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W.P.No. 2955 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.02.2025

Pronounced on : 28.02.2025

CORAM

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 2955 of 2020

R.Kariamal,
S/o. Ramasamy,
6th Ward, 209A, West Street,
Govindanagaram,
Theni – 625 517.

... Petitioner

Vs.

The Management of Raj T.V.Network Ltd,
No.32, Poes Road II Street,
Teynampet,
Chennai – 600018.

... Respondent

Prayer in W.P.No.2955 of 2020

To issue writ, order or direction and in particular a Writ of Certiorarified Mandamus calling for the records relating to the Award dated 04.12.2019 made in I.D.No. 92 of 2018 with I.A.No.3 of 2019 passed by the Hon'ble 1st Additional Labour Court, Chennai and quashing the same, consequently directing the Respondent herein to reinstate the Petitioner with continuity of service, back wages and all other attendant benefits and to pass such further or other orders as this Hon'ble Court may deem fit.



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Appearance of Parties:

For Petitioner : Mr.K.Elango

For Respondent : M/s. K.Harishankar

JUDGMENT

Heard.

2. The petitioner, a workman, has filed this writ petition challenging the award passed by the First Additional Labour Court, Chennai, in ID No. 92/2018 dated 04.12.2019, as well as the order in I.A. No. 3/2019 issued on the same date. The award was decided against the workman, and his application in I.A. No. 3/2019, seeking to summon documents from the respondent management, was also dismissed. Upon filing of the writ petition, notice was issued to the respondent on 07.02.2020. In response, the respondent management has entered an appearance through counsel.

3. The workman's case is that he was employed as a driver, having joined service on 27.09.1999. His services was terminated illegally on 18.07.2005. This termination was subsequently adjudicated by the Labour Court in I.D. No. 15/2007. By an award dated 12.06.2013, the Labour Court held that the termination was arbitrary and illegal, directing the workman's reinstatement



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with continuity of service and 50% back wages. Following the award, the petitioner repeatedly sought reinstatement. However, after some correspondence, the respondent, instead of reinstating him in Chennai, issued an order dated 05.05.2014, directing him to report for duty at their branch office in Dadar, Mumbai, purportedly in compliance with the award, while also stating that the awarded sum of Rs.3,48,500/- would be provided to him.

4. On 05.05.2014, the workman sent a letter stating that the amount offered by the respondent was not in accordance with the benefits granted under the award. He also sought clarification on whether accommodation would be provided to him in Mumbai. Upon reaching Mumbai, he discovered that no employment was actually offered to him and that the transfer was merely a punitive measure. He proceeded to Mumbai solely without prejudice to his legal rights to challenge the management's action.

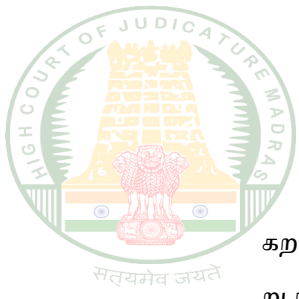
5. Subsequently, the workman filed a claim statement in C.P. No. 403 of 2014 before the Labour Court, seeking back wages as per the award, along with wages accrued thereafter, totalling Rs.8,11,500/-. In response, the management filed a counter statement, contending that the workman had remained absent without intimation and, despite being directed to report for duty, had not done so. He was not employed anymore, and he had voluntarily abandoned his employment. In response to these allegations, the workman was



compelled to send a letter dated 25.05.2016, stating that he was not given employment in Mumbai as there was no vehicle available there and that the officers had instructed him to return to Chennai. He had also previously written a letter on 15.05.2014, requesting employment either in Chennai or at any location within Tamil Nadu.

6. Subsequently, the workman raised an industrial dispute under Section 2A through his letter dated 03.05.2017. In response, the respondent submitted a reply on 17.07.2017. The substance of the management's reply, as presented before the Labour Officer, were summarized in the failure report issued by the officer on 07.12.2017, which stated as follows:

"எதிர்மனுதாரர் நிர்வாகம் மனுதாரர் கூறும் பல்வேறு கூற்றுக்களை மறுப்பதாகவும் மனுதாரர் எதிர்மனுதாரர் நிறுவனத்தில் மும்பையில் ஓட்டு நராக பணியில் சேர்ந்தவுடன் முன்பணமாக ரூ. 4,250/- முன் கூட்டியே சம்பளத்தொகையாக அன்றாட செலவினங்களை நேர் செய்துகொள்ள கொடுக்கப்பட்டதாகவும் அதன் பின் நீதி மன்ற உத்தரவு படி அவருக்கு ரூ.3,49,500/- வங்கி காசோலையாக கொடுக்கப்பட்டது. மனுதாரர் மேற்சொன்ன தொகையினை பெற்றுக்கொண்ட பின்பு மனுதாரர் அவர் தனது பணியிலிருந்தும் பொறுப்புகளில் இருந்தும் கடந்த 16.05.2014 முதல் எவ்வித தகவலும் இன்றி அவர் தலைமறைவாக இருந்ததாகவும் ஆகவே வே மனுதாரரின் தவறான நடத்தைக்கு எதிராக கடந்த 24.05.2014 ஒரு குற்றச்சாட்டு வழக்கு வழங்கப்பட்டதாகவும் மனுதாரர் அந்த குற்றச்சாட்டுக்கு எந்தவித மன்னிப்பும் கோரவில்லை என்றும் எனவே மனுதாரர் கூறிய காரணங்கள் எதுவாக இருப்பினும் அவர் தன்னிச்சையாக தனது பணியிலிருந்து நின்று விட்டார் என்றும் எனவே மனுதாரர் தன்னிச்சையாக பணியினை விட்டுவிட்டதால்தான் நிர்வாகம் அவரை கடந்த 16.05.2014 நீக்



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கறவு செய்ததாகவும் எனவே மனுதாரரின் மனுவினை தள்ளுபடி செய்யுமா
று நிர்வாகம் தனது பதிலுரையில் தெரிவித்துள்ளது. ”

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7. Meanwhile, the Labour Court, by its order dated 30.01.2018, allowed the claim petition in C.P. No. 403/2014. The court awarded a sum of Rs.5,10,910/-, and after deducting the amount already paid, determined that the workman was entitled to receive the balance amount of Rs.1,61,410/-. The Labour Court limited its scope to computing the amount in accordance with the benefits granted under the earlier award. In paragraph 11 of its order, it observed as follows:

“11..... The question of the petitioner voluntarily abstained from attending duty once again from 16.5.2014 as adverted on the side of the respondent, in Ex.P11 and he was in alternative employment are all the issues to be rake up before the court in any industrial dispute to be instituted by the petitioner for his necessary relief on reinstatement.”

