



W.P. No. 23860/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.09.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.23860 OF 2018

AND

W.M.P. NO. 27815 OF 2018

The Management
Wentworth Estate Factory
M/s.Harrisons Malayalam Ltd.
Cherampady Post, Nilgiris
Rep. by its Manager-Legal

.. Petitioner

- Vs -

R.Saraswathy
Respondent

..

Writ Petition filed under Article 226 of the Constitution of India
praying this Court to issue a writ of certiorari to call for the records on the file
of the Presiding Officer, Labour Court, Coimbatore and quash the impugned
order dated 18.04.2018 made in I.A. No.25 of 2018 in I.D. No.264 of 2010.

For Petitioner : Mr. Vijayan, for
M/s.King & Partridge

For Respondent : Ms. S.Kavya, Legal Aid Counsel



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ORDER

Assailing the order of the Labour Court in allowing the application filed by the respondent herein on the question of maintainability of the dispute on the ground of limitation, the present petition has been filed.

2. For the sake of convenience, the petitioner and the respondent herein, irrespective of their array before the Labour Court, shall be referred to as petitioner and respondent.

3. The brief facts of the case, as projected in the writ petition is that the respondent herein raised a dispute u/s 2A (2) of the Act before the Labour Court, Coimbatore on the ground that she is the wife of Late R.Rajendran, who was a worker in the petitioner's estate and that her husband died on 4.2.2009. It was the case of the respondent that her husband could not attend the work between November, 2003 and January, 2004 for which a



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show cause notice was issued by the petitioner to which the workman submitted his explanation and not being satisfied, enquiry was initiated against the workman by framing charges and after conduct of the enquiry, the workman was dismissed from service with effect from 14.5.2004. It was the further stand of the respondent herein that while the workman, viz., her husband was dismissed from service, the petitioner herein had not sought for approval as required u/s 33(2)(b) of the Act. On that ground the respondent claimed that she is eligible for all backwages and other benefits for the period from 14.05.2004 to 30.02.2009 and, therefore, impleaded herself along with her two children in the conciliation proceedings, which was pending before the conciliation officer and upon the failure report being submitted by the conciliation officer, the respondent filed the dispute in I.D. No.264/2010 before the Addl. Labour Court, Coimbatore.

4. The petitioner, in the dispute filed by the respondent u/s 2-A (2) of the Act, contended that the said petition is not maintainable and that the workman was dismissed from service after conduct of the enquiry and the workman accepting the charges framed against him. It was further



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contended by the petitioner that the petition u/s 2-A (2) was filed more than six years after the dismissal of the workman.

5. Before the Labour Court, the maintainability of the petition filed by the respondent was put in issue on the ground that the workman's wife, viz., the respondent, had raised the dispute more than six years after the termination of service of the deceased workman by referring to Section 2-A (3) of the Act, which prescribes that any application referred to under sub-section (2) to Section 2-A with regard to dispute relating to discharge, dismissal, retrenchment or termination of service referred to under sub-section (1) should be raised before the expiry of a period of three years from the date of the said act. However, the present dispute having been raised after a period of three years by the wife, more specifically on 11.11.2010, the said petition is not maintainable. Further, the Act not having conferred any right on the legal heirs of the deceased to raise a dispute, the present dispute, raised by the respondent, viz., the wife of the workman cannot be entertained. In spite of the above, the Labour Court having passed an order in favour of the respondent, the present writ petition has been filed.



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6. Learned counsel appearing for the petitioner submits that the workman was dismissed in the year 2004 and failure report in the conciliation proceedings was filed by the Conciliation Officer on 9.6.2010. However, there is a clear mandate u/s 2-A (3) of the Act, which prescribes that any application referred to under 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). It is therefore the submission of the learned counsel that the petition raising a dispute having been filed by the respondent after the expiry of three years from the date of dismissal of the workman, the said petition is barred by limitation and the same could not have been entertained by the Labour Court.

