



Writ Petition No.4163 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.11.2023

PRONOUNCED ON: 4/4/2024

CORAM

THE HONOURABLE DR.JUSTICE D.NAGARJUN

Writ Petition No.4163 of 2015

C.Venkatesan

..Petitioner

VS.

1.The Presiding Officer,
Principal Labour Court,
Vellore,
Vellore District.

2.Vellore District Consumer Co-operative Wholesale Stores
rep. by its Managing Director,
no.14, Officers Line,
Vellore.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records from the first respondent, quash the order of the first respondent Labour Court dated 05.01.2015 in IA No.471 of 2014 in I.D.No.69 of 2014 as illegal, arbitrary and contrary to law and consequently direct the first respondent to restore I.D.No.69 of 2014 on its file and adjudicate the same in accordance with law on its merits.



Writ Petition No.4163 of 2015

For Petitioner : M/s.Balan Haridas

For Respondents : Mr.M.S.Palaniswamy for R2

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records from the first respondent, quash the order of the first respondent Labour Court dated 05.01.2015 in IA No.471 of 2014 in I.D.No.69 of 2014 as illegal, arbitrary and contrary to law and consequently direct the first respondent to restore I.D.No.69 of 2014 on its file and adjudicate the same in accordance with law on its merits.

2.The brief facts of the case as narrated in the affidavit filed in support of the Writ Petition, are stated below:

The petitioner was working as a Salesman in the Shop No.1 and 2 at Wallaja of the Karpagam Supermarket. According to him, consumer durable items kept for sales in the Shops, are available freely in the market, the consumers are not willing to buy the same, due to which, the stock piled



up and the same getting damaged and had to be sold for lower price, which resulted in shortage of cash. While so, inspection was carried out on 04.05.2004 and it was alleged that there was stock deficit and the petitioner was placed under suspension and was issued a show cause notice dated 06.05.2004 and was directed to pay Rs.61,896.65 along with interest within 7 days. The petitioner gave his explanation on 19.07.2004. Thereafter, an enquiry was conducted, wherein, the charges were proved and based on enquiry report, the 2nd respondent issued second show cause notice against the petitioner, to which, the petitioner gave explanation on 03.03.2005. However, the 2nd respondent vide order, dated 15.05.2006, dismissed the petitioner from service.

3. Aggrieved by the same, the petitioner filed W.P.No.22621 of 2006, which came to be disposed of by this Court vide order dated 16.10.2006, by holding the writ petition is not maintainable and the petitioner can work out his remedy by way of revision under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983. Accordingly, the petitioner filed a revision petition before the Joint Registrar of Co-operative Society, who in turn dismissed the revision. Challenging the same, the petitioner filed



W.P.No.5356 of 2008, which also came to be dismissed by this Court vide order dated 22.06.2013. Thereafter, the petitioner raised an industrial dispute vide I.D.No.69 of 2014 before the 1st respondent Labour Court. During the pendency of the said I.D., the 2nd respondent Management moved an I.A.No.471 of 2014 under Section 2A(3) r/w 11 of the Industrial Disputes Act, 1947 to try the maintainability of the dispute as preliminary issue. The 1st respondent Labour Court, vide order dated 05.01.2015 decided the preliminary issue holding that the industrial dispute raised by the petitioner is found to be barred by limitation. Aggrieved by the same, the petitioner has come forward with the present Writ Petition.

4. A detailed counter affidavit has been filed by the 2nd respondent/Management, wherein, it is stated that the petitioner cannot sell products below their MRP. He ought to get sanction from higher level. The shortage in cash is not due to sale for lesser price but due to misappropriation. The respondent issued a show cause notice dated 6.05.2004 directing the petitioner to give an explanation to the stock deficit of Rs.61,896.65/- with interest. The petitioner submitted his explanation on 19.07.2004. The enquiry report was furnished to the petitioner and



thereafter a second show cause notice dated 25.09.2004 was issued to him.

The petitioner submitted his explanation on 3.03.2005. The respondent issued notices dated 8.02.2006 and 2.03.06 to remit the amount of Rs.61,896.65/- The petitioner did not deny his liability but requested this respondent to adjust the said sum from his salary in instalments every months. The petitioner was given a chance to rectify his mistakes but he failed to be mended. Therefore this respondent by its order dated 15 05 2006 dismissed the petitioner from service.

5. The petitioner filed W.P.No.22621 of 2006 questioning the order of dismissal before this Court. The said Writ Petition was disposed of on 16.10.2006 directing the petitioner to seek his remedy before the revisional authority under section 153 of the Tamilnadu Co-operative Societies Act. The revision petition filed by the petitioner was dismissed on 13.09.2007. Again the petitioner came up before this Court in W P.No.5356 of 2008 seeking to quash the order passed by the revisional authority. The said writ petition also was dismissed by this Court on 22.06.2013. Thereafter, the petitioner raised the industrial dispute before the 1st respondent Labour Court.



