second respondent seems only a penalty and hence, it cannot be sustained. For arriving at his conclusion, the learned single Judge took note of the provisions of the regulations of the year 1995. The appellants challenged the aforesaid order of the learned single Judge on the following grounds.

8. The order passed by the learned single Judge would amount to rewriting the terms of the contract between the parties. Since the first respondent-Labour Court and the learned single Judge found the discharge as valid in view of the continued ill health of the second respondent, there is neither a scope to invoke Section 11A of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") nor Article 226 of the Constitution of India which is expected to be used sparingly being extraordinary in nature. To buttress his submissions, the



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learned counsel has made reliance on the following decisions.

- 1.Om Oil & Oilseeds Exchange Ltd., Delhi Vs.Their Workmen (AIR 1966 Supreme Court 1657);
- 2.The Workmen of Firestone and Rubber Co of India (Pvt) Ltd., Vs. The Management and Ors. (AIR 1973 SC 1227);
- 3.Kerala Solvent Extractions Ltd., V. A.Unnikrishnan and Ors (2996 SCC 619);
- 4.APSRTC, represented by Depot Manager Vs. K.Pochaiah and Ors (AIR 1999 SC 2638);
- 5.Bharat Heavy Electricals Ltd., Vs. M.Chandrasekhar Reddy and Ors (AIR 2005 SC 2769);
- 6.Life Insurance Corporation of India Vs. R.Dhandapani (AIR 2006 SC 615);
- 7.Davalsab HusainsabMulla Vs. North West Karnataka Road Transport Corporation (2013 (9) SCR 826); and
- 8.Himachal Road Transport Corporation and Ors V. Himachal Road Transport Corporation Retired Employees Union (AIR 2021 SC 1132).

9.The learned Senior Counsel appearing for the second respondent submitted that the affidavit filed before this Court would clearly demonstrate that the scheme is still alive and it was accordingly applied even for an employee who suffered by way of penalty, the power of the Labour Court is rather wide. A restrictive interpretation cannot be given to exercise of such a power. The provisions will have to be given a wider meaning. Even a contract can be created in a given situation through the award by the Labour Court. Ultimately, one has to see the justness in the award passed. In aid of his submissions, the learned Senior Counsel seeks to refer the following decisions.

- 1.Western India Automobile Association Vs. Industrial Tribunal, Bombay and others ((1949) 51 BOMLR 894);
- 2.Rohtas Industries Limited Vs. Brinjanandan Pandey and others ((1956) 2 LLJ 444);
- 3.State of Madras Vs. C.P.Sarathy and another ((1953) I LLJ 174);
- 4.A.R.Varma and another Vs. The Mettur Industries Ltd (AIR 1959 Mad 479);
- 5.Patna Electric Supply Co. Ltd., Patna Vs. Patna Electric Supply Workers Union ((1959) 2 LLJ 366);
- 6.New Maneck Chowk SPG & WVG Co. Ltd., Ahmedabad and others Vs. Textile Labour



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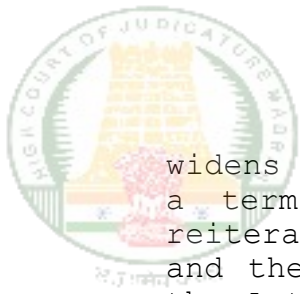
Association, Ahmedabad ((1962) 1 LLJ 521);
7.J.K.Cotton spinning and Weaving Mills Co. Ltd., Vs. Labour Appellate Tribunal of India and others ((1963) 2 LLJ 436);
8.Gujarat Steel Tubes Ltd., V. Mazdoor Sabha ((1980) 2 SCC 593);
9.Management of Bata India Ltd., and another Vs. Presiding Officer, Industrial Tribunal, Tamil Nadu and others ((2010) 2 LLJ 175).