7. It is the further submission of the learned counsel that Section 10 (8) of the Act stipulates that only proceedings which are pending before a Labour Court, Tribunal or National Tribunal would not lapse on account of the death of the workman. However, in the case on hand, the dispute being raised



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before the Conciliation Officer by the workman in the year 2004, on which failure report was filed on 2.6.2010 by the Conciliation Officer, the said dispute is not relatable to the authorities referred to under Section 10 (8) and, therefore, the proceedings would not survive on the death of the workman. Therefore, the order of the Conciliation Officer permitting the respondent to implead herself as the legal heir of the deceased in the dispute and also permitting the respondent to pursue the dispute is wholly perverse, as it has no legal sanctity nor is provided for under any statute. Therefore, the impugned order permitting the respondent to file the dispute is wholly misconceived, arbitrary and illegal and the same deserves to be set aside.

8. In support of the aforesaid submissions, learned counsel placed reliance on the following decisions :-

- i) *State Bank's Staff Union (Madras City) – Vs – Union of India & Ors. (2005 (7) SCC 584); and*
- ii) *Vijay – Vs – State of Maharashtra & Ors. (2006 (6) SCC 289)*



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9. As per the directions of this Court, legal aid counsel was appointed though the respondent had informed that she does not require any legal aid counsel in view of her old age and not willing to continue to contest the case. However, to render complete and substantial justice, this Court, by exercising its inherent power, appointed Ms.Kaavya as legal aid counsel vide its order dated 26.9.2023 to conduct the case.

10. In view of the aforesaid order, the case on behalf of the respondent was taken up by the learned counsel, so appointed. Learned counsel for the respondent, while countering the contentions raised on behalf of the petitioner submitted that the prescription of limitation found u/s 2-A (2) and (3) with regard to 45 days and three years for raising the dispute was inserted by amending Act 46 of 1982 only on 15.9.2010. Prior to 15.9.2010, there was no embargo for raising a dispute, as there was no prescription of a time period within which the dispute should be raised. Therefore, such insertions would have only prospective effect and limitation would not take retrospectivity from an anterior date. Therefore, the three years provided under sub-section (3) to Section 2-A should be reckoned only from the date on



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which the amendment came into force and not from the date on which the order of dismissal was passed as that alone would be a reasonable interpretation, as labour laws are labour welfare legislations intended to safeguard the rights of the labour.

11. It is the further submission of the learned counsel that the contention that only a proceeding pending before a Labour Court, Tribunal or National Tribunal alone could be continued upon the death of the workman and a proceeding pending before the Conciliation Officer could not be brought within the ambit of Section 10 (8) is wholly unreasonable, as Section 2-A of the Act clearly spells out that 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. Such being the case, the dispute raised by the workman before the Conciliation Officer, which is the starting point of the dispute, would squarely stand attracted under Section 10 (8), which alone would be a reasonable interpretation that could be given to Section 10 (8) and, therefore, the dispute before the Conciliation Officer would also be taken to its logical



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conclusion by referring the issue as a dispute upon the filing of a failure report, even in the event of death of the workman and there is no necessity for the legal heirs to implead themselves to proceed with the proceeding. It is the further submission of the learned counsel that in the above backdrop, the order of the Labour Court permitting the respondent, viz., the wife of the workman to raise a dispute is perfectly in order and does not suffer the vice of any illegality and, therefore, does not require any interference.

12. In support of the aforesaid submissions, learned counsel placed reliance on the following decisions :-

- i) *Dhanalakshmi & Anr. – Vs – Reserve Bank of India & Ors. (ILR 1999 Kar 269); and*
- ii) *The General Manager, Indian Overseas Bank & Anr. – Vs – S.Ganesan (Decd.) rep. By LRs (W.A. No.554/2013 – Dated 26.4.2018)*

13. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record, inclusive of the provisions of law, on which



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reliance was placed and also the decisions, which were brought to the knowledge of this Court.

14. The following two issues arise for the determination of this Court in the present petition :-

- i) *Whether the period of limitation provided under sub-section (3) of Section 2-A of the Act would operate prospectively or retrospectively.*
- ii) *Whether the legal heirs of the workman are barred from raising a dispute before the Labour Court/Tribunal after the death of the workman u/s 10 (8) of the Act.*

ISSUE NO. 1

Whether the period of limitation provided under sub-section (3) of Section 2-A of the Act would operate prospectively or retrospectively.



