



W.P.No.539 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.539 of 2016

V.Sankar

...Petitioner

Vs.

1. The Presiding Officer,
Central Government Industrial Tribunal cum Labour Court,
I Floor, B Wing,
26, Haddows Road, Shastri Bhavan,
Chennai – 600 006.
 2. The Consulate General of Japan,
12/1, Cenetoph Road, 1st Street,
Teynampet, Chennai – 600 018.
- ...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the concerned records from the 1st Respondent, quash the Award of the 1st Respondent Labour Court, dated 31.07.2015 in I.D.No.32 of 2014 as illegal, arbitrary and contrary to law and consequently direct the 2nd respondent to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits.

For Petitioner : Mr.Balan Haridas

For Respondents : Ms.S.P.Arthi, for R2



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ORDER

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2. The case of the petitioner is that, the petitioner joined the service of the 2nd respondent as Gardener in the year 1993 as permanent employee. While so, all of a sudden, the 2nd respondent orally terminated the services of the petitioner during March 2006, aggrieved by which, the petitioner issued a legal notice on 23.06.2006, requesting the 2nd respondent to provide him work and also sent a rejoinder legal notice dated 09.08.2006, and as the same did not evoke any response, the petitioner raised a dispute before the Assistant Commissioner of Labour (Central) and failure of which, resulted in raising of a dispute in I.D.No.32 of 2014 before the 1st respondent, in which, the present impugned award dated 31.07.2015 came to be passed holding the reference as against the petitioner. Challenging the same, the petition has come up with this Writ petition.

3. Heard learned counsel on either side and perused the material



documents placed on record.

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4. Admittedly, the petitioner was orally terminated from service by the 2nd respondent during March 2006 and the petitioner raised the dispute only in the year 2015, after a lapse of five years and as rightly pointed out by the learned counsel for the 2nd respondent, it is a clear violation of Section 2A(3) of the Industrial Disputes Act, 1947. For better appreciation, the relevant portion is extracted hereunder:-

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)

5. 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 date of dismissal. Further, in the case on hand, the amendment having come into force on 15.09.2010 and the dispute has been raised in the year 2015, after a lapse of five years, the dispute is barred by limitation and not maintainable, as the delay is fatal to the case of the petitioner.

6. Though the Labour Court has dismissed the reference against the workman on a different set of facts, however, when the dispute itself is barred by limitation, there arises no necessity to consider the correctness of findings rendered by the Labour Court.



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7. Hence, this Court is not inclined to interfere with the impugned award, as the dispute is liable to be dismissed solely on the ground that, the dispute is barred by limitation prescribed under Section 2A(3) of the ID Act.

8. For the reasons aforesaid, these Writ Petitions stand dismissed. No costs.

03.08.2023

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

To

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M.DHANDAPANI., J.

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