8. Subsequently, based on the failure report, the workman filed a claim statement dated 20.04.2018 before the Labour Court, which was registered as I.D. No. 92/2018, and notice was issued to the respondent. The respondent entered an appearance and filed a counter statement on 10.07.2018. During the proceedings, the workman examined himself as PW1 and produced 21 documents, marked as Ex.W1 to Ex.W21. However, the management neither presented any witnesses nor submitted any documents in support of its case.

Relying on the replies sent by the management, which were marked as evidence

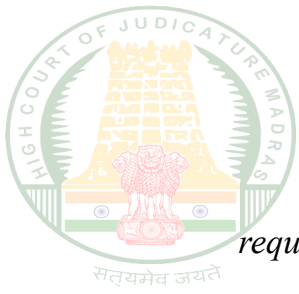


by the workman, the Labour Court concluded that the case did not involve termination but rather voluntary abandonment of service. On this basis, the Labour Court issued an award dated 11.09.2018, dismissing the industrial dispute.

9. Aggrieved by the award, the workman filed a writ petition before this Court in W.P. No. 27033 of 2018, challenging the decision of the Labour Court. After issuing notice to the respondent, this Court allowed the writ petition. By an order dated 20.02.2019, the Court quashed the award and remitted the matter for fresh consideration. In doing so, the Court observed as follows:

“8. When the petitioner was present with his counsel on the previous occasions and the Management was set exparte on 05.09.2018 and the matter was posted for orders on 11.09.2018, the Labour Court ought to have heard the petitioner before passing the award. Unfortunately, from the Daily Status, this Court is unable to discern as to why the Labour Court has hurriedly passed the award without hearing the petitioner. Nothing is stated in the Daily Status about the absence of counsel or the petitioner himself, on 11.09.2018. In the absence of such details, this Court has come to an irresistible conclusion that the First Additional Labour Court has passed an award in violation of the established procedure, by not hearing the petitioner, when the petitioner has been diligently prosecuting the case.

9. When the Labour Court has particularly chosen to pass an adverse award, it ought to have provided opportunity of hearing to the petitioner before taking a decision. Unfortunately, the Labour Court has passed an award as if the petitioner was absent and he need not



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require to be heard. Such a procedure adopted by the Labour Court is per se violative of the established principles of natural justice and therefore, the award passed by the First Additional Labour Court cannot be sustained even for a second.

10. In view of the above, the impugned award passed by the First Additional Labour Court, Chennai, dated 11.09.2018, in I.D.No.92 of 2018, is hereby set aside. The matter is remanded back to the First Additional Labour Court for fresh consideration. The First Additional Labour Court is directed to pass an award after giving due and reasonable opportunity to the petitioner. The First Additional Labour Court is also directed to expeditiously dispose of the I.D.No.92 of 2018, but not later than six months from the date of receipt of copy of this order. It is made clear that in case, the Management wants to file any application seeking to set aside the ex-parte order, the same may be considered by the Labour Court on its merits and in accordance with law.”

10. Following the remand by this Court, when the matter was taken up for reconsideration, the respondent examined MW1, S. Suresh, Manager-Administration, as their witness. During his cross-examination, he stated that the Mumbai office had 5 to 6 vehicles, whereas the workman had maintained that there were no vehicles at the Mumbai office. In light of this contradiction, the workman was compelled to file an application in I.A. No. 3/2019, seeking a direction for the respondent to produce copies of the registration certificates of all vehicles owned by them at their Mumbai office as of May 2014. In response, the respondent filed a counter affidavit dated 12.10.2019 and submitted three



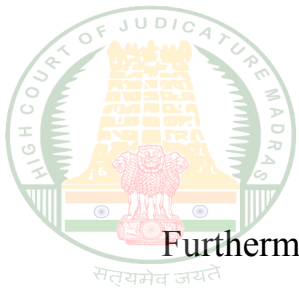
documents. In paragraphs 2 and 3 of the counter affidavit, it was stated as

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“2. I state that in May 2014 the Respondent Company owned a vehicle in Mumbai office in MMV category: Its registration number is TN07 AC 2332. The Registration Certificate of the said vehicle is filed as Document 1. The said Vehicle’s body was built in Silvassa and was used by Respondent Company’s Mumbai office. The invoice issued by the company which built the body of the vehicle TN07 AC 2332 is filed as Document 2.

3. I state that Mr.Ishwar Ramasami has joined the Respondent’s Company in the year 2009, and is still in service. He is working as Vice President (Sale and Marketing) in the Respondent Company’s Mumbai office. He was owning a car since 2010 having registration number MH04 EQ 8461. The Registration Certificate of the said vehicle is filed as Document 3. The Respondent Company provides him with a driver as a part of arrangement between them.”

11. The workman filed a reply affidavit dated 23.10.2019, contending that the three documents submitted by the respondent were irrelevant to the case. He stated that the vehicle registration numbers mentioned in Documents No. 1 and 2 belonged to vehicles registered in Tamil Nadu, which could not have been legally operated in Mumbai without a change of registration. Regarding the third document, the workman asserted that it was fabricated, as it lacked the signature of both the owner and the registering authority.



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Furthermore, although the management claimed that Vice President Eshwar Ramaswamy at the Mumbai office commuted by electric train and did not use a car—citing that the cost of using a car from Thane West to Dadar West would amount to Rs. 300 per day for petrol—the workman contended that this statement was implausible and unconvincing.

12. Notably, the Labour Court did not pass any order on the I.A. The workman submitted his written arguments on 19.11.2019, while the respondent filed their written arguments in December 2019. The primary contention raised by the management was that the dispute was time-barred under Section 2A(3) of the Industrial Disputes Act. The management contended that the workman had been reinstated on 12.05.2014 pursuant to the earlier award and that he had subsequently written to the management on 15.05.2014 (Ex.W8) demanding reinstatement. According to them, the cause of action for raising a dispute arose from that date. However, the workman only approached the Labour Officer on 03.05.2017. Since more than three years had elapsed from the date of the alleged cause of action, the management contended that the dispute was not maintainable.

13. The Labour Court further observed that after leaving the Mumbai office, the workman remained silent until he received the termination order dated 15.07.2017, which terminated his service with effect from 16.05.2014.



