



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.1511 of 2015

and

M.P. (MD) .Nos.1 to 3 of 2014

T.Nagaraj

... Petitioner

Vs.

1.The General Manager,
Tamil Nadu State Transport Corporation
Head Office,
Bye-pass Road,
Chettinayakkanpatti Post,
Dindigul District.

2.Palamalai
TNSTC Branch Manager,
Batalakundu Branch,
Dindigul District.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the proceedings of stopping the yearly increment with cumulative effect for two years for which order made in ச.து.எ2.1828 dated 15.10.2014 issued by the first respondent and to quash the same as illegal.

For Petitioner	: Mr.K.Shanmugaraja
For R1	: Mr.A.Jeyaram
	Government Advocate
For R2	: No appearance

ORDER

The order of punishment dated 15.10.2014 issued by the first respondent/General Manager imposing the penalty of stoppage of increment for two years with cumulative effect is under challenge in the present writ petition.

2.The writ petitioner is working as a Driver in Tamil Nadu State Transport Corporation. On account of certain allegation, a departmental disciplinary proceedings were initiated and he was



placed under suspension and subsequently, an enquiry proceedings were concluded and based on the proved charges, punishment of stoppage of increment for two years with cumulative effect was issued by the first respondent/General Manager in proceedings dated 15.10.2014.

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3. Admittedly, the writ petitioner is a workman within the meaning of industrial dispute act. This apart, the order dated 15.10.2014 itself states that the writ petitioner is at liberty to prefer an appeal before the Managing Director within a period of 60 days from the date of the order. The writ petitioner has not exhausted either the appeal remedy available under the Rules nor he approached the labour Court by raising a dispute under Section 2(k) of the Industrial Dispute Act. Exhausting the appellate remedy is also a vital fact to be considered, while entertaining the writ petition under Article 226 of the Constitution of India. The opportunity of adjudication provided under the Rules or thereafter under the special Acts are to be exhausted before approaching the High Court under Article 226 of the constitution of India. This Court also elaborately considered the legal principles with reference to the full Bench judgment of the Madras High Court in the case of **P.PITCHUMANI AND ORS. VS. THE MANAGEMENT OF SRI CHAKRA TYRES LTD. AND ORS.**, reported in **2004(3)CTC 1**. The relevant paragraph is extracted hereunder:

8. The judgment in 1999 (2) L.L.N. 16 (vide supra), is identical in all respects to the facts of the present case.

In both the cases, the workers of the State Transport Corporation were involved.

In both the cases, the impugned action was in violation of the settlement arrived at between the workers and the management.

In both the cases, the writ jurisdiction was invoked.

Even if the settlement between the management and the workers of the Karnataka State Road Transport Corporation was still in force, unlike in this case, that will not make a difference, in view of the legal principle laid down by the Supreme Court in 1980 (2) L.L.N. 575 (vide supra). The only other difference in these two cases is that in the case referred to above, the check-off facility was withdrawn, which is not the case here.

12. Even in the judgment reported in 2005 (1) L.L.N. 878, cited supra, the Division Bench of this Court had held as follows, in Para.5, at page 880:

"...No doubt, it is well settled that alternative remedy is not an absolute bar to a writ petition...."



The Division Bench placed reliance on the Full Bench judgment in *P.Pitchumani Vs. Management of Sri Chakra Tyres, Ltd.*, [2004 (2) L.L.N. 1086] (vide supra), wherein the Full Bench laid down the following parameters for deciding the question of jurisdiction in labour matters in Para.14, at pages 1091 and 1092:

"(i) only such violations under Industrial Disputes Act, which involve public duties, are amenable to writ jurisdiction under Art.226 of the Constitution of India;

(ii) dismissals, transfers and other matters concerning the service conditions of employees governed by the Industrial Disputes Act, have to be adjudicated only by the forums created under the said statute and not otherwise;

(iii) it is needless to mention that the disputes relating to matters not governed by Industrial Disputes Act have to be resolved only by common law Courts;

(iv) the transfers effected in these cases do not involve any public duties and involve the disputed questions of fact and they should be resolved only before the forums under the I.D. Act;

(v) the appellants / petitioners - employees shall be entitled to seek for reference by filing application under S.10 of the Industrial Disputes Act, within two weeks from the date of receipt of a copy of this order;

(vi) if any industrial disputes are raised, then the concerned forums, be it Labour Court or Industrial Tribunal, shall dispose of the same within four months from the date of receipt of the reference, after affording opportunity to either party;

(vii) without prejudice to the contentions of the appellants / petitioners-employees, one week time from the date of receipt of a copy of this order is given to the employees to join at the transferred places and in respect of such of those dismissed employees, for non-joining at the transferred places, the delay is condoned if they join as stipulated above and in that event, dismissal orders passed against them disappear automatically; and

(viii) the respondents - managements shall sympathetically consider the payments of wages / salaries to the appellants / petitioners - employees so as to maintain the industrial peace and harmony."



In that case, the matter was referred to the Full Bench because of the differing views taken by two co-ordinate Benches regarding maintainability of a writ petition when the forum constituted under the Industrial Disputes Act, is there. On view was that for violation of a statutory provision, writ petition is maintainable even against a private company, as held by a Bench of this Court in Chemplast Sanmar Ltd., Vs. Mettur Chemicals Podhu Thozhilalar Sangam [2000 - I L.L.J. 1335]. The other view was that a writ petition cannot be maintained for the said violation. The Full Bench concluded as above."

4. In view of the full bench judgment, the writ petitioner has to approach the Labour Court. This apart, the opportunity of appeal remedy is also provided in the impugned order dated 15.10.2014. Thus, the writ petitioner has to approach the appellate authority as the first instance and if his grievances are not redressed, then he can raise the dispute under the Industrial Dispute Act for the adjudication of the issues. Contrarily, all these disputed issues and facts cannot be adjudicated in a writ petition under Article 226 of the Constitution of India and the power of judicial review cannot be extended for the purpose of adjudication of the disputed issues. This being the factum, the writ petitioner is at liberty to approach the appellate authority and in the event of submitting any appeal without reference to the point of delay, the said appeal shall be entertained by the Managing Director and pass an order on merits and in accordance with law as expeditiously as possible. Even thereafter, if the writ petitioner is aggrieved, then he is at liberty to approach the competent Labour Court for adjudication of issues by raising a dispute under the Industrial Dispute Act.

5. With these observations, this writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar

To

1. The General Manager,
Tamil Nadu State Transport Corporation
Head Office, Bye-pass Road,
Chettinayakkanpatti Post, Dindigul District.

<https://hcservices.ecourts.gov.in/hcservices/>



2.Palamalai
TNSTC Branch Manager,
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