DISCUSSION:-

10.Before venturing into the factual issues not being many and the rival contentions at the Bar, let us try to understand and appreciate the provisions governing the Industrial Disputes Act, 1947 as the object of resolving the disputes between the workmen and the Management to create an atmosphere of industrial peace and harmony. Thus, it has got its own social objective behind it which is to protect, support and safeguard the interest of the employees. Therefore, what is required to be adopted is a purposive, creative and constructive interpretation. Such a liberal interpretation is to be followed together to give effect to the object behind the enactment. The mechanism provided under the Act is one of resolution and therefore, cannot be treated like a mere civil forum, by construing it as a mere adjudicational one. Even the preamble of the Act throws light that the Act is meant for settlement of industrial disputes.

11.With the aforesaid understanding, let us now consider the relevant provisions of the Industrial Disputes Act, 1947. Section 2(k) of the Act defines an 'industrial dispute'. This provision is so exhaustive to take in its ambit any dispute or difference, which does not stop with 'a' dispute but all disputes. Therefore, any difference between the employee and the employer, ofcourse, in the course of the employment would come within the purview of the definition clause of industrial dispute. Any other interpretation other than the one as stated by us would defeat the very purpose of the enactment and make the definition clause unworkable. The words 'employment' or 'non employment' are to be of widest amplitude and therefore, these words will have to be read in conjunction with the other part of the definition clause. The only caveat is that there must be some connection with either the 'employment' or 'non employment'.

12.Section 2A of the Act deals with a discharge, dismissal, retrenchment or a termination. When we speak of discharge, a termination per se, as we deal with the case on hand would be by one. To make the position clear, this section

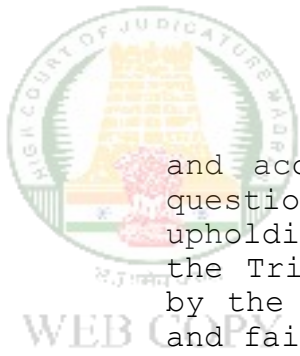


widens the scope by stating that a dispute would also involve a termination otherwise. It does not stop with that. It reiterates that any dispute or difference between the workman and the employer would come under the purview of Section 2A of the Act. Therefore, a restrictive meaning can never be given to the word dispute or difference. What is required is the existence of such a dispute or difference in connection with or arisen out of such discharge, dismissal etc. A deeming fiction is being created meant to resolve all such disputes under the Act. The words used such as discharge, dismissal or retrenchment are merely illustrative but not exhaustive. The said intention is strengthened by the words "otherwise terminates", leaving no room to any other interpretation. Thus it includes any dispute or difference between an employer and employee in connection with the employment into the purview of the Act.

13. We have already held that the words 'discharge' or 'termination' are illustrative in nature. At times, a discharge and termination can be read to mean one and the same. However, a discharge may not lead to a termination in a given situation. One has to see the ultimate effect.

14. For example:- 'A' is the employer of 'B'. 'B' is discharged by 'A' on medical ground by way of termination. Regulation provided for better benefits, such as, voluntary retirement. It was accordingly given to few others but not to 'B'. Now, the challenge is not to the reason behind discharge, but the termination affecting the interest of 'B'. In other words, the challenge is to the ultimate decision affecting the interest of the employee and not the reasons behind it. Therefore, it is well open to the Tribunal to hold that a discharge is valid insofar as the decision is concerned but not with respect to the ultimate result. One cannot say that once there is an element of inability to work the resultant decision by way of termination cannot be challenged.

15. Section 11A of the Industrial Disputes Act, 1947 has got a laudable object behind it. This provision is meant to give a sufficient relief to an employee. Even in a case of punishment, the doctrine of proportionality can be applied. It cannot be stated that the Tribunal is divested such a power to pass appropriate award after having found that the discharge is valid. The very object of giving the twin powers to the Tribunal is to give effect to the mandate of this Act to resolve any dispute or difference between the parties. Here, the difference may not be with respect to the need for a discharge but on the question of the final action. This distinction is to be borne in mind while considering the case of a discharge leading to a termination. Therefore, like in a case where a guilt is proved



and accepted, the Tribunal has got the power to go into the question of termination as against the other modes even while upholding the discharge. Thus, while upholding the discharge, the Tribunal can still hold the order of termination as imposed by the Management is not justified on the question of adequacy and fairness.

