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W.P.No.12239 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.12239 of 2021

A.Harikrishnan

...Petitioner

Vs

1.The Management

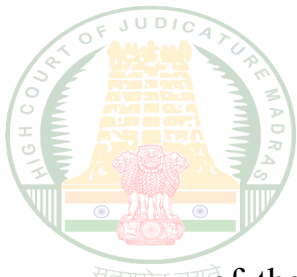
G.V.K. Emergency Management
and Research Institute
Health Visitors Training Institute
Triplicane
Chennai – 600 005.

2.The Project Director

Tamil Nadu Health System
III Floor, DMS Annexe
New Building 259 Anna Salai
Teynampet
Chennai – 600 006.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling for the records



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of the III Additional Labour Court, Chennai, pertaining to I.D.No.501 of 2015 dated 27.09.2019, quash the same and to direct the III Additional Labour Court, Chennai to adjudicate the Industrial Dispute I.D.No.501 of 2015 on merits and in accordance with law.

For Petitioner : Mr.I.Jeyaraj

For Respondent : Mr.E.V.Chandru for R1
Mr.M.Murali, Government Advocate [R2]

ORDER

The workman who is the petitioner before the III Additional Labour Court. Chennai in I.D.No.501/2015 is the writ petitioner before this Court.

2. The short facts that led to the filing of the writ petition is as follows :

- a) The petitioner was appointed as Ambulance Driver in the Office of the first respondent with effect from 10.11.2008. On 07.05.2012, he was suspended for a period of four days as punishment for having kept his son in the ambulance cabin while on duty. During his denial

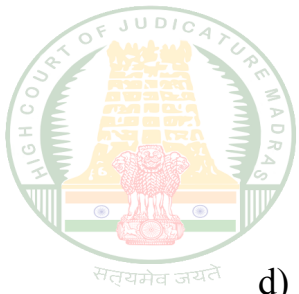


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of employment, his posting was at Saidapet, Chennai.

- b) In pursuance to his suspension, the petitioner had sent a detailed explanation on the very same day explaining the fact that his son could not be left alone at home as he was suffering from certain mental disturbances and needed physical attention as per doctor's advice. On that particular day, his wife was not in a position to take care of his son due to some unavoidable circumstances, which constrained him to bring his son along with him and therefore his son was in the ambulance cabin when the ambulance was between its trips.
- c) Thereafter, on 11.05.2012, after the completion of suspension period, the petitioner attempted to join duty but he was denied duty and was required by his superiors to meet the HR. On 15.05.2012, the petitioner had given a detailed explanation requesting the management to withdraw his order of transfer and permit him to continue in the same place that he was working. However his attempts turned futile.



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- d) Thereafter on 16.05.2012, the petitioner had initiated conciliation proceedings before the authority concerned under Section 2A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act').
- e) While the conciliation proceedings were pending, the respondent-Management had sent letters dated 21.05.2012 and 29.05.2015, enclosing his transfer order dated 14.05.2012. This transfer order, according to the petitioner, is a back dated one. It had been alleged in the above correspondences dated 21.05.2012 and 29.05.2015 that the petitioner had absented himself without joining the duty at Vellore from 15.05.2012, and therefore, he had committed an act of misconduct. Ultimately, the conciliation proceedings also ended in failure, and a failure report dated 31.07.2012 was issued.
- f) Thereafter, the petitioner had approached the Management several times to provide him with employment, all of which, had turned futile. Therefore, on 05.10.2015, the petitioner was constrained to raise an industrial dispute under Section 2(A)(2) of the Industrial Disputes Act before the III Additional Labour Court, Chennai, and



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the same was taken on file in I.D.No.501/2015.

- g) The first respondent-Management had filed a counter inter alia contending that the petition in I.D.No.501/2015 itself is barred by limitation as it was not filed within three years from the date of dismissal, and further it is alleged by the Management that the petitioner had absented himself from duty with effect 15.05.2012.
- h) During trial, the petitioner had examined himself as W.W.1 and had marked Ext.W1 to Ext.W12, and on the side of respondents, one Vasudevan, Manager HR was examined as M.W.1 and exhibits Ext.M1 to Ext.M12 were marked. Thereafter, the management had filed I.A.No.1 of 2019 to eschew the evidence of said Vasudevan and sought to examine one Ashok Kumar, Manager HR, through whom the same documents were marked once again as Ext.M1 to Ext.M12.
- i) After trial , the Labour Court had dismissed the said I.D.No.501 of 2015 by order dated 27.09.2019.

Aggrieved by the same, the present writ petition has been filed.

