



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.01.2022

Pronounced on : 15.02.2022

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.2513 of 2012
and
M.P. (MD)No.1 of 2012

The Management,
represented by its General Manager,
Tamilnadu State Transport Corporation,
(Kumbakonam Division-II) Limited,
Trichy.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Trichy.

2.Dheeran Chinnamalai Transport
Corporation Worker's Union,
AITUC, by its Secretary,
No.1A, Periyamilaguparai,
Trichy-1.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records in I.D.No.58 of 2002, dated 28.06.2011, on the file of Labour Court, Trichy, to quash the same.

For Petitioner : Mr.A.Balaji
for Mr.D.Sivaraman

For Respondent 1 : Court

For Respondent 2 : Mr.S.Arunachalam

O R D E R

The Management has filed this Writ Petition to quash the order passed by the Labour Court in I.D.No.58 of 2002, dated 28.06.2011.

2.The brief facts of the case are that the second respondent Union, namely Dheeran Chinnamalai Transport Corporation Workers' Union, AITUC, has raised an Industrial Dispute in I.D.No.58 of 2002,

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for one of its member, namely, K.M.Arumugam. The said employee joined on service on 16.06.1974. The following are the imputation of charges on the said K.M. Arumugam during various period:

1. While working as Driver, he indulged in strike, violently blocked first batch of vehicles and also prevented the employees who were going for duty on 12.04.1988. He was issued with a charge memo, dated 18.04.1988 for his misconduct and he gave his explanation on 02.06.1988. A domestic enquiry was conducted on 25.08.1988 and the charges were proved. A second show cause notice, dated 13.09.1988, was issued and the delinquent submitted his explanation on 13.10.1988. After considering the past service, the delinquent was awarded a punishment of stoppage of increment for one year with cumulative effect.
2. The petitioner management submitted that the delinquent K.M.Arumugam was involved in the misconduct of misbehaviour with the Branch Manager on 11.06.1988. The Management issued charge memo, dated 13.06.1988. The delinquent submitted his explanation on 12.07.1988 and subsequent domestic enquiry was conducted. He was found guilty and a punishment of increment cut for one year with cumulative effect was awarded.
3. The third charge against the delinquent was he did not park the Bus TML 5868 in the Town bus bay in the Central Bus Stand and misbehaved with the Junior Superintendent, who was on duty in the Bus stand on 26.06.1989. The delinquent did not respond to the charge memo, dated 08.07.1989 and a domestic enquiry was conducted, which ended up in punishment of increment cut for one year with cumulative effect.
4. The next charge is on 22.08.1989, where the delinquent was performing duty in the Bus TML 5575, reached the Bus stand 25 minutes ahead of scheduled timing and favoured the private Bus and caused revenue loss to the Corporation. A charge memo, dated 22.09.1989, was issued. After the finding of the Enquiry Officer, a punishment of cut in increment for two years with cumulative effect was imposed.
5. The next charge was on 18.09.1989. The delinquent while discharging service on Manaparai Branch did



not pickup passengers on the line and had driven the Bus fastly and arrived at the destination 15 minutes earlier and caused loss to the Corporation which ended up in punishment of two years increment cut with cumulative effect.

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6. The next charge was on 09.07.1989, while discharging his service in Jeyamkondan Branch, the petitioner misbehaved with the superior Officer in a violent and disorderly manner and caused prejudice to the industrial peace among the employees Branch and was awarded with a punishment of two years increment cut with cumulative effect.
7. On 15.08.1989, when the delinquent was working on Jeyamkondan Branch, in Bus TML 5617, he arrived at the destination earlier and caused loss to the Corporation. After enquiry, on 31.10.1989, he was awarded with a punishment of two years increment cut with cumulative effect.
8. The next charge was that while he was working in Manaparai Branch on 07.09.1996, he refused to perform duty in the Bus TN 45 No.349. Hence, he was awarded with a punishment of increment cut for three years with cumulative effect.
9. The next charge was that the delinquent was absent without prior permission and intimation from 21.12.1992 to 26.12.1992, which ended up in punishment of increment cut for three months without cumulative effect.
10. The next charge was on 25.05.1992. While he was performing duty in Bus TN 45 N.0288, he had driven the bus carelessly and caused an accident and was awarded with punishment of increment cut for six months with cumulative effect.

