



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2022

CORAM

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

W.P. NO. 29546 OF 2019

AND

W.M.P. NO. 29427 OF 2019

M.Lakshmi

... Petitioner

-vs-

The Management,
Attikunna Estate,
Parry Agro Industries Ltd.,
Uppatty (Post),
The Nilgris - 643 241.

... Respondent

Prayer:-

Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the entire records in pursuant to the impugned order dated 18.07.2019 in I.A. No. 3 of 2019 in I.A. No. 260 of 2018 in I.D. No. 103 of 2016 passed by the Additional Labour Court, Coimbatore and quash the same and thereby direct the Additional Labour Court, Coimbatore to summon Doctor T.Ganesan whose address are mentioned in I.A. No. 3 of 2019 in I.A. No. 260 of 2018 in I.D. No. 103 of 2016, to speak about the medical certificate dated 02.12.2016.

For Petitioner : Mr. A.Deivasigamani

For Respondent : Mr. Leeban Arivalagan
for M/s. T.S. Gopalan & Co.

O R D E R

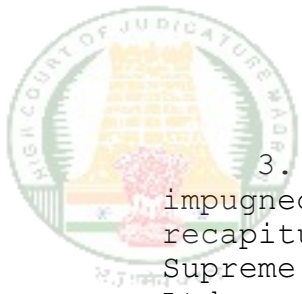
Heard Mr. A.Deivasigamani, Learned Counsel for the Petitioner and Mr. Leeban Arivalagan, Learned Counsel appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.



2. The chronological sequence of events leading to the filing of the Writ Petition are given below:-

- (i) The Petitioner, who was working in the establishment of the Respondent had been terminated from service on 27.03.2012 and as an industrial dispute in I.D. No. 1 of 2003 was then pending before the Industrial Tribunal, Chennai (hereinafter referred to as the Industrial Tribunal) between the Respondent and the Trade Union of its employees in which the Petitioner was a member, the Respondent had made an application in A.P. No. 40 of 2012 under Section 33(2) (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) for approval before the Industrial Tribunal.
- (ii) It is stated that the Petitioner had made an endorsement that approval for termination may be granted reserving the rights of the Petitioner to challenge the dismissal on all issues and recording the same, an order dated 05.09.2018 in A.P. No. 40 of 2012 was passed granting approval for termination of the Petitioner.
- (iii) After the Labour Officer, Coonoor had submitted a failure report dated 01.08.2016, the Petitioner had raised an industrial dispute under Section 2-A(1) of the Industrial Disputes Act, 1947, in I.D. No. 103 of 2016 before the Additional Labour Court, Coimbatore (hereinafter referred to as 'the Labour Court' for short) challenging her dismissal from service.
- (iv) The Respondent had filed an Interlocutory Application in I.A. No. 260 of 2018 to decide the issue of limitation in filing the industrial dispute in I.D. No. 103 of 2016 as a preliminary issue at the first instance.
- (v) The Petitioner filed an Interlocutory Application in I.A. No. 3 of 2019 in I.A. No. 260 of 2018 to summon one Dr. T.Ganesan, to speak about the Medical Certificate dated 02.12.2016 about the treatment given during the period from 05.11.2014 to 30.11.2015 by him to the Petitioner in order to substantiate the reasons for the delay in raising the industrial dispute. The Labour Court by order dated 18.07.2019 in I.A. No. 3 of 2019 arrived at the conclusion that the issue of limitation is purely a question of law and there is no necessity to examine the reasons for the delay and the Petitioner is not entitled to seek any order to summon the witness and dismissed that application.

Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the order dated 18.07.2019 in I.A. No. 3 of 2019 in I.A. No. 260 of 2018 in I.D. No. 103 of 2016 passed by the Additional Labour Court, Coimbatore (hereinafter referred to as 'the Labour Court' for short) in this Writ Petition.



3. Before proceeding to examine the validity of the impugned order passed by the Labour Court, it must be recapitulated here that 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] has held that the termination from service shall be ineffective till approval for the action taken by the employer is granted by the Industrial Tribunal where the industrial dispute between the employer and the trade union of its employee is pending as per Section 33(2) (b) of the Act. It would follow as a corollary therefrom that it is only from the time when approval for termination is granted by the Industrial Tribunal under Section 33(2)(b) of the I.D. Act that the period of limitation of three years for raising an industrial dispute under Section 2-A(3) of the Act would commence. Viewed from that perspective, inasmuch as the application under Section 2-A of the ID Act had been filed on 01.12.2016 before the expiry of three years from 05.09.2014 when the order of approval for termination in A.P. No. 40 of 2012 was passed by the Industrial Tribunal, it cannot be said on the facts of this case that the industrial dispute in I.D. No. 103 of 2016 is barred by limitation. As a consequence thereof, the Interlocutory Application in I.A. No. 260 of 2018 filed by the Respondent before the Labour Court to decide the question of limitation as a preliminary issue in I.D. No. 103 of 2016 is struck off in the exercise of the plenary powers of this Court under Articles 226 and 227 of the Constitution to prevent the abuse of the legal process and secure the ends of justice. This would obviously mean that the Interlocutory Application in I.A. No. 3 of 2019 filed by the Petitioner to summon the Doctor to explain the delay in raising the industrial dispute is unnecessary.

4. In view of the foregoing discussion, the Writ Petition is disposed on the following terms:-

- (i) the order dated 18.07.2019 in I.A. No. 3 of 2019 in I.A. No. 260 of 2018 in I.D. No. 103 of 2016 passed by the Labour Court is set aside and that the application is closed;
- (ii) the Interlocutory Application in I.A. No. 260 of 2018 in I.D. No. 103 of 2016 before the Labour Court is struck off from the file of the Labour Court;
- (iii) the parties shall co-operate for expeditious disposal of I.D. No. 103 of 2016 before the Additional Labour Court, Coimbatore and the Respondent shall file its Counter, if not filed earlier, before the next date of hearing;
- (iv) the Labour Court after following the prescribed procedure in recording the evidence and hearing the parties, shall pass reasoned orders dealing with each of the contentions raised on merits in accordance with law;



- (v) it shall be ensured that there is atleast two effective hearing every month showing progress of the case before the Labour Court and quarterly reports shall be sent to the Registrar (Judicial) of this Court till I.D. No. 103 of 2016 is finally disposed;
- (vi) consequently, the connected Miscellaneous Petition is closed; and
- (vii) there shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Presiding Officer,
Additional Labour Court,
Coimbatore.
2. The Management,
Attikunna Estate,
Parry Agro Industries Ltd.,
Uppatty (Post),
The Nilgris - 643 241.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

+1cc to Mr.K.Sathiyamurthi, Advocate, S.R.No.19615
+1cc to M/s.T.S.Gopalan & Co., Advocate, S.R.No.19708

W.P. No. 29546 of 2019

EV(CO)
PM/20/06/2022