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15. It is borne out by record that prior to 15.9.2010, sub-sections (2) and (3) were not available under Section 2-A. However, with effect from 15.09.2010, sub-sections (2) and (3) were inserted under Section 2-A by way of Amending Act 24 of 2010 and for better appreciation, the same is extracted hereunder :-

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.— (1) 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



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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)."

16. From the above, it is patently evident that prior to 15.9.2010, there was no provision u/s 2-A, which barred the workman from raising any dispute at any point of time, provided that the act involved the dismissal, discharge, retrenchment or termination of the workman with regard to any dispute or difference between the workman and his employer.

17. In the case on hand, the workman, who is since deceased, had been dismissed from service on 14.5.2004 and the workman had raised the dispute u/s 2-A (1) of the Act on 29.12.2008 (as the Act stood then) before the Conciliation Officer u/s 12 of the Act. Pending the dispute, the workman passed away on 4.2.2009 and, thereafter, failure report was filed by the



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Conciliation Officer on 9.6.2010. Pursuant to the filing of the failure report, the respondent, viz., the wife of the workman, filed the industrial dispute before the Labour Court on 11.11.2010.

18. It is to be pointed out at this juncture that the respondent had impleaded herself and her two daughters, upon the death of the workman as party in the conciliation proceedings and, thereafter, the conciliation failure report had come to be passed on 9.6.2010. Further, it is evidenced from the order of the Labour Court, which is not controverted by the petitioner that the petitioner had not taken the plea of limitation and locus standi of the respondents before the conciliation officer.

19. Therefore, for the first time, the plea has been taken before the Labour Court, which has been negatived. As stated above, the petitioner, laying emphasis on Section 2-A (3), contends that any application, as referred to in sub-section (2), which is made to the Labour Court or Tribunal beyond the period of three years from the date of discharge, dismissal, retrenchment or otherwise would not be maintainable. It is the further stand of the



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petitioner that no dispute could be raised by the legal heirs of the deceased workman as it is only the workman who has a right against his employer and it cannot be juxtaposed to the legal heirs upon the death of the workman.

20. Though such a contention, on the face of it looks attractive, but the same cannot be accepted for more than one reason.

21. The dispute was raised by the workman before the Conciliation Officer on 29.12.2008 with relation to his dismissal from service on 14.5.2004. At that point of time, sub-section (2) and (3) were not available in the Act. Therefore, there was no embargo for the workman to raise a dispute before the Conciliation Officer.

22. As stated above, sub-sections (2) and (3) were inserted into the statute vide the amending Act 24 of 2010 with effect from 15.9.2010. Upon such insertion, the limitation prescribed under the aforesaid sub-sections comes into play. Sub-section (2) provides that a workman, who has since been dismissed u/s 2-A (1) of the Act, could raise a dispute directly before the



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Labour Court or Tribunal after the expiry of forty-five days from the day the workman had made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute. In effect, sub-section (2) provides the workman with an opportunity to file a dispute directly to the Court or Tribunal after a period of forty-five days from the day he had made the application to the Conciliation Officer, in case no order has come to be passed by the conciliation officer by that time. The only interpretation that could be drawn to the period of 45 days fixed under sub-section (2) is that it places a duty on the Conciliation Officer to adjudicate the dispute within the said time frame and submit a report to the Government. Therefore, the time fixed therein is a pointer for the Conciliation Officer for speedy disposal of the dispute and beyond the period of forty-five days, the ball is left at the court of the workman to work out his remedies before the Labour Court/Tribunal by raising a dispute even in the absence of any report being filed by the Conciliation Officer with regard to the dispute pending before him.

23. The limitation for the workman to prefer an industrial dispute before the Labour Court/Tribunal is prescribed under sub-section (3) of



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Section 2-A. Under the aforesaid provision, in respect of dismissal, discharge, termination or retrenchment, as provided under sub-section (1) to Section 2-A, the workman could file an application, as provided under sub-section (2) against the action of the employer before the Labour Court/Tribunal within a period of three years from the date of such dismissal, discharge, termination or retrenchment. A careful reading of the above provision reveals that the said prescription of three years is without reference to the outcome of the conciliation proceedings pending before the Conciliation Officer. In fact, what is provided under sub-section (2) is that the workman could make such an application before the Labour Court/Tribunal even pending a dispute before the conciliation officer, but after a period of forty-five days from the date the dispute was raised before the conciliation officer.