3. In these delinquencies, the delinquent was imposed the punishment after detailed enquiry conducted by the retired Judge. The delinquent employee was given ample opportunity in the domestic enquiry and the enquiry was conducted following the principles of natural justice. The findings of the Enquiry Officer in all the enquiries were based on the evidence on record. Considering the past record of service and the case on hand, which was also proved in the enquiry, the delinquent was awarded a punishment for such misconducts by following principles of natural justice under the relevant rules and regulations. The Labour Court without considering



the facts and circumstances has allowed the I.D. and set aside all the punishments and allowed all the monetary benefits to the delinquent. Aggrieved over the same, the present Writ Petition is filed.

4. The respondents have not filed any counter affidavit. But, submitted detailed arguments before this Court by citing various judgments, also relied on the petition filed before the Labour Court.

5. Heard Mr.A.Balaji, learned Counsel appearing for the petitioner and Mr.S.Arunachalam, learned Counsel appearing for the respondents.

6. The second respondent Union has raised an I.D. by filing a petition on 26.08.2002. The Union has contested the enquiry proceedings initiated and the punishments, which was imposed a decade ago. The first punishment that was imposed in the year 1988 and the Union contended that the management has not produced any enquiry proceedings before the Labour Court and the enquiry is vitiated. This Court is not able to accept such contention of the Union, since any institution is not expected to retain any files beyond a period of time. Admittedly the first punishment was in the year 1988.

7. The charges framed in the year 1988, 1989, 1992 and 1996 are being questioned in I.D. and the question is whether the Union has any right to raise any Industrial Dispute beyond a period of time. The contention of the second respondent that there is no time limit fixed for raising industrial dispute and has relied on a judgment rendered by Hon'ble Supreme Court in Sapan Kumar Pandit and Uttar Pradesh States Electricity Board and others reported in 2001 (3) LLN 862, where it has been held the period envisaged by the term "at any time" in section 4K under Uttar Pradesh Industrial Disputes Act, 1947 are prima facie indicator to a period without boundary. The relevant portion is culled out herein under:

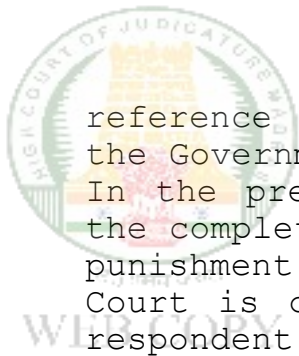
"8.The above section is almost in tune with S.10 of the Industrial Disputes Act, 1947 and the difference between these two provisions does not relate to the points at issue in this case. Though no time-limit is fixed for making the reference for a dispute for adjudication, could any State Government revive a dispute which had submerged in stupor by long lapse of time and rekindled by making a reference of it to adjudication. The words "at any time" as used in the section are prima facie indicator to a period without boundary. But such an interpretation making the power unending would be pedantic. There is inherent evidence in this section itself to indicate that the time has some circumscription. The words "where the Government is of



the opinion that any industrial dispute exists or its apprehended" have to be read in conjunction with the words "at any time". They are, in a way, complimentary to each other. The Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression "at any time" terminates with the eclipse of the industrial dispute. It therefore, means that if the dispute existed on the day when the reference was made by the Government it is idle to ascertain the number of years which elapsed since the commencement of the dispute to determine whether the delay would have extinguished the power of the Government to make the reference.

9.Hence the real test is, was the industrial dispute in existence on the date of reference for adjudication? If the answer is in the negative then the Government's power to make a reference would have extinguished. On the other hand, if the answer is in positive terms the Government could have exercised the power whatever be the range of the period which lapsed since the inception of the dispute. That apart, a decision of the Government in this regard cannot be listed on the possibility of what another party would think whether any dispute existed or not. The section indicates that if the opinion of the Government that dispute existed then the Government could make the reference. The only authority which can form such an opinion is the Government. If the Government decides to make the reference there is a presumption that in the opinion of the Government there existed such a dispute."

However, this case is not applicable to the facts of the present case. Since in the referred case there were more than 10 employees claiming for reinstatement (since they were retrenched). The employer had given an assurance to reinstate, then the same was not granted to the employees, had preferred industrial dispute and the same ended in favour of the employees. Then, one of the employee preferred industrial dispute and the High Court had held it is hit by delay and latches, then the Supreme Court had held that the issue is still pending, because conciliation was pending, the employer gave an assurance to the appellant that in the event of any of the claims of the 10 workmen was upheld by the Labour Court the same benefit would be extended to the appellant. Under those circumstances the Supreme Court held that the issue is not hit by limitation. But in the present case on hand, the domestic enquiry was over after each delinquency was dealt with after following natural justice and ended up with punishment. The real test is whether there is an industrial dispute in existence on the date of



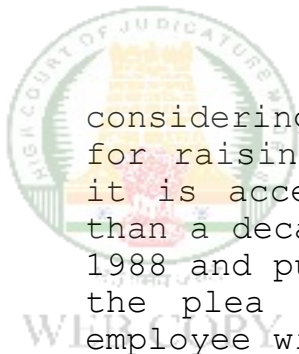
reference for adjudication? If the answer is in the negative then the Government's power to make a reference would have extinguished". In the present case the industrial dispute has extinguished after the completion of the each and every enquiry after the imposition of punishment and when there is no appeal pending. Therefore, this Court is of the considered opinion that the referred case by the respondent is not applicable for the facts of the present case.

