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W.P.No.1091 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.1091 of 2018

S.Kamarajbabu

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Salem.

2. The Management,
Shapoorji Pallonji Samalpatti Operator
Service Private Limited,
Sreyas Virat, 1st Floor, D.No.14,
Third Cross Street, Raja Annamalaipuram,
Chennai - 600 028.

... Respondents

(R2 amended as per order dated 20.06.2018 by SMSJ
in W.M.P.No.14881 of 2018 in W.P.No.1091 of 2018)

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the award made in I.D.No.102 of 2009 dated 28.03.2017 by the first respondent and quash the same and further directing the second respondent to reinstate the petitioner in service with continuity of service and backwages.



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For Petitioner : Ms.R.Puspalatha
for Mr.G.Pugazhenthir

For Respondents : R1 - Labour Court
Mr.Raghul Balaji for R2

ORDER

The impugned order dated 28.03.2017 made in I.D.No.102 of 2009 passed by the first respondent is under challenge in the present Writ Petition.

2. The petitioner is the workman engaged by the second respondent Management. He was issued with a charge memo dated 02.06.2005 with an allegation of conducting Dharna on 25.05.2005 before the Tahsildar, Pochampalli and distributing pamphlets on 31.05.2005. The explanation submitted by him was not found satisfactory and that he was issued with a show cause notice dated 29.11.2005 regarding the proposed punishment. Pursuant to the same, the petitioner filed his explanation on 03.12.2005. However, the second respondent Management issued an order



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of termination dated 05.12.2005 terminating the petitioner from service. The petitioner raised an Industrial Dispute before the Labour Officer, Krishnagiri under Section 2(A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). A conciliation proceedings was initiated which ended in failure and the Labour Officer has submitted its failure report dated 05.06.2006. The petitioner filed claim statement in I.D.No.102 of 2009 before the first respondent / Labour Court seeking reinstatement of service and continuity of service along with backwages. On behalf of the petitioner, Exs.W1 to W5 were marked and on behalf of the Management, Exs.M1 to M30 were marked. The Management contested the Industrial Dispute on two issues (i) whether the dispute is barred by limitation? and (ii) whether the Court orders for reinstatement and continuity of service along with backwages? The Labour Court passed an award dismissing the dispute in I.D.No.102 of 2009 dated 28.03.2017 holding that the petitioner is entitled for reinstatement in service with continuity of service and backwages and that since the dispute is filed after three years of termination, the Court cannot pass an award directing the respondent Management to reinstate the



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petitioner in service with continuity of service and backwages. Challenging the same, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that there is no limitation prior to 15.09.2010 in respect of raising Industrial Disputes before the Labour Court or Tribunal. Only after the amendment made by the Government, there is limitation for three years which came into effect only on 19.09.2010 and therefore, the award of the Labour Court is illegal. He further submits that Labour Court has rightly held that the petitioner is entitled for reinstatement with continuity of service along with backwages but erred in holding that the petitioner filed the dispute after three years of his dismissal and therefore, is barred by limitation. Hence, the learned counsel prays for setting aside the impugned award.

4. The learned counsel appearing for the second respondent relied upon the judgment of the Madurai Bench of this Court in the case of ***Ravikumar Vs. Tamil Nadu State Transport Corporation and another*** in



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W.P.(MD)No.4269 of 2017, wherein it has been held that by virtue of the amendment to section 2A of the Industrial Disputes Act, 1947, the State provision would stand repealed by introduction of 2010 Act and therefore, by virtue of the amendment being a central amendment, the same would prevail over the provisions of the State amendment and the right of the workman being one determinable under Section 2A would have to be governed by the provisions thereto and the three years time limit would have to be calculated only from the date of dismissal

5. It is not in dispute that the second respondent has wound up its operation with effect from 29.02.2016. It is also not in dispute that the Industrial Dispute has been filed after a period of three years from the date of dismissal. The question of limitation has been dealt with by the Labour Court which has held that the Industrial Dispute has been raised after three years from the date of dismissal and therefore, limitation stands attracted. The second respondent has filed Ex.M29 before the Labour Court which discloses that the power purchase agreement between the second respondent



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and the TANGEDCO had ended on 29.02.2016 and thereby the operation of the second respondent was shut down with effect from 01.03.2016. Therefore, the Labour Court have come to the conclusion that it is unable to order reinstatement of the petitioner and the said I.D. was dismissed.

6. However, it is brought to the notice of this Court by the learned counsel appearing for the petitioner that with respect to the similarly placed person, namely, T.Anbalagan, who has raised Industrial Dispute in I.D.No.63 of 2007, the Labour Court had awarded backwages and the respondent Management has settled the said employee with a sum of Rs.4,30,126/- from the date of dismissal, i.e., 07.12.2005 to the date of winding up of the operation of the Company, i.e., 29.02.2016. Therefore, the learned counsel for the petitioner seeks similar treatment for him.

7. It is relevant to refer to Section 2A amended vide Act 24 of 2010 (Central) (w.e.f. 15.09.2010), which is extracted hereunder:



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"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

(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



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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 only issue that befalls determination of this Court is the applicability of limitation prescribed under sub-section (3) of Section 2-A of the Act for raising a dispute and whether the said limitation would be prospective or would have retrospective effect. In this backdrop, this Court has to analyse as to the manner in which limitation would have to be counted.

9. As aforesaid, sub-section (3) to Section 2-A provides for a limitation of three years from the date of passing of the order of dismissal, discharge, retrenchment or termination of a workman. However, the said



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amendment was inserted into the statute by amending Act 24 of 2010 only on 15.9.2010. It has been the consistent view of the Courts that so far as the amendment is not a disqualifying provision, all the statutes would operate only prospectively and there cannot be retrospective effect on the provision. On the above finding, this Court finds that the impugned order warrants interference of this Court.

10. Considering the facts and circumstances of the case as also the fact that a person, who was similarly situated like the petitioner, has been given the benefit, this Court is of the view that the same benefit shall be extended to this petitioner also. In view of the above, the impugned award passed by the first respondent in I.D.No.102 of 2009 dated 28.03.2017 is set aside. The second respondent Management is directed to pay 75% backwages to the petitioner from the date of dismissal, i.e., 05.12.2005 till the date of winding up of the operation of the Company, i.e., 29.02.2016 within a period of four weeks from the date of receipt of a copy of this order. It is made clear that if the amount is not settled within the time prescribed by



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this Court, the petitioner is entitled for interest at 6% p.a. from 29.02.2016 to till the date of deposit.

11. With the above observations and directions, this Writ Petition is disposed of. No costs.

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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

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Shapoorji Pallonji Samalpatti Operator
Service Private Limited,
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This writ petition is listed under the caption for being mentioned at the instance of the learned counsel for the petitioner.

2.The last three lines in Paragraph No.10 is modified as follows:

“... It is made clear that the petitioner is entitled for interest at 6% p.a. from the date of closure ie., 29.02.2016 till the date of deposit”.

3. Registry to carry out necessary correction and issue fresh copy of the order.

19.02.2024

RR