

Devakumar. Vs. the Presiding Officer and anr.

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Court : Chennai

Decided On : Jun-19-2012

Judge : N. Paul Vasanthakumar, J.

Acts : [Industrial Disputes Act, 1947](#) - Section 10(8); [Constitution of India](#) - Articles 226

Appeal No. : Writ Petition No.14515 of 2012

Appellant : Devakumar

Respondent : The Presiding Officer and anr.

Advocate for Def. : Mr.P.Paramasivadoss, Adv

Advocate for Pet/Ap. : Mr.V.Ajoy Khose, Adv.

Judgement :

Writ petition filed under Article 226 of the [Constitution of India](#) to issue a writ of certiorarified mandamus to call for the records pertaining to the order dated nil in I.A.No.393 of 2009 in I.D.No.410 of 2001 passed by the first respondent, quash the same and consequently permit the petitioner to implead himself as L.R. In the place of his deceased father P.Durairaj so as to get all the legal dues and benefits which may be payable to his father based on the award to be passed by the first respondent.

ORDER

1. This writ petition is filed challenging the order made in I.A.No.393 of 2009 in I.D.No.410 of 2001 passed by the first respondent and to permit the petitioner to implead himself as the legal heir in the place of his deceased father P.Durairaj so as to enable him to get all the legal dues and benefits which may be payable to his father based on the award to be passed by the first respondent.

2. The case of the petitioner is that his father P.Durairaj was employed as a Conductor in the second respondent Corporation from the year 1981. He worked at Puducherry Depot. He was dismissed from service by order dated 8.2.2000 along with one A.Kandasamy, Conductor of the Bus on similar charges. The petitioner's father and the said A.Kandasamy raised industrial disputes in I.D.Nos.410 and 409 of 2001 respectively. During the pendency of the said I.D.No.410 of 2011, the petitioner's father expired on 10.3.2004 due to ill-health. The petitioner and his mother being the legal heirs of the deceased P.Durairaj, filed an application before the Labour Court to substitute them in his place and the application was signed on 25.5.2004 by them.

3. According to the petitioner, the said application was handed over to the learned counsel for filing it in the Labour Court and according to the petitioner, his counsel filed the application. But the same was missing in the Labour Court. It is alleged in the affidavit that when the petitioner's counsel enquired about the missing of the application, he was asked to file one more application. Thereafter, another application was filed and the same was numbered as I.A.No.393 of 2009. The said application was returned on the ground that the application was filed after five years from the date of death of the petitioner's father and the application should have been filed within 90 days and hence, the I.D. had become abated.

4. The contention of the learned counsel for the petitioner is that if I.A.No.393 of 2009 is allowed, the petitioner as the legal heir of the deceased P.Durairaj, will be able to get the benefits arising out of the cancellation of the termination order. Learned counsel also submits that Section 10(8) of the [Industrial Disputes Act, 1947](#) gives protection and statutory rights to the petitioner to bring him as the legal heir on the death of his father.

5. Learned counsel also relied on the judgment of the Hon'ble Supreme Court reported in 1995 Supp (3) Supreme Court Cases 557 V.Veeramani v. Madurai Dist. Coop. Sup. & Mktg. Society Ltd. He emphasised paragraph 3 of the said judgment in support of his contention, which reads as follows:-

"3. This makes it clear that although the amendment came into operation from 21.8.1984, the Legislature by the said amendment only wanted to make clear the law on the subject which according to it was prevalent from the very inception. Thus it is clear that the industrial dispute would neither abate nor otherwise come to an end merely because the workman whom was a party to the dispute had died pending the adjudication of the dispute".

6. Learned counsel for the second respondent submitted that the application in I.A.No.393 of 2009 was filed after a period of five years and hence, the Labour Court has rightly rejected the application and there is no illegality in the said order.

7. I have considered the rival submissions.

8. The fact about the relationship of the petitioner to the deceased workman, who was the claimant in I.D.No.410 of 2001, is not in dispute and the same is established through the Legal Heirship Certificate issued by the Tahsildar, Cuddalore dated 21.4.2004. The statutory provision relied on by the learned counsel for the petitioner viz., Section 10(8) of the [Industrial Disputes Act, 1947](#) reads as follows:-

"(8) No proceedings pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate Government."

The said provision mandates the Labour Court to bring the legal heirs of the deceased on record and pass an award on merits even if the claimant had died during the pendency of the industrial dispute. The said issue has been considered by the Hon'ble Supreme Court in the decision referred to above. In the said

decision, it has been held that the industrial dispute would neither abate nor otherwise come to an end merely because the workman who was a party to the dispute had died during the pendency of the dispute. The judgment of this Court in confirming the order of the Labour Court rejecting the request of the legal heir of the deceased workman therein, was set aside by the Hon'ble Supreme Court in the above cited decision, and a direction was issued to the Labour Court, Madurai to proceed with the dispute from the stage of the order dated 14.11.1972.

9. Following the said judgment of the Hon'ble Supreme Court reported in 1995 Supp (3) Supreme Court Cases 557 V.Veeramani v. Madurai Dist. Coop. Sup. & Mktg. Society Ltd and by virtue of the statutory provision contained in Section 10(8) of the [Industrial Disputes Act, 1947](#) the impugned order of the first respondent passed in I.A.No.393 of 2009 in I.D.No.410 of 2001 is set aside and the writ petition is allowed. The I Additional Labour Court, Chennai is directed to substitute the petitioner as the legal heir of the deceased workman viz., P.Durairaj and proceed with the enquiry and pass an award on merits, within a period of six months from the date of receipt of a copy of this order. No costs.

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