



CRP.No.2057 of 2020.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 09.03.2023

Delivered On: 06.04.2023

CORAM :

**THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP**

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Radhakrishnan (died)

1. R.Geetha

2. R.Pavithra

3. R.Deepa Kumar

... Third Parties/Third Parties/Petitioners

Vs.

The Administration,

Tamil Nadu Transport Corporation,

Villupuram.

... Respondent/Respondent/Respondent

**PRAYER:** Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the Order dated 08.02.2019 in I.A.No.41/2015 in unnumbered I.D.No. /2015 on the file of the Labour Court, Cuddalore.

For Petitioners : Mr.R.Vivekananthan  
for Mr.R.Subramanian

For Respondent : Mr.M.Aswin,  
Standing Counsel



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## **ORDER**

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This Civil Revision Petition has been filed to set aside the order passed by the learned Presiding Officer, Labour Court, Cuddalore in I.A.No.41/2015 in unnumbered I.D.No. /2015, dated 08.02.2019.

2. Mr.R.Vivekananthan, learned Counsel for Mr.R.Subramanian, learned Counsel for the Petitioners submitted that the Revision Petitioners are the Legal heirs of the deceased employee viz., Radhakrishnan. The said Radhakrishnan who was working as a driver in the Tamil Nadu State Transport Corporation, Villupuram was dismissed from service by the Respondent/Transport Corporation on 22.07.2011.

3.As per the Industrial Dispute Act, the dismissal of the employee has to be approved by the Deputy Commissioner of Labour under Section 33(2) (b) of the Industrial Dispute Act. The Respondent/Transport Corporation preferred Approval Petition in A.P.No.264/2011 before the Special Deputy Commissioner of Labour, Chennai seeking approval of dismissal of the employee, driver of State Transport Corporation, Villupuram Division. The approval was granted by the proceeding by the Special Deputy



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Commissioner of Labour dated 08.02.2012. The employee/Radhakrishnan had approached the Presiding Officer, Labour Court, Cuddalore for conciliation. The Respondent/employee did not appear and the conciliation failed. Therefore, the employee/Radhakrishnan had to necessarily approach the Labour Court. While approaching the Labour Court, the learned Presiding Officer, Labour Court had dismissed the Application seeking condonation of delay. The learned Presiding Officer had misdirected himself by taking into consideration the date of dismissal and the date on which the employee/Radhakrishnan had approached the Labour Court.

4. The observation of the learned Presiding Officer that the employee had approached the Court with the delay of 201 days cannot be accepted, in the light of the fact that in cases of this nature, the time spent in the proceedings had to be deducted which was not done in this case. Therefore, the Order passed by the learned Presiding Judge, Labour Court, Cuddalore in dismissing the I.A.No.41/2015 in unnumbered I.D.No /2015 is perverse and the same is to be set aside.

5. Aggrieved by the same, the Legal heirs of the deceased employee



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viz., Radhakrishnan had approached this Court by filing this Criminal Original Petition.

6. On the date the Order was passed on 08.02.2019, the Petitioner in I.A.No.41/2015/dismissed employee was not alive. Therefore, the Order passed by the learned Presiding Officer, Labour Court, Cuddalore against the deceased employee is to be set aside.

7. The learned Counsel for the Respondent by way of reply submitted that the Petition had been filed on 01.12.2014. The deceased employee was dismissed from service on 22.07.2011. The Approval Petition in A.P.No.264/2011 was allowed on 08.02.2012. Though several opportunities were given to the deceased employee, he did not appear before the Approval Officer in the Approval proceedings. After that, on 08.02.2012, the Authority passed the Orders. The conciliation proceedings ended on 01.12.2014. Workmen filed the condone delay Petition in I.A.No.41/2015 on 18.02.2015. The condone delay Petition was dismissed on 08.02.2019.

8. The learned Counsel for the Respondent invited the attention of



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this Court to Section 2 (A) of the Industrial Disputes Act, 1947 which is extracted as under:

***“2-A.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 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).”*

9. It is the contention of the learned Counsel for the Respondent that whether the Limitation Act is applicable to the disputes attracting the Industrial Dispute Act is point for consideration.



