
(1968) 09 MAD CK 0005
In the Madras High Court

The Super Surgical Co.

APPELLANT

Vs

S. Desikan and Another

RESPONDENT

Date of Decision : 05-09-1968

Acts Referred:

Industrial Disputes Act, 1947 — Section 11(3), 11(3)(d), 33(c)(2)

Citation : (1969) 82 LW 3 : (1969) 82 LW 23 : (1969) 1 MLJ 170

Hon'ble Judges : P.S. Kailasam, J

Bench : Single Bench

Judgement

P.S. Kailasam, J.

This petition has been filed by the management for the issue of a writ of certiorari to call for the records of the Presiding Officer, Labour Court, and

to quash its order entertaining a fresh petition filed by the first respondent on the same matter on which an earlier petition was dismissed.

2. The first respondent was an employee of the petitioner-firm. The services of the first respondent was terminated after giving a full month's notice

and according to the petitioner, the first respondent accepted the notice and stayed away from service. The first respondent subsequently filed a

claim petition u/s 33(c)(2) of the Industrial Disputes Act, before the Labour Court, Madras, claiming a sum of Rs. 4,740 under various heads like

retrenchment compensation, earned wages, leave wages, bonus, commission and gratuity. The petition was numbered as C.P. No. 143 of 1965.

The petitioner filed a counter and the matter after several adjournment, was taken up on 23rd November, 1965. The first respondent stated that he

was not pressing the petition. He made an endorsement and the petition was dismissed. Subsequently, the first respondent came up with a fresh

claim petition No. 263 of 1966 based of the same grounds as G.P. No. 143 of 1965. The petitioner filed a counter taking a preliminary objection

that as the previous petition on the same ground has been dismissed by the Labour Court, it was not open to the Labour Court to entertain a fresh

petition on the same allegations. This objection was overruled and hence this writ petition.

3. According to the Labour Court, as the first respondent made an endorsement to the effect that he was withdrawing the petition without

prejudice to the right to file a fresh petition, he filed a fresh petition in accordance with the endorsement and therefore, the management cannot

question his right to do so. In this connection; it may be stated that the order of the Court is, ""dismissed"" and it does not refer to the endorsement

or that it granted leave to withdraw the petition and to file a fresh petition. Apart from this obstacle that no leave was granted by the Court to file a

fresh petition, there is a legal objection to the entertainment of the fresh petition.

4. Section 11(3) of the Industrial Disputes Act provides that the Labour Court shall have powers as are vested in a civil Court under the Civil

Procedure Code, 1908, when trying a suit, in respect of the matters enumerated in the section. Section 11(3)(d) empowers the Labour Court to

exercise the powers in respect of matters that may be prescribed under the rules.

5. Neither in the Industrial Disputes (Central) Rules nor in the Madras Industrial Disputes Rules, the Labour Court is empowered to grant leave to

withdraw an application with permission to file a fresh application on the same grounds. As this power has not been conferred on the Labour

Court, the Labour Court cannot exercise such power. It is not disputed that the principle of res judicata is applicable to the Labour Court and the

Labour Court would not entertain a fresh petition on the same cause of action unless it is empowered to do so. As there is no provision for

entertaining a fresh application, the preliminary objection taken by the petitioner before the Labour Court will have to be upheld.

6. This writ petition is allowed and the preliminary objection by the petitioner before the Labour Court is upheld and the first respondent's petition

before the Labour Court is dismissed. No order as to costs.