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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2021

CORAM

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

W.P. No. 5931 of 2013

M. Raju

... Petitioner

-vs-

1. The Assistant Commissioner of Labour (Conciliation) - 2,
Coimbatore - 641 009.

2. The Management of Kaleeswarer Mills,
(A) unit,
Kattur, Coimbatore - 641 003.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Certiorarified Mandamus calling for the records pertaining to Na.Ka.No. 188/2009 and quash the order dated 02.09.2010 passed by the 1st respondent granting approval to the dismissal order dated 07.08.1998 passed by the 2nd respondent and further direct the 2nd respondent to reinstate the petitioner in service with continuity of service, back wages and all other attendant benefits.

For Petitioner : Mr. K.V.Shanmuganathan

For Respondents : Mr. C.Harsha Raj
Government Counsel (for R1)

Mr. Anand Gopalan
for M/s. T.S.Gopalan & Co. (for R2)

O R D E R

(through video conference)

Heard Mr. K.V. Shanmuganathan, Learned Counsel for the Petitioner, Mr. C.Harsha Raj, Learned Government Counsel appearing for the First Respondent and Mr. Anand Gopalan, Learned Counsel appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.



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2. The Petitioner was in the employment of the Spinning Mill belonging to the Second Respondent. He was dismissed from service by order dated 07.08.1998. Since there were industrial disputes pending then, the Second 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 First Respondent for approval of that action taken which was granted by order dated 02.09.2010 and the Petitioner has challenged the same in this Writ Petition.

3. Learned Counsel for the Second 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 concerned authority where the industrial dispute was pending and cannot prosecute this Writ Petition without resorting to such 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..."

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 or any other available legal remedy. He has also filed a memo dated 01.11.2020 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 the same by the Petitioner, the period from the date of filing of the Writ Petition, viz., 07.03.2013, till the date on which the certified copy of this order is made ready by the Registry, shall be excluded.



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

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dm/vjt
To

The Assistant Commissioner of Labour (Conciliation) - 2,
Coimbatore - 641 009.

Copy to

1. M. Raju,
S/o. Murugan,
01/11, Police Quarters,
Coimbatore - 641 044.
2. The Management of Kaleeswarer Mills,
(A) unit,
Kattur, Coimbatore - 641 003.
3. The Section Officer,
ER Section, High Court, Madras.

+1cc to Mr.K.V.Shanmuganathan, Advocate Sr.56803

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gj[co]
srg 16/11/2021