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10. The learned Counsel for the Respondent invited the attention of this Court to Section 2(A) (3) of the Industrial Disputes Act, 1947 which deals with limitation. Also, he invited the attention of this Court to the Order copy of the Labour Court which was enclosed in the typed set of papers filed by the Workmen. He had approached the Court beyond the period of limitation which commences from 08.02.2012. Since the Approval was granted on 08.02.2012, he ought to have approached this Court before 08.02.2015. He had filed the Petition to condone the delay on 18.02.2015.

11. The learned Counsel for the Respondent also invited the attention of this Court to the batch of Writ Petitions disposed off by the learned Single Judge of this Court in W.P.Nos.28505/2018, 28515/2018, 28521/2018, 28529/2018, 28537/2018 which were dismissed by the Writ Court on 19.07.2019 and which were all filed on a similar point of consideration. Therefore, this Order by the learned Presiding Officer, Labour Court dated 08.02.2019 is a well reasoned Order and it does not warrant any interference of this Court under Article 227 of Constitution of India.



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12.Point for consideration:

***Whether the order passed by the learned Presiding Judge, Labour Court, Cuddalore in dismissing the I.A.No.41 of 2015 in unnumbered I.D.No.... of 2015 of the Labour Court, Cuddalore, dated 08.02.2019 is to be set aside?***

13.Against the order of dismissal, the Management/Employer has filed Petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 seeking approval. The application for approval by the Management – Tamil Nadu Transport Corporation was granted by the Special Deputy Commissioner of Labour, Chennai, on 08.02.2012. The employee A.Radhakrishnan had filed Industrial Dispute against the dismissal before the Labour Court, Cuddalore, Camp Court at Villupuram which was returned by the Camp Court with the endorsement “(i) How this claim is in time to be stated and (ii) Postal stamp to be affixed on the envelop”. The learned Counsel appearing for the dismissed employee had re-presented stating that the approval of the Special Deputy Commissioner of Labour, Chennai, was passed on 08.02.2012. The Petition is filed on 07.02.2015. Hence, the Petition filed by the Petitioner is within time. The Petitioner



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prays that this Court may be pleased to admit the Industrial Dispute and thus render justice. It was complied on 18.02.2015. Petition returned on 11.02.2015 and it was re-presented by the learned Counsel for the Petitioner on 18.02.2015 before the Camp Court at Villupuram. Still the staff of the Labour Court had returned it once again on 23.02.2015 forcing the Petitioner to file a Petition in I.A.No.41 of 2015 in unnumbered I.D. of 2017 to condone the delay. The condone delay petition is filed on 29<sup>th</sup> April, 2015 seeking to condone the delay of 280 days in re-presenting the main petition. Since it is taken at Camp Court and it was repeatedly adjourned. It was served on 06.06.2015 and for counter it was repeatedly adjourned. In the meanwhile, the dismissed employee died. Therefore, I.A.No.136 of 2015 was filed by the dismissed employee's wife and children seeking to implead them. That petition was allowed on 08.12.2017 and amendment carried out on 05.01.2018. Since it is conducted in Camp Court at Villupuram, it was repeatedly adjourned and finally the Petition in I.A.No.41 of 2015 to condone the delay in filing the Industrial Dispute was dismissed as beyond three years. It is only due to the fact that the learned Judge was carried away by the staff who had put up notes. It is to be pointed out that in cases of this nature the dismissed employee when he was



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alive approached the Court within time by filing petition on 07.02.2015 within three years but the staff of the Labour Court, Camp Court at Villupuram had returned it as though he had not approached the Court from the date of dismissal. His Counsel had clearly complied the returns in unnumbered I.D. filed on 07.02.2015 stating that from the date of passing of the approval proceeding by the Special Deputy Commissioner of Labour, Chennai, only the limitation starts. Therefore, the dismissed employee had approached the Labour Court within time. The staff of the Labour Court, Cuddalore, Camp Court at Villupuram had misguided the employee and his Counsel. Only to satisfy them, I.A.No.41 of 2015 to condone the delay was filed even though the dismissed employee when he was alive had approached the Court on time. The learned Labour Court Judge instead of perusing the records and seeking legal position by himself was carried away and misguided by the staff of the Labour Court, Cuddalore, Camp Court at Villupuram, passed an order dismissing the condone delay petition. Therefore, this order is found perverse as per the interpretation to be taken by the Court under the General Clauses Act.



