



W.P.No.24322 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.24322 of 2018

and

W.M.P.No.28341 of 2018 and W.M.P.No.18427 of 2021

The Managing Director,
Tamil Nadu State Marketing Corporation
Limited (TASMAC),
Thalamuthu Natarajan Maaligai,
CMDA Tower,
Gandhi Irwin Road,
Egmore,
Chennai - 600 008.

... Petitioner

Vs.

G.Jaisuresh,
Represented by
Mr.G.Nandakumar and M.Devarajan,
Authorised representatives for petitioner and
Trade Union Official of the Madras Commercial
and General Workers Union,
31, Abdullah Street,
Choolaimedu,
Chennai - 600 094.

... Respondent



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the award dated 28.02.2018 passed in I.D.No.138 of 2014 on the file of the II Additional Labour Court, Chennai and quash the same,

For Petitioner : Mr.K.Balakrishnan

For Respondent : Mr.S.Ravi

O R D E R

The impugned order dated 28.02.2018 made in I.D.No.138 of 2014 on the file of the II Additional Labour Court, Chennai is under challenge in the present Writ Petition.

2. The petitioner is the Management (TASMAC). The respondent joined the petitioner Management as a part time Salesman on 03.12.2003 on a consolidated monthly salary of Rs.2,000/- and he absented himself unauthorisedly from 12.05.2005 which amounted to abandonment of service. After a lapse of eight years, the respondent moved an application before the Conciliation Officer for reinstatement of his service. The



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conciliation ended in failure and the respondent has raised an Industrial Dispute against the petitioner Management before the Presiding Officer / II Additional Labour Court, Chennai in I.D.No.138 of 2014. During the course of the trial, the respondent had admitted himself that he has gainfully employed. However, the Labour Court without considering the same, has passed an award directing reinstatement of the respondent with continuity of service and all other benefits with full backwages. Challenging the same, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner Management submits that the respondent abandoned himself from attending duty with effect from 12.05.2005 and no termination order was passed against him. All of a sudden, after a lapse of eight years, the respondent raised Industrial Dispute in I.D.No.138 of 2014 before the Labour Court. Therefore, the award passed by the Labour Court is liable to be set aside.



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4. I have considered the said submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

5. It is seen from the materials available before this Court that there was an inordinate delay of eight years in filing the Industrial Dispute by the respondent. In such circumstances, it is relevant to refer Section 2A amended vide Act 24 of 2010 (Central) (w.e.f. 15.09.2010), which is extracted hereunder:

"Section 2A of the principal Act shall be numbered as sub- section (1) thereof and after sub- section (1) as so numbered, the following sub- sections shall be inserted, namely:-

(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



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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)"

6. The aforesaid provision contemplates that the workman must raise an Industrial Dispute before the Conciliation Officer and upon expiry of forty five days from the date of filing of the application before the



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Conciliation Officer, the workman can move application to the Labour Court before the expiry of three years from the date of dismissal. In any event, right conferred under Section 2A of the Industrial Disputes Act, 1947 lapse immediately proceeding the date of expiry of three years of the date of dismissal. Sub-section (3) of Section 2A operates independently, despite the continuation of the conciliation proceeding. While such being the settled provision, in the case on hand, the respondent abandoned himself from attending duty from 12.05.2005, thereafter after a period of eight years, he filed an application under Section 2A(2) of the Industrial Disputes Act before the Labour Court on 02.02.2018 in I.D.No.138 of 2014. That apart, the respondent has categorically admitted himself before the Labour Court that he was gainfully employed at that point of time.

7. Thus, in the light of the above discussion, the Industrial Dispute filed by the respondent before the Labour Court under Section 2(A)(2) of the Industrial Disputes Act was not maintainable and the Labour Court ought not to have entertain the same and passed an award directing reinstatement



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of the respondent. In view of the same, this Court is inclined to allow the present Writ Petition.

8. Accordingly, this Writ Petition is allowed and the impugned order dated 28.02.2018 passed by the Presiding Officer / II Additional Labour Court, Chennai is set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

21.09.2023

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

vji

To

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2. The II Additional Labour Court,
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