



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2020

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.8851 of 2015

and

M.P. (MD)No.1 of 2015

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P.Ravichandran

... Petitioner

Vs.

1.The General Manager,
Tamilnadu State Transport Corporation,
Kumbakonam Ltd.,
Kumbakonam.
Tanjore District.

2.Assistant Manager (Disciplinary Proceedings),
Tamilnadu State Transport Corporation,
Kumbakonam Ltd.,
Pudukottai Region,
Pudukkottai District,

3.The Enquiry Officer,
Tamilnadu State Transport Corporation,
Kumbakonam Ltd.,
Pudukkottai Region,
Pudukkottai District.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the enquiry report passed by the third respondent in enquiry No.T3/340, dated 26.06.2014 and the order of punishment passed by the second respondent in proceeding No.TaAaPoKa/Kumba/Pudhu/Ts/T3/340, dated 31.03.2015 and to quash the same as illegal.

For Petitioner : Mr.K.R.Laxman

For Respondents : Mr.D.Sivaraman

ORDER

The petitioner challenged the order of the third respondent dated 26.06.2014 and the order of punishment passed by the second respondent dated 31.03.2015. Disciplinary proceedings were initiated against the petitioner who was working as a Driver in the Transport Corporation and after conducting an enquiry, the order of punishment was issued imposing stoppage of increment for five years with cumulative effect.



2.The learned counsel for the respondent made a submission that the writ petition itself is not maintainable in view of the fact that the petitioner is a workman and his service conditions are governed under the settlement under the Industrial Disputes Act. Thus, the petitioner has to approach the Labour Court.

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3.This Court is of the considered opinion that once the workmen are governed under the settlement under the Industrial Disputes Act, they are bound to exhaust the remedies under the Industrial Disputes Act itself. Adjudication of the issues before the Labour Court cannot be construed as inefficacious. Thus, the High Court cannot entertain the writ petition on the ground that the alternative remedy before the Labour Court cannot be an effective remedy. In fact, the workmen would get an opportunity to adjudicate all the issues with reference to the documents and evidence before the Labour Court. Therefore, the petitioner being a workman is bound to approach the Labour Court for the purpose of redressal of his grievances in the manner known to law.

4.This Court has elaborately considered the entertainability of the writ petition in this regard filed by the workman in W.P. (MD)No.10416 of 2009 and 2926 of 2010 and the relevant paragraphs are extracted hereunder:-

"45.This Court is of an undoubted opinion that the power of judicial review under Article 226 of the Constitution of India is well defined. Repeatedly, the Supreme Court held that the judicial review under Article 226 of the Constitution of India is directed, not against a decision, but the decision making process. Of course, a patent illegality and / or error apparent on the face of the decision which goes to the root of the decision, made various decision making process. In the event of no such decision or in the event of no such actions on the part of the respondents, in a writ petition, then the High Court cannot issue any direction based on certain apprehensions raised by the parties in the writ petition. Thus, the scope of judicial review under Article 226 of the Constitution of India has been well defined and therefore, the High Court cannot entertain a writ petition in a routine manner where a statutory remedy is very much available for the litigants to redress their grievances by following the procedures.

46.Forum choosing by the litigants can never be encouraged. It is not as if the aggrieved persons can choose the forum. When a definite forum is contemplated under the Statute, they are bound to approach the same and thereafter approach the High Court under Article 226 of the Constitution of India. If such litigants who all are



claiming to be aggrieved is permitted to approach the High Court directly without exhausting the statutory remedies provided under the Act, then the High Courts are not only over burdened, but the High Courts would not be in a position to render justice as warranted under the constitutional principles. The extraordinary jurisdiction are to be exercised efficiently, speedily in order to provide justice to the citizen at large. In the event of entertaining such matters, where alternate remedy is available under the Statute which all are procedurally effective, then the High Courts must be cautious in entertaining the writ petition and direct those aggrieved persons to approach the Courts competent and thereafter approach the High Court.

47. The very apprehension of these writ petitioners even can be brought before the Industrial Labour Court and the Industrial Labour Courts are competent to issue interim orders also. Industrial Labour Courts are competent to pass orders, whenever the Court thought fit to issue such orders. Thus, it is not as if the industrial Labour Courts are not having any powers to issue any such interim orders or any other orders as necessity warrants. Thus, this Court is of the considered opinion that all the Special Courts, appellate authorities created under the Statute as well as under the service Rules must be respected at the first instance by the High Courts and all such authorities / competent Courts / competent forums must be allowed to exercise their powers in the manner known to law.