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It found that the workman had not raised any industrial dispute during this period, citing only the reason that he was awaiting an order from the respondent management for employment in Chennai. Based on this, the Labour Court accepted the respondent management's contention that the workman had voluntarily abandoned his service. It also rejected the workman's argument regarding the computation of the limitation period. In paragraphs 15 and 17, the Labour Court arrived at the following conclusions:

“15. Further the claim of computation of the limitation as alleged by the petitioner is also not acceptable by this court. Though both counsels have not disputed about the existence of limitation as per Section 2A(3) for filing petition u/s 2(A), this court has got reservation about the correctness of the binding force of the judgment of the Hon'ble High Court of Madras reported in 2017 LLR Page 704 in view of the Judgment of the Hon'ble Apex Court which holds that the industrial disputes have to be adjudicated only on merits and the Limitation Act is not at all applicable to an Industrial Disputes Act. Further the factual aspects relied by the petitioner to justify the commencement of the industrial dispute from the date of receipt of the termination order dated 15.7.2017 is concerned cannot be accepted as the order of termination is given with effect from 16.5.2014 from which date the petitioner is admittedly absent from duty. Even accepting the contention of the existence of limitation, if these factual aspects are concerned, the petitioner shall be deemed to be dismissed from the date 16.5.2014 as it is a case of allegation of abandonment as misconduct and therefore also he cannot maintain the above petition.



16.

17. *The respondent also argued about the conduct of the petitioner in not raising any issue when C.P.No.403/2014 was pending before this court about the dissatisfaction of the petitioner for his reinstatement at Mumbai and his claim for reinstatement at Chennai and his conduct of keeping silent till the written order of termination was passed by this court to show the lack of bonafides on the side of the petitioner."*

14. Regarding the issue of ordering production of additional documents beyond those voluntarily submitted by the respondent management, the Labour Court, in paragraph 19, provided the following reasoning:

19.*This court is not inclined to accept the same because non availability of any vehicle alone cannot be a valid reason on the side of the petitioner to abandon the service. Further if really the petitioner was aggrieved by the said order of reinstatement, he could have raised objections even in the initial stage by filing an execution petition in the said I.D. Therefore in order to maintain this I.D., those documents are absolutely not necessary and this court is also inclined to accept the arguments of the respondent that the respondent which is running the press and is also having the office at Mumbai will have all chances of its officers being taken through vehicles to the office and the residence and this situation alone cannot be claimed to justify the conduct of the petitioner to challenge the order of termination passed by the respondent. Hence the said petition in I.A.No.3/2019 is also liable to be dismissed as these documents will not in any way be helpful*



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to adjudicate the actual dispute between the petitioner and the respondent.”

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15. In his deposition PW1, the workman categorically stated that the management had issued a show cause notice on 02.08.2014, to which he submitted his explanation on 06.08.2014. However, before issuing the termination order dated 15.07.2017, which was made retrospectively effective from 16.05.2014, the management did not conduct any inquiry, rendering the termination illegal and arbitrary. He further contended that since the termination was not preceded by notice pay and compensation as required under Section 25-F of the Industrial Disputes Act, it was illegal. This evidence was recorded before the first award was passed, which was later set aside, and the matter was remanded for reconsideration.

16. Following the remand, the Manager-Administration was examined on behalf of the management. In his proof affidavit submitted in lieu of chief examination, he made the following statements in paragraphs 3 and 4:

“3. I state that on 12.05.2014 the Petitioner joined the branch office of the Respondent in Mumbai and was paid Rs.4250/- towards an advance for May 2014 salary to meet the incidental expenses. Thereafter, to the shock and surprise of the Respondent the Petitioner left the office without informing anyone and stopped reporting to duty from 16.05.2014. The Respondent sent a letter dated 24.05.2014 to the Petitioner informing about his continuous



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unauthorized and uninformed absence from duty and asked him immediately report to duty, explaining his reasons for his absence.

4. The Petitioner on 05.6.2014 sent a letter making false allegations on the Respondent that, he was not given any work in Mumbai and unless he was given job in Tamil Nadu he will not be reporting to duty. The Respondent again sent a remainder letter to the Petitioner on 14.06.2014 informing the Petitioner to report to duty immediately. Thereafter, the Respondent issued a Charge memo to the Petitioner asking him to explain the reasons for the continuous unauthorized absence and violation of Code of Conduct. The Petitioner failed to give any satisfactory reply to the Respondent and continued to abscond from service. Therefore, on 15.07.2017 the Respondent issued a termination letter to the Petitioner, terminating him from service with effect from 16.05.2014, for voluntarily abandoning the service.”

17. In the cross-examination, he confirmed his above stand as follows:-

”மனுதாரர் தனக்கு தமிழ்நாட்டிலேயே மீண்டும் பணியமர்த்துமாறு அனைத்து கடிதத்திலும் கேட்டிருக்கிறார் என்பது சரிதான். எங்கள் கடிதத்திற்கு பதில் சொல்லாமல் அவராகவே தொடர்ச்சியாக இந்த கடிதங்களை அனுப்பியிருக்கிறார் . 14.6.2014 தேதியிட்ட கடிதத்திற்கு அப்போது பதில் வரவில்லை . 17.6.2014 தேதியிட்ட மனுதாரரின் பதிலை வாங்கியதாக சொல்லியிருக்கிறோம் என்றால் சரியல்ல , அது அவருடைய தனிக்கடிதம். 2.8.2014 ல் தொசாஆ 12 கொடுத்தோம் என்றால் சரிதான். அந்த குற்றச்சாட்டு குறிப்பாணைக்கு தொ சா ஆ 13 பதில் கொடுத்தார் என்பது சரிதான் . இதை தொடர்ந்து மனுதாரரை பணிநீக்கம் செய்து விட்டோம். விசாரணை வைக்கவில்லை என்பது சரிதான். அவர் பணியில் இருந்து வந்துவிட்டதை ஒப்புக்கொண்டதினால் விசாரணை வைக்கவில்லை .



15.7.2017 ல் தான் மனுதாரரை பணிநீக்கம் செய்தோம். இது தொழிற்சாலை
ராஜா சமரச அதிகாரி முன்பு இருக்கும்போது போட்டதுதான்.”

18. The management, in its counter statement dated 10.07.2018, admitted that the termination order was issued based on the alleged abandonment of service and that no inquiry was conducted prior to the termination. Aware of this lapse, the management made the following plea in paragraph 10:

“10. The Respondent humbly submits that it has not violated the principles of natural justice by not conducting a domestic enquiry. However, in the event, this Hon’ble Court comes to the conclusion that a domestic enquiry ought to have been conducted before terminating the Petitioner, the Respondent prays that this Hon’ble Court may permit the Respondent to conduct a de novo enquiry before this Hon’ble Court to justify the reasons for terminating the Petitioner.”

