



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.3422 of 2017

and

W.M.P (MD)No.19073 of 2017

G.Saravana Muthu

... Petitioner

Vs.

1.The Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Represented by its Managing Director,
Madurai.

2.The General Manager,
The Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Dindigul Region,
Dindigul.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to re-designate the petitioner as Junior Assistant from the date of his initial engagement as Data Entry Operator that is from 23.04.1991 and to give him time bound notional promotion in the Administrative Category from 23.04.1991 and to grant him pay protection from 23.04.1991 and to direct the respondents to give him attendant monetary benefits and to pass orders in the light of the award passed in I.D.No.236/2006, dated 24.02.2016 by the First Additional Labour Court, Chennai within the time that may be stipulated by this Court.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.J.Senthil Kumariah

ORDER

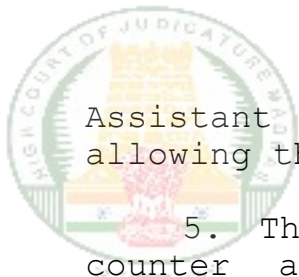
This writ petition is filed seeking for a mandamus, directing the respondents to re-designate the petitioner as Junior Assistant from the date of his initial engagement as Data Entry Operator, that is from 23.04.1991 and to give him time bound notional promotion in the Administrative Category from 23.04.1991 with pay protection from 23.04.1991 and for a direction to the respondents to give him attendant monetary benefits and to pass orders in the light of the award passed in I.D.No.236/2006, dated 24.02.2016 by the First Additional Labour Court, Chennai.



2. According to the petitioner, he joined as Junior Tradesman with effect from 28.06.1988 in the respondents Corporation and his appointment was confirmed with effect from 01.09.1989. He has completed Typewriting in Tamil and English (Higher) and possessing M.Sc., degree in Computer Science. Though the petitioner was appointed as Junior Tradesman in the Technical Category of the first respondent Corporation, he participated in the internal selection to the post of Data Entry Operator conducted in Dindigul Region of the first respondent Corporation on 15.03.1991. There was an Aptitude test conducted on that day by the Gandhi Gram Rural Institute (Deemed University). In pursuance of the selection, the second respondent, by order dated 23.04.1991, posted the petitioner as Data Entry Operator at Electronic Data Processing Section, Dindigul Region. Pursuant to the selection, some of the conductors and other Junior Tradesman were redesignated as Data Entry Operators. The Management entered into a settlement with Union under Section 12(3) of the Industrial Disputes Act on 28.09.1989. As per Clause 11 of the settlement, the conductors and other Junior Tradesman, who were working in other department, are to be regularised. Contrary to the said clause, the respondents reverted them to the original post. The same was challenged by the aggrieved persons, by filing a batch of writ petitions in W.P.No.21567 of 2000 etc., batch. The said writ petitions were ordered in their favour. In spite of the said order, the respondents again attempted to revert the Data Entry Operators to the post of Conductors and Junior Tradesmen. Against the said order of reversion, the aggrieved persons filed a writ petition in W.P.No.32986 of 2006. The said writ petition was dismissed on 16.03.2006. Against the order of dismissal, the Trade Union filed the writ appeal in W.A.No.379 of 2006. The Division Bench of this Court had held that the reversion order is null and void and directed the State Government to make a reference to the Labour Court/Industrial Tribunal, for adjudication and further directed the Transport Corporation not to discontinue the services of the workmen in the post of Data Entry Operator, without prior approval of the Labour Court/Tribunal.

3. The Labour Court, on reference in I.D.No.236 of 2006, held that the demand of the Union that the management shall continue to employment of 54 Conductors/Technical Staff as Data Entry Operators, is justified and the management of the said corporation was directed to allow them to work as Data Entry Operator till their retirement. The Labour Court further held that the Data Entry Operators shall be placed in appropriate pay scale on par with Junior Assistant and their pay has been revised periodically and the Data Entry Operators appointed as Junior Assistants also entitled for notional promotion.