24. Be that as it may. In the case on hand, the workman was dismissed on 14.5.2004 and dispute was raised before the conciliation officer on 29.12.2008, after a period of more than four years. The workman died on 4.2.2009, pending the dispute and upon impleadment of the legal heirs, on 2.6.2010, the conciliation officer filed the failure report. The amendment to



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Section 2-A of the Act came into force on 15.9.2010, wherein period of limitation for raising a dispute has been prescribed.

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

26. 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 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.



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27. In this regard, useful reference can be had to the decision of the Apex Court in *State Bank Staff Union case (supra)*, wherein the Apex Court held as under :-

“The general rule that a statute shall be construed to be prospective has two exceptions: it should be expressly so stated in the enactment or inference in relation thereto becomes evident by necessary implication.

In the instant case it is stated expressly that the amendment would apply also to a case where the elected candidate had been elected as a member of Panchayat earlier thereto. It not only incorporates within its purview all persons who would be members of the Panchayat in futuro, but also those who were sitting members. In other words, the bar created to hold the post of member of Panchayat would bring within its purview also those who were continuing to hold post.

It may be true the amendment came into effect on 8.8.2003. The legislative policy emanating from the aforesaid provision, in our opinion, is absolutely clear and unambiguous. By introducing the said provision, the legislature, inter alia, intended that for the purpose of bringing grassroot democracy, a person should not be permitted to hold two posts created in terms of Constitution (73rd Amendment) Act. It is true that ordinarily a statute is construed to have prospective effect, but the same rule does not apply to a disqualifying provision. The inhibition against retrospective construction is not a rigid rule.



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It does not apply to a curative or a clarificatory statute. If from a perusal of the statute intendment of the legislature is clear, the Court will give effect thereto. For the said purpose, the general scope of the statute is relevant. Every law that takes away a right vested under the existing law is retrospective in nature. [See Govt. of India & Ors. vs. Indian Tobacco Association, (2005) 7 SCC 396.]

"The cardinal principle is that statutes must always be interpreted prospectively, unless the language of the statutes makes them retrospective, either expressly or by necessary implication. Penal statutes which create new offences are always prospective, but penal statutes which create disabilities, though ordinarily interpreted prospectively, are sometimes interpreted retrospectively when there is a clear intendment that they are to be applied to past events. The reason why penal statutes are so construed was stated by Erle, C.J., in Midland Rly. Co. v. Pye, (1861) 10 C.B. NS 179 at p.191 in the following words:

"Those whose duty it is to administer the law very properly guard against giving to an Act of Parliament a retrospective operation, unless the intention of the legislature that it should be so construed is expressed in clear, plain and unambiguous language; because it manifestly shocks one's sense of justice that an act,



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legal at the time of doing it, should be made unlawful by some new enactment."

This principle has now been recognised by our Constitution and established as a Constitutional restriction on legislative power."

(Emphasis Supplied)

28. From the above, it is clear that sub-section (2) and (3) is not a disqualifying provision and, therefore, the said provision would have only prospective application. Further, one other aspect which also is evident from the aforesaid provisions is the fact that the workman may, after the expiry of forty-five days from the date a dispute has been raised by him before a conciliation officer of the appropriate Government, may raise a dispute directly before the Labour Court or the Tribunal, without it being referred by the appropriate Government to the Labour Court.

29. The above mandate in the statute is provided to the workman to raise a dispute directly before the Labour Court/Tribunal without waiting for the outcome of the conciliation proceedings. To put it in a nutshell, sub-sections (2) and (3), though prescribes a limitation for raising a dispute, yet it



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is to be pointed out that it is a labour welfare legislation, which is provided to the workman to raise a dispute directly and not await the outcome of the conciliation proceedings. However, the above mandate is not without a lever, in that a time limit is prescribed for the workman to wait before embarking upon raising a dispute directly before the Labour Court/Tribunal. The above proposition is evident from the language employed in sub-sections (2) and (3), wherein there is a clear prescription in sub-section (2) that *“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”* and sub-section (3) contains a clear prescription that *“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”*.