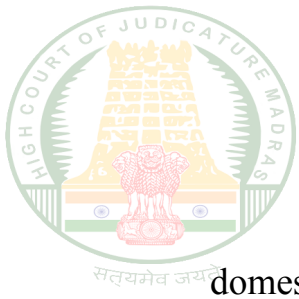


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3.1 The learned counsel would submit that though the management had alleged that the petitioner had committed an act of misconduct, however no domestic enquiry whatsoever was conducted by the Management, and that no order of dismissal, which is mandatory, had been issued or served on him. That apart, the second respondent remained *exparte* before the Labour Court. The petitioner would contend that the Management witnesses did not submit themselves for cross-examination on several occasions and subsequently, the evidence was closed but no steps were taken to recall or reopen the evidence. However, overlooking all these aspects, the Labour Court had mechanically proceeded to dismiss the said petition, as barred by limitation by its impugned award dated 27.09.2019, is illegal and unsustainable.

3.2 The crux of argument of the petitioner-workman is that as per Section 2A(2) of the Industrial Disputes (Tamil Nadu Amendment) Act, 1981, the limitation will not apply to the case on hand, and further no



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domestic enquiry has been conducted nor an order of termination issued by the first respondent. In support of his contention, he referred to the order of this Court dated 28.02.2025 in W.P.No.2955 of 2020 [***R.Kariamal Vs The Managemen of Raj T.V. Network Ltd.,***]. Hence, he seeks to quash the impugned order.

4. The first respondent though served has not entered appearance either in person or through counsel. Therefore, this Court by its order dated 23.062025 has directed the Tamil Nadu State Legal Services Authority to nominate a counsel to represent the first respondent. Pursuant to this order, the Tamil Nadu State Legal Services Authority had nominated Mr.E.V.Chandru, Advocate, to appear on behalf of the first respondent.

5. The learned counsel appearing for the first respondent would fairly concede that the Management witnesses have not submitted themselves for cross-examination and their cross-examination had been closed for default, which has not been re-opened subsequently. His contention is that the



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petitioner had abstained from work by not joining the duty at Vellore. He would further submit that the learned Judge of the III Additional Labour Court, Chennai, has considered all these aspects and has decided to dismiss the petition in I.D.No.501 of 2015.

6. Heard the learned counsel on either side.

7. The only ground on which the petition in I.D.No.501 of 2015 has been dismissed, is on the ground of limitation. The learned Judge of the Labour Court has observed that the crucial date of denial of employment was on 15.05.2012, and therefore the petition under Section 2A(3) ought to have filed within a period of three months, however, the petition was prepared only on 30.09.2025 and the same has been filed in Court on 05.10.2015, which is after the limitation period. Challenging the said dismissal, the present writ petition.

8. The petitioner, during the course of his arguments, by referring to



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the order of this Court dated 28.02.2025 in W.P.No.2955 of 2020, has pleaded that limitation would not apply as per the State amendment to Section 2A of the Industrial Disputes Act. The learned counsel appearing for the first respondent has also fairly conceded that there is no limitation for filing the application as per the Industrial Disputes (Tamil Nadu Amendment) Act, 1981.

9. The Tamil Nadu Government had enacted the State amendment to the Industrial Dispute Act in 1981, which came into effect on 01.11.1988 proposing an amendment to Section 2A of the Industrial Disputes Act, 1937, by inserting sub-section (2) to Section 2A. This was codified as 'Tamil Nadu Act 5 of 1988' which would read 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



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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.”

Correspondingly, the State of Tamil Nadu have also amended the Rules and has framed Rule 25-B under the Tamil Nadu Industrial Disputes Rules, 1958, which 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.*

(2) On receipt of such intimation, the aggrieved individual



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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.”

Thereafter, the State Amendment become a law as per Article 254(2) of the Constitution of India, on receiving assent of the President. The contrast between the Central Amendment and State Amendment has been succinctly discussed by this Court in W.P.No.2955 of 2020 in its order dated 28.02.2025. The learned Judge has observed as follows :

“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



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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 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 subsection (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.”*



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Ultimately, in paragraph Nos.38, 39 & 40, the learned Judge has observed as follows :

“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 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



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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.”

10. The dicta laid down in judgment would apply on all fours to the instant case. Therefore, the observation of the learned Judge of the III Additional Labour Court, Chennai, in dismissing the I.D.No.501 of 2015 on the ground that the petition is barred by limitation, cannot be sustained.



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11. The Management has not been able to prove their contentions as they have not submitted themselves for cross-examination. That apart, there is nothing to show that the petitioner-workman has been put on notice and a domestic enquiry was held. Therefore, even on merits, the order of termination cannot be sustained. Accordingly the order of the III Additional Labour Court, Chennai, dated 27.09.2019 in I.D.No.501 of 2015 is set aside.

12. With the above observation, the writ petition is allowed. No costs.

15.07.2025

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/ No
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P.T.ASHA, J.,

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