4. The learned counsel for the petitioner contended that the petitioner was appointed as Data Entry Operator on technical side and as per the award passed by the Labour Court in I.D.No.236 of 2006, the petitioner is also entitled to be redesignated as Junior



Assistant from the date of his initial appointment and prayed for allowing the writ petition.

5. The learned counsel appearing for the respondents filed counter affidavit and contended that the relief granted in I.D.No.236 of 2006 by the Labour Court, is applicable only to 54 persons mentioned therein and the petitioner is not entitled for the said relief. As per Clause 18 of the settlement, there can be no change from one category to another category to the Transport employees and the claim of the petitioner for the benefits in Wage Settlement under Section 12(3) of Industrial Dispute Act, dated 28.09.1989 being contrary to the settlement is not maintainable and the petitioner has to raise the Industrial dispute to redress his grievance and therefore, prayed for dismissal of the writ petition.

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

7. From the materials on record, it is seen that the petitioner was appointed as Data Entry Operator on 15.03.1991 and he is working as Data Entry Operator. The petitioner is seeking redesignation from the post of Data Entry Operator to the post of Junior Assistant. According to the petitioner, as per the award passed by the Labour Court, in I.D.No.236 of 2006, he is entitled for the relief sought for in the writ petition. The said contention is without merits. The operative portion of the award relied on by the petitioner is reads as follows:-

"8. In the result, this industrial dispute is adjudicated on the following terms:

The demand of the petitioner that the management shall give up the change proposed in the notice issued under section 9A of the Industrial Disputes Act, dated 5.7.2005 and that the management shall continue to employ the 54 workmen concerned in this dispute as Data Entry Operators is justified. The management shall continue to allow them to work as Data Entry Operators till their retirement.

The demand of the union that the Data Entry Operators should be placed in appropriate pay scale from the date of their initial appointment as Data Entry Operators and that the pay shall be revised subsequently is justified. The Data Entry Operators should be placed on the same pay scale as the Junior Assistants at the time of their original appointment as the Data Entry Operators and they should be given notional promotion on the date on which the Junior Assistant appointed immediately before the workmen involved in this dispute were appointed as Data Entry Operators got promoted to assistant. After such notional promotion they could be called Data Entry Operators Grade-I. They after such notional promotion should be placed on the same pay



scale as that of Assistants till their retirement. The respondent shall pay the wages and all other attendant benefits according to their new pay scale."

8. A reading of the conclusion of the award clearly shows that the Labour Court did not direct the respondents to redesignate 54 persons, who were working as Conductors and Junior Tradesman, but directed the respondents not to revert them to the post of Conductor and Junior Tradesman and give promotion, when the Junior Assistant appointed immediately before them. The learned counsel for the respondents referred to Clause 18 of the 12(3) Settlement and contended that a person cannot be transferred from one category to another category. The said Clause is reads as follows:-

"(xviii) போக் குவரத்துக் கழகத்தில் எந்த பிரிவில் ஒரு தொழிலாளர் நியமனம் செய்யப் படுகிறாரோ அந்த பிரிவிலேயே பணி செய்ய வேண்டும். வேறு பிரிவிற் கு மாற்ற இயலாது (கேட்டகிரி மாற்றம் இல்லை)"

9. The settlement was entered under Section 12(3) of the Industrial Disputes Act, 1947 between the respondent and the Union and that the settlement is binding on the petitioner and in view of the rival contentions with regard to the facts, which are disputed, the writ petition filed by the writ petitioner, is not maintainable.

10. For the above reasons, the writ petition is dismissed. No costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Managing Director,
TNSTC (Madurai) Ltd.,
Madurai.
2. The General Manager,
TNSTC (Madurai) Ltd.,
Dindigul Region,
Dindigul.



+1 CC to Mr.J.SENTHIL KUMARIAH, Advocate (SR-87077[F] dated 17/09/2019)

+1 CC to Mr.A.RAHUL, Advocate (SR-87861[F] dated 19/09/2019)

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