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WP.No.28345 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.28345 of 2017
& WMP.No.30449 of 2017

The Management, Tamil Nadu
State Transport Corporation
(Coimbatore) Limited, 37,
Mettupalayam Road,
Coimbatore-641043.

...Petitioner

Vs

1.The Presiding Officer,
Labour Court, Coimbatore.

2.G.Krishnasamy

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the order dated 22.3.2017 passed in I.D.No.228 of 2009 on the file of the Labour Court, Salem and quash the same as being illegal, arbitrary and unconstitutional.



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For Petitioner : Mr.A.Sundaravadhanan
For Respondent-2 : Mr.B.Sudharshanam,
Legal Aid Counsel

ORDER

This is a petition filed by the petitioner seeking to quash the order dated 22.3.2017 in I.D.No.228 of 2009 on the file of the first respondent.

2. The facts leading to filing of this case are as follows :

(i) The second respondent was engaged by the petitioner as a driver on daily wage basis from 05.4.1998 so as to meet emergency situation. All of a sudden, he was stopped from service on 20.4.1999 after the normal condition was restored by the petitioner management. Long after that, the second respondent filed W.P.No.27047 of 2007 before this Court seeking reinstatement and it was disposed of by order dated 12.10.2007 directing the second respondent to approach the Labour Court. Subsequently, he filed the industrial dispute before the first respondent seeking reinstatement with continuity of service, back wages and all other



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attendant benefits.

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(ii) In the said industrial dispute, the petitioner filed a counter refuting the claim made by the second respondent. However, by the impugned award, the first respondent directed the petitioner to reinstate the second respondent, however, without back wages and other attendant benefits. Challenging the same, the petitioner management is before this Court.

3. At the time of admission, on 07.11.2017 in WMP.No.30449 of 2017, this Court granted an order of stay until further orders.

4. Learned counsel for the petitioner would submit that admittedly, the 2nd respondent joined as a driver in the petitioner corporation for which no appointment order was issued to him and that he was not under continuous employment. Subsequently, the workman was stopped from service since 20.04.1999. However, after a lapse of nine years, he raised a dispute under Section 2A-(2) of the Industrial Disputes Act, 1947 before the



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1st respondent/Labour Court. Though the workman has not completed 240 days of continuous employment, the Labour Court without advertng to the said fact, has mechanically passed the impugned Award in favour of the workman which is not sustainable. Accordingly, he prays for allowing this Writ