

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.26147 OF 2013

ORDER:

In spite of the matter being adjourned on 19.04.2017 and 24.04.2017 for appearance of respondents' counsel, there is no representation for the respondents even today also.

Heard the learned counsel for the petitioner.

The present Writ Petition, under Article 226 of the Constitution of India, came to be filed seeking to declare the action of the 1st respondent in returning the Conciliation Application vide Lr.No.A/935/2011 dated 07.12.2011, as illegal and arbitrary.

The facts in issue are as under:

The petitioner-APSRTC National Mazdoor Union raised a dispute relating to the regularization of Smt.A.Nirmala, Conductor of Chittoor-I Depot of the 5th respondent Region and accordingly filed Conciliation Application on 20.06.2011 under Section 10 (1) of Industrial Disputes Act, 1947 before the 1st respondent with a prayer to admit the Conciliation Application. In said application, it was submitted that when the workman-Conductor was conducting bus route on Penumur to Pakala on 27.11.2000, a check was conducted and pursuant thereto a charge memo was issued alleging that the workman has collected Rs.5/- from a male passenger at the boarding point and issued ticket of Rs.4/- to the said passenger and also failed to issue proper luggage ticket in respect of two tomato baskets. Thereafter, the workman-Conductor submitted her explanation stating that in view of heavy load of passengers, she could not estimate the weight of the baskets, as free luggage is allowed upto 50 kgs. and as tomato baskets will be around 10-12 kgs. she has not issued luggage ticket. In spite of

said reply, the 3rd respondent issued a show cause notice No.02/95(231)/2000-CTR.II dated 13.12.2000. Though the workman submitted a detailed explanation on 20.12.2000, but without considering the same, the 3rd respondent issued the proceedings dated 22.12.2000 deleting the name of the workman from the select list of Conductors. As against the said proceedings, the workman submitted an appeal before the 4th respondent on 04.01.2001. After considering the entire facts and circumstances of the case, the 4th respondent set aside the proceedings of the 3rd respondent and directed re-appointment of the workman into service vide proceedings dated 22.01.2001, duly postponing the regularization for a period of one year. Accordingly, the workman joined her duty on 01.04.2001. The review appeal filed by the workman on 08.08.2001, before the 5th respondent, was rejected vide order dated 15.04.2003. In view of the punishment of postponement of regularization imposed on the workman, her services as conductor were regularized w.e.f. 05.10.2008. As against the said proceedings, the workman submitted a representation on 04.03.2009 to the 5th respondent seeking regularization of her services on par with other conductors of her batch w.e.f. 05.10.2007. Since no orders are passed thereon *in spite* of representing the matter several times, the petitioner Union filed Conciliation Application before the 1st respondent on 20.06.2011 seeking to initiate conciliation proceedings with regard to the dispute of postponement of regularization of the workman. It is the case of the petitioner-Union that though there exist a dispute between the workman and the 5th respondent, the 1st respondent-Conciliation Officer, instead of admitting the

Conciliation Application, has arbitrarily held that the dispute raised is belated and accordingly returned the application filed by the petitioner Union vide proceedings dated 07.12.2011. Challenging the same, the present Writ Petition came to be filed.

Learned counsel for the petitioner would submit that identical issue came up for consideration before this Court in W.P.No.23768 of 2016, which was allowed by this Court on 02.09.2016, by setting aside the order of rejection passed by the Conciliation Officer, on the ground of limitation.

Relevant portion of the judgment passed by this Court in the above writ petition on 02.09.2016 is as under:

“2. In view of the pendency of conciliation, this Court purposely omitted the averments relating to the cause leading to the imposition of punishment. When the matter is taken up for consideration, learned Government Pleader for the respondents 1 and 2 and the learned Standing Counsel for the respondents 3 and 4 submitted that the duty of the first respondent is a ministerial act and he has to see whether there is any possibility of conciliation or not of the dispute and if there is no possibility, he has to refer the matter to the concerned Labour Court in accordance with law which shall decide the various objections relating to the dispute.

3. In view of the same, the impugned order dated 03.02.2016 passed by the first respondent is set aside and the application filed by the petitioner is directed to be taken by him and dispose of the same in accordance with law. In view of the submission of the learned Government Pleader that the decision taken by the first respondent in the impugned order with regard to limitation aspect is not correct in law, the first respondent is directed to consider the application without going into the aspect of limitation and dispose of the same in accordance with law.”

Following the ratio laid down by this Court in W.P.No.23768 of 2016, this Writ Petition is allowed by setting aside the order dated 07.02.2011 passed in Conciliation Application Lr.No.A/935/2011, by the 1st respondent. Further, the 1st respondent is hereby directed to consider the Conciliation Application without going into the aspect of limitation and dispose of the same in accordance with law.

Miscellaneous Petitions pending in this petition, if any, shall stand closed. No order as to costs.

25.04.2017
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JUSTICE C. PRAVEEN KUMAR