19. Aware that their counter pleadings might be insufficient, the management also sought liberty to file an additional counter if necessary, as stated in paragraph 9 of the counter statement. During the first round of adjudication, only the workman deposed as PW1 on 21.08.2019. In his cross-examination, he was confronted with a suggestion that he had taken no steps for three years to secure reinstatement. However, up to this stage, there was neither a specific pleading nor evidence regarding the invalidity of the dispute due to limitation. Even when the Labour Court initially passed the award on 11.09.2018 in I.D. No. 92/2018—which was later set aside by this Court on



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20.02.2019—it primarily addressed the issue of whether the workman had voluntarily abandoned his service and the fact that no industrial dispute had been raised for nearly three years. At that stage, there was no reference to the limitation prescribed under Section 2A(3) of the Industrial Disputes Act, introduced through the central amendment.

20. Following the remand order, no additional pleadings were filed by the respondent concerning the alleged limitation under Section 2A(3) of the Industrial Disputes Act. It was only in their written arguments, dated Nil, December 2019, that the respondent raised the issue for the first time, contending that the dispute was time-barred under Section 2A(3). In paragraph 10 of their written arguments, the respondent asserted that even if it were assumed that the management had not provided employment to the workman, he had failed to approach the Labour Court within the three-year limitation period prescribed under Section 2A(3). Under these circumstances, without conducting a detailed examination of the issue, the Labour Court accepted the management's stand and dismissed both the reference and the application for the production of documents.

21. In light of the above, three issues arise for consideration by this Court:



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- 1. Whether the dispute is barred by limitation under Section 2A(3) of the Industrial Disputes Act, as introduced by the Central amendment?*
- 2. Whether the workman had abandoned his employment, thereby disentitling him to any relief in the dispute?*
- 3. If the dispute is maintainable and the impugned award is held to be wrong, what relief the workman is entitled to?*

22. Admittedly, the workman filed his claim statement in I.D.No. 92/2018 on 20.04.2018 under Section 2A(2) of the Industrial Disputes Act, as introduced by the Tamil Nadu Amendment Act. The following statements from paragraph 8 of the workman's claim statement are relevant and may be extracted:

“8. The Petitioner states that thereafter, he found no other way than to raise an Industrial Dispute before the Labour Officer-3, Chennai 600 108, on 03.05.2017 under Section 2-A of the I.D.Act. Since the Management did not reinstate the Petitioner, the conciliation ended in a failure and the authority gave his report on the failure of conciliation on 07.12.2017. The Petitioner who is unemployed found it extremely difficult on various counts including financial inability to again approach the Labour Court....”

23. It is essential to refer to the historical evolution of an individual workman's right to seek adjudication of their non-employment without his cause being espoused by a substantial section of workmen from the same establishment. Initially, under the Industrial Disputes Act, all disputes were

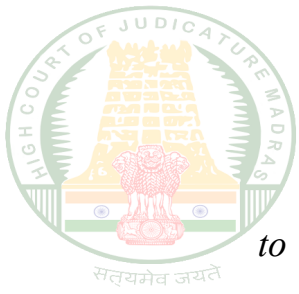


treated as collective disputes in accordance with Section 2(k) of the ID Act.

Following the failure of conciliation proceedings, the government had the discretion to refer the matter for adjudication under Section 10(1) of the Act upon receiving the failure report from the conciliation officer under Section 12(4) of the Act. If an individual workman's dispute was not supported by other workmen, it remained an individual dispute rather than a collective one, thereby limiting the government's power to make a reference. Consequently, individual workers were often unable to directly approach Labour Courts for adjudication of their non-employment, leading to significant hardship for many affected workers. Top of Form

24. The Supreme Court, in its judgment in *Bombay Union of Journalists v. The State of Bombay*, reported in AIR 1964 SC 1617, held that a dispute that is not sponsored by the workmen of the establishment remains an individual dispute, and any reference made by the Bombay government in such a case was illegal. Following this decision, Parliament amended the Industrial Disputes Act and introduced Section 2A and 2A(1) , which reads as follows:

“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



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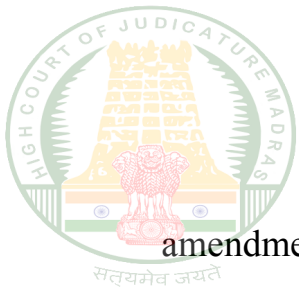
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to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.”

The govt. under Section 10(1) has to refer the dispute for adjudication by an appropriate labour court. Even at that time of the reference being issued, both State and Central governments have refused several disputes being sent for adjudication.

25. This amendment eliminated the requirement for a workman to secure the support of other workers to have his individual non-employment adjudicated by the Labour Court. This amendment was brought in by Central Act 35/1965 w.e.f. 1.12.1965. Notwithstanding this amendment, the workman was still required to approach the Conciliation Officer regarding his non-employment. If conciliation efforts failed, a report—known as the Conciliation Failure Report—had to be sent to the government under Section 12(4) of the Industrial Disputes Act. The Government, under Section 10(1), was then responsible for referring the dispute to an appropriate Labour Court for adjudication. Even after the introduction of this process, both State and Central Governments, on multiple occasions, refused to refer several disputes for adjudication.

26. To address this issue, the Tamil Nadu Legislature enacted the Industrial Disputes (Tamil Nadu Amendment) Act, 1981, proposing an



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amendment to Section 2A by introducing Subsection (2). This amendment allowed a workman, after the failure of conciliation, to directly approach the jurisdictional Labour Court for adjudication of his dispute without requiring a reference order under Section 10(1). To overcome the central law the amendment was sent for the assent of the President of India. The President granted his approval on 25.06.1988. Consequently, the amendment was proposed in 1981, it came into effect only on 01.11.1988 and was codified as *Tamil Nadu Act 5 of 1988*. Section 2 of *Tamil Nadu Act 5 of 1988*, which introduced Subsection (2) to Section 2A, reads as follows:

“Amendment of Section 2-A, Central Act, XIV of 1947 – In the Industrial Disputes Act, 1947 (Central Act XIV of 1947) (hereinafter referred to as the principal Act) section 2-A shall be re-numbered as sub-section (1) of that section and after the said sub-section (1) as so renumbered, the following sub-section shall be added, namely:-

“(2) Where no settlement is arrived at in the course of any conciliation proceeding taken under this Act in regard to an industrial dispute referred to in sub-section(1), the aggrieved individual workman may apply, in the prescribed manner, to the Labour Court for adjudication of such dispute and the Labour Court shall proceed to adjudicate such dispute, as if, such dispute has been referred to it for adjudication and accordingly all the provisions of this Act relating to adjudication of industrial disputes by the Labour Court shall apply to such adjudication.”