16. On the power of the Labour Court, one has to see the fairness in the award passed. Fairness is expected to be in built in an action initiated by the employer. When such a fairness is found to be inadequate or non-existent, the Labour Court is well within its jurisdiction to pass an award to an extent. While doing so, it might even create a right which may have the trappings of a contract. What is relevant is to see the fairness in the award but not the creation of the contract though it is expected that such a decision may not infringe upon the rules and regulations governing. It is suffice to state that the power of the Labour Court is exhaustive in passing the just award.

17. In *Western India Automobile Association Vs. Industrial Tribunal, Bombay and others* ((1949) 51 BOMLR 894), the Federal Court has considered the scope and ambit of the relevant portions in a following manner.

"The preamble to the Act gives a wide scope to it, when it says that it is expedient to make provision for the investigation and settlement of industrial disputes and for certain other purposes thereafter appearing. It does not limit its sphere to businesses run only by the Government or local authorities. The scheme of the Act fits in with the interpretation we are placing on the expression "employer", and any other construction of it would create incongruity and repugnancy between different sections of the Act. The Act was intended to be a more comprehensive law on trade disputes than its predecessor, the Trade Disputes Act, 1929. It was not denied that under that Act, the term "employer" included within its scope industries owned by persons other than Government departments or local authorities. In the Act of 1947 an elaborate and effective machinery for bringing about industrial peace has been devised.

.....
The question for determination is whether the definition of the expression "industrial dispute" given in the Act includes within its



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ambit a dispute in regard to reinstatement of dismissed employees. The definition is, as pointed out by Lord Porter in *National Association of Local Government Officers v. Bolton Corporation* [1943] A.C. 166, 191., worded in very wide terms which unless they are narrowed down by the meaning given to the term "workman" would seem to include all employees, all employment and all workmen, whatever the nature or scope of the employment may be. Reinstatement is the employment of a person non-employed and is thus within the words of Lord Porter "all employment." Thus it would include cases of re-employment of persons victimized by the employer. The words of the definition may be paraphrased thus :

any dispute which has connection with the workmen being in, or out of service or employment.

"Non-employment" is the negative of "employment" and would mean that disputes of workmen out of service with their employers are within the ambit of the definition. It is the positive or the negative act of an employer that leads to employment or to non-employment. It may relate to an existing employment or to a contemplated employment, or it may relate to an existing fact of non-employment or a contemplated non-employment. The following four illustrations elucidate this point: (1) An employer has already employed a person and a trade union says "Please do not employ him." Such a dispute is a dispute as to employment or in connection with employment. (2) An employer gives notice to a union saying that he wishes to employ two particular persons. The union says "No." This is a dispute as to employment. It arises out of the desire of the employer to employ certain persons. (3) An employer may dismiss a man, or decline to employ him. This matter raises a dispute as to non-employment. (4) An employer contemplates turning out a number of people who are already in his employment. It is a dispute as to contemplated non-employment. Employment or non-employment" constitutes the subject-matter of one class of industrial disputes, the other two classes of disputes being those connected with the terms of employment and the conditions of labour. The failure to employ or the refusal



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to employ are actions on the part of the employer which would be covered by the term "employment or non-employment." Reinstatement is connected with non-employment and is therefore within the words of the definition. It will be a curious result if the view is taken that though a person discharged during a dispute is within the definition of the word "workman," yet if he raises a dispute about dismissal and reinstatement, it would be outside the words of the definition "in connection with employment or non-employment." It was contended that the words employment or non-employment" were employed in the same sense, just to remove any ambiguity that might arise if the word "employment" alone was used. In other words, the word "non-employment" has limited the meaning of the word "employment." To our mind the result is otherwise. The words are of the widest amplitude and have been put in juxtaposition to make the definition thoroughly comprehensive. Mr. Setalvad contended that the expression "in connection with employment or non-employment" excludes the question, of non-employment itself which must exist as a fact to supply the nexus with the dispute. The argument is, in our opinion, unsound. The words "in connection with" widen the scope of the dispute and do not restrict it by any means.

