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W.P.Nos. 1967 to 1970 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos. 1967 to 1970 of 2017

and

W.M.P. Nos. 1950 to 1953 of 2017

1. K. Harirajan

.. Petitioner in
W.P.No. 1967 of

2017

2. G. Kumar

.. Petitioner in
W.P.No. 1968 of

2017

3. P. Thangaraju

.. Petitioner in
W.P.No. 1969 of

2017

4. Meenakshi Sundaram

.. Petitioner in
W.P.No. 1970 of

2017

Vs.

1. The Government of Tamil Nadu,
Represented by its Secretary,
Transport Department,
Fort St. George, Chennai – 600 009.

2. The Management of Metropolitan Transport
Corporation Chennai Ltd.
Pallavan House, Pallavan Salai,



Chennai – 600 002

W.P.Nos. 1967 to 1970 of 2015



... Respondents
in all WPs

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Prayer in all WPs: Writ Petitions filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records and quash the impugned order dated 15.10.2015, 11.12.2015, 16.12.2015 & 02.02.2016 respectively Letter No. 1080/PB(PO)2/MTC/2015 issued by the second respondent and consequently direct the respondents to fix the date of appointment of the petitioners notionally from the date of initial appointment or at least on par with the co-workers Venkatapathy, PrabakaraRao, Dhananchezhian and Natarajan (Staff No. 50872, 50862, 50804, 50712) and consequently count the total service to grant notional fixation of pay, seniority, length of service for pension.

For Petitioners : Ms. N.S. Tanvi

For Respondents : R1- No appearance
Mr. R. Balaji for R2

COMMON ORDER

The writ petitions are filed questioning the rejection order passed by the respondents with reference to the claim of the writ petitioners for fixation of their seniority and for consequential benefits. The petitioners were appointed either as Conductors or Drivers in the transport corporation. The petitioners were retrenched without any prior permission which is mandated under Section 25N of the Industrial Disputes Act, 1947.



WEB COPY 2 Another set of retrenched employees filed Writ Petitions and pursuant to the interim orders, they were allowed to continue in service.

3. The learned counsel for the petitioners brought to the notice of this Court that several other retrenched employees filed writ petitions and continued in service and in this regard, the seniority dispute arose between the workmen serving in the cadre of conductors and drivers.

4. The service conditions of the workmen working in transport corporation are governed under 12 (3) Settlement entered into between the management and the Labour Union. Their seniority is to be fixed as per the terms and conditions of the Settlement and in accordance with the Rules in force. It requires an elaborate adjudication on the disputed facts. Such a roving enquiry cannot be conducted by the High Court in a writ proceedings nor the issues can be decided merely based on the affidavits filed by the parties. It requires an adjudication with reference to the original documents and evidences with reference to the terms and conditions stipulated in the Settlement at various points of time.



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5. That apart, workmen at the first instance has to exhaust the remedy contemplated under the Industrial Disputes Act. The growing practise of filing a writ petition directly under Article 226 of the Constitution of India cannot be encouraged at all circumstances. The very purpose and object of alternate remedy will be defeated if writ petitions are entertained in order to adjudicate such disputed facts. The finding of fact by the Labour Court would be of greater assistance to the High Court for the purpose of exercising the power of judicial review under Article 226 of the Constitution of India. In the absence of any such factual findings, the High Court may not be in a position to form an opinion with reference to such disputed facts between the parties.

6. The Courts have repeatedly held that the alternative remedy contemplated under the statutes are to be exhausted at all circumstances. The remedy provided in the present case is the Labour Court which is a judicial forum and therefore it cannot be dispensed with ordinarily by the High Court. When the alternative remedy is more efficacious and is a judicial forum, then the said remedy is to be exhausted by the workmen who



are all governed under the Industrial Disputes Act.

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7. High Court entertaining a writ proceedings on such disputed issues between the parties and issuing a direction one way or other are causing prejudice to either of the parties and ultimately the issues are not settled in entirety and the litigants are repeatedly approaching the High Court for redressal of their grievances then and there in piece-meal manner. Therefore, the procedures as contemplated are to be followed scrupulously by the parties for the purpose of redressal of their grievances. The principles in this regard are considered by this Court in the case of '**P. Muthukrishanan & Others vs The Management of the Tamil Nadu State Transport Corporation (Madurai) Ltd., & Another in W.P. (MD) Nos. 10416 of 2009 & 2926 of 2010 dated 25.07.2019**'

8. Therefore, whenever the service conditions are governed under the provisions of the Industrial Disputes Act, then the workmen have to approach the Labour Court for redressal of grievances in the manner contemplated and the writ petition is not entertainable. High Court cannot routinely dispense with the alternate remedy provided under the Industrial Disputes Act i.e. Labour Court.



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9. In the present case, the petitioners are claiming seniority and the retrenchment orders passed, appointment orders, the terms and conditions of the Settlement are to be adjudicated and decided with reference to the documents and evidences. Therefore, the petitioner is at liberty to approach the Labour Court in the manner known to law. In the event of any such approach by the petitioners, the Labour Court shall take into consideration the period during which the writ petitions were pending before the High Court for the purpose of condoning the delay and adjudicate the issues on merits and in accordance with law, as expeditiously as possible. The writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

14.11.2022

mrn

Index : Yes / No

Speaking order / Non-Speaking order



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To

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2. The Management of Metropolitan Transport
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S.M.SUBRAMANIAM, J.

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