

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.10700 of 2021 and WMP No.11333 of 2021

R.S.Daniel Jayakumar

... Petitioner

Vs.

1. The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai 600 001.

2. The Deputy Port Conservator,
Chennai Port Trust,
Rajaji Salai,
Chennai 600 001.

3. The President,
Shipping Department,
Marine Division,
Chennai Port Trust,
Rajaji Salai,
Chennai 600 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the Central Government Industrial Tribunal cum Labour Court, dated 30.09.2019 made in I.D.No.48 of 2018 and the 2nd Respondent's order in No.A8/15055/90/M, dated 18.04.1991 and quash the same, and consequently direct the Respondents to release the terminal benefits with all attendant benefits with regard to the Petitioner's service benefits.

For Petitioner : Mr.S.Gopinathan

O R D E R

Petitioner has come up with this Writ Petition challenging the Award dated 30.09.2019 made in I.D.No.48 of 2018 by the Central Government Industrial Tribunal cum Labour Court and the 2nd Respondent's order in No.A8/15055/90/M, dated 18.04.1991, and for a consequential direction to the Respondents to release the terminal benefits with all attendant benefits.

2. According to the Petitioner, he was appointed as Fireman in the Marine Division, Chennai Port Trust on 06.11.1972. He was initially promoted as Fireman Grade - I on 05.05.1981 and later promoted as Fireman Driver on 17.02.1984. Owing to his wife's ill health, the Petitioner was forced to apply leave in November 1989 and he went on leave. He further stated that, his leave application was neither accepted nor rejected by the administration. However, after his continuous request, the Petitioner came to know that, he was terminated from service with effect from 03.11.1990. But, before passing the order of termination, no intimation was given to him and no enquiry was conducted.

3. Heard the learned counsel for the Petitioner and perused the material documents available on record.

4. The undisputed fact is that, the Petitioner was terminated from service with effect from 03.11.1990. The Petitioner has moved the Conciliation Officer in February 2017 only. However, the conciliation could not be completed and the period of 45 days as contemplated under Section 2-A of the Industrial Disputes Act, expired on 24.03.2017. Thereafter, the Petitioner approached the Labour Court by filing a Petition under Section 2-A of the Act and the Management disputed the fact that, it is barred by limitation.

5. For better appreciation, Section 2-A of the Industrial Disputes Act, 1947, w.e.f. 01.12.1965, is extracted hereunder:

2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.— 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.

6. In 1988, there was an amendment to Section 2A of the Industrial Disputes Act, and the amended one is extracted below:

"By Tamil Nadu Act 5 of 1988, the following amendments have been made:

Amendment of Section 2A, Central Act XIV of 1947 - In the Industrial Disputes Act, 1947 (Central Act XIV of 1947) (hereinafter referred

to as the principal Act), Section 2-A shall be re-numbered as sub-section (1) of that section and after the said sub-section (1) as so re-numbered, the following sub-section shall be added, namely: -

(2) Where no settlement is arrived at in the course of any conciliation proceeding taken under this Act in regard to an industrial dispute referred to in sub-section (1), the aggrieved individual workman may apply in the prescribed manner, to the Labour Court for adjudication of such dispute and the Labour Court shall proceed to adjudicate such dispute, as if such dispute has been referred to it for adjudication and accordingly all the provisions of this Act relating to adjudication of industrial disputes by the Labour Court shall apply to such adjudication."

7. According to the Respondent/Management, the Petitioner has approached the Authority 45 days after the failure of the conciliation on the presumption that, three years period runs from the date of making an Application to the Conciliation Officer and not from the date of actual date of termination. Even though the Petitioner was discharged from service as early as on 03.11.1990, the amendment of the Industrial Disputes Act came into force only on 16.09.2010. For better appreciation, the amended provision of Section 2-A of the Industrial Disputes (Amendment) Act, 2010, is extracted below:

"Amendment of Section 2A. - Section 2A of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:- "(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).".

