

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-03-2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.4884 of 2018

S.Dhandapani

.. Petitioner

-VS-

1. The Managing Director,
Tamil Nadu State Transport Corporation
Coimbatore Ltd.,
No.37, Mettupalayam Salai,
Coimbatore-43.

2. The General Manager,
Tamil Nadu State Transport Corporation
Coimbatore Ltd.,
Thirupur Region,
Kangayam Road,
Thirupur.

3. The Branch Manager,
Tamil Nadu State Transport Corporation
Coimbatore Ltd.,
Udumalaipet Branch,
Thirupur District.

.. Respondents

Petition under Article 226 of the Constitution of India,
praying for the issuance of a Writ of Mandamus, directing the
respondents to give second review benefits from 24.5.2016 with
arrears and all consequential benefits forthwith.

For Petitioner - Mr.R.Jaikumar

For Respondents - Mr.R.S.Selvam,
Standing Counsel.

ORDER

This writ petition has been filed by the petitioner directing the respondents to give second review benefit from 24.5.2016 with arrears and all consequential benefits forthwith.

2. The learned counsel, appearing for the petitioner, submitted that the petitioner was appointed as a Driver on 24.11.1998 in the respondent-Transport Corporation and has been working to the satisfaction of the respondent-Transport Corporation. In the meanwhile, the respondent-Transport Corporation has entered into 12(3) settlement with the Trade Unions on 13.4.2015.

3. As per 12(3) Settlement, a person who is working continuously for six years is eligible for first review benefit and thereafter, he is also entitled to get second review after 7 years of service from the date of the first review, namely, 6+7+7+7+5. As the petitioner had joined the service of the Transport Corporation as a Driver on 24.11.1998, he had completed his six years as on 23.11.2004, but he was facing with two charge sheets. Consequently punishments were also imposed against him on 21.3.2000 and 23.4.2001, in which his increments were also postponed totally for 1-1/2 years. Therefore, it is claimed that the respondent-Transport Corporation ought to have given the first review benefits from 24.5.2006 and the same has not been considered.

4. Moreover, the petitioner also suffered with two more charge sheets for which also he was given punishment by two orders, namely, on 19.7.2016 and 18.6.2015, imposing stoppage of increment for one year each without cumulative effect and yet another punishment of stoppage of increment for three years with cumulative effect by order dated 6.4.2015. However, on appeal, by order dated 19.7.2016, the said punishment has been modified into one of stoppage of increment for two years with cumulative effect.

5. The learned counsel, appearing for the petitioner, would submit that in so far as the first punishment dated 18.6.2015 is concerned, it was without cumulative effect and hence, the same cannot be treated as an impediment for getting the benefit of review. But this Court is unable to find any merit whatsoever.

6. Firstly, the present writ petition is not maintainable under Article 226 of the Constitution of India. The petitioner has to approach only the Labour Court to get his first review benefit on the basis of 12(3) Settlement dated 13.4.2015. The question as to whether the entitlement of the petitioner to the first review benefit has to be adjudicated by the Labour Court

and this Court, sitting under Article 226 of the Constitution of India, cannot go into that question in the light of Section 2(k) of the Industrial Disputes Act, 1947.

7. Section 2 (k) of the Industrial Disputes Act, 1947, reads as under:-

“ 'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.”

A mere reading of the above definition says that any dispute between the employer and the workman connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person safely looking into by the Labour Court, is an industrial dispute. Therefore, the petitioner cannot come to this Court and he cannot maintain the writ petition under Act 226 without approaching the Labour Court.

8. Secondly, the records show that the petitioner is known for getting frequent punishments of almost four punishments. The first and the second punishments were imposed against the petitioner on 21.3.2000 and 23.4.2001. The third punishment was also imposed against the petitioner on 18.6.2015, stopping his increment for a period of one year without cumulative effect and the fourth punishment was also imposed against him initially for a period of three years with cumulative effect by order dated 6.4.2015, which has been modified by order dated 19.7.2016 into one of stoppage of increment for two years with cumulative effect, hence, this Court is not inclined to entertain this writ petition and the same is dismissed accordingly. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

Svn

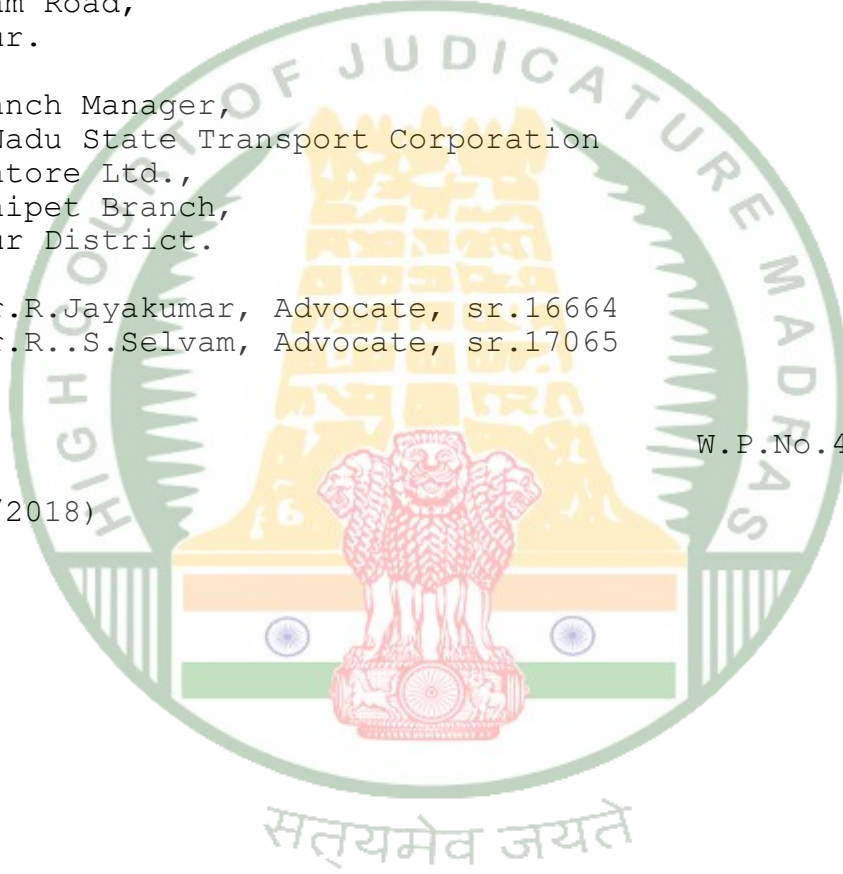
To

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Coimbatore Ltd.,
Udumalaipet Branch,
Thirupur District.

+1cc to Mr.R.Jayakumar, Advocate, sr.16664
+1cc to Mr.R..S.Selvam, Advocate, sr.17065

W.P.No.4884 of 2018

RMP (22/03/2018)



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