

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.21806 of 2014

E.Subramaniam

... Petitioner

vs.

1. The Special Deputy Commissioner of Labour,
Labour Commissioner Office,
Teynampet,
Chennai 600 018.
2. The General Manager,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Bharathipuram, Salem Main Road,
Dharmapuri District -5. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus, to call for the records in Proceedings No.Pa.Mu.No.11/155/D5/Tha, A.Po.Ka/2010, dated 06.09.2010, on the file of the 2nd Respondent and the consequential order of the 1st Respondent in A.P.No.159 of 2010 in C/37589/07, dated 27.12.2012 and quash the same as illegal, incompetent and unconstitutional and further direct the Respondents to reinstate the Petitioner in service as Driver with consequential service benefits.

For Petitioner : Mr.A.R.Nixon

For 2nd Respondent : Ms.Rajeni Ramadoss

ORDER

Challenging the proceedings dated 06.09.2010 passed by the 2nd Respondent and the consequential order dated 27.12.2012 passed by the 1st Respondent in A.P.No.159 of 2010, and for a further direction to the Respondents to reinstate him in service as Driver with consequential service benefits, the Petitioner has come up with this Writ Petition.

2. It is seen that the Petitioner was employed in the 2nd Respondent/Transport Corporation in the year 1990. He was issued with the Charge Memo dated 16.02.2010 for the charges that the Bus was driven by him in a rash and negligent manner, which was in violation of Rules 16K, and 16Q Model Standing

Orders. The Petitioner submitted his explanation to the said Charge Memo. However, the 2nd Respondent passed a final order on 06.09.2010 merely affirming the Enquiry Report and consequently, dismissed the Petitioner from service.

3. Hence, the 2nd Respondent/Transport Corporation filed an Application for confirmation before the 1st Respondent under Section 33(2)(b) of the Industrial Disputes Act, 1947 in A.P.No.159 of 2010 and by an order dated 27.12.2012, the 1st Respondent confirmed the order of the 2nd Respondent. Aggrieved by the same, the Petitioner is before this Court.

4. Though, the Approval Petition filed by the 2nd Respondent/Transport Corporation was confirmed by the 1st Respondent on 27.12.2012, the Petitioner has filed the present Writ Petition on 11.08.2014, even though the Affidavit is dated 08.08.2014. That apart, the Petitioner/employee has been dismissed from service on 06.09.2010 prior to the introduction of the limitation period of three years by means of an amendment to Section 2-A of the Industrial Disputes Act, 1947, which came into effect on 15.09.2010.

5. There are a catena of cases, wherein, it has been held that grant of approval is not a bar for an individual to raise an Industrial Dispute. Also, the Supreme Court in the case of P.L.Shah vs. Union of India, reported in AIR 1989 SC 985 has made it very clear that even though the Central Administrative Tribunal was constituted in the year 1985, the years of limitation can be looked into prior to the Act coming into force.

6. In view of the same, this Court is of the view that the Petitioner can agitate his remedy before the appropriate Labour forum, though, he is not entitled to any relief before this Court.

7. It is seen that the Petitioner/employee has approached this Court in 2014 within two years from the date of the order passed in the Approval Petition. Hence, the Petitioner is at liberty to raise a dispute before the Labour forum and in such case, the period of pendency of the Writ Petition shall be excluded for the purpose of calculation of limitation, and the authority concerned shall conciliate in terms of the amended provisions of the Industrial Disputes Act. In case of failure of dispute within the time stipulated, the Petitioner/employee shall approach the Labour Court and the Labour Court is expected to conclude the case not on the ground of limitation, if the three years limitation period that came into effect on 15.09.2010 is taken into account, excluding the period during which the Writ Petition is pending.

The Writ Petition is dismissed with the above direction and observation. No costs. Consequently, connected M.P.No.1 of 2014 is closed.

(aeb)

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Special Deputy Commissioner of Labour,
Labour Commissioner Office,
Teynampet,
Chennai 600 018.
2. The General Manager,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Bharathipuram, Salem Main Road,
Dharmapuri District -5.

+1cc to Mr.A.R.Nixon, Advocate, SR.No.69670

+1cc to Mrs.S.Rajeni Ramadoss, Advocate, SR.No.69683

W.P.No.21806 of 2014

Kak(18/09/2019)

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