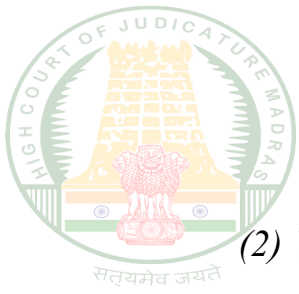
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27. Following the amendment, the Tamil Nadu Government framed Rule 25-B under the Tamil Nadu Industrial Disputes Rules, 1958, thereby implementing the provisions of the Act. Rule 25-B, issued through G.O. (Ms) No. 505, Labour and Employment Department, dated 15.03.1989, reads as follows:

“25-B. Application to Labour Court by workmen, - Where no settlement is arrived at in the course of any conciliation proceeding taken in the case of an industrial dispute referred to in sub-section (1) of section 2-A, the Conciliation Officer shall send an intimation to the aggrieved workman with a copy marked to the employer, the Commissioner and Secretary to Government, Labour and Employment Department, Madras-9 and to the Commissioner of Labour, Madras-6.

(2) On receipt of such intimation, the aggrieved individual workman may apply in Form C-1 to the Labour Court having jurisdiction over the area for adjudication of such dispute. Such application shall be in duplicate and filed before the Labour Court, either personally or by registered post. A copy of the intimation received from the Conciliation Officer under sub-rule (1) shall be filed along with application.”

28. Thus, with the President’s assent, the State amendment became law in Tamil Nadu, per Article 254(2) of the Constitution, which states as follows:



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(2) *Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:*

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

29. Even after the Tamil Nadu amendment and the enactment of the corresponding rule, the old procedure remained applicable to industries where the "appropriate Government" under Section 2(a) of the *Industrial Disputes Act* was the Central Government. In such cases, workmen were still required to approach the Conciliation Officer, and if conciliation failed, the failure report would be sent to the Central Government, which continued to exercise its power under Section 10(1) by referring the dispute to the appropriate Central Government Industrial Tribunal-cum-Labour Court. As a result, the procedure for adjudicating individual non-employment disputes varied depending on the industry's nature and the appropriate Government's jurisdiction. The Tamil Nadu amendment, being a progressive legislative measure, was subsequently adopted by other states, including Andhra Pradesh.



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30. Even 45 years after the introduction of Section 2A, the Central Government continued the procedure of reference for individual disputes. This practice remained unchanged even after the Tamil Nadu amendment, which introduced Section 2A(2) and had been in effect for over 22 years. Eventually, in 2010, the Central Government enacted a long-overdue amendment to the *Industrial Disputes Act*. The Central Amendment Act 24 of 2010, enacted on 18.08.2010, received the President's assent on the same day. Through Section 3 of this amendment, Section 2A of the *Industrial Disputes Act* was modified by introducing sub-sections (2) and (3). The amended Section 3, introducing Sections 2A(2) and 2A(3), reads as follows:

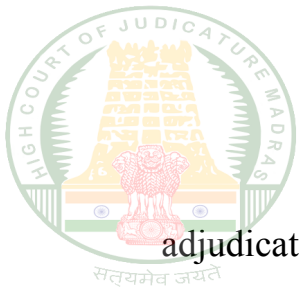
“3. Section 2A of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:- “(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of three months 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).”

31. The Central Amendment Act 24 of 2010, which introduced Sections 2A(2) and 2A(3) into the *Industrial Disputes Act*, was officially notified by the Central Government to take effect from 15.09.2010. As a result, the requirement of a reference by the Central Government under Section 10(1) was dispensed with, and a three-year limitation period for raising disputes related to individual non-employment under Section 2A was introduced. This amendment applied specifically to industries where the appropriate government is the Central Government. With this change, Parliament also removed the requirement of obtaining a conciliation failure report from the Conciliation Officer as a prerequisite for a workman to directly approach the Labour Court.

32. The differences between the Tamil Nadu amendment of 1988 and the central amendment of 2010 are notable. In the Tamil Nadu amendment, the requirement for a reference from the central government was eliminated. However, a worker still needs to approach a Conciliation Officer first, and only after receiving a failure report can they proceed to the labour court for



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adjudication. In contrast, the central amendment removed only the reference procedure outlined in Section 10(1). While approaching the Conciliation Officer remained essential, the timeline for this process was limited to 45 days. Furthermore, the outcome of the conciliation—whether it results in failure or success—is no longer a prerequisite to moving forward, as sub-section (3) introduces a three-year time limit as a limitation. The Industrial Disputes Act's preamble clearly states that the objective of the Act is to resolve industrial disputes through two methods: conciliation and adjudication. While the Tamil Nadu amendment upholds conciliation as an essential element for solving the dispute, the central amendment has largely eliminated the requirement for conciliation to reach a conclusive outcome.

33. Many modern legislations now encourage alternative (“appropriate”) dispute resolution (ADR) as a preferred method for resolving disputes. Some laws have even made mediation mandatory before initiating legal proceedings, such as the Commercial Courts Act, which requires mediation before filing a suit. Similarly, Family Courts are obligated to conduct conciliation before proceeding to trial. However, the Central Amendment to the *Industrial Disputes Act* has virtually eliminated conciliation in individual disputes by imposing a three-year limitation period under Section 2A(3). This contradicts the broader trend of promoting negotiated dispute resolution. It is relevant to note that even after the Central Amendment if a trade union espouses an individual workman's



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case and the Conciliation Officer issues a failure report, the Central Government alone retains the power to order a reference under Section 10(1) to an appropriate Tribunal. In such cases, no limitation period is prescribed, further highlighting the inconsistency in the legal framework.

34. Recognizing the distinction between Section 10(1) and Section 2A of the *Industrial Disputes Act* under the central framework, the Supreme Court, in its decision in *Prabhakar v. Joint Director, Sericulture Dept. & Anr.*, reported in 2015 (15) SCC 1, provided a detailed explanation of the dichotomy between these two provisions.

The Court made the following observations:

“40.Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in *praesenti*. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist.

41.

42. To summarise, although there is no limitation prescribed under the Act for making a reference under Section 10(1) of the Act, yet it is for the 'appropriate Government' to consider whether it is expedient or not to make the reference. The words 'at any time' used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the Act. However, the policy of industrial adjudication is that



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very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers' financial arrangement and to avoid dislocation of an industry."

35. However, even in this judgment, the Court did not emphasize the necessity of conducting a full conciliation process. Earlier, in *Lokmat Newspapers Pvt. Ltd. v. Shankarprasad*, reported in 1999 (6) SCC 275, the Supreme Court had elaborated on this issue in the following terms:

"In order to answer these questions, it is necessary to note subsection (4) of Section 12 of the I.D. Act which reads as under : "(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at."