30. The above prescription of a time period in sub-sections (2) and (3) of Section 2-A has a clear object. A conjoint reading of the above two provisions would clearly spell out that where there continues a stalemate in



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the conciliation proceedings, after completion of forty-five days, the workman may make an application direct to the Labour Court/Tribunal and that such application has to be made within a period of three years from the date of dismissal, discharge, retrenchment or otherwise termination of service. The mandate under sub-section (3) is provided for the purpose of enabling the workman also to act with due diligence.

31. The above view of this Court is strengthened by the provisions of Section 12 of the Act, which prescribes the duties of conciliation officers, which is quoted hereunder :-

“12. Duties of conciliation officers.—(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.



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(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government [or an officer authorised in this behalf by the appropriate Government] together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, 3[Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:



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Provided that, subject to the approval of the conciliation officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.”

(Emphasis Supplied)

32. A careful perusal of sub-sections (2) and (6) of Section 12 reveal that the Conciliation Officers are to submit the report without any delay, more particularly sub-section (6) mandates the conciliation officer to submit the report of the proceedings within fourteen days of the commencement of the conciliation proceedings, or within the time stipulated by the appropriate Government, provided, it could be extended upon mutual agreement in writing by the parties. In the above backdrop, the time limit of forty-five days provided under sub-section (2) of Section 2-A assumes significance, as any delay in the finalisation of the conciliation proceedings by the conciliation officer, the workman has been given the right to file an application directly to the Labour Court/Tribunal, from the date he made the application to the conciliation officer. It is only for the purpose of enabling the conciliation officers to act diligently, time limit has been fixed. However, the said amendment by way of sub-sections (2) and (3) had come into force only with

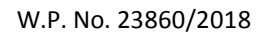


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effect from 15.9.2010 and, therefore, the limitation prescribed under the said sub-sections, in respect of disputes, which are pending adjudication or even filing of any fresh disputes, would start only from the date when the said provisions came into effect and there cannot be any retrospectivity to the said provisions.

33. In the case on hand, the conciliation officer had submitted a failure report on 2.6.2010 and the dispute was raised by the respondent on 21.10.2010, which is well within the period of limitation of three years and, therefore, the submission of the petitioner that the dispute is barred by limitation is wholly misconceived as the counting of limitation of three years would start only from 15.9.2010 when sub-sections (2) and (3) came into force on 15.9.2010 and, therefore, any application as provided under sub-section (2) by the workman directly to the Labour Court/Tribunal could be made only on and from the date of coming into force of sub-section (2) as in the absence of the said provision, the workman could raise the dispute at any time. That being the case, the three years envisaged under sub-section (3) for filing an application referred to in sub-section (2) would start only from the



34. Accordingly, this Court holds that the limitation provided under sub-section (3) would start only from 15.9.2010, from which date, the workman has three years time to raise the dispute directly to the Labour Court/Tribunal, even in respect of a proceeding pending before the conciliation officer, insofar as any dismissal, discharge, retrenchment or termination from service and any dismissal, discharge, retrenchment or termination order passed by the employer after 15.9.2010, the date of the said order would be the starting point for computing the period of limitation u/s 2-A (3) of the Act. Issue No.1 is answered in the above terms.

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Whether the legal heirs of the workman are barred from raising a dispute before the Labour Court/Tribunal after the death of the workman u/s 10 (8) of the Act.

35. The main contention that is advanced on behalf of the petitioner is that barring a dispute that is pending adjudication before the Labour Court, Tribunal or National Tribunal, which has been raised by a workman, who had since died, the legal heirs of the deceased workman cannot raise any dispute before the Labour Court/Tribunal as the legal heirs have no subsisting right against the employer and a dispute could be raised only by the workman and by no one else.

36. ‘*Industrial Dispute*’ is defined under Section 2 (k) of the Act to mean –

“(k) “industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.”



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37. From the above definition, it transpires that a dispute takes within its fold any difference between employers and employers or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.

38. At first blush, though the stand of the petitioner could be passed through, but what is more important in the said definition is the fact that the dispute should be *connected with the employment*. Therefore, in case the dispute is connected with the employment, the dispute having civil consequences, the benefits would stand accrued to the legal heirs of the workman as well.

