



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2020

CORAM:

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.2915 of 2013

and

MP (MD) No.1 of 2013

Tamil Nadu Arasu Pokkuvarathu Thozhilalar Sangam CITU,
Rep. by its General Secretary,
3/1/5, Mudiyarasan Salai,
Karaikudi. ... Petitioner

-Vs-

1.The Management of
Tamil Nadu State Transport Corporation (Kumbakonam)
Limited,
Rep. by its Managing Director,
Kumbakonam.

2.The General Manager,
Tamil Nadu State Transport Corporation (Kumbakonam)
Limited,
Karaikudi Region, Maruthupathi,
Karaikudi. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to give promotion to the post of Checking Inspectors based only on seniority of the employees working in the post of Special Grade Conductors Level VI/Special Grade Conductors - Level V/Special Grade Conductors grades and in accordance with the existing practice in the first respondent Corporation and forbear the respondents from filling up the post of Checking Inspectors by making selection from the employees who are working in the post of Senior Conductors/Selection Grade/Special Grade Conductors and having the Degree qualification, without issuing notice under Section 9(A) of I.D. Act 1947.

For Petitioner : Mr.S.Arunachalam

For Respondents : Mr.K.Sathiyasingh
Standing Counsel



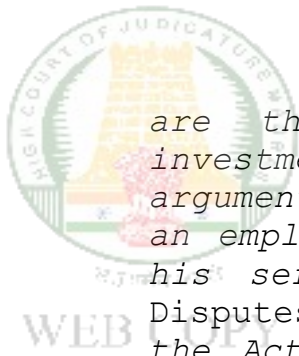
ORDER

The relief sought for in the present writ petition is to direct the respondent to give promotion to the post of Checking Inspectors based only on seniority of the employees working in the post of Special Grade Conductors Level VI/Special Grade Conductors - Level V/Special Grade Conductors grades and in accordance with the existing practice in the first respondent Corporation and forbear the respondents from filling up the post of Checking Inspectors by making selection from the employees who are working in the post of Senior Conductors/Selection Grade/Special Grade Conductors and having the Degree qualification, without issuing notice under Section 9(A) of I.D. Act 1947.

2.The writ petition is filed by the Tamil Nadu Arasu Pokkuvarathu Thozhilalar Sangam CITU. The dispute is relating to grant of promotion to the post of Checking Inspectors. The members of the petitioner Sangam are the workman governed under the settlements. Such disputed facts cannot be adjudicated by the High Court under Article 226 of the Constitution of India. The disputed facts and circumstances are to be adjudicated with reference to the documents and the evidences and therefore, the petitioners are bound to approach the competent forum for the purpose of adjudication of these issues. This apart, promotion is an individual grievance and as far as the petitioner is concerned, the petitioner is the Sangam. Therefore, the present writ petition is not entertainable. The petitioner-Sangam have to approach the Labour Court for the purpose of adjudication of all such disputed issues. The principles, in this regard, are considered by this Court in W.P.(MD)Nos.10416 of 2009 and 2926 of 2009 and a Judgment was delivered on 25.07.2019 and the relevant paragraphs are extracted hereunder:-

"...55.Thus, this Court is bound to consider the legal principles settled by the Full Bench of this Court in the case of P.Pitchumani Vs. The Management of Sri Chakra Tyres Ltd,. As far as the judgment of the Full Bench are concerned, the principles are enumerated and those principles are to be applied in respect of entertaining the writ petition under Article 226 of the Constitution of India.

56.When an aggrieved person is a workman within the meaning of the Industrial Disputes Act, 1947 and his service conditions and service benefits are governed under 12(3) settlement, then all such workmen should first approach the Labour Court for adjudication of disputes and issues effectively and thereafter, approach the higher Courts, if their grievances are not redressed. Contrarily, a recent trend is being developed that such industrial disputes are raised before the High Court under Article 226 of the Constitution of India. An argument is putforth by stating that the Transport Corporations or certain other Companies



are the Government owned or the Government has made investments on such Companies or Corporations. Such an argument can never be considered as a good proposition. Once an employee comes under the definition of "the workman" and his service conditions are governed under the Industrial Disputes Act, 1947, more specifically under Section 12(3) of the Act, then all such adjudications are to be effectively done at the first instance before the Labour Tribunal or the Court concerned. In violation of these line of procedures, large number of writ petitions are filed seeking adjudication of main issues and disputes under Article 226 of the Constitution of India, which can never be allowed and if at all, any imminent circumstance arise, then by way of exception, a writ proceedings can be entertained and issues can be settled. Contrarily, entertaining a writ petition for the purpose of adjudication of disputes and issues can never be a routine affair by the High Courts. Exhausting the alternative remedy is the rule and entertaining a writ proceedings is an exception.

