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W.A. No. 1123 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2023

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THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No. 1123 of 2023

P. Isaac Samraj

..Appellant

Vs.

1. Ministry of Labour & Employment rep.
by its Under Secretary,
Govt. of India,
Shram Sakthi Bhawan, Rafi Marg,
New Delhi – 110 001.
2. The Managing Director & CEO,
Exide Life Insurance,
3rd Floor, JP Techno Park,
No.3/1, Millers road,
Bangalore, Karnataka – 560 001.



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3. The Executive Vice – President,
Exide Life Insurance,
Prince Kushal Tower, Anna Salai,
Chennai -2.

..Respondents

For Appellant :: Mr.S. Arunachalam

For Respondents :: Mr.T.L. Thirumalaisamy
for R1

J U D G M E N T

(Delivered by S. Vaidyanathan,J.)

The present appeal has been preferred against the order dated 11.01.2018 passed by the learned Single Judge dismissing the writ petition thereby confirming the order of the 1st respondent/Government in declining to refer the dispute with regard to the discharge of the appellant with effect from 01.03.2017 to the Central Government Industrial Tribunal cum Labour Court, Chennai for adjudication.



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2. The appellant/writ petitioner, questioning his discharge from service with effect from 01.03.2017, raised an industrial dispute before the Conciliation Officer and the Conciliation Officer submitted a failure report to the Government. On receipt of such report, the Central Government, after considering the same, may either refer the dispute for adjudication or refuse to do so, by exercising its powers under Section 10 of the Industrial Disputes Act, 1947 ('I.D. Act' in short). A reference is not required for a dispute raised under Section 2A of the I.D. Act, 1947. In the present case, taking note of the fact that the appellant/writ petitioner was appointed as an Assistant Sales Manager and was drawing a salary of Rs.34,805/-, the Government came to the conclusion that the appellant/writ petitioner was not a 'workman' within the meaning of Section 2(s) of I.D.Act, 1947 and passed an order dated 25.08.2017 declining to refer the dispute for adjudication. Challenging the said order, the writ petition came



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to be filed, which was also dismissed by the order under challenge. Hence,

the present writ appeal.

3. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent.

4. The Government cannot decide the dispute between the parties and it is only the industrial adjudicator, who, on a reference made, can render a finding taking note of the evidence let in, both oral and documentary. The designation or the salary drawn by an employee cannot decide the factum whether he is a workman or not. It is ultimately the nature of work that determines whether an employee is a workman or not. The Hon'ble Apex Court, in the decision rendered in *Ananda Bazar Patrika (P) Ltd. V. The Workmen* reported in *1969 2 LLJ 670 SC* has categorically held as to how an employee comes within the purview of Section 2(s) of I.D.Act, 1947. There are a catena of decisions on this aspect. However, subsequently, the Apex Court in its decision in *M.P. Irrigation Karamchari*



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Sangh V. State of M.P. and Another reported in ***1985-1-LLJ 519 (SC)*** has

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held that the Government cannot decide the dispute between the parties.

5. In the present case, the Government has refused to refer the dispute for adjudication. Though we can remand the matter to the Government for fresh consideration, taking note of the decisions rendered by the Hon'ble Supreme Court in ***Sankari Cement Alai Thozhilalar Munnetra Sanga V. Government of Tamil Nadu ((1983) 1 SCC 304) V. Veerarajan V. Government of Tamil Nadu ((1987) 1 SCC 479)*** and ***Telco Convoy Drivers Mazdoor Sangh V. State of Bihar ((1989) 3 SCC 271)***, we are not inclined to do so in this case, as reference by the Government is not required in cases falling under Section 2A of the Industrial Disputes Act, 1947. Section 2A of the Industrial Disputes Act, 1947 was amended and certain provisions have come into effect w.e.f. 15.09.2010. For better understanding, Section 2A is scanned below:



Sec 2A] THE INDUSTRIAL DISPUTES ACT, 1947 A27

¹[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[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,

¹ Ins. by Act 15 of 1965, s. 3 (with effect from 1st December, 1965).

² Sec. 2-A of the principal Act re-numbered as sub-section (1), by Act 24 of 2010, s. 3 (with effect from 15th September, 2010).

³ Sub-secs. (2) and (3) of Sec. 2-A, inserted by Act 24 of 2010, s. 3 (with effect from 15th September, 2010).



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A28 THE INDUSTRIAL DISPUTES ACT, 1947 [Sec.2A
retrenchment or otherwise termination of service as specified
in sub-section (1).]

6. After amendment to Section 2A, more so insertion of certain provisions to Section 2A, which has come into effect w.e.f. 15.09.2010, based on the conciliation failure report, the employee is entitled to approach the Labour Court or the Tribunal in cases falling under Section 2A of the Act. Hence, the employee is directed to file a Claim Statement before the Industrial Tribunal or the Labour Court and the said Tribunal shall entertain the industrial dispute and decide the same in accordance with law. The Industrial Tribunal which is going to hear the matter shall take into account Rule 10B-(8) of the Industrial Disputes (Central) Rules, 1957 and proceed with the matter without adjourning the same beyond seven working



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days at any given point of time and pass an Award as expeditiously as possible.

The writ appeal is disposed of accordingly. No costs.

nv

(S.V.N.J.) (K.R.S.J.)

01.06.2023

S. VAIDYANATHAN,J.

AND

K. RAJASEKAR,J.

nv

To

1. Under Secretary,
Ministry of Labour & Employment,
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