48. The speedy redressal of the grievances of the litigants of our great Nation is undoubtedly a constitutional perspective. Thus, while dealing with all such cases, the High Court should ensure that the aggrieved persons approach the appropriate Forum at the first instance. Sometimes, it happens that the legal brains are advising to file cases directly in the High Court, without exhausting the statutory remedies available to the aggrieved persons. Such ill- advises or opinions may commercialize the litigations. Commercialization of the judicial systems and dispensation of justice is unconstitutional and can never be tolerated nor be allowed by the constitutional Courts. Commercialization being adopted in certain circumstances, through such ill-advises. The Court must be cautious and take a decision to exhaust the statutory remedies and thereafter, approach the higher Courts. Under these circumstances, all these aspects are weighing in the minds of this Court and it is undoubtedly important to ensure that such specially constituted Courts or Tribunals or Forums are also exercising their powers as



contemplated under the provisions of such special statutes or general statutes. Apart from this, an enquiry or trial can never be conducted by the High Court, under Article 226 of the Constitution of India. The power of Judicial review cannot be extended for the purpose of conducting an enquiry or trial by examination of documents or witnesses. Thus, such a process is to be undertaken by the competent authorities or the Forums or the Tribunals or the Special Courts constituted for that purpose. Under these circumstances, in the event of non-adjudication of the disputed issues and facts by these Tribunals, Labour Courts etc., the High Court would not be in a position to decide the cases by exercising the power of judicial review under Article 226 of the Constitution of India. Adjudication of issues and facts are highly warranted. Only in the event of finding of the facts and adjudication of the documents and circumstances, the High Court would be in a position to deal with the writ petitions properly and exercise the power of judicial review, so as to provide complete justice to the aggrieved persons, who all are approaching the Court of law.

49. The Apex Court time and again reiterated that mere apprehension is insufficient to entertain a writ petition. Only in the event of establishing any such apprehensions or probabilities or there is no other way to restrain such illegality or unconstitutionality, then alone, the High Court can entertain writ petitions on exceptional circumstances. In all other cases, a definite cause of action is mandatory for entertaining a writ petition. In the present case on hand, mere apprehension was taken as a cause by the writ petitioners. However, they have not followed the procedure of approaching the Labour Tribunal at the first instance. The service conditions are neither altered nor any changes are made. Under these circumstances, the writ petitioners have not made out any cause of action even for entertaining the present writ petitions.

50. Undoubtedly, Labour Tribunals, Special Courts created under special statutes are functioning effectively. The process of enquiry may take some more time. However, the delay in conducting trial would not be a cause for approaching the constitutional Courts. Even in Civil Courts, such a delay is happening. In many Forums, including certain Appellate Authorities, some delay is inevitable. In this regard, every Institutions are thriving hard to improve the procedural aspects and to ensure speedy disposal of appeals, cases for providing redressal to the aggrieved persons. When the Institutions are also thriving hard to provide speedy redressal, the litigants cannot be



permitted to bypass the alternative remedies available under the statute.

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.

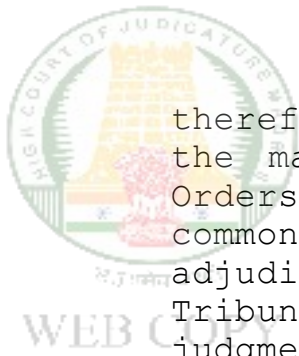
58.This being the legal principles to be followed, the Full Bench judgment in the case of P.Pitchumani cited supra, categorically enumerates that if the Industrial Dispute relates to enforcement of a right or an obligation created under the Act, then, the only remedy available is to adjudicate the same 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.

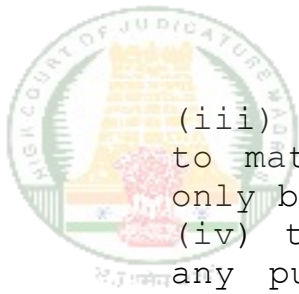
(iii) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(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;

(vii) without prejudice to the contentions of the appellants / petitioners - employees, on weeks time from the date of receipt of a copy of this order is given to the employees to joint at the transferred places and in respect to 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.

The Writ Appeals and Writ Petitions are disposed of accordingly. No costs. Consequently, the connected W.A.M.Ps. are closed."

62.The above judgment of the Hon'ble Full Bench of this Court is also unambiguous that the Workmen should approach the Industrial Labour Court at the first instance and thereafter, if their grievances are not redressed, then they are at liberty to approach the High Court under Article 226 of the Constitution of India challenging the order / award passed by the Competent Industrial Labour Court. As far as the present writ petitions are concerned, the apprehensions of the writ petitioners were clarified by the respondents that no such change in service conditions are made and the apprehensions are baseless and presumptive. In view of the facts and circumstances this Court is of the opinion that entertaining a writ petition for issuing a writ of Mandamus should not be entertained where the workmen approaches the High Court directly under Article 226 without exhausting the remedy provided under the Industrial Disputes Act before the competent Industrial Labour Court. Thus, this Court is of the undoubted opinion



that the writ petitions for Mandamus based on certain apprehensions filed by the Workmen aggrieved under the provisions of the Industrial Disputes Act, cannot be entertained.

63. The General principle is that no writ petition can be dismissed on the ground of maintainability. The power of judicial review under Article 226 of the Constitution of India is extraordinary. Thus, High Court would not dismiss a writ petition on the ground of maintainability. However, the High Court is rejecting a writ petition on the ground that the statute provides a remedy by approaching competent forums / Tribunals / Labour Courts specially created for such adjudications of the issues and to redress their grievances. Thus, the writ petitioners in all such circumstances are 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."

5. In view of the above legal principles settled by this Court, the petitioner is at liberty to approach the competent forum for the purpose of redressal of his grievances.

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

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

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+1 CC to M/s.D.SIVARAMAN, Advocate (SR-23255[F] dated 30/11/2020)

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27.11.2020

MR (CO)

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