A mere look at this provision shows that if the Conciliation Officer finds during conciliation proceedings that no settlement is arrived at between the disputing parties, then after closing the investigation he has, as soon as practicable, to send to the appropriate Government a full report setting forth the steps taken by him for



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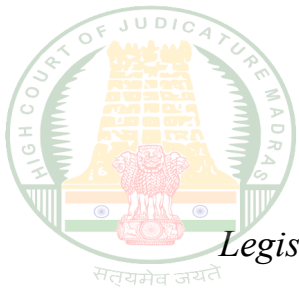
ascertaining the facts and circumstances relating to the dispute and has also to mention all other details as required to be mentioned in the report under Section 12(4) of the I.D.Act.

The aforesaid statutory requirements leave no room for doubt that after closing the investigation and after having arrived at the conclusion that no settlement is possible between the parties, the Conciliation Officer has to spend some more time before submitting his detailed written report about failure of consideration for information and necessary action by the State Government.”

36. However, whether a full conciliation process is necessary or whether the limitation period of 45 days imposed by the Central Amendment is justified is not a concern in this case. This is because, for the State of Tamil Nadu, where the Respondent establishment falls under the jurisdiction of the State Government, only the Tamil Nadu Amendment (T.N. Act 5 of 1988) is applicable, and not the Central Amendment (Central Act 24 of 2010). This legal position is further reinforced by Article 254(1) of the Constitution, which states as follows:

“254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the



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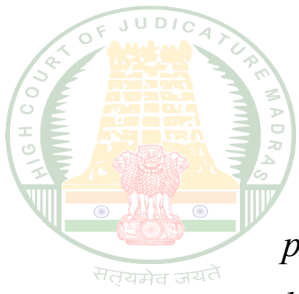
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Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.”

37. In the context of State and Central amendments to the *Industrial Disputes Act*, particularly regarding the powers of Labour Courts for execution, a learned Judge of this Court addressed a similar issue in *S. Gunasekaran & K.M. Ramesh, LLPA v. The Government of Tamil Nadu & Ors.*, reported in 2011

(4) CTC 118. The Court made the following observations:

“25. In respect of the contention that the amendment of the State legislature was repugnant due to the subsequent Central amendment, it has to be examined with the law relating to repugnancy and the scope of Article 254(2) in this regard. Under Article 246 of the Constitution, the subject matter of law that can be made by the Parliament and the legislature of the State are delineated. Under Article 246(2), the Parliament as well as the legislature of the State has power to make laws with reference to any matters enumerated in the List III of the Seventh Schedule of the Constitution known as the concurrent list. Item 22 deals with employment and unemployment. It is an admitted fact that the law relating to the present legislation comes under List III which is the concurrent list. When once the State legislature received the assent of the President, then in terms of Article 254(2), it will prevail over any Central legislation in that State. Even though it was argued that subsequent law made by the Parliament was to prevail, the

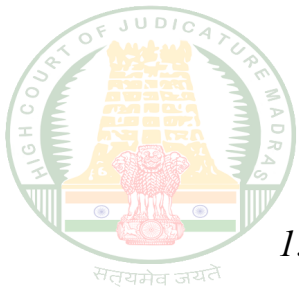


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proviso to Article 254(2) only enables the Parliament to make law at any time with reference to the same matter including the law adding, omitting, varying or repealing the law so made by the legislation. In the present case, nothing is seen from the Central Act 24/2010 that it was intended to omit or vary or repeal the law made by the State legislature. On the other hand, the Parliament made law for the entire country and did not even intend to eliminate the State enactment. 26.It will be worthwhile to refer to certain decisions of the Supreme Court which will have a bearing on the said subject. 27.The Supreme Court vide its judgment in Bhagwat Singh v. State of Rajasthan,(1964) 5 SCR 1 = AIR 1964 SC 444 dealt with the question of repugnancy in the Industrial Disputes Act i relation to the law made by the State legislature. In paragraph 14, it was stated as follows:

"14.It is unnecessary however to consider the merits of these contentions because the legislature has remedied the defects, if any, in the constitution of the Tribunal, by ending the Rajasthan Industrial Tribunal (Constitution and Proceedings) Validating Act, 1959, which was reserved for the consideration of the President of India and has received his assent. By Section 2(1) of that Act, notwithstanding any judgment, decision or order of any Court and notwithstanding any defect or want of form or jurisdiction, the Industrial Tribunal for Rajasthan, constituted under Section 7 of the Industrial Disputes Act, 1947 by Government notification dated June 2, 1953, as amended by order dated March 9, 1956, shall, as respects the period commencing onthe 10th day of March 1957 and ending with the



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15th day of April, 1949, be deemed to have been duly constituted under Section 7-A of the said Act. By sub-section (2) it is provided that notwithstanding any judgment, decision or order of any court all references made to and all proceedings taken and orders passed by the Industrial Tribunal constituted in sub-section (1) between the period March 10, 1957 and April 15, 1959, shall be deemed respectively to have been made, taken and passed as if the said Tribunal were constituted under Section 7 A of the Act. It is clear from the validating provisions that the Tribunal Originally constituted under Section 7 of the Industrial Disputes Act, 1947, before it was amended by Act 36 of 1956 is to be deemed to have been duly constituted under Section 7A, and the reference made on December 18, 1957 is to be deemed to have been made as if the Tribunal were constituted under Section 7A of the amended Act. The Validating Act is because of Item 22 List III of the Seventh Schedule to the Constitution within the competence of the State Legislature, and it was reserved for the consideration of the President and has received his assent. It must by virtue of Article 254(2) prevail in the State of Rajasthan."

28

29. The Supreme Court while permitting the law to be made by both Central and State Government has held that in order to find the inconsistencies, it should be seen whether by abiding the State law without flouting or violating the Central law, then it cannot be a case of repugnancy and the laws of complementary to each other. Both laws can stand together. Reference may be made to the judgment of the Supreme Court in Ram Chandra



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Mawa Lal v. State of Uttar Pradesh reported in 1984 Supp SCC

28. *In paragraph 50, the Supreme Court had observed as follows:*

"Is the alleged inconsistency irreconcilable or intolerable one?"

