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W.P.No.9061 of 2011



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.9061 of 2011

S.Muthuraj (Deceased)

2.M.Manjula

3.R.Dhanalakshmi

4.M.Viayalakshmi

(P2 to P4 substituted as LRs of deceased sole petitioner vide order dated 11.04.2022 made in W.M.P.No.8528 of 2022 in W.P.No.9061 of 2011)

...Petitioners

vs.

1.The Presiding Officer,
II Additional Labour Court,
Chennai – 600 104.

2.The Management of Metropolitan
Transport Corporation (Chennai) Ltd.,
Anna Salai, Chennai – 600 002.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Award dated 30.10.2010 passed in I.D.No.102 of 2008, quash the Award and consequently direct the 2nd respondent to reinstatement with continuity of service, back wages and other attendant benefits, Award costs.



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For Respondents : R1 – Labour Court
Mr.R.Balaji for R2

W.P.No.906





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ORDER

The Writ Petition has been filed challenging the Award of the Labour Court rejecting the claim of the petitioner wherein, he had challenged the order of termination and sought for reinstatement.

2.Heard Mr.S.T.Varadarajulu, learned counsel appearing for the petitioner and Mr.R.Balaji, learned counsel for the second respondent.

3.Learned counsel appearing for the petitioner would submit that the petitioner was called for an interview for the post of Conductor in the year 2000 through Employment Exchange and after due process of selection, he was selected. Pursuant to the order of selection, he had joined the second respondent Corporation as a Conductor on 21.09.2000. But, from 26.06.2001, the petitioner was not given any work. It came to his knowledge that an order of dismissal was passed based upon alleged misconduct that happened on 02.06.2001. Hence, he raised an industrial dispute. On failure of Conciliation Proceedings, the claim of the petitioner was referred to the Industrial Tribunal in I.D.No.102 of 2008, the same was not entertained solely on the ground that the petitioner had been appointed temporarily and had not completed 240 working days in a calendar year and that he was also denied opportunity to defend himself on the alleged misconduct.

<https://www.mhc.tn.gov.in/judis>

4.He would submit that the denial of employment amounts to



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retrenchment as per Section 2(oo) of the Industrial Dispute Act, 1947. He would rely upon the Government Order issued in G.O.Ms.No.41 dated 13.07.2006, wherein similarly placed persons such as the petitioner were sought to be regularized, where also the second respondent Corporation was directed to give preference in employment to the retrenched workers such as petitioner. He would further submit that to substantiate that the petitioner had been working for more than 240 days, had filed a statement under exhibit W-5 and also exhibit W-9 series. The same has not been looked into properly by the Tribunal to hold that the petitioner has not completed 240 days in a calendar year and therefore, the entire proceedings is nothing but perverse and would have to be set aside.

5.Countering his arguments, Mr.R.Balaji, learned counsel appearing for the second respondent would submit that the services of the petitioner was not continued in view of his involvement in a misconduct. He would further submit that the services of the petitioner were only temporary and on daily wages and he had admittedly worked from 21.09.2000 to 26.06.2001. According to him, the total number of calendar days between 21.09.2000 and 26.06.2001 would only be 252 days. He would submit that exhibit W-5 had given a self serving statement as if he had worked for 261 days. This itself would show that the said document could not be looked into at all. Further, the production of exhibit W-9 series is also a self-serving documents as some of the documents are not even

tallying with the Calendar dates & one such example is that Sl.No.6 dated



31.09.2000. It is pertinent to note that September month has only 30 days.

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6. Admittedly, the last date of employment was 26.06.2001. The petitioner had only raised an industrial dispute after a period of seven years. Further, the Award was passed on 30.10.2010 and this Writ Petitioner had approached this Court only in the month of April 2011. This itself would show that the petitioner is not diligent in pursuing his claim and he had also not given any reasons as to why there was a delay in approaching this Court. He would submit at the outset, the Writ Petition should be dismissed for laches.

7. I have considered the rival submissions made by the learned counsel appearing on either side and also perused the materials available on record.

8. It is an admitted fact that the petitioner was not given work from 26.06.2001. He had approached the Industrial Tribunal only in the year 2008 which is nearly after seven years. The reason assigned by the petitioner is that in 2006, the Government has issued orders to regularize the services of the similarly placed persons with preference to give employment to the retrenched workers. I am not convinced with the reason that is being assigned by the petitioner. The petitioner had acquiesced himself of denial of work and when the Government had taken a Policy Decision to benefit certain employees working in

the Department, he had approached the Industrial Tribunal. That apart, it is not



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a retrenchment as claimed by the petitioner to avail the benefit of the Government Orders of the year 2006. The further conduct of the petitioner in not approaching this Court immediately after the Award passed would show that the petitioner was not vigilant in canvassing his rights. It has been repeatedly held that even though delay and laches may not be fatal in all circumstances, if such delay may affect other rival rights and may unnecessarily tag others into litigation, then such delay should not be condoned. Such delays or laches should be seriously viewed.

9.In the present case, the petitioner had not given any plausible explanation for the delay / laches as enumerated supra, the petitioner had also been not diligent. On this ground alone, the Writ Petition need not be entertained with.

10.Be that as it may, since the Writ Petition had been pending on the file of this Court and that the claim of the petitioner had also been dealt with on merits by the Industrial Tribunal. Hence, I would proceed to further deal with the merits of the case.

11.The petitioner had been appointed as Conductor on 21.09.2000 and was not given work from 26.06.2001. As rightly pointed out by the learned counsel for the second respondent, the petitioner could not have 240 working



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days to claim protection of the Industrial Dispute Act for continuation of employment. Even though an allegation has been made against the petitioner for certain misconduct, the non-employment was not based on such allegations for the petitioner to suffer any stigma. The Tribunal had rejected the claim of the petitioner on the ground that the Tribunal had factually found that the petitioner had not completed 240 days for his claim to be entertained.

12.I find no perversity, illegality or infirmity in the aforesaid order. Therefore, I am of the view that there is no ground made out by the petitioner to entertain this Writ Petition.

13.In fine, the Writ Petition is dismissed. There shall be no order as to costs.

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Index: Yes/No
Speaking order: Yes/No
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K.KUMARESH BABU, J.

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