39. In this regard, the decision of the Division Bench of the Karnataka High Court in *Dhanalakshmi case (supra)*, squarely answers the issue and the relevant portion of the said order is quoted hereunder :-

"5. The Courts in the Country have not adhered to strictly with the maxim actio personalis moritur cum persona. Such a maxim, which is a part of English law, has been dubbed as an



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unjust maxim, obscure in its origin, inaccurate in its expression and uncertain in its application. It has further been held to be resulting in grave injustice.

6. *Keeping the aforesaid position of law in mind this Court in Prema's case, supra, held that right conferred in proceedings under Section 33(1)(b) or (2)(b) or 33(3) on legal representatives to come on record and contest cover the conciliation proceedings as well. Right for adjudication of dispute cannot be taken away by the death of a workman. In such cases the Court can mould the relief appropriately. Instead of directing reinstatement, the relief of pecuniary benefits can be granted. After referring to various provisions of the Act, this Court held:*

"Under the very same section an application for permission or approval could also be pending before the Labour Court or the Tribunal or a National Tribunal in respect of an individual dispute Applying the provisions of Section 10(8) of the Act, the legal representatives of the workman would be permitted to contend the proceedings before the Labour Court, the Tribunal or the National Tribunal under Section 33(1)(b) or 2(b) or 33(3) of the Act. Therefore, it does not stand to reason why the very same legal representatives should be deprived of the right to contest the proceedings if an application is made before the Conciliation Officer under these three provisions of the Act. Therefore, the



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right of the legal representatives of the deceased workman to come on record in a conciliation proceedings could also be covered by interpreting the provisions of Section 10(8) of the Act liberally.

* * * * *

Under the scheme of the Act, an adjudication of an individual dispute is preceded by certain statutory requirements, namely, a raising of the dispute either under Section 2A, conciliation proceedings under the provisions of Section 12 and thereafter a reference by the State Government for adjudication of the dispute. If the workman is permitted to raise a dispute and initiate conciliation proceedings in view of the provisions of Section 2A of the Act, then his right to have an adjudication of the dispute, in case it is made to the Labour Court, cannot be taken away by his death since the award, if made in his favour, would enure to the benefit of his estate.

Section 18(3)(d) of the Act is an exception to the Law of Contract. Under the Law of Contract it is only the parties who are signatories to the contract will be bound by the terms of the contract. But, under Section 18(3)(d) in the case of a settlement in the course of conciliation, even workmen who subsequently become employees of the employer will get the benefit of the settlement and will be bound by the terms of the



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settlement. If this scheme of the Act is kept in view, the intention of the Parliament becomes clear. That is, it had no intention to abrogate or cut down the rights of the workman when it concerned the benefits due from his employer when he raises an industrial dispute. Therefore, could it be said that the legislature had the intention to deny the legal representatives to claim the benefit due to the estate of the deceased workman by omitting the words "conciliation proceedings" under the amended provisions of Section 10(8) of the Act? Conciliation is also a proceeding, the act of making a reference is also a proceeding as they are legal steps or measures which precede the adjudication of the dispute".

* * * * *

8. The High Court of Andhra Pradesh in Smt. Anjilamma and Others v The Labour Court-III at Hyderabad and Another, after referring to various judgments such as.-

1. Bharathamma and Others v The Labour Court and Another .

2. Rameshwar Manjihi (deceased) through his son Lakhiram Manjihi v Management of Sangramgarh Colliery and Others.

3. Girijanandini Devi v Bijendra Narain Choudhary.

4. Gwalior Rayons, Mavoor v Labour Court and Others.

5. Shree Meenakshi Mills Limited v State of Madras .



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6. *Bank of Baroda v Its Workmen* and

7. *Sitabai v Auto Engineers and Others.*

and after quoting *Clerk and Lindsell on Torts* (15th Edition)

dealing with survival of causes of action state, concluded:

"In the result and for the foregoing reasons I hold that legal heirs/legal representatives of a deceased workman are entitled to institute an industrial dispute before the Labour Court questioning the validity of termination of services of such workman even after the death of such workman under Section 2A of the Industrial Disputes Act. It is not necessary that such legal heirs/representatives should be 'workmen' within the meaning of Section 2(s) of the Act and in fact they are not and cannot be workmen within the meaning of that term unless in a given case they are also workmen under the same employer. The essence of the matter is that if on death of a workman any or all causes of action survives/survive for the benefit of estate left behind by him, it is competent for the legal heirs of such workman, as the custodian of the estate of the deceased workman, either to continue the pending proceedings instituted by the deceased workman, or to institute the proceedings after the death of the workman before the Industrial Court. With the death of a workman, an industrial dispute instituted by him or an industrial dispute capable of being instituted by him.



