



**W.A(MD)No.973 of 2017**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 12.03.2024**

**CORAM:**

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN  
and  
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

**W.A(MD)No.973 of 2017**

**Against**

**W.P(MD)No.4269 of 2017**

**Ravikumar**

**... Appellant/Petitioner**

**vs.**

**1. The Management,  
Tamil Nadu State Transport Corporation Ltd.,  
Tirunelveli Division,  
Vannarapettai,  
Tirunelveli-627 003.**

**2. The Presiding Officer,  
Labour Court,  
Tirunelveli.**

**... Respondents / Respondents**

**PRAYER : Appeal filed under Clause 15 of Letters Patent, against  
the order passed in W.P(MD)No.4269 of 2017 dated 11.04.2017.**

**For Appellant : Mr.T.A.Ebenezer  
For R1 : Mr.D.Jebaraj**



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## **JUDGMENT**

[Judgment of the Court was made by  
**MRS.V.BHAVANI SUBBAROYAN.J.]**

Challenging the order passed in W.P(MD)No.4269 of 2017 dated 11.04.2017, the writ petitioner/workman has filed this appeal.

2. The appellant was working as a driver in the 1<sup>st</sup> respondent Corporation from 04.12.1996. While he was working in Thoothukudi Depot, he was dismissed from service on 04.04.2005 on the charge of unauthorised absence from 24.08.2004 to 10.10.2004. On 31.07.2007, the Management accorded approval for the appellant's dismissal from the Joint Commissioner of Labour (Conciliation), Chennai. However, the appellant raised an industrial dispute before the Labour Officer, Thoothukudi, on 02.01.2014, in which, a failure report was given on 25.03.2014. Thereafter, the appellant filed an industrial dispute before the 2<sup>nd</sup> respondent in I.D.No.64 of 2014 which was dismissed on the sole ground of limitation by applying Section 2A(3) of Industrial Disputes Act introduced by the provisions of industrial disputes (Amendment) Act 2010.

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3. Challenging the said order of the 2<sup>nd</sup> respondent, the appellant filed writ petition, contending that the limitation prescribed in 2010 amendment is not applicable to him, since he was dismissed from service before the said amendment and further the amended provisions of Section 2A(2) and 2A(3) of the Act does not repeal Section 10 of the Act, as such, Section 10 remains as its is and therefore, the petitioner can seek remedy either under Section 10 of Industrial Disputes Act or under the amended provisions of Sections 2A(2) of the Act and this aspect was failed to consider by the Labour Court. It was further contended that the said amendment will not take away the right of individual workman prevailing before the amendment, unless it specifically states that the individual workman can raise industrial dispute only before the Labour Court and cannot raise the dispute under Section 10 of the Act. It was also contended that since the legislative enactment is meant for the benefit of the workmen, the amended provisions of Section 2A(2) and Section 2A(3) should not be interpreted against the interest of workmen and considering the welfare legislation of the Act, the claim of the appellant cannot be rejected merely on the ground of delay.



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4. The learned Single Judge after considering the decision relied upon by the appellant's counsel in **S.Gunasekaran and others v. The Government of Tamil Nadu in W.P.Nos.1949 and 7558 of 2010** and the judgment of the Hon'ble Supreme Court in **T.Barai v. Henry Ah Hoe** reported in **(1983) 1 SCC 177**, referred to in *S.Gunasekaran's case*, has held that the proviso to Article 254(2) empowers the Union parliament to repeal or amend a repugnant State law even though it has become valid by virtue of President's assent. As regards the contention of the appellant based on Section 10 of the Act, the Writ Court held that the appellant's application did not fall under Section 10, whereas it was filed under Section 2(A)(2) of the Act. So saying, the learned Single Judge dismissed the writ petition. Hence this writ appeal.

5. Learned counsel appearing for the appellant submitted that the learned Single Judge failed to consider that the Parliament enacted the law amending the Industrial Disputes Act in repugnant to the State Law which is already having the assent of the President. Since the Industrial Disputes Act is a welfare legislation, the benefit of no limitation extended by the State Law should not be curtailed by the subsequent Central Law



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by fixing three years limitation against the interest of workmen. It is the further contention of the appellant that before making amendment fixing the cut shorted limitation, the aggrieved labours should have been given reasonable time to approach the Labour Court, which the Legislators failed to consider, thereby, the object of the Industrial Disputes Act is defeated by working against the interest of the workmen. However, Courts which deal with the power of judicial review, ought to have dealt with the same to save the interest of the workmen.

