



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**DATED: 24.01.2017**

CORAM

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**THE HON'BLE MR.JUSTICE S.VAIDYANATHAN**

**W.P. (MD) No.1070 of 2017  
and WMP(MD)No.910 of 2017**

P.Velappan

...Petitioner

-vs-

1. The Managing Director,  
Tamil Nadu State Transport Corporation,  
Tirunelveli Division, Nagercoil Zone.

2. The Presiding Officer,  
Labour Court,  
Tirunelveli.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the award passed in I.D.No.76/2014 dated 20.07.2015 passed by the 2<sup>nd</sup> respondent and quash the same and further direct the 1<sup>st</sup> respondent to give notional promotion to the petitioner as Checking Inspector with attendant monetary benefits with effect from 01.11.2009.

For Petitioner : Mr.S.Royce Immanuel

For R1 : Mr.K.Sathiya Singh

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### **O R D E R**

This petition has been filed, seeking to quash the impugned order dated 20.07.2015 passed by the 2<sup>nd</sup> respondent in I.D.No.76 of 2014. The said petition filed by the petitioner, seeking grant of promotion, was dismissed. The petitioner also sought a direction to the 1<sup>st</sup> respondent to give notional promotion to the petitioner as Checking Inspector with attendant monetary benefits with effect from 01.11.2009.

2. The case of the petitioner is that since he had participated in many strikes and trade union activities, he was punished on three occasions and also suspended for 30 days; that even though the punishment period was over, he was not given promotion; that in the appeal preferred before the Managing



Director, the stoppage of increment was reduced to two years; that challenging the denial of promotion, the petitioner raised a dispute in I.D.No.76 of 2014 before the 2<sup>nd</sup> respondent herein, which was dismissed by the Labour Court on 20.07.2015 and aggrieved by the same, the petitioner is before this Court.

3. The 1<sup>st</sup> respondent would submit that the petitioner retired from service on 31.03.2012 and that the case of the petitioner was not supported by any Union and as such, there is no existence of Industrial Dispute and that his promotion was periodically postponed pursuant to his misconduct and unauthorized absence from duty.

4. Heard the learned counsel on either side.

5. Admittedly, there is no iota of evidence that the dispute was sponsored by any Union. Even before the Conciliation Officer, the Management has taken a stand that the Union has raised the dispute, but differing with Union, the petitioner continued to contest the dispute. The petitioner has also not established the membership of the Union, which is said to have raised the dispute initially and the petitioner ought to have produced a copy of the resolution taken by the Union to espouse the demand. Reference falling under Section 2(k) of the Industrial Disputes Act, 1947 (in short "the I.D.Act") need to be contested only by the Union.

6. The Labour Court, by a well considered Award, held that reference itself is not maintainable, though the Labour Court has held that after retirement, the dispute with regard to promotion cannot be raised, may not be correct, as employees through Union are entitled to espouse the cause and there will be community of interest. In this case, such essence is absent. This Court agrees with the Award of the Labour Court to the extent that reference under Section 2(k) of the I.D.Act cannot be made by the Government at the instance of an individual, but only by the Union. Admittedly, there is no espousal by the Union and as stated supra, resolution has also not been produced. The Labour Court, in support of drawing its findings, referred to the judgment of this Court in the case of **Management, RSL 'B' Tannery, represented by its Director, Vaduvanthangal, Katpaid, Taluk vs. Presiding Officer, Principal Labour Court, Vellore, Vellore District and others**, reported in **2015-I-LLJ-552**, wherein it has been held as under:

"8. The Tribunal has rightly passed an award on merits in the absence of management. But, unfortunately, the Tribunal has not answered the issue raised by the management. The contention of the union is that it is only a technical objection and that more than a decade has passed away and that this Court can grant relief which cannot be accepted. A specific point is taken by the



management that the union has no representative capacity and that the reference itself is incompetent. Neither the union nor the Tribunal has gone into the question as the representative capacity of the union. There is no iota of evidence by the union. The main point raised by the management was not answered by the Tribunal and that point which has been raised in para 2 of the counter mentioned supra.

9. In the absence of any evidence or proof to show that any other persons who mainly demands on behalf of the workers, the reference is bad. Even though the reliance placed by Mr. Ravindran, learned counsel for the petitioner, pertaining to the dispute of the year 1969, and as per the previous law, there is Industrial Dispute raised by the Union is good as on date though with regard to non-employment of the individual workmen. After introduction of Section 2(A) Industrial Disputes Act, 1965, there is no need for a support of the Union and even if the membership is not established independently, the dispute will not stand. In case of the Section 2(K) pertaining to other issues could follow under Section 2A of Industrial Disputes Act, the principle laid down in the judgment will hold good. Even though, the Labour Court has stated that the WW1 has stated in evidence that there were 104 employees in the union, nowhere it is stated that there is sponsorship for raising dispute. This Court in a decision reported in 1999 (2) LLJ 8 (Food Corporation of India, Class IV Employee Union v. Sangrur and Food Corporation of India, Chandigarh), wherein the individual workers raised the dispute without any sponsorship for the union. The contention of the management was rejected on the ground that 120 employees jointly raised the dispute. In this case, there is no evidence to that effect. I find that the union has not proved the representative capacity to maintain the dispute and therefore, set aside the award and remand the matter to the Tribunal for fresh disposal on merits after giving opportunity to both parties and the Tribunal should complete the exercise within a period of six months from the date of receipt of a copy of this order. At no point of time, the Tribunal shall grant adjournment for the period of more than three days, on a petition filed by parties. Since the employee had the benefit of the award and there is no mandatory relief granted to them during the pendency of the writ petition and the management is directed to pay the concerned workers a sum of Rs.25,000/- each to enable them to sustain during the pendency of the industrial dispute. Since the order of the Labour Court in respective claim petitions based on the order of the learned Single Judge



of this Court which has been referred by the Division Bench. The order of the Labour Court is set aside as it is open to the employees to approach the Labour Forum if so advised depending upon the outcome of the proceedings before the Industrial Tribunal in I.D.No.46 of 2002. The Tribunal is directed to dispose of the case within a period of six months from the date of receipt of a copy of this order. The writ petition filed by the Management is allowed to the extent indicated supra. There is no order as to costs. Parties are directed to appear before the Tribunal on 31.10.2014. The Registry is directed to send all relevant papers to the Tribunal and it is also made clear that there is no notice to be sent to the Tribunal and the parties."

The dispute under Section 2(k) of the I.D.Act raised by an employee cannot become an industrial dispute, unless it is supported either by his Union or in the absence of Union, by a number of workmen. The exception to the above principle is that if an employee is retrenched or terminated, then individual disputed can be raised under Section 2 (A) of the Act. The only exception is that after espousal of the dispute and establishing the membership / sponsorship by the Union, if the Union withdraws from the scene, then it is open to the individual to proceed further even in absence of the Union, as initiation must be through proper espousal, which is absent in this case. As there was no industrial dispute in this case either existing or apprehending on the date of reference, it can be easily construed that the reference itself is not valid and the petitioner has also no where stated that the dispute was raised by the Union.

7. Hence, finding no merits in this writ petition, the same is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

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To:

1. The Managing Director,  
Tamil Nadu State Transport Corporation,  
Tirunelveli Division, Nagercoil Zone.
2. The Presiding Officer, Labour Court, Tirunelveli.

+1CC to Mr.K.Sathiya Singh, Advocate Sr.No.3955

GJM/BS/2.3.17-4p-4c

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**24.01.2017**