8. The contention of the Union on behalf of the delinquent that they preferred an appeal and submitted representations to the management and the same was not considered, cannot be accepted, since the Union or delinquent has not produced any appeal papers that were claimed to have been filed before the management. Hence the argument of the Union is rejected.

9. The contention raised by the Union that the Management has marked only the final orders passed against the delinquent and for each and every domestic enquiry, the respondents have not produced any enquiry report or enquiry proceedings before the Labour Court and the same is vitiated. This Court is not able to accept such contention. On perusing the "list of documents" produced by the Union, it is seen that the Union have produced the Enquiry Officer's report, especially Exhibit 15, dated 25.08.1988. Even, the Union has produced another Enquiry Officer's report, dated 14.09.1988, 01.11.1989, etc. When the Union has produced the enquiry reports, then the Union's claim that enquiry reports were not produced by the management and so the enquires are vitiated is absolutely erroneous. As far as the "copy of enquiry proceedings", it is already held supra that the management is not bound to keep the old records beyond a period of time. More over the Union has not produced any evidence to show that enquiry proceedings were demanded by the delinquent, inspite of the demand the management did not produce the proceedings.

10. Whenever the domestic enquiry is conducted the delinquent's rights are protected as per the laws. The main protection is to give proper opportunity to the delinquent. If that is not granted he can question before the Labour Court in preliminary objection and each and every delinquency can be challenged before the Labour Court. The delinquent ought to be very vigilant, if his rights are affected and should question it then and there. Having slept over for more than a decade, nearly fourteen years, the delinquent cannot raise up in the year 2002 and suddenly question the punishment awarded for the charge memos, dated 13.06.1988, 08.07.1989, 22.09.1989, 18.09.1989, 09.07.1989, 31.10.1989, 07.09.1989, 25.05.1992 and for the unauthorized absence from 21.12.1992 to 26.12.1992.

11. Whether the Union can raise any domestic enquiry after a lapse of so many years. It is seen that the Labour Court has set aside the domestic enquiries in a single stroke without



considering the question of limitation. There is no time prescribed for raising any domestic enquiry before the Labour Court. Even if it is accepted, there should be some reasonable time limit, more than a decade is too long a delay. The first charge was in the year 1988 and put to challenge in the year 2002 can never be accepted. If the plea of delay is not applicable is accepted, then all the employee will file a case on the eve of superannuation and set aside the punishment in one stroke and get away. This would be mockery of domestic enquiry and such a situation can never be allowed at all.

12.This Court is of the considered opinion that the last delinquency was while he was working in Manaparai Branch on 07.09.1996, he refused to perform duty in the Bus TN 45 No.349, was awarded with a punishment of increment cut for three years with cumulative effect. The last delinquency was put to challenge in the year 2002 and this is challenged after a lapse of six years. Atleast the last delinquency can be considered, since it is only six years comparative to the other delinquencies. Since all the punishments are with cumulative effect, this Court is showing some mercy to the delinquent and is considering only the last delinquency, which was imposed for stoppage of increment for three years with cumulative effect and only that punishment is reduced as stoppage of increment for one year without cumulative effect. The other punishments awarded by the management are confirmed and the impugned order of the Labour Court in I.D. No. 58 of 2002, dated 28.06.2011, is set aside as far as the other delinquencies are concerned.

13.In the result the following order is passed:

a. The impugned order in I.D. No. 58 of 2002 dated 28.06.2011 is set aside for all delinquencies except the delinquency in Manaparai Branch on 07.09.1996.

b. For the delinquency happened in Manaparai Branch on 07.09.1996, for refusing to perform duty in the Bus TN 45 No.349, was awarded with a punishment of increment cut for three years with cumulative effect is modified as "punishment of increment cut for one year without cumulative effect".

14.With this modification, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)



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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

TO

The Presiding Officer,
Labour Court,
Trichy.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-6420[F] dated 16/02/2022)

Order made in
W.P. (MD)No.2513 of 2012
15.02.2022

PKP/08.03.2022/8P/3C