



W.P.No.31910 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 08.12.2022

Orders delivered on 07.02.2023

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

W.P.No.31910 of 2014 and M.P.No.1 of 2014
and M.P.Nos.1 and 2 of 2015

The Management,
Tamil Nadu State Transport Corporation Ltd
Rep by its General Manager,
Villupuram-605602

.. Petitioner

Vs

1. The Presiding Officer,
Labour Court, Cuddalore,
Cuddalore.

2. K.Ezhumalai

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari to call for the records of the 1st respondent made in I.D.No.29 of 2008 dated 12.09.2011 and to quash the same.

For Petitioner : Mr.M.Aswin

For Respondents : Mr.R.Muralidharan
For R.2
R.1 - Court



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ORDER

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This writ petition has been filed challenging the award passed by the 1st respondent in I.D.No.29 of 2008 dated 12.09.2011, reinstating the workman/2nd respondent without continuity of service, backwages and other attendant benefits.

2. The case of the petitioner is as follows:

The 2nd respondent was appointed as a Conductor in the petitioner Corporation on sponsorship from the concerned employment exchange. The 2nd respondent was discharged from service permanently on 09.02.1996 due to his poor performance in the service. Thereafter, the 2nd respondent raised Industrial Dispute in I.D.No.29 of 2008. The said I.D. was raised by the 2nd respondent after a lapse of 11 ½ years. The petitioner refuted the said I.D. stating that the I.D. was not maintainable by virtue of the unexplained delay of 11 ½ years. But the 1st respondent Labour Court, treated the discharge as dismissal from service vide award dated 12.09.2011 and directed for reinstatement of the 2nd respondent, depriving backwages, continuity of service and all other attendant benefits. Aggrieved over the same, the petitioner Management has filed the present writ petition.



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3. Heard the learned counsel for the petitioner and the learned counsel appearing for the 2nd respondent.

4. Learned counsel for the petitioner would submit that the 1st respondent has lost sight of the fact that the 'discharge simpliciter' was not dismissal from service. He would further submit that when a decision is taken by the employer to release an employee who is on probation, considering his overall performance, conduct and suitability for the job, such decision cannot be said to be stigmatic or punitive and therefore, while taking a decision, neither any notice is required to be given to him, nor he is required to be given any opportunity of hearing. Learned counsel would further submit that there is no ground for the 1st respondent to interfere with the industrial dispute since there is an unexplained delay of 11 ½ years in raising the industrial dispute and hence, it is hit by Section 2(A) of Industrial Disputes Act, 1947 which was amended vide Industrial Disputes Amendment Act, 2010 (Act 24 of 2010) with effect from 15.09.2010.

5. On the contrary, the learned counsel appearing for the 2nd respondent would submit that the 2nd respondent was appointed as a



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conductor in the petitioner management in February 1990 through employment exchange and the petitioner management received Rs.2500/- as caution deposit from the 2nd respondent on 15.02.1990, before joining duty. The 2nd respondent had worked for more than 240 days in a calendar year. He was discharged from duty from 9.2.1996 as his performance was poor, without charge memo, without notice and without enquiry. His dismissal from service is against law and principles of natural justice. Hence, he has raised industrial dispute before the Labour Court, Cuddalore and the Labour Court has rightly passed an order of reinstatement.

6. Learned counsel for the respondent relied on the decision reported in *AIR 1999 Supreme Court 1351 (Ajaib Singh v. Sirhind Co-op. Mktg.-cum-Processing Service Society Ltd.)* and would contend that no reference to the labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour Court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal.



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7. On consideration of the submissions made on either side, this Court is of the view that the only point to be decided is whether the learned Judge was justified in condoning the delay of 11½ years in raising the Industrial Dispute.

8. Section 2(A) of Industrial Dispute Act, 1947 was amended vide Act 24 of 2010 with effect from 15.09.2010. For better appreciation, the amended Section 2A is extracted hereunder.

S.2-A. Dismissal etc., of an individual workman to be deemed to be an industrial dispute. -

[(1)] Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

[(2)] Notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to



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the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in subsection (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)].

9. The aforesaid provision infers that the workman must raise an industrial dispute before the Conciliation Officer and upon expiry of 45 days from the date of filing an application before the Conciliation Officer, the workman can move an application before the Labour Court, before the expiry of three years from the date of his dismissal. In any event, the right



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conferred under section 2A of the Act lapse immediately preceding the date of expiry of three years of the date of dismissal. Sub-section (3) of Section 2A operates independently, despite the continuation of the conciliation proceeding. While such being the settled provision, in the case on hand, the petitioner was dismissed from service on 9.2.1996. Subsequently, after a lapse of 11 1/2 years, he filed an application under Section 2A of the I.D.Act before the Labour Court i.e., only on 08.03.2008. Therefore, he ought to have filed an application before the learned Labour Court within three years from the date of dismissal order passed by the petitioner Management on 9.2.1996.

10. In the present case, admittedly, there is a delay of 11 1/2 years in raising the industrial dispute. Law or principles of limitation has got a definite purpose and object. After the amendment of Section 2(A) of Industrial Dispute Act, 1947, vide Act 24 of 2010, the Labour Court is bound to look into the limitation of three years. Prior to the said amendment, no limitation was provided in the Industrial Dispute Act. Further, the decision



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relied on by the learned counsel for the respondent is not applicable to the present case.

11. The petitioner was dismissed from service on 09.02.1996 and the prescribed period of limitation of three years began to run on and from the date of dismissal which expired on 08.02.1999. A perusal of the claim petition filed by the second respondent-workman in I.D.No.29 of 2008 would show that there is no reason furnished for such a long delay of 11 ½ years. However, the Labour Court has given a finding that the writ petitioner-Management has dismissed the 2nd respondent without issuing charge memo, without conducting enquiry and without payment of compensation. In the absence of establishing any reason for such huge delay of 11 ½ years, the Labour Court ought not to have come to the conclusion that the 2nd respondent is entitled for reinstatement. The Labour Court, without looking into the limitation of three years has awarded reinstatement in 2011 whereas the Industrial Dispute (Amendment) Act came into force in 2010 itself, prior to the



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passing of the award by the labour Court. As there is no provision contrary to the said amended Act, the said amended Act is operative.

12. For the aforesaid reasons, this Court has no hesitation in coming to the conclusion that the award passed by the Labour Court has to be set aside. Accordingly, the Award of the Labour Court dated 12.09.2011 passed in I.D.No.29 of 2008 is hereby set aside and the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

07.02.2023

Index :Yes/No
Speaking/Non-speaking order
vsi

To

The Presiding Officer,
Labour Court, Cuddalore,
Cuddalore.



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J.NISHA BANU, J.

vsi

Pre-delivery order in
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