

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7531 of 2021

A.Govindaraj

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Cuddalore.

2.The Management,
TNSTC (Kum) Ltd.,
Kumbakonam Division,
92 Railway Feeder Road,
Kumbakonam-612 001.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records from the first respondent in respect of the impugned order dated 04.10.2019 passed by the first respondent and direct the first respondent to number the petition dated 26.06.2019 filed by the petitioner in ID under Section 2A of the I.D.Act, 1947 so as to enable him to pursue the case so that he can get due remedy on the dismissal order dated 30.10.2012 effected against him by the second respondent.

For Petitioner : Mr.A.Rahul

For Respondent : Mr.D.Sivaraman
Standing Counsel for R2

ORDER

Heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the management.

2. The only issue that arises for consideration is computation of the period of limitation. The question is whether it should be computed from the date of dismissal of the workman or from the date of approval given by the statutory authority under Section 33(2)(b) of the Industrial Dispute Act.

3. The issue is no longer *res integra*. A learned Judge of this Court vide order dated 30.07.2021 in W.P.No.6850 of 2017 (The Management Vs. The Special Deputy Commissioner of Labour) had held as follows:-

5. The only reasoning given by the first respondent / authority for rejecting the petitioner's approval petition is that the Branch Manager has not been examined. This Court is not willing to accept the same, as even hearsay evidence is admissible. The Authority has erred in rejecting the petitioner's approval petition on this ground and hence, the order passed by the first respondent / Authority is set aside.

5. An employee can raise an industrial dispute under Section 2(A) of the Industrial Disputes Act, 1947. A reading of Section 2(A) of the Act makes it clear that an industrial dispute has to be raised by the employee within three years from

the date of dismissal. Even though an order of dismissal has been passed on a particular date, if the Approval Petition filed by the Management is pending without attaining finality, it may take effect at a retrospective date. Hence, the period of limitation prescribed under Section 2(A) of the Act will commence on and from the date of approval of the action of the Management, in confirming the order of dismissal. Otherwise, the purpose of Section 2(A) of the Industrial Disputes Act, 1947, itself will be defeated.

6. Once the Authority confirms the order passed by the Management, the order of dismissal of the employee will get emerged with the order of the Authority in the Approval Petition, and the period of limitation begins from the date of grant of approval and not prior to that date, even though the dismissal order is held to be valid. Hence, the period of limitation will run only from the date of the order in the Approval Petition, when the dismissal order is confirmed by the Tribunal/Authority/Board.

7. Similarly, the period during which the writ petition is pending shall also be excluded for the purpose of limitation.

4. I am inclined to adopt the very same approach. The Writ Petition is allowed on the above terms. The jurisdictional Labour Court is directed to number the ID filed by the workman and also dispose of the same on merits and in accordance with law within a period of six months after re-submission of the ID petition. No costs.

23.03.2023

Index : Yes / No
Internet : Yes/ No
rmi

Note: Registry to mark a copy of this order to the Labour Court, Kumbakonam.

G.R.SWAMINATHAN, J.

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