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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.17831 of 2020

V.Kosal Ram

... Petitioner

Vs.

M/s.State Express Transport Corporation Ltd.,
rep. by its Managing Director,
No.2, Pallavan Salai,
Chennai 600 002.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the First Additional Labour Court, Chennai in E.P.No.8 of 2019, dated 26.08.2019 and quash the same, and consequently direct the Respondent to regularize the services of the Petitioner with effect from 01.09.1999.

For Petitioner : Mr.D.Soundar Raj

For Respondent : Mr.K.Kathiresan

O R D E R

Petitioner has come up with this Writ Petition challenging the order dated 26.08.2019 passed by the First Additional Labour Court, Chennai in E.P.No.8 of 2019, wherein, it has been held that, an Execution Petition cannot be maintained by a workman for getting benefits under the Settlement, with regard to a collective dispute. The Petitioner has also sought for a consequential direction to the Respondent/Management to regularize his services with effect from 01.09.1999.

2. Heard the learned counsel on either side and perused the material documents available on record.

3. Whether the Petitioner/employee has completed 240 days of continuous service or not and whether there is unfair Labour practice will have to be adjudicated only under the Industrial Disputes Act, 1947. If the Respondent/Management fails to consider regularization of the employee, the Union is entitled to execute the terms of Settlement. In the order under



challenge, the Labour Court has observed that, if the order passed in the Writ Petition has not been implemented, and, if at all the Petitioner needs any remedy, he has to file only a Contempt Petition. The Labour Court held that, though the number of the Writ Petition has wrongly been mentioned, in any event, the remedy is only before the High Court to file a Contempt Petition, and Execution Petition is not maintainable.

4. Admittedly, both the Respondent/Management and the Petitioner/employee have not filed documents before the Labour Court. Learned counsel appearing for the Respondent/Management contended that, in case, the employee has completed the required number of days of service, his remedy is only before the Authority constituted under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, and individuals have no locus to raise the dispute.

5. Learned counsel appearing for the Respondent/Management drew the attention of this Court to Section 11-B of the Industrial Disputes Act, 1947 and contended that, the order passed by the Labour Court is a decree and there is a delay on the part of the Petitioner in approaching the Court and more than 12 years have gone by and the Petitioner cannot seek any remedy, as it is beyond the time limit prescribed under the Limitation Act. Hence, according to the learned counsel, the Writ Petition is liable to be rejected.

6. The fact that, the Petitioner joined the services of the Respondent/Management as a Casual Labourer in the year 1995, is not in dispute. The employee was dismissed from service and thereafter, taken back into service pursuant to the orders of this Court and his services have been regularized w.e.f. 01.10.2006. It is also not in dispute that, the Petitioner has not filed a single document before the Labour Court to show that, he was employed from the year 1995. Before this Court, the Petitioner has produced numerous documents pertaining to the wages drawn by him and also the challan for payment of collection made by the Conductors in the Depot. In the series of documents marked from the year 1995 till 2000, the Officer of the Respondent/Management has given the particulars pertaining to the number of days, the Petitioner/employee worked in the Corporation.

7. A reading of Section 11-B of the Industrial Disputes Act, 1947 is clear that, the order of the Labour Court is a decree. For the sake of convenience, Section 11-B of the I.D. Act is extracted below:

11-B. Power of Labour Court or Tribunal to execute its award by decree. A Labour Court or



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a Tribunal shall have the power of a civil court to execute its own award as a decree of civil court and also to execute any settlement as defined in clause (p) of section 2 as decree.

8. For the purpose of execution and recovery of the benefits of the Settlement, powers have been conferred on Section 11-B of the Act. A narrow reading of the said provision makes it clear that, the entire provision of the Industrial Disputes Act, 1947, is redundant.

