



W.A.No.1029 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.01.2023

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal No.1029 of 2020

K.Settu

.. Appellant

Vs.

The Assistant Engineer,
Office of Tamil Nadu Electricity Board,
Kethandapatti,
Natrampalli Taluk, Vellore District.

.. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 20.09.2019 passed by the learned Single Judge, in W.P.No.8413 of 2019 on the file of this Court.

For petitioner : Mr.S.N.Ravichandran

For respondent: Mr.Anand Gopalan for M/s.T.S.Gopalan & Co.

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JUDGMENT

(The Judgment of the Court was delivered by S.Vaidyanathan, J)

Challenging the Award of the Labour Court which was confirmed by the learned Single Judge, rejecting employment to the appellant herein, the present appeal has been preferred by the employee.

2. The undisputed facts are that the appellant/employee was engaged as a Contract Labourer in the Tamil Nadu Electricity Board (TNEB) by way of settlement under Section 12(3) of the Industrial Disputes Act, 1947. As per the settlement, the employee who fulfils the conditions set out therein, could be absorbed in the services of the TNEB, depending upon the qualification obtained by them.

3. The learned counsel appearing for the appellant/employee contended that the employee's name is found in the list of employees in Serial No.45. The appellant was drawing ex-gratia amount and that the other employees whose names are found in the list, have been absorbed in service. The appellant/employee was electrocuted while in service and



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fortunately, it was not fatal. Since the employee has met with the accident, he has not been provided a job. He further submitted that the employee has made a representation to the respondent to consider the same, which is yet to be answered.

4. The learned counsel appearing for the respondent/TNEB contended that the employee stated that he was denied employment at the age of 56 years and that there is a delay in raising a dispute, more so, after coming into force of the amended provisions of the Industrial Disputes Act, namely Section 2-A, which prescribes three year limitation period with effect from 15.09.2010. Even though he was dis-engaged in service prior to the amendment of the Act, he should have filed the application before the Labour Court within a period of three years from the date of coming into force of the amended provisions. As there was a delay and that after fighting and losing the legal battle before the Labour Court, the appellant/employee has approached this Court by filing a Writ Petition in W.P.No.8413 of 2019 after a delay of 4 years.



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5. In reply, the learned counsel for the appellant/employee submitted that the employee has knocked at the doors of the Conciliation Officer in February 2013 and thereafter, he has approached the Labour Court on 30.10.2013 and it is well within time. For the sake of convenience, the amended provisions of Section 2-A of the Industrial Disputes Act, is extracted below:

Section 2-A: (inserted by Act 35 of 1965, S.3 (with effect from 01.12.1965): Dismissal, etc., of an individual workman to be deemed to be an industrial dispute: (1) (S-2.A renumbered as sub-S(1) thereof by Act 24 of 2010, S.3 (with effect from 15.09.2010): Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between the 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 workman is a party to the dispute.

(2) (Inserted by Act 24 of 2010, S.3 (with effect from 15.09.2010): 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).



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State Amendments: Tamil Nadu: In its application to the State of Tamil Nadu, S.2-A shall be renumbered as sub.s.(1) thereof and after subsection, as so renumbered, the following subsection shall be inserted, 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 subsection (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"--T.N. Act 5 of 1988, S.2 (with effect from 01.11.1988)"



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6. Thus, from the above provision, it is clear that the employee (workman) should have approached the Labour Court within 45 days in case of failure report of conciliation or in case of no failure report, and even without waiting for the same, he should have approached the Labour Court within the time stipulated supra.

7. In the case on hand, going by the averment of the learned counsel for the appellant/workman that the employee has got a failure report issued on 02.09.2013, he has not approached the Labour Court within 45 days. Hence, there is a delay in approaching the Labour Court and the Labour Court has no jurisdiction to take up the matter and render an Award.

8. That apart, as rightly pointed out by the learned Single Judge, there is a delay even in challenging the Award. Hence, we are of the view that there is no need for any interference in the order passed by the learned Single Judge in this case. However, we make it clear that it is open for the appellant/workman to approach the Committee constituted in terms of the Board's Proceedings No.44 for redressal of his grievance.

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9. The employer will have to consider as to whether the employee is governed by settlement or not, and it needs to be considered by a Committee that has been constituted under the Board Proceedings No.44, dated 06.09.2007 and in case any representation is made, it is for the TNEB to consider as to whether the employee has fulfilled the requirements mentioned in the settlement.

10. We also make it clear that the settlement under Section 12(3) is still in force. In the light of the judgment of the Supreme Court reported in 1981 (1) LLJ page 1 (SC) (L.I.C. Vs. D.J.Bahadur), the Award or settlement will be in force till such time it is substituted by another settlement or Award.

If there is any violation of the settlement, it is open to the employee to take recourse to the legal proceedings in accordance with law by making a complaint under Section 29 of the Industrial Disputes Act for non-compliance of the settlement against a person falling under Section 32 of the said Act. The Government shall not sit on the complaint and must take a



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decision within a month of receipt of the complaint. Before sanctioning prosecution, the Authority concerned must ascertain from the person falling under Section 32 of the said Act about the violations if any, and then take a decision.

11. We also make it clear that there is no need for the TNEB to be made a party to the said complaint, as the provisions under the Negotiable Instruments Act and the Industrial Disputes Act, are completely different, as held by this Court in W.P.No.2869 of 2021 (P.Rajendran Vs. The General Manager, Tamil Nadu State Transport Corporation (Coimbatore Division-II) Limited, Chennimalai Road, Erode-1), by order dated 11.02.2021. In case of filing such complaint, the Authority concerned will have to scrutinise the records and sanction prosecution if necessary, in the light of the judgment of the Supreme Court reported in 1997 (1) LLJ 994 (Raj Kumar Gupta Vs. Lt. Governor, Delhi and others) and the Criminal Court shall bring the issue to the logical end, if any prosecution is sanctioned, without adjourning the matter beyond 15 working days at any point of time.



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12. With the above observations, the Writ Appeal is disposed of.

There shall be no order as to costs.

(S.V.N., J) (J.S.N.P., J)
24.01.2023

Index: Yes

Speaking Order: Yes

Neutral Citation: Yes

cs

To

The Assistant Engineer,
Office of Tamil Nadu Electricity Board,
Kethandapatti,
Natrampalli Taluk,
Vellore District



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S.VAIDYANATHAN, J

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