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will not die with him and despite his death such a dispute remains to be an industrial dispute within the meaning of Section 2(k) of the Act as contemplated under sub-section (8) of Section 10 of the Act and the legal heirs to and the administrators of, the estate of the deceased have locus standi to prosecute such dispute either by continuing the pending proceedings or by instituting fresh proceedings in the Industrial Courts as representing the deceased's estate and for the benefit of the estate. In the present case, the cause of action which accrued to the workman on March 30, 1989 to institute Industrial Dispute in the Labour Court for claiming reliefs of lump sum compensation in lieu of reinstatement, back wages did not die with the workman on December 28, 1990 but did survive for the benefit of the estate left behind by him. Therefore, I hold that the industrial dispute raised by the petitioners before the Labour Court is competent and maintainable".

* * * * *

10. The references are answered accordingly holding that the legal heirs of deceased workman can initiate and prosecute the industrial dispute as there does not exist any statutory bar for such a course being adopted and followed. We do not agree with the submission made on behalf of the employer that in view of the provisions of Sections 2(k), 2A and 10(8) of the Act,



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the conciliation proceedings cannot be initiated or continued after the death of the workman. We are of the opinion that despite a workman's death, the points sought to be settled by his legal heirs remain an industrial dispute for the purposes of adjudication under the Act. Section 10(8) is a beneficiary provision made for the workman prescribing that despite his death, the proceedings would not lapse even without the formal application of bringing on record his legal representatives."

(Emphasis Supplied)

40. A Division Bench of this Court in the case of *General Manager, IOB* (*supra*), had occasion to consider similar issue and in the said context, held as under :-

"9. The dispute in the subject case though related to dismissal would also involve a question as to whether the legal representatives would be entitled to the consequential benefits in case the order of dismissal is set aside. It is worth mentioning here that the employee has made a specific claim for back wages in his writ petition.

* * * * *

*15. The Hon'ble Supreme Court in *Girijanandini v. Bijendra Narain* [AIR 1967 SC 1124] observed that the maxim 'actio personalis moritur cum persona' meaning a personal action*



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dies with the person, has a limited application. The Supreme Court was of the view that the maxim would operate in a limited class of actions, such as actions for damages, for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party, the relief could not be enjoyed or granting it would be nugatory.”

41. The aforesaid decisions are squarely on the issue, which have been addressed before this Court. It has been categorically held therein that the legal representatives of the workman are entitled to continue the dispute raised by the workman and in addition to the same, are even entitled to raise an industrial dispute for the benefit of the estate left behind by the workman.

42. In the aforesaid backdrop, as already pointed out above, the words “*connected with the employment or non-employment*” assumes significance. The Parliament, in its wisdom, had included non-employment as well under the definition of Section 2 (k) of the Act, which is clearly relatable to Section 2-A of the Act. In hindsight, it could only be for the purpose of a workman or the legal heirs of the workman raising a dispute of continuing the dispute



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upon death of the workman for any action u/s 2-A (1). Therefore, there cannot be any exclusion of the legal heir from the purview of raising a dispute and Section 10 (8) of the Act cannot exclude the legal heirs from raising a dispute upon the death of the workman or even continuing the dispute, which is pending.

43. Further, it is to be pointed out that when Section 10 (8) clearly stipulates that the dispute, which is pending before the Labour Court, Tribunal or National Tribunal will not abate on account of the death of the workman and it would be taken to its logical conclusion, meaning thereby, that the fruits of the dispute would enure to the benefit of the legal representatives, if the dispute ends in favour of the workman, necessarily by implication, the legal heirs ought to be brought in as party to the said pending dispute so as to take the dispute to its logical conclusion. Therefore, when the legal heirs can be brought as legal representatives of the deceased workman in a pending dispute, equally, for any benefits due to the workman to which a claim is entertainable, the legal heirs are entitled to raise a dispute and there could be no embargo u/s 10 (8) of the Act.



