



W.P.(MD)No.18584 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.08.2022

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.18584 of 2017

S.Joseph

... Appellant

vs.

- 1.The Ministry of Labour and Employment Department,
represented by its Secretary,
Government of India, Refi Marg, New Delhi.
- 2.The Secretary to Government,
Tamil Nadu State Legislative Assembly,
Fort St.George, Chennai-600 009.
- 3.The Secretary,
Labour Department, Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
- 4.The Commissioner of Labour,
D.M.S. Compound, Teynampet,
Chennai-600 018.
- 5.The Labour Officer (Conciliation),
Labour Department, Integrated Labour Offices,
Bharathi Ula Road, Race Course,
Madurai-625 002.
- 6.The Tamil Nadu State Transport Corporation,



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represented by its Managing Director,
Bye Pass Road, Madurai-16.

... Respondents

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(R6 was impleaded vide order of this Court, dated 13.02.2019)

Prayer: Writ Petition filed under Article 226 of Constitution of India to issue a Writ of Declaration to declare that Section 2(K) of the Industrial Dispute Act, 1947 is unconstitutional and void and consequently, to direct the first respondent to make suitable amendment according to the Constitution of India and also declare that the Section 2(A) of the Industrial Dispute Act, 1947, as amended by Tamil Nadu State Government is unconstitutional and consequently, to direct the respondent to declare that Section (A) of the Industrial Dispute Act, 1947, is evenly/squarely applicable to all aggrieved employees, irrespective of the fact that whether they are in service or under termination/dismissal and consequently, to direct the fourth respondent to circulate such repealing and extension of the present Section 2(A) of the Industrial Dispute Act, 1947, to all Labour Officers about the amendment of the same giving effect to the earlier pending representations/pending among the aggrieved employees and in this case from the year 2014 widening/extending the same to all employees without any variation/exception and to direct the fifth respondent Labour Officer to entertain the case of the petitioner of the year 2014 without rejecting the same on the ground of delay.

For Appellant	:Mr.S.Joseph Party-in-person
For R1	:Mr.R.Rajaraman
For R2 to R5	:Mr.A.Jeyaram

ORDER

(Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

The present Writ Petition is filed with omnibus prayer for issuance of a Writ of Declaration to declare that Section 2(K) of the Industrial Dispute Act, 1947 is unconstitutional and void and consequently, to direct the first respondent to make suitable amendment according to the Constitution of India



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and also declare that the Section 2(A) of the Industrial Dispute Act, 1947, as amended by Tamil Nadu State Government is unconstitutional and consequently, to direct the respondent to declare that Section (A) of the Industrial Dispute Act, 1947, is evenly/squarely applicable to all aggrieved employees, irrespective of the fact that whether they are in service or under termination/dismissal and consequently, to direct the fourth respondent to circulate such repealing and extension of the present Section 2(A) of the Industrial Dispute Act, 1947, to all Labour Officers about the amendment of the same giving effect to the earlier pending representations/pending among the aggrieved employees and in this case from the year 2014 widening/extending the same to all employees without any variation/exception and to direct the fifth respondent Labour Officer to entertain the case of the petitioner of the year 2014 without rejecting the same on the ground of delay.

2.Heard Mr.S.Joseph, Party-in-Person, Mr.R.Rajaraman, learned Central Government Standing Counsel for the first respondent and Mr.A.Jeyaram, learned Counsel for R2 to R5.

3.The petitioner is working as a Secondary Grade Driver in the Madurai Branch of Tamil Nadu State Transport Corporation, Madurai Limited,



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Madurai. The petitioner has made general allegations against his employer for victimizing the honest employees and, thereby, trying to negate the fundamental rights of such employees. It is also stated that the employees are suffering from the tyrannical attitude of the officials of the employer. As the employees are not aware of their legal rights, it is contended that there must be adequate protection by statute. It is stated that only few employees filed complaints with the Labour Officer against those illegal and unlawful activities of the officials of their employer and that such complaints are disposed of without going into deep for granting reliefs.

4. Referring to Section 2(K) of Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), the petitioner points out that the said Section permits the right of approaching the Labour Court only through the recognized labour unions and totally prohibits the individual employees to seek remedy. Though the Act was enacted for the welfare of the employees, the petitioner's grievance is that the Act does not protect the rights of the aggrieved individual employee in letter and spirit. Referring to Section 2(K) of the Act, the petitioner contended that the said provision is applicable to the dismissed employee and therefore, it violates Articles 14, 15, 16, 19 and 21 of Constitution of India.



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5.The grounds raised in the Writ Petition are not impressive. Even though the petitioner states that the impugned provisions, namely, Sections 2(A) of the Act, as amended by the State Government is unconstitutional, except referring to general principles of equality and protection of fundamental rights, the petitioner has not made any specific legal ground to challenge the constitutional vires of Section 2(A) of the Act.

6.It is to be noted that the petitioner has filed another Writ Petition earlier in W.P(MD)No.24761 of 2016 challenging the order of punishment of stoppage of increment for one year with cumulative effect. It is the grievance of the petitioner that he was directed to approach the Tribunal under Section 2(K) of the Act, when he submitted a petition before the Labour Officer. Thereafter, the petitioner filed a petition before the Labour Court, which was also dismissed. The Writ Petition filed by the petitioner challenging the order imposing punishment was also dismissed only on the ground that the petitioner is entitled to seek interim relief through his unions. Thereafter, the petitioner challenges the order passed by the learned Single Judge in the Writ Petition before this Court and this Court allowed the Writ Appeal. Therefore, the grievance of the petitioner is addressed.



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7.The Industrial Disputes Act enables the parties to resolve the industrial disputes and for that purpose, different types of forums have been set up to resolve such disputes. The Act is intended to be a self contained one and it seems to achieve the social justice on the basis of collective bargaining, conciliation and arbitration etc. The essential objects of the labour legislation has been achieved by this country by providing the mechanism and infrastructure by the State.

8.The present Writ Petition has been filed without the basic understanding of fundamental rights ensured under the Constitution. While equality is recognized as a fundamental right, a reasonable classification is always permissible. The petitioner in his earlier round of litigation has not placed the facts properly while getting adverse order. Though the jurisdiction of Civil Court is excluded in respect of any matter, which arises within the exclusive jurisdiction and domine of the forum created under the Act, in exceptional cases, by necessary implication, it is permissible to move the Civil Court where, the relief prayed by the employee does not fall either under the jurisdiction of Tribunal or the forum under the Act or in respect of rights and obligations arises under the contract, which is not expressly or impliedly bared.



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It is settled law that the scope of judicial review, when no remedy is provided under any enactment, is recognized by exercising the extraordinary jurisdiction of High Court under Article 226 of Constitution of India.

9.Hence, the grounds raised by the petitioner are misconceived and therefore, this Court find no merit in this Writ Petition. Hence, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [S.S.Y., J.]
16.08.2022

Index : Yes / No
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