

(2017) 07 MAD CK 0048
In the Madras High Court
Case No : 155 of 2014

C.T.Abraham

APPELLANT

Vs

The Presiding Officer & Ors.

RESPONDENT

Date of Decision : 03-07-2017

Acts Referred:

[Industrial Disputes Act, 1947](#), [Section 33\(c\)](#) - Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings

Citation : (2017) 07 MAD CK 0048

Hon'ble Judges : K.K.Sasidharan, G.R.Swaminathan

Bench : DIVISION BENCH

Advocate : K.K.Sasidharan, G.R.Swaminathan

Judgement

1. The instant writ appeal has been filed questioning the order dated 28.10.2011 made in W.P(MD).1105 of 2007.
2. The aggrieved writ petitioner had earlier filed claim petition No.60 of 1997 before the Labour Court, Thirunelveli. The writ petitioner contended that he was employed as a Security Guard in the engineering department from 20th May 1965 to 08th April 1996 in the second respondent mill.
3. According to the writ petitioner, his resignation letter was obtained by assuring him that he would be paid a sum of Rs. 01.00 Lakh, but that he was issued with a cheque only for a sum of Rs.45,000/-. Since, the second respondent mill management did not act in terms of the promise held out to him, he was constrained to file C.P.No.60 of 1997 for recovery of Rs.55,000/- with interest.
4. The second respondent herein filed a counter contesting the claim made by the writ petitioner.
5. According to the mill management, the writ petitioner was entitled to a sum of Rs.45,000/- only as per the voluntary retirement scheme. The other allegations made against the mill management were denied. The claim of the writ petitioner

was strongly contested and the second respondent herein specifically contended that the claim petition itself was not maintainable.

6. The Labour Court, Thirunelveli, by an order dated 10.05.2002, dismissed the claim petition filed by the writ petitioner under section 33 (C) (2) of the Industrial Disputes Act, 1947. Aggrieved by the dismissal of the petition, the writ appellant herein filed W.P.(MD).No.1105 of 2007. The writ petition also met the same fate by the impugned order, dated 28.10.2011. The appellant herein has come up before the Division Bench, challenging the order made by the learned single Judge.

7. Heard the learned counsel for the appellant as well as the learned counsel appearing for the second respondent mill management.

8. The writ appeal is liable to be dismissed in view of the very nature of the proceeding filed under section 33 (C) (2) of the Industrial Disputes Act, 1947. It has been held in D.Krishnan vs. Special Officer, Vellore Co-operative Sugar Mill - 2008 7 SCC 22 that proceedings under section under section 33 (C) (2) of the Act are in the nature of execution proceedings. Such proceedings pre-suppose some adjudication leading to determination of a right which needs to be enforced. If there is a dispute or contest, an application or petition under section 33 (C) (2) would not lie. In the present case, the mill management has strongly disputed the very entitlement of the appellant workman. Therefore, the Labour Court as well as the learned single Judge of this Honourable Court were right in dismissing the claim raised by the appellant herein.

9. Yet another reason which persuades us to dismiss the writ appeal is that the appellant herein accepted the cheque for Rs.45,000/- given by the mill management and also submitted his resignation. After accepting the benefit and the voluntary retirement scheme introduced by the mill management, it is not open to the workman to turn around and raise a disputed claim. The conduct of the workman clearly estops him from doing so.

10. For the above said reasons, we find no merit in the writ appeal. Accordingly, the writ appeal stands dismissed.