
(1978) 10 MAD CK 0030
In the Madras High Court

T.S. Kunchithapadam

APPELLANT

Vs

Addl. Labour Court and Others

RESPONDENT

Date of Decision : 19-10-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11, 33C

Citation : (1979) 1 LLJ 230

Hon'ble Judges : V. Ramaswami, J; Ratnavel Pandian, J

Bench : Division Bench

Judgement

V. Ramaswami, J.—The petitioner in both the writ petitions is the same. He was employed under the 2nd respondent-management as a assistant in the accounts department. On certain allegations of misconduct the petitioner was dismissed by the 2nd respondent from service by an order dated 16-2-1966. The petitioner filed an appeal u/s 41(2) of the Madras Shops and Establishments Act before the Addl., Commissioner for Workmens Compensation challenging the order of termination from service. The appeal was allowed and the order of termination was set aside. Thereafter the petitioner filed Claim Petition No. 969 of 1967 before the Addl. Labour Court, Madras the first respondent herein u/s 33C(2) of the Industrial Disputes Act claiming back wages for the period from 16-2-1966 to 13-7-1967 in the sum of Rs. 2, 957.60 and another sum of Rs. 8,400 as the benefit of reinstatement till the petitioner attained the age of superannuation. When this petition was pending the 2nd respondent-management filed W.P. No. 2931 of 1967 seeking for a writ of certiorari to quash the order of the Addl. Commissioner for Workmens Compensation dated 13-7-1967 and in that writ petition he had also prayed for and obtained an order of stay of the proceedings u/s 33C(2). Since there was an order of stay the petitioner made an endorsement in Claim Petition No. 969 of 1967 which read as follows:

There is stay order served on me by the High Court in respect of the order of the Addl. Commissioner for Labour, relating to this case. I may be permitted to

renew my case in this Court as soon as the stay is vacated.... I cannot press this application at this stage and I may be permitted to renew after vacation of the stay order.

On this the Labour Court passed the following order:

In view of the above endorsement of the petitioner, this petition is not pressed. Hence it is dismissed as not pressed. The permission prayed for is granted.

This order of the Labour Court and the endorsement was on 21-9-1968. The writ petition was dismissed by this Court on 1-9-1969. Thereafter the petitioner filed a Claim Petition No. 530 of 1969 u/s 33C(2) before the Addl. Labour Court, Madras claiming back wages and the value of the benefit of reinstatement. This petition was dismissed by the Labour Court on 28-6-1971 on the ground that only some of the provisions of the CPC are applicable for proceedings before the Labour Court and not all those contained in the Code and that the Labour Court was not empowered to grant leave to withdraw an application with liberty to file a fresh application on the same grounds. In support of this view the Labour Court relied on a decision of a single Judge of this Court reported in *Super Surgical Co. Vs. S. Desikan and Another*, *Factory Law Journal* 18. The petitioner has filed Writ Petition No. 1750 of 1972 against this order of the Labour Court dated 28-6-1971. He had also filed by way of abundant caution Writ Petition No. 1749 of 1972 against the original order of the Labour Court dated 21-9-1968 permitting him to withdraw the claim petition with liberty to file a fresh petition after the High Court had vacated the stay order. The learned Counsel for the petitioner contended that if the view of the Labour Court that it had no jurisdiction to grant leave to withdraw an application with liberty to file a fresh application on the same cause of action is to be upheld, then the earlier order dated 21-9-1968 is without jurisdiction and since the liberty granted and the dismissal could not be separated that order has also to be set aside. If on the other hand the view of the Labour Court that it had no jurisdiction to grant leave to withdraw an application with liberty to file a fresh application on the same cause of action is not correct, then the order dated 28-6-1971 is liable to be set aside.

2. In *Super Surgical Co. v. S. Desikan and Anr.*, (supra) already referred to a single Judge of this Court held that the Labour Court is not empowered to grant leave to withdraw the application with permission to file a fresh application. But it is seen from the facts in that judgment that while permitting the claim petitioner to withdraw the petition and dismissing the same as withdrawn, the Labour Court had not made my order to the effect that the permission to file a fresh petition was granted or not granted. In view of that statement in the judgment itself the rest of the observations of the learned Judge were not necessary to be decided in that case. But even otherwise, having given our anxious consideration with respect we are unable to agree with the view of the learned Judge. u/s 11(3) of the Industrial Disputes. Act the Labour Court is vested with the same powers as that the civil Court under the CPC when trying a suit in respect of matters

enumerated therein. Order 23 Rule 1 of the CPC is not one of the provisions which is specifically made applicable. But from this alone one could not say that the principle of Order 23 Rule 1 CPC cannot be invoked by the parties in respect of proceedings before the Labour Court. If the provisions of Order 23 Rule 1 CPC is not applicable equally Section 11 of the Code is also not made applicable. But in respect of that the principles of res judicata will be applicable to the orders made by the Labour Court as well. That could only be on the analogy that the principle of res judicata is a salutary principle and in order to avoid multiplicity of proceedings such principle should be invoked even in the case of Labour Court decisions. In the case of decision in a writ petition also by virtue of Section 141 of the CPC the provisions of the CPC are not made applicable. It is well-settled now that on the same analogy the principle of res judicata is applicable to the decisions rendered under Article 226 of the Constitution of India as well. We are satisfied that if in a given case the Labour Court feels that the application, for any technical defect or other sufficient reason, should be permitted to be withdrawn with liberty to file a fresh application on the same cause of action it must be held that the Labour Court had jurisdiction to make such an order. The analogy of the principles contained in Rule 1 of Order 23 of the CPC are, therefore, to be applied to even proceedings before the Labour Court as that is a salutary principle intended to advance the cause of justice. Therefore, the decision in *Super Surgical Co. Vs. S. Desikan and Another*, ; to the extent it holds that the Labour Court is not empowered to grant leave to withdraw the application is not acceptable. It may also be mentioned that the earlier order dismissing the application was not one on merits. In fact from the permission granted to the petitioner to renew the application afresh after vacating the stay order granted by this Court, it should be presumed that the Labour Court deliberately did not decide the matter on merits. In these circumstances we are satisfied that the Labour Court had the jurisdiction to grant permission to withdraw the petition with liberty to file a fresh application and in view of the validity of that order, the later order made by 28-6-1971 refusing to exercise its jurisdiction and determine the claim interims of money is liable to be set aside. Accordingly we allow Writ Petition No. 1750 of 1972 set aside the order of the first respondent dated 28-6-1971 and direct the Labour Court to dispose of the matter afresh on merits. In view of the order in Writ Petition No. 1750 of 1972, it is not necessary for us to make any order in Writ Petition No. 1749 of 1972 because that would arise only if the order dated 28-6-1971 is valid. Writ Petition No. 1749 of 1972 is accordingly dismissed.

3. The learned Counsel for the Official Liquidator stated that the petitioner may be directed to file his claim petition before the Official Liquidator as the company had gone into liquidation. The Liquidator is permitted to raise this contention before the Labour Court. The Labour Court will decide the matter after hearing the Official Liquidator either to make an award itself or direct the award to be passed by the Liquidator for payment or to direct the petitioner to make the claim petition before the Official Liquidator himself. Sufficed to say that we are

not deciding whether the matter is to be decided by the Labour Court or by the Official Liquidator. The matter is remanded to the Labour Court for the purpose of fresh disposal on merits. There will be no order as to costs.