9. In the case of Life Insurance Corporation vs. D.J.Bahadur, reported in 1981 (1) LLJ 1, the Apex Court has specifically held that, the Award or Settlement will be in force till such time, it is substituted by another Settlement or Award. It is no doubt true that, an employee, who has completed 240 days of continuous service is entitled to only retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947. But, it does not preclude the Management and the Union to enter into a Settlement by giving better benefits, and in the present case on hand, the Management has agreed to regularize the services of the workman, who has completed 240 days of continuous service in a period of 12 calendar months.

10. The State Transport Corporation is a 'State' within the meaning of Article 12 of the Constitution of India, as held by this Court in the case K.S.Gurumurthy vs. The Additional Commissioner for Workmen's Compensation reported in (1987) 2 MLJ 335.

11. Though the workman has not filed any document before the Labour Court, he has produced numerous documents before this Court to show that, he has rendered more than 240 days of continuous service in a period of 12 calendar months every year and that, he is entitled to benefits of the Settlement. The beneficiary in terms of Section 11-B of the Act may be a workman, and the Union can espouse the case of that workman. It does not mean that, the workman as a beneficiary, cannot try to execute the benefits of the Settlement or the Award. For example, in a case of increase in wages payable to a workman, Union alone can raise a dispute under Section 2(k) of the Act. If the benefits of the Settlement are not given to some of the employees, they are entitled to invoke Section 33(c)(2) or Section 33(c)(5) of the Industrial Disputes Act to claim wages under the Award/Settlement, if it requires computation. If there is a Settlement, benefits of the Settlement can be claimed by the beneficiary viz. the workman.



12. In the case on hand, there are three Settlements. The first one was made on 25.09.1986; the second one on 28.09.1989 and the third Settlement on 30.09.1992. Terms in all these Settlements are crystal clear that, the Management has agreed to confer permanent status to the workman, on his completion of 240 days of continuous service. Strictly speaking, these Settlements have been given a go-by and for violation of the Settlements, prosecution under Section 29 of the Act can be initiated, and the Government must sanction prosecution against the person falling under Section 32 of the Industrial Disputes Act, 1947.

13. In cases pertaining to conferment of permanent status, the Management of Khadi Board took a plea that, only the employees will have to approach the Authority under the Conferment of Permanent Status Act, for getting permanent status.

14. In the case of A.Palanivelu vs. Tamilnadu Khadi and Village Industries Board, reported in 1997 (3) LLN 509, this Court has held that, if the Respondent is a State amenable to the jurisdiction of this Court and in case, the employees produce undisputed documents before this Court, instead of relegating the employee to go to the Authority for seeking relief, this Court is empowered to grant the relief.

15. In the case on hand, the Petitioner/employee is entitled to get the benefits before this Court, though this Court is empowered to remand the matter to the Labour Court to view the documents furnished by the Petitioner and render a finding, only if there is a dispute.

16. As there is no dispute with the Respondent/Management, this Court is invoking Article 226 of the Constitution of India to grant relief to the Petitioner/employee. That apart, the Tamilnadu Industrial Establishments (Conferment of Permanent Status) Act, 1981 received the assent of the President of India and it came into force in the year 1982. But, prior to 1981, employees who seek regularization need to raise only the Industrial Dispute through the Union. Clause 10 of Schedule V of the Industrial Disputes Act, 1947 makes it clear that, continuation of an employee in service for years together with an object of depriving permanent status would be an unfair Labour practice. Of course, this clause can also be looked into by the Authority under the Conferment of Permanent Status Act, in case, the dispute has been raised by the employee in terms of the decision reported in N.Mamundiraj vs. Management of Bharat Heavy Electricals Ltd., Trichy, reported in 1999 (1) LLJ 662.



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17. The observation mentioned supra is only to give a quietus to the entire issue on hand, instead of relegating the employee either to go before the Labour Court for fresh adjudication or directing the employee to approach the Authority under the 1981 Act.

18. The Apex Court in the case of Nirchiliya vs. Management of Safire Theatre reported in (1991) 1 LLJ 111 (SC) has held that, when there are two enactments enabling a person to resort to redressal, it is open to the employee to choose any one of the forums. In this case, the employee has decided not to raise a dispute with regard to regularization either through the Union before the Industrial forum or individually before the Authority under the Conferment of Permanent Status Act, as, he is seeking benefits based on the three Settlements mentioned supra.