57.The contentions of the writ petitioners that the Judgment of the Honourable Full Bench of this Court cited supra was in a case where the employer is a Private Company. Such an argument undoubtedly has no relevance. The Full Bench has answered the question and decided the principles and held the importance of exhausting the alternative remedy by the workman before the Labour Court at the first instance. Thus, the very argument of the writ petitioners deserves no merit consideration. Once a settlement is arrived between the Management and the Workmen under Section 12(3) of the Industrial Disputes Act, 1947, it is binding on the parties to the agreement and accordingly, the disputes, issues and grievances are to be adjudicated and resolved only through the procedures contemplated and as well as before the Forums created and bypassing such procedures or mandatory provisions of the statutory can never be dispensed with nor be waived.

58.This being the legal principles to be followed, the Full Bench judgment in the case of P.Pitchumani cited supra, categorically enumerates that if the Industrial Dispute relates to enforcement of a right or an obligation created under the Act, then, the only remedy available is to adjudicate the same under the Act. It is made clear that the grievances of the writ petitioners are in relation to their service conditions which were recognised under the Settlements under Section 12(3) of the Industrial Disputes Act. Therefore, those rights and service conditions are to be enforced through appropriate adjudication under the provisions of the Industrial Disputes Act more specifically before the Labour Court. Even in the absence of issuing any



such 9-A notice, it is to be construed as violation of the provisions of the Industrial Disputes Act. Then also, the "workmen" is entitled to approach the Industrial Labour Court for redressal of their grievances.

59. All such grievances even in the absence of any notice or in the absence of any order can be adjudicated before the competent Industrial Labour Court and it is not necessary that those cases are also to be entertained by the High Court under Article 226 of the Constitution of India.

60. In the present case, this Court is of the opinion that it became unnecessary on account of the counter filed by the respondents that the respondents have not taken any decision to alter or modify the service conditions of the workmen. Therefore, entertaining a writ petition for the year 2009-10, keeping it pending for about 9 years and considering the fact that the respondents have not taken any steps to alter certain conditions became meaningless. Under these circumstances, this Court is of the considered opinion that the workmen must approach the Labour Court at the first instance instead of approaching the High Court based on certain apprehensions.

61. The principles laid down by the Full Bench are enumerated in paragraphs 7 and 14, which are extracted hereunder:

"7. General contract of employment is governed by common law and any breach of the contract and dispute arising therefrom is to be adjudicated by common law Court. But, if the matter is governed by the I.D. Act or the Standing Orders relating thereto, by necessary implication, the common law remedy is barred and more so, if the adjudicatory forums, be it Labour Court or Industrial Tribunal, are constituted under I.D. Act. Earliest is the judgment of the Supreme Court in Premier Automobiles Limited Vs. Kamlakar Shantaram Wadke and others, 1975 (2) LLJ 445. In the said case, there was a dispute as to whether a civil suit was maintainable in a matter arising under the Industrial Disputes Act. The case related to the payment of the amounts under the Memorandum of Settlement and as to whether there was an infraction of Section 9-A of the Industrial Disputes Act, 1947. A suit in representative capacity was filed under Order 1, Rule 8 of C.P.C., and it was partly decreed, against which an appeal was filed questioning the jurisdiction of the Civil Court, but the appeal failed. Then the matter was taken in a Letters Patent Appeal, but there also the finding with regard to sustainability of the suit before the Civil Court was upheld, and later on the matter landed in Supreme Court.



The legal contentions were comprehensively considered by referring to several important judgments and following are the legal principles stated in the said case:

(i) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act, the remedy lies only in the Civil Court.

(ii) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief, which is competent to be granted in a particular remedy.

(iii) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(iv) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for its enforcement is either Section 33-C or the raising of an industrial dispute, as the case may be.

14. In view of what is stated supra, we hold that

(i) only such violations under I.D. Act, which involve public duties, are amenable to Writ Jurisdiction under Article 226 of Constitution of India;

(ii) dismissals, transfers and other matters concerning the service conditions of employees governed by I.D. 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 I.D. 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 Section 10 of the I.D. 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;



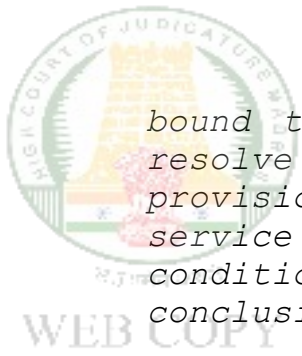
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bound to approach the Industrial Labour Court in order to resolve the issues arising out of the violations of the provisions of the Industrial Disputes Act, violations of the service conditions or the violations of the terms and conditions of the settlement or otherwise. This being the conclusion, the present writ petitions are devoid of merits.

64. Accordingly, the writ petitions stand dismissed. No costs. Consequently, M.P.[MD]No.1 of 2010, for impleadment and other miscellaneous petitions are closed."

3. In view of the principles settled in the Judgement stated above, the petitioner-Sangam are at liberty to approach the Competent Labour Court for the purpose of adjudication of the issues on merits and in accordance with law.

4. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

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Sub Assistant Registrar(CS)

sj i

To

1 CC to M/s.K.SATHIYA SINGH, Advocate (SR-26193[F] dated 18/12/2020)

W.P. (MD) .No.2915 of 2013
16.12.2020

SJ(CO)
KK(28.12.2020) 7P 2C