8. The Petitioner should have been vigilant enough to raise a dispute before the provision was amended. Even assuming for the sake of convenience that, the amended provision could not be retrospective, the Petitioner should have raised the dispute at least within three years from September 2010, which he has not done. After the constitution of the Central Administrative Tribunal (CAT), when the issue with regard to Subsistence Allowance came up before the Apex Court in the case of P.L. Shah vs Union of India reported in AIR 1989 SC 985, it was held therein, that, the period of limitation even if applicable retrospectively, benefits could be restricted for a particular period only. In P.L.Shah case (supra), the delay was 13 years. Relevant portion of the said judgment is extracted hereunder:

"6. ... If the Government servant is not responsible for such delay or even if he is responsible for such delay to some extent, but is not primarily responsible for it, it is for the Government to reconsider whether the order of suspension should be continued or whether the subsistence allowance should be varied to his advantage or not. The decision on the said question no doubt depends upon several factors relevant to the case. In the instant case, the appellant was suspended in the year 1975. Now nearly 13 years have elapsed from the date of suspension. He was paid subsistence allowance at the rate of 50 per cent of the salary last drawn by him from 1975 to 1982 and from 1982, he is being paid 25 per cent of the salary last drawn by him. It is not clear from the record before us, since the application made by the applicant was dismissed by the Tribunal at the preliminary stage, whether the appellant was responsible for the inordinate delay in the disposal of the case instituted against him. In the circumstances of the case, we are of

the view that even though no relief could be given to the appellant in respect of the period which was beyond three years from the date on which the Tribunal commenced to exercise its powers under the Act, it was quite open to the Tribunal to consider whether it was proper for the Government to continue to give effect to the order dated 06.05.1982 from any subsequent date and if the Tribunal came to the conclusion that the order dated 06.05.1982 was required to be revised, it could pass an appropriate order notwithstanding the fact that a period of five years had elapsed from the date on which the order reducing the subsistence allowance was passed."

9. In the present case on hand, the Petitioner has not woken up from the slumber for two decades and has raised a dispute after 21 years. In view of the undisputed facts mentioned supra, this Court is of the view that, there are no merits in the Writ Petition and the same is liable to be dismissed.

10. Before parting with the judgment, this Court would like to emphasize that, there is no time limit prescribed under Section 10 of the Industrial Disputes Act, 1947, in approaching the Labour forum. Even non-employment cases falling under Section 2-A of the Act can be agitated through the Union, as there is no time-limit prescribed. The Legislature has not thought about the legal flaw while bringing about the amendment, as the other door through the Union is available to dismissed employees for raising a dispute and the Apex Court, in a number of cases on the question of delay, has held that, the relief need not be rejected and it cannot be taken note of for depriving only the backwages.

11. In the present case on hand, even if the dispute is raised through Union under Section 2(k) of the Industrial Disputes Act, 1947, it is doubtful as to whether records would be available for two decades with the Management. There is no need for the employer to retain the records for two decades. There is no need to burden the Court with one more litigation and if permission is given, it is a gambling situation for the employee and a lottery to him.

12. Whether amended provision of Section 2A of the Industrial Disputes Act, 1947 needs to be read along with Section 2(k) or to be read in isolation or harmoniously, needs to be decided in an appropriate case. When the Legislative

wants to close the door in the categories falling under Section 2A after the period of limitation, whether it can be given a different entry by means of invoking Section 2(k) of the Act, needs to be addressed. Firstly, there may not be a genuine case. Secondly, there may be a genuine case, which shall not be thrown out, which amounts to deprivation of justice to the needy. In the case on hand, "shutters down" and cannot be opened by the employee.

The Writ Petition stands dismissed with the above observation. No costs. Consequently, connected W.M.P.No.11333 of 2021 is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

(aeb)
To:

1. The Chairman,
Chennai Port Trust, Rajaji Salai, Chennai 600 001.
2. The Deputy Port Conservator,
Chennai Port Trust, Rajaji Salai, Chennai 600 001.
3. The President,
Shipping Department, Marine Division,
Chennai Port Trust,
Rajaji Salai, Chennai 600 001.

+1cc to M/s.S.Gopinathan, Advocate Sr.26532

W.P.No.10700 of 2021

ajs[col]
srg 12/07/2021

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