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6. The petitioner is not entitled to raise an industrial dispute under section 2 A (2) of the I.D. Act. He has exhausted all the remedies available under the Tamilnadu Co-operative Societies Act and his dismissal was confirmed by this Court. Now the petitioner, cannot re-agitate the same matter under the Industrial Disputes Act before the Labour Court after a lapse of eight years. The industrial dispute is not maintainable. The Labour Court has no jurisdiction to entertain the dispute because he has chosen his remedy under the Co-operative Societies Act and lost it. Therefore, the Labour Court while deciding the preliminary issue as regards the maintainability of the dispute, has rightly held that the dispute is not maintainable, which requires no interference. With these averments, the 2nd respondent sought for dismissal of the Writ Petition.

7. Heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent and perused the entire materials available on record.

8. The main ground on which the petitioner is challenging the impugned order passed in I.A.No.471 of 2014 dated 5/1/2015 is that the



limitation of three years for raising the Industrial Dispute before the lower Court as envisaged in Section 2 A (2), 2 A (3) of the Industrial Disputes Act, 1947 does not apply to the facts of this case on the ground that the amendment came into force in the year 2010 and that the Central Government which has amended Section 2 A is not a party in this Industrial Dispute.

9. The second respondent has opposed the said submissions stating that irrespective of the fact that as to whether the Central or State Government is a party to the Industrial Dispute, the amendment which was come into force in 2010 applies to the facts of the case.

10. The petitioner was terminated from service after conclusion of the domestic enquiry on 15/5/2006. As per Section 2 A (3) of the Industrial Disputes Act, aggrieved person should raise the Industrial Dispute from the date of three years of termination of service. The relevant provision of Section 2 A (3) of the Industrial Disputes Act, runs as under:-



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“(3) Notwithstanding anything in sub-sections (1) and (2), no such 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 if such dispute is not raised in conciliation proceeding within a period of three years from the date of such discharge, dismissal, retrenchment or termination:

Provided that the Labour Court or the Conciliation Officer, as the case may be, may consider to extend the said period of three years when the applicant workman satisfies the Court or Conciliation Officer that he had sufficient cause for not raising the dispute within the period of three years.”.



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11. On going through the above provision, it is clear that the petitioner should have approached the respondent labour Court within three years from 15/5/2006, thereby, the limitation for raising the Industrial Dispute was expired in the year 2009. However, the petitioner has raised the Industrial Dispute in the year 2014. The amendment to Section 2 A of the Industrial Disputes Act in respect of limitation of raising the Industrial Dispute was brought into statute in the year 2010. Even if the limitation is taken from 2010 onwards, in the year 2013, petitioner should have approached the labour Court raising the Industrial Dispute. Therefore, since the petitioner has not raised the dispute within three years as required under Section 2 A (3) of the Industrial Disputes Act, the very registration of the Industrial Dispute No.69 of 2014 is against the provisions of the Industrial Disputes Act.

12. The labour Court in its impugned order has quoted the judgment of Calcutta High Court reported in ***CDJ 2014 Calcutta High Court 115 (SWAPNA ADHHIKARI Vs. THE STATE OF WEST BENGAL & OTHERS)***, wherein it is mentioned that Industrial Dispute has to be raised



within a period of three years from the date of cause of action as per Section 2 A (3) of the Industrial Disputes Act.

13. The other ground on which the petitioner is seeking the relief in this Court is that since the Central Government which has amended Section 2 A of the Industrial Disputes Act, is not a party in the Industrial Dispute. The limitation does not apply to the facts of this case.

14. On a perusal of Section 2 A (3) of the Industrial Disputes Act, as referred above, it does not make out any difference as to whether the said amendment applies only when the Central Government is a party to the Industrial Disputes. The Industrial Disputes Act of 1947 is a Central enactment thereby, Central Government in its wisdom has made its amendment of Section 2 (A) 3 of the said Act. Unless State Government makes an amendment specifically mentioning that the amendment of Section 2 A (3) of the Act, does not apply to the State Government, then, the submission of the learned counsel for the petitioner can be accepted to some extent. Therefore, the submissions of the learned counsel for the petitioner that limitation does not apply to the facts of the case cannot be accepted.



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15. Considering the discussion made above, the petitioner has not made out any case for interfering with the impugned order passed by the first respondent Labour Court in I.A.No.471 of 2014 in I.D.No.69 of 2014. Accordingly, this writ petition is dismissed. No costs.

4/4/2024

Index : Yes/No

NCC: Yes/No

dn/mvs.

To

1.The Presiding Officer,
Principal Labour Court,
Vellore,
Vellore District.



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Dr.D. NAGARJUN, J

dn/mvs.

Pre-delivery order made in
WP No.4163 of 2015

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