.....

Any dispute connected with employment or non-employment" would ordinarily cover all matters that require settlement between workmen and employers, whether those matters concern the causes of their being out of service or any other question, and it would also include within its scope the reliefs necessary for bringing about harmonious relations between the employers and the workers.

The interpretation we are placing on these words was accepted on a similarly worded definition in the English statutes on this subject. In the Industrial Courts Act, 1919, "trade dispute" has been denned as meaning

"Any dispute or difference between employers and workmen, or between workmen and workmen connected with the employment or non-employment or the terms of the



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employment or with the conditions of labour of any person."

With a slight variation this definition is expressed in the same terms in Act XIV of 1947. In the Unemployment Insurance Act, 1935 (25 Geo. V, c. 8), [Section 118\(1\)\(u\)](#) "trade dispute" means

"any dispute between employers and employees or between employees and employees, which is connected with the employment or non-employment or the terms of employment or the conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises or not. A dispute between employers and employers is not within the definition."

In our Act XIV of 1947 what was excluded by the last sentence of this section of the [English Act](#) has been expressly included. In Volume XXXIV of Halsbury's Laws of England (Hailsham Edition), in paragraph 605, it has been stated that disputes connected with the employment or non-employment of any persons were held to have arisen when the dismissal or reinstatement of some employee was demanded. Reference has been made in this connection to certain decisions given by umpires in industrial disputes.

.....

In *Hodges v. Webb* [1920] 2 Ch. I. a dispute arose whether non-unionist labour in general and members of the National Association of Supervising Electricians in particular should be employed to work along with the members of the Electrical Trades Union. The workmen by their union objected to working with the members of the National Association of Supervising Electricians or to the employment of the members of that Association in jobs on which the members of the union were engaged. Peterson J. observed (p. 82):

"The dispute was one which was connected with the employment of the members of the Association whom the Union persisted in regarding as in all essentials non-unionists. Whether the Union was right in this view appears to me to be immaterial



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for the purposes of this case. It is sufficient that it objected to members of the Association being employed on jobs on which members of the Union were engaged. No doubt this attitude involves a contest between the National Association and the Electrical Trade Union, as it necessarily tends to draw men away from the Association. But this consequence does not convert a trade dispute into something which is not a trade dispute.

The dispute in the case did not relate to reinstatement but concerned a wider field, i.e., "who could be taken into employment by the employer," with whom he could enter into a contract of service."

.....

"Having regard to the general words in connection with the employment or non-employment" in the definition of industrial dispute, it seems clear that if there arises non-employment by reason of the termination of employment by the employer, it will be within the jurisdiction of the Tribunal to determine whether the termination was justifiable."

18. In the celebrated judgment of the Apex Court in *The Workmen of Firestone and Rubber Co of India (Pvt) Ltd., Vs. The Management and Ors.* (AIR 1973 SC 1227), once again the scope and ambit of Section 11A of the Act to be exercised by the Labour Court vis-a-vis the object and rationale behind the enactment to bring the industrial peace and harmony has been dealt with in extenso. We do not wish to reiterate the law laid down therein except by holding that one can deduce the principle governing in exercise of power under Section 11A of the Act.

19. The word 'victimisation' has not been defined under the Act. Obviously, an interpretation in favour of the labour is required to be given. Therefore, when an action is found to be not fair, a Court of Law can hold that it involves victimisation and therefore, a workman is entitled for a relief. Similarly, the word 'arbitrariness' has to be understood in the labour parlance to mean an unjustified action. An action becomes unfair where there are two options, of which, one is beneficial to the workman when he is not found guilty but the management renders the other one, one can call it as arbitrary. Such arbitrariness is attributable to the final result of the action of the management. We only quote the following paragraphs of the Apex Court in *Workmen of Williamson Magor & Company Limited Vs. Williamson Magor & Company Limited*



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and another ((1982) AIR 78), where the Apex Court defined the word 'victimisation' in the following manner.