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44. Further, the stand of the petitioner that only a dispute which is pending before a Labour Court, Tribunal or National Tribunal could be continued and conciliation proceedings cannot be continued is a misconceived submission advanced on behalf of the petitioner.

45. In fact, Section 12 of the Act, which relates to the duties of the conciliation officers clearly stipulates that where any industrial dispute exists or is apprehended, the conciliation officer may hold conciliation proceedings. What is evident from sub-section (1) to Section 12 is the fact that the proceedings is an off-shoot of the dispute that exists between the employer and the workman and merely because the word used is "*conciliation proceedings*" would not rob the proceedings from out of the purview of dispute. Necessarily, the proceedings, which is held by the conciliation officer is a dispute, which would either stand settled upon consensus at the conciliation stage or brew further to be placed before the Labour Court/Tribunal for judicial adjudication. Therefore, the exclusion of the word



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“Conciliation Proceedings” from Section 10 (8) cannot be taken to mean that the conciliation proceedings is not a dispute.

46. Further, one other aspect, which also strengthens the case of the respondent is that upon submission of failure report by the conciliation officer, the appropriate Government could very well refer the dispute for adjudication by the Labour Court/Tribunal under Section 10 of the Act. If really the intent of the Parliament was that the death of the workman before raising a dispute or pending the conciliation proceedings would tie the hands of the Government from referring any dispute, provision would have been made in the Act to the said effect. However, no such provision is made u/s 10 and therefore, by implication, once the Government is empowered to refer the dispute for adjudication upon filing of a failure report even where the workman is deceased, equally, within the period of limitation, the legal heirs also would be entitled to raise a dispute before the Labour Court/Tribunal for adjudication upon the death of the workman.



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47. In such circumstances, this Court has to give a reasonable interpretation on the basis of the entire gamut of facts and cannot, merely on the strength of the fact that the word “*conciliation proceedings*” does not form part of sub-section (8) to Section 10, negate the entitlement of the legal heirs to either raise a dispute or continue the dispute upon death of the workman. Once the Labour Court, Tribunal or National Tribunal is given the power to conclude the pending dispute to its logical conclusion, even on the death of the workman, it is equally within its power to entertain a fresh dispute raised by the legal heirs of the deceased workman.

48. In such circumstances, this Court holds that the legal heirs of the workman, who had died pending the conciliation proceedings is not barred from raising a dispute before the Labour Court/Tribunal and the Labour Court, Tribunal or National Tribunal shall take up the dispute and decide the same. Issue No.2 is answered accordingly.

49. For the reasons aforesaid, this Court is of the considered view that the Labour Court had adverted to the legal issues in proper perspective and



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had rightly held that the respondent herein is entitled to raise a dispute on behalf of the workman, who has since deceased and, therefore, no interference is warranted with the well considered decision of the Labour Court.

50. **Accordingly, the order passed by the Addl. Labour Court, Coimbatore in I.A. No.25/2018 in I.D. No.264/2010 deserves to be confirmed and consequent thereto, this writ petition fails and the same is dismissed.** Consequently, connected miscellaneous petition is closed. There shall be no order as to costs. However, keeping in mind the fact that the dismissal of the workman was as early as in the year 2004 and almost two decades have passed by now and the respondent, viz., the wife of the workman is old-aged, and in fact, had lost all her appetite to contest the dismissal and to get justice, which is solely because of the delay in the disposal of the conciliation proceedings and the continued litigation, which has in turn, meted out injustice to the respondent, thereby causing travesty of justice, this Court is of the considered view that the Labour Court should be



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directed to consider and dispose of the dispute raised by the respondent within a stipulated period.

51. In the aforesaid circumstances, the Addl. Labour Court, Coimbatore, is directed to take up I.D. No.264/2010 and conclude the same on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order.

52. Registry is directed to forward a copy of the abovesaid order to the Member Secretary, Tamil Nadu State Legal Services Authority for the purpose of enabling the authority to pay the fees to the legal aid counsel appointed to defend the case.

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To

1. The Presiding Officer

Addl. Labour Court

Coimbatore.

2. The Member Secretary

Tamil Nadu State Legal Services Authority

Chennai.



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M.DHANDAPANI, J.

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