



WP.No.24373 of 2016

In the High Court of Judicature at Madras

Dated : 05.7.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.24373 of 2016 &
WMP.No.20861 of 2016

1.The Post Master General,
Western Region (TN),
Coimbatore-2.

2.The Senior Superintendent of
Post Offices, Salem East
Division, Salem-1.

3.The Sub-Divisional Inspector,
Attur Postal Sub-Division,
Attur, Salem-636102.

...Petitioners

Vs

1.J.Sivakumar

2.The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
Chennai.

...Respondents

PETITION under Article 226 of The Constitution of India praying for
the issuance of a Writ of Certiorari to call for the records of the second

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respondent relating to award dated 14.10.2015 made in I.D. No.89/2014 and quash the same.

For Petitioners : Mr.K.Subbu Ranga Bharathi, CGSC
For Respondent-1: No appearance

ORDER

This is a petition filed by the petitioners seeking to quash the order dated 14.10.2015 made in I.D.No.89/2014 on the file of the 2nd respondent.

2. The facts leading to filing of this case are stated as follows:

(i) Vide proceedings dated 21.9.1998, the 1st respondent was appointed as the Extra Departmental Delivery Agent at Arasanatham Branch Office by the 3rd petitioner purely on temporary basis as the regular incumbent was placed under off duty at that point of time. The 1st respondent temporarily worked from 21.11.1998 to 24.2.1999. After the regular incumbent was reinstated into service on 25.2.1999, the 1st respondent was terminated on 25.2.1999.

(ii) The regular incumbent availed leave without allowance in different spells from 26.2.1999 to 31.8.1999 by nominating the 1st respondent from 01.7.1999 to 31.8.1999 and it was approved by the 2nd



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petitioner vide proceedings dated 21.7.1999 and 21.12.1999. Thereafter, again vide the proceedings dated 15.2.1999 issued by the 3rd petitioner, the 1st respondent was permitted to work as the Extra Department Delivery Agent at Arasanatham on temporary basis from 01.9.1999 to 31.12.1999.

(iii) Once again the regular incumbent was placed under off duty from 01.1.2000 on account of unauthorized absence and the 1st respondent was provisionally engaged for a period of two months from 01.1.2000. Further, the 3rd petitioner directed the Postmaster, Attur to draw the pay and allowances of the 1st respondent from 01.3.2000. He was allowed to work continuously till 03.9.2002. Further, the regular incumbent was removed from service vide memo of the 3rd petitioner dated 03.9.2002.

(iv) Vide memo dated 01.3.2003, the 3rd petitioner issued orders regularizing the provisional appointment of the 1st respondent with effect from 04.9.2002 FN. Since there was a procedural lapse in the selection of the 1st respondent, vide proceedings dated 24.11.2004, the 2nd petitioner directed the 3rd petitioner to issue a show cause notice to the first respondent. Vide memo dated 25.11.2004, the show cause notice was also issued to the 1st respondent so as to enable him to show that his appointment



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was made after observing the rules.

(v) On receipt of the said show cause notice, the 1st respondent sent a representation dated 08.12.2004, which was considered by the 2nd petitioner by giving a personal hearing on 14.2.2005. As the 1st respondent did not produce any proof as required, the 2nd petitioner directed the 3rd petitioner vide proceedings dated 23.3.2005 to cancel the irregular appointment. Consequentially, the 3rd petitioner relieved the first respondent from the post vide proceedings dated 30.3.2005.

(vi) As against the said proceedings dated 30.3.2005, the 1st respondent filed O.A.No.324 of 2005 before the Central Administrative Tribunal, Chennai and it was disposed of on 04.5.2006 directing the petitioners to consider his case for appointment. Pursuant to the order dated 04.5.2006, a fresh notification was issued for selection and the meritorious candidate assumed charge on 29.11.2006. As against the selection of the meritorious candidate, the 1st respondent filed a contempt application, which ended in dismissal.

(vii) Again the 1st respondent made representations to petitioners 2 and 3 to reinstate him into service. As there was no reply, he filed



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O.A.No.1542 of 2010 and it was disposed of with a direction to the 1st petitioner to consider the representation of the 1st respondent. However, the request of the 1st respondent was rejected. Once again, the 1st respondent filed a petition before the Assistant Commissioner of Labour (Central), Chennai, which ended in failure. At that stage, the 1st respondent filed the claim statement before the 2nd respondent, who, by the impugned award dated 14.10.2015, directed the petitioners to appoint the 1st respondent in service in the vacancy that arose immediately after completion of one month of publication of the award. Challenging the same, the petitioners are before this Court.

3. The learned counsel appearing for the petitioners submit that though the relieving order of the 1st respondent was passed by the petitioners management on 30.3.2005, the 1st respondent filed the Industrial Dispute after a lapse of 10 years before the 2nd respondent, which is *per se* unsustainable. Even as per the amendment u/s.2(A)3 of the Industrial Disputes Act, 1947, the 1st respondent ought to have filed the claim statement within a period of three years from the date of termination,



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however, in the present case on hand the petitioner raised the industrial dispute after a lapse of 15 years which is wholly unsustainable. Hence, impugned Award dated 14.10.2015 is liable to be set aside on the ground of delay.

4. Though the 1st respondent is served and his name printed in the cause list, none appears for him nor the first respondent is present before this Court.

5. Heard the learned counsel for the petitioners and perused the materials placed on record.

6. Admittedly the 1st respondent was terminated from service on 30.3.2005. As rightly pointed out by the learned counsel for the petitioner management, 1st respondent raised the dispute before the 2nd respondent only in the year 2015, after a lapse of ten (10) years from the date of dismissal, which is a clear violation of Section 2A(3) of the Industrial Disputes Act, 1947. For better appreciation, the relevant portion 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 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)

7. A careful perusal of the above said amendment makes it clear that, the workmen should raise a dispute before the expiry of three years from the



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date of dismissal. Further, in the case on hand, the amendment having come into force on 15.9.2010 and the dispute has been raised in the year 2015, after a lapse of ten years, the dispute is barred by limitation and not maintainable. While so, the Labour Court, without considering the period of limitation, entertained the dispute raised by the workmen and has also subsequently allowed the same, vide present impugned award, which cannot be sustained.

8. In view of the above, this Court is of the view that the impugned award dated 14.10.2015 made in I.D.No.89 of 2014 by the 2nd respondent is perverse and accordingly, the impugned award is set aside.

9. With the above observations, this Writ petition is allowed. No costs. Consequently, the connected Miscellaneous petitions are closed.

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RAP

Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No



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To

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The Presiding Officer, Central Government Industrial
Tribunal-cum-Labour Court, Chennai.



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