6. Learned counsel appearing for the appellant further submitted that the Writ Court failed to consider that the dictum of law based on Article 254 of the Constitution of India that whether the Union Law if prior or later in time, the Union Law will prevail and State Law shall to the extent of repugnancy be void, could not be made applicable to the facts of this case. In this regard, learned counsel submitted that even assuming that the Union Law will prevail over the State Law, the Union Law should have repealed or amended the State Law extending no time limit, but in this case, there is no such repeal or amendment as stipulated by Article 254 (2) of the Constitution of India. It is also submitted that



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the said amendment by the Parliament relates to Welfare of the Labours which is admittedly in the concurrent list, and therefore, the Parliament should have redressed all the labours who are waiting beyond the limitation period of three years, by fixing a reasonable period to approach the Labour Court, otherwise, the interest and welfare of the Labours would be prejudiced. Hence, the learned counsel seeks interference of this Court in the impugned order.

7. Per contra, learned counsel for the 1<sup>st</sup> respondent submitted that the Labour Court as well as the Writ Court have dealt with all the contentions of the appellant elaborately and have passed well considered orders rejecting the claim of the appellant. However, without advertng to the legal postion on the point of limitation, still the appellant harping on the said point, has filed this appeal. Thus, the learned counsel prayed for dismissal of this writ appeal.

8. We have heard the learned counsel for the appellant as well as the 1<sup>st</sup> respondent.



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9. As regards the contention of the appellant that the benefit of no limitation prescribed by the State Law cannot be curtailed by the Central Law, the Writ Court has considered the decision of this Court relied upon by the appellant in **S.Gunasekaran and others v. The Government of Tamil Nadu in W.P.Nos.1949 and 7558 of 2010** and also the judgment of the Hon'ble Supreme Court in **T.Barai v. Henry Ah Hoe** reported in **(1983) 1 SCC 177**, referred to in S.Gunasekaran's case. Though the Writ Court extracted relevant portion of T.Barai's case to hold that whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void, at the risk of repetition, it is extracted below for better appreciation of the issue involved in this appeal:-

*"15. There is no doubt or difficulty as to the law applicable. Article 254 of the Constitution makes provision firstly, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is repugnant to a Union law relating to that subject, then, **whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void.** To the general rule laid down in Clause*



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(1), Clause (2) engrafts an exception viz. that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to Clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the Presidents assent. Parliament may repeal or amend the repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the same matter. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together, e.g., where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed. In all such cases, the law made by Parliament shall prevail over the State law under Article 254(1)....." (Emphasis added). It is not clear as to how the said judgment will have any assistance to the respondent State when there is no repugnancy shown and that the two laws can possibly stand together. Further, the case referred to related to imposition of penal provisions and therefore, invocation of Article 21 arose in that case."



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10. Countering the contention of the appellant that before making amendment fixing the cut shorted limitation, the Parliament should have granted reasonable time to the aggrieved workmen to approach the Labour Court and that since the appellant was dismissed even prior to such amendment, the amendment will not be applicable to him, it could be seen that there is no exceptional clause in the Amendment Act 2010, to the dismissal or retrenchment of workmen happened prior to such amendment, as such, though there is no explicit provision of retrospective effect in the Amendment Act in 2010, but such retrospective effect of amendment is implicitly stated in the Amendment Act because of omission of such exceptional clause. Therefore, the amendment in 2010 will take effect both prospective and retrospective.

11. Coming to the next contention of the appellant that the Union Law should have repealed or amended the State Law extending no time limit, as held by the Writ Court, the proviso to Article 254(2) empowers the Union parliament to repeal or amend a repugnant State law even though it has become valid by virtue of President's assent and the Parliament may repeal or amend the repugnant State law, either directly or



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by itself enacting a law repugnant to the State law with respect to the same mater. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. Therefore, the contention to the contra cannot be accepted.

12. Regarding the contention of the appellant that before making such amendment in 2010 fixing limitation of three years, the aggrieved persons should have been given reasonable time to approach the Labour Court, the appellant ought to have challenged the vires of the Amendment Act to seek such relief. Be that as it may, the appellant was dismissed on 04.04.2005 which was approved on 31.07.2007, but he has chosen to raise industrial dispute only on 15.09.2014 after a lapse of 7 years. Had he approached the Conciliation Officer and the Labour Court promptly at least with considerable delay, the question of limitation would not have arisen, but the appellant has slept over the matter for more than 7 years. Both the Labour Court as well as the Writ Court have extensively gone into the contentions of the appellant and also considered the legal position regarding limitation and rightly dismissed the claim of the



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appellant on the ground of limitationm by passing reasoned orders.

Therefore, we are unable to take a different view.

13. Thus, concurring with the orders passed by the Labour Court and the learned Single Judge, this Writ Appeal is dismissed. No costs.

(V.B.S.J.,)

(K.K.R.K.J.,)

12.03.2024

Index :Yes / No  
Neutral Citation :Yes / No  
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To

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2. The Presiding Officer,  
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V.BHAVANI SUBBAROYAN, J.

and

K.K. RAMAKRISHNAN, J.

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**JUDGMENT MADE IN**  
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