50. There are degrees of inconsistency in the context of conflict of laws. There can be apparent or surface inconsistency which may be considered as a non-hostile, tolerable, benign, one, subject to the unquestioned power of the Centre to override the State if so minded. On principle, every apparent inconsistency cannot be presumed to be hostile or intolerable. More so when the Centre does not even raise a whisper of discord. One of the tests for ascertaining whether the inconsistency is an irreconcilable or intolerable one, is to pose this question: Can the State law be obeyed or respected without flouting or violating the Central law in letter and spirit? If the answer is in the affirmative, the State law cannot be invalidated. Not at any rate when the State law merely promotes the real object of both the laws, and is in the real sense supplementary or complementary to the Central law. In the present case the test answers in favour of the validity of the impugned State notification. The Central notification is not violated if the dealers sell the fertilizers from out of the existing stocks acquired at the lower rates, for, both the notifications fix the maximum selling price and the maximum selling price fixed under the State notification is not higher than that fixed under the Central notification. What is more, the State notification promotes and serves the object and purpose of both the Centre and the State. Promotes and serves, in the sense, that the



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manifest object of fixing maximum ceiling price is to make available to the cultivators who grow the food for the Nation to obtain the inputs at reasonable prices and to protect them from exploitation so that the food production is not retarded. It is not contended even by the petitioners, for the very good reason that it is incapable of being so contended, that the object of the price regulation is to enable the dealers to make unconscionable profit. Thus the impugned State notification promotes rather than defeats, the life-aim of Central as also the State notifications. It helps rather than hurts the objectives and goals of the Centre, and there is no conflict whatsoever of interest, purpose, or perspective. The State has done only that which the Centre presumably would have readily done if it was fully aware of the situation from all angles of vision. For, the only impact of the impugned notification is that the cultivator for whose protection the price regulation is essentially made, is saved from exploitation without hurting the legitimate claim of the dealer; who, in any case, gets his fixed profit margin of Rs 45 per ton."

The learned Judge, in making this observation, held that the earlier State amendment would prevail despite the subsequent Central amendment to the *Industrial Disputes Act*. This ruling is directly applicable to the present case.

38. In light of the proviso to Article 254(2), it must be noted that there is no repugnancy between the Central Amendment and the earlier State Amendment, even though both operate within the same legal framework. This is



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because, when the State Amendment received Presidential assent in 1988, the Central Law continued to apply to industries where the appropriate government was the Central Government. However, the Labour Court, in the impugned award, failed to distinguish between the Central Act and the State Act and instead incorrectly relied on the Central Act. This misapplication is evident, especially considering that no specific pleading on the issue of limitation was raised before the Labour Court. Even the respondent primarily focused on justifying the action taken against the workman rather than relying on the alleged delay as a defense.

39. Having held that the State Amendment (T.N. Act 5 of 1988) applies to this case, the question of limitation does not arise. On the contrary, the workman has diligently complied with the procedure prescribed under Section 2A(2) as applicable in Tamil Nadu. Aware of this legal position, the counsel for the respondent relied on the Supreme Court's decision in *Prabhakar v. Joint Director, Sericulture Dept. & Anr.*, 2015 (15) SCC 1, to argue that even in cases of reference under the *Industrial Disputes Act*, delay and laches could be considered as relevant factors. However, in the same judgment, the Supreme Court made the following observation:

“40.Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were



discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under [Section 2A](#) of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection.”

40. Therefore, it cannot be said that the dispute raised by the workman is invalid on the ground of applicability of limitation under Section 2A(3) of the *Industrial Disputes Act*. The same cannot be accepted. At most, any delay or inaction on the part of the workman might have a bearing on the nature of relief to be granted, but it does not render the dispute itself as barred by limitation. Accordingly, it must be held that the dispute is not barred by limitation, as Section 2A(2) of the State Amendment—which applies to Tamil Nadu—does not prescribe any limitation period. To this extent, the Labour Court erred in passing the impugned award.



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41. Regarding the issue of alleged abandonment, it is essential to consider whether the respondent has the authority to remove the workman from service solely on the basis of alleged abandonment. In the absence of any such provision, abandonment cannot be presumed; it is fundamentally a question of intention. Although the respondent's counsel cited the Supreme Court's judgment in *Syndicate Bank v. General Secretary, Syndicate Bank Staff Association & Anr.*, 2000 (5) SCC 65, this decision is inapplicable to the present case. In that instance, specific provisions in the bipartite settlements for bank employees allowed termination of service after a prescribed number of days of absence, following due procedure. Even under such circumstances, there is no automatic presumption of abandonment; instead, removal is effected only after providing a reasonable opportunity to the employee.

42. This legal position was further clarified by the Supreme Court in *Viveka Nand Sethi v. Chairman, J&K Bank Ltd. & Ors.*, 2005 (5) SCC 337. The Court observed as follows:

“In Syndicate Bank (supra), this Court noticed the decision of three- Judge Bench of this Court in D.K. Yadav vs. J.M.A. Industries Ltd. [(1993) 3 SCC 259] whereupon the Industrial Tribunal had placed strong reliance. In D.K. Yadav (supra) admittedly no opportunity was given to the workman and no inquiry was held. In that situation, it was observed :



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"8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person."

43. In *D.K. Yadav v. J.M.A. Industries Ltd.*, reported in 1993 (3) SCC 259, the Supreme Court held that abandonment cannot be presumed. If a workman is prevented from reporting to duty, he cannot be terminated based on mere presumption. Instead, he must be given a fair opportunity to explain his absence. In this context, the Court made the following observations:

"In this case admittedly no opportunity was given to the appellant and no enquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented to report to duty, nor he be permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Cl. 13 of the certified Standing Orders to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must



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be read into the standing order No. 13 (2) (iv). Otherwise it would become arbitrary. unjust and unfair violating Arts. 14. When so read the impugned action is violative of the principles of natural justice....”

44. In the present case, the management consistently maintained that the workman had absented himself and was therefore terminated from service (Ex.W17). Although the Respondent intended to present evidence before the Labour Court to justify their action, they ultimately did not. The sole witness, RW1, admitted during cross-examination that the workman's termination followed the issuance of a charge sheet (Ex.W12) and his explanation (Ex.W13). However, no inquiry was conducted before his termination. RW1 merely stated that he was terminated after returning from Mumbai and accepting the same.

45. On the other hand, the workman's stand was that after he succeeded in the first award in I.D. No. 15/2007 dated 12.06.2013 (Ex.W1), he was transferred to Mumbai as an act of victimization. However, upon reaching Mumbai, he found that there was no vehicle assigned to him, and he was kept idle without any work. After the management witness stated that they had 5 to 6 vehicles but voluntarily produced documents for only 3, he filed I.A. No. 3/2019 requesting documents related to the vehicles kept at the Mumbai office in response to this discrepancy. In the reply affidavit filed in the



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I.A., the workman explicitly stated that the first two documents were spurious.

Regarding the third document, he refuted the claim that Officer Eshwar Ramasamy commuted daily by vehicle, asserting that he personally knew the officer traveled by train. Despite these contentions, the Labour Court, without justification, dismissed the I.A., stating that the documents might not be helpful.