"8. Mr. Pai, learned counsel appearing for the management, made two submissions before us. Firstly, he submitted that unlike in public sector undertakings, promotion is not a condition of service in a private company. We are unable to accept the submission of Mr. Pai in toto. If there is no scope of any promotion or upgradation or increase in salary in a private undertaking, the submission of the learned counsel may be justified but if there are grades and scopes of upgradation/promotion and there are different scales of pay for different grades in a private undertaking, and, infact, promotion is given or upgradation is made, there should be no arbitrary or unjust and unreasonable upgradation or promotion of persons superseding the claims of persons who may be equally or even more, suitable. The second submission of Mr. Pai is that although there were no norms, the promotions of the persons in question were not arbitrary and that the finding of the Tribunal in this regard were incorrect. He led us through the material evidence of the witness examined. We are unable to agree with learned counsel and do not find any reason to differ from the findings of the learned Tribunal that the promotions of the fifteen persons were arbitrary and unjustified. Mr. Pai also submitted that unless victimization was proved by the union, the management's action should not be disturbed. The word 'victimization' has not been define in the statue. The term was considered by this Court in the case of [Bharat Bank Limited v. Employees of Bharat Bank Ltd.](#) This Court observed, "It (victimization) is an ordinary English word which means that a certain person has become a victim, in other words, that he has been unjustly dealt with". A submission was made on behalf of the management in that case that 'victimization' had acquired a special meaning in industrial disputes and connoted a person who became the victim of the employer's wrath by reason of his trade union activities and that the word could not relate to a person who was merely unjustly dismissed". This submission, however, was not considered by the Court. When, however, the word 'victimization'



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can be interpreted in two different ways, the interpretation which is in favour of the labour should be accepted as they are the poorer section of the people compared to the management.

This Court in the case of K. C. P. Employees' Association, Madras v. Management of K. C. P. Ltd. Madras & Ors. observed:

"In Industrial Law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without over-stepping the proved facts".

We would therefore accept the interpretation of the word 'victimization' in the normal meaning of being the victim of unfair and arbitrary action, and hold that there was victimization of the superseded workmen."

20.The principle of ubi jus ibi remedium would also apply while considering Section 2k of the Act. The principle of ubi jus ibi remedium has to be read into when we understand the words 'employment' or 'non employment'. It is obviously the interest of the legislature which we cannot ignore. After all, the Act being comprehensive, one cannot make the workman to approach the civil Court contrary to the intendment of the legislation.

21.On facts, there is no difficulty in upholding the order of the learned single Judge. Though the learned counsel appearing for the appellant contended that the findings rendered by the Labour Court as confirmed by the learned single Judge are not challenged, we are concerned with the said aspect. Admittedly, the second respondent has accepted the order of the learned single Judge. Thus, the only question for consideration is as to whether the said order is liable to be confirmed or reversed.

CONCLUSION:-

22.We have already discussed the effect of the affidavit filed by the second respondent before us and the submission made on that by the learned counsel appearing on behalf of the appellants. Certainly, the appellants themselves have applied the erstwhile regulation of the Bank of Madura. We have already held that the Labour Court is entitled to exercise the power available under Section 11A of the Act. The learned



single Judge has rightly exercised his judicial discretion in making the modification of the award passed. In such view of the matter, we find no reason to interfere with the well merited order under challenge. As we do not have any quarrel with the proposition of the law in the other judgment rendered at the bar, we do not wish to discuss them being not necessary.

23. In the result, the writ appeal stands dismissed and the order of the learned single Judge is confirmed. No costs. Consequently, connected civil miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

raa

To:

1. The Presiding Officer,
Central Government Industrial Tribunal cum
Labour Court,
Sastri Bhavan, No.26, Haddows Road,
Chennai-16.

+1cc to Mr.K.Krishnamoorthy, Advocate SR No.35738

W.A.No.431 of 2020

SJ (CO)
PR (23/08/2021)