19. Undoubtedly, the Petitioner has got the right to file a Contempt Petition and there is no delay to file a contempt. The powers of this Court under Article 215 of the Constitution of India are wide and it cannot be curtailed by Section 20 of the Contempt of Courts Act, 1971. Even though this Court in the case of Ponnuthai vs. V.M.Xavier Chrisso Nayagam reported in (2017) 3 MLJ 565 has held that, the limitation of Section 20 of the Contempt of Courts Act, 1971 will commence from the date of the order of this Court, there is no limitation applicable if Contempt is initiated invoking Article 215 of the Constitution of India. The provision for execution is completely different from punishing a person under the Contempt of Courts Act or seeking prosecution under Section 29 of the Industrial Disputes Act and both proceedings can go on simultaneously.

20. The Apex Court in the case of Workmen of American Express International Bank vs. Management of American Express International Banking Corporation reported in 1985 (2) LLJ 539, has categorically held that, the Management cannot expect the employee to work with hammer and sickle and for computing the actual number of working days, paid holidays and Sundays will have to be taken into account for arriving at 240 days. In the case on hand, the Petitioner/employee has produced documents from the year 1995, i.e. from the date of his joining, and that, the total number of days worked by him is over 240 days in a period of 12 calendar months. Hence, the Petitioner herein is entitled to regularization on completion of 240 days of service, i.e. w.e.f. 05.06.1996, based on the Settlement.

21. The contention that, the Limitation Act, will apply to the provisions of the proceedings, may not be correct. However, not only taking note of the fact that, there is a pandemic situation, but, the fact that, the Petitioner has knocked at the doors of this Court belatedly and also taking note of the fact



that, the Petitioner has not produced any document before the Labour Court, this Court holds that, the benefits due to the Petitioner from 05.06.1996 shall be notionally fixed, as if, he was a permanent employee on that date. Monetary benefits and other benefits due to the Petitioner shall be notionally calculated and the arrears can be paid from the date of filing of the Execution Petition before the Labour Court and arrears of backwages prior to that shall not be paid.

22. The limitation of one year is prescribed only in respect of the claim made under Section 33(c)(1) and not under Section 33(c)(2) of the I.D. Act. Section 11-B of the I.D. Act cannot be read in isolation and it has got to be read with Section 33(c)(1) of the I.D. Act. But, delay can be condoned provided, sufficient cause is shown.

23. As the Award/Settlement will be in force till it is substituted by another Award or Settlement, the limitation under Section 33(c)(1) may apply on and from the date of superannuation or demise of the employee, as benefits due to the employee has to be continuous, and default on the part of the employer is also continuous. The employer cannot be compelled to retain the records for years beyond the prescribed time, and if any Application calling for records is filed by an employee, the same has to be rejected with costs payable by the employee. In the absence of records at the hands of the employer, no relief can be granted to the employee, if he has not approached the Forum well within time. Also, when a litigation is pending before a higher forum, that period has to be excluded for the purpose of limitation. However, for the delay, the employee cannot be allowed to make a lottery. If strict provision to Section 33(c)(1) of the I.D. Act is applied, the employee will be out of litigation. On a reading of the decision rendered by the Apex Court in L.I.C. vs. D.J.Bahadur reported in AIR 1980 SC 2181 and the provisions of I.D. Act, and on equity, this Court deprives payment of arrears to the employee, as mentioned supra.

In fine, this Writ Petition is allowed on the above terms. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

(aeb)



To:

1.The Managing Director,
M/s.State Express Transport Corporation Ltd.,
No.2, Pallavan Salai,
Chennai 600 002.

2.I Additional Labour Court,
Chennai.

+lcc to D.Soundar Raj, Advocate SR No.28703

+lcc to K.Kathiresan, Standing Counsel for SETC SR No.28582

W.P.No.17831 of 2020

KSM (CO)
PR (23/08/2021)