46. Based on the workman's statement, it is evident that Officer Eshwar Ramasamy traveled daily from Thane (West) to Dadar (West), covering approximately 72 kilometers, which would take more than 3 to 4 hours each day and incur significant petrol costs. In contrast, a train journey covering the same route at just 10% of the cost could reach the office within half an hour. In any case, the key issues—such as the termination of the workman's services due to his unwillingness to serve in Mumbai as a last-grade employee in the post of a driver with a salary of Rs.4,250 per month, the fact that he had already succeeded in a previous dispute, and that his transfer was an act of victimization—were never examined by the Labour Court. Therefore, Issue No. (ii) is answered against the Respondent. It is held that the workman never intended to abandon his service. On the contrary, he was actively pursuing his claim statement before the Labour Court during that period. He had also properly raised the dispute and initially obtained an ex-parte award, which was later set aside by this Court with an order of remand.



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47. It is evident that the workman's services were terminated solely by the order dated 15.07.2017, and the respondent failed to present any evidence to justify the termination. In such circumstances, the workman, having served for 15 years, was dismissed without being given any opportunity and without being paid any compensation. This clearly constitutes retrenchment as defined under Section 2(oo) of the Industrial Disputes Act. Since the mandatory conditions under Section 25F(a) and (b) were not complied with, the termination is void ab initio.

48. In *L. Robert D'Souza v. The Executive Engineer, Southern Railway & Anr.*, reported in 1982 (1) SCC 645, the Supreme Court, while addressing a case involving alleged unauthorized absence leading to termination without compliance with the mandatory conditions under Section 25F of the Industrial Disputes Act, held as follows:

".....On the admission of the Railway administration, service was terminated on account of absence during the period appellant was on fast. Absence without leave constitutes misconduct and it is not open to the employer to terminate service without notice and inquiry or at any rate without complying with the minimum principle of natural justice. Further, rule 2302 clearly prescribes the mode, manner and methodology of terminating service of a temporary railway servant and admittedly the procedure therein prescribed having not been carried out, the termination is void and



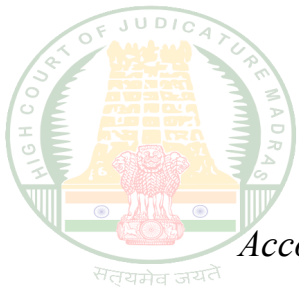
invalid. Accordingly, the same conclusion would be reached even while accepting for the purpose of the facts of this case simultaneously rejecting it in law that the termination does not constitute retrenchment yet nonetheless it would be void and inoperative.

.....

Assuming we are not right in holding that the appellant had acquired the status of a temporary railway servant and that he continued to belong to the category of casual labour, would the termination of the service in the circumstances mentioned by the Railway administration constitute retrenchment under the Act ?

Section 25F of the Act provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the conditions set out in Act are satisfied.

....Therefore, assuming that he was a daily rated worker, once he has rendered continuous uninterrupted service for a period of one year or more. within the meaning of s. 25F of the Act and his service is terminated for any reason whatsoever and the case does not fall in any of the excepted categories. notwithstanding the fact that Rule 2505 would be attracted, it would have to be read subject to the provisions of the Act. Accordingly the termination of service in this case would constitute retrenchment and for not complying with pre-conditions to valid retrenchment, the order of termination would be illegal and invalid.



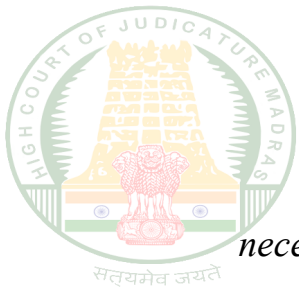
W.P.No. 2955 of 2020

Accordingly, we allow this appeal, set aside the order of the High Court and declare that the termination of service of the appellant was illegal and invalid and the appellant continues to be in service and he would be entitled to full back wages and costs quantified at Rs. 2,000.”

49. In the present case, the Model Standing Orders framed by the Tamil Nadu Government do not contain any provision allowing the removal of a workman solely on the ground of absence for a specific period. Instead, habitual absence is categorized as misconduct, which requires a proper inquiry. However, in this case, the respondent neither conducted an inquiry nor took the opportunity to present clear evidence regarding the workman's alleged absence. Therefore, having established that the dispute is maintainable and the termination was not valid, the only remaining issue for consideration is the relief to be granted to the workman.

50. Since the Labour Court failed to render findings on these crucial issues, the question arises whether the matter should be remanded for reconsideration. However, in *Viveka Nand Sethi* (cited supra), the Supreme Court, decided the relief on its own instead of remanding the case. The Court made the following observations:

“Keeping in view the fact that we have ourselves considered the pleadings of the parties as also the materials on records, it is not



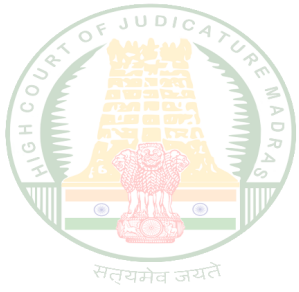
W.P.No. 2955 of 2020

necessary to remit the matter to the Tribunal as it would not serve any purpose.”

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51. Although it was contended that the workman may have been gainfully employed elsewhere during the intervening period between 2014 and 2017, the management failed to present any evidence to support this claim. In contrast, the workman, in his proof affidavit dated 24.08.2018, explicitly stated that he had been jobless and remained unemployed during this period. Notably, there was no cross-examination on this issue, nor did RW1 present any contradictory evidence to dispute the workman's statement.

52. In light of the judgment in *L. Robert D'Souza* and the finding that the workman's termination was in violation of Section 25F of the *Industrial Disputes Act*, the impugned award of the Labour Court must be set aside. It is hereby declared that the workman is entitled to the normal relief of reinstatement with back wages. Accordingly, the writ petition in W.P. No. 2955 of 2020 is allowed. The impugned award in I.D. No. 92/2018 dated 04.12.2019 is set aside, and the Respondent Management is directed to reinstate the workman with continuity of service, full back wages, and all attendant benefits.



W.P.No. 2955 of 2020

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53. Since the workman has been compelled to approach the Labour Court three times, dragged to this Court once, and further forced to seek computation of his arrears due to the Respondent's attitude, a cost of Rs. 10,000/- is ordered on the Respondent.

28.02.2025

NCC : Yes / No

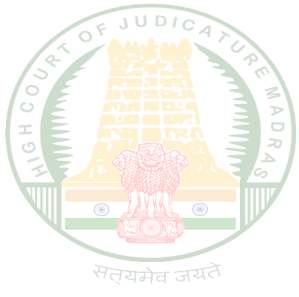
Index : Yes / No

Internet : Yes / No

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Copy to:

The Presiding Officer,
First Additional Labour Court,
Chennai – 600 104.
(with records if any)



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W.P.No. 2955 of 2020

DR. A.D.MARIA CLETE, J.

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Pre-delivery Judgment in
Writ Petition No. 2955 of 2020

.02.2025