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14. On perusal of the original records, summons by the Labour Court, Cuddalore, in unnumbered I.D. and I.A.No.41 of 2015, it is found that original date of the petition presented by the original employee was 07.02.2015 which is well within the time. Hence, the point for consideration is answered in favour of the Petitioner and as against the Respondent.

15. As per the judgment relied on by the learned Counsel for the Revision Petitioner in **1990 AIR 10 1989 SCC (4) 582** in the case of **S.S.Rathore Vs. State of Madhya Pradesh**, the Order of dismissal will be merged with remedies available to the Petitioner as per the Act. Therefore, it is to be reckoned from the date of failure of the conciliation proceedings. Also, the contention of the learned Counsel for the Revision Petitioner that the Labour Court ought to have considered Section 14 of Limitation Act and to exempt the period spent by the litigant bonafidely before the other forum has to be excluded. Under those circumstances, the submission of the learned Counsel for the Respondent that the Petition is not maintainable, cannot be accepted and hence rejected. The Order passed by the Writ Court in W.P.Nos. 28505/2018, 28515/2018, 28521/2018, 28529/2018,



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28537/2018 are based on the request of the learned Counsel for the Writ Petitioners, to consider it under Section 2 (k) of Industrial Dispute Act before the Labour Court. Hence it is not applicable to the facts herein. Apart from that, the Petition dismissing the I.A against the deceased person without impleading the Legal Representatives of the deceased is also not maintainable. Therefore, exercising the discretion under Article 227 of Constitution of India, the Order passed by the learned Presiding Judge, Labour Court, Cuddalore in I.A.No.41/2015 in unnumbered I.D.No. /2015 dated 08.02.2019 is set aside. This is to be considered afresh after impleading the Legal Representatives of the deceased workmen who was the Petitioner before the learned Presiding Judge, Labour Court, Cuddalore and to proceed further as per law. It is made clear that the Petition had been filed by the deceased/dismissed employee within the prescribed time of three years which were calculated wrongly by the learned Presiding Judge, Labour Court, Cuddalore from the date of dismissal. Whereas as per the reported ruling relied by the learned Counsel for the Petitioner, **1990 AIR 10 1989 SCC (4) 582** in the case of **S.S.Rathore Vs. State of Madhya Pradesh**, the Order merges with the conciliation proceedings which is dated



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01.12.2014 and from that date it has to be recorded. Therefore, the Revision Petitioners approached this Court within the specified time and the time spent on litigation has to be excluded as per Section 14 of Limitation Act.

16.In the light of the above discussion, the point for consideration is answered in favour of the Petitioners and as against the Respondent. The order passed by the learned Presiding Judge, Labour Court, Cuddalore in dismissing the I.A.No.41 of 2015 in unnumbered I.D.No.... of 2015 of the Labour Court, Cuddalore, dated 08.02.2019 is to be set aside.

In the light of the above discussion, this ***Civil Revision Petition is allowed.*** The order passed by the learned Presiding Judge, Labour Court, Cuddalore in I.A.No.41 of 2015 in unnumbered I.D.No.... of 2015 of the Labour Court, Cuddalore, dated 08.02.2019 is set aside. No costs.

**06.04.2023**

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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To

1. The Administration,  
Tamil Nadu Transport Corporation,  
Villupuram.
2. Labour Court, Cuddalore.
2. Section Officer,  
V.R.Section,  
High Court, Madras.



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**SATHI KUMAR SUKUMARA KURUP, J.**

dh/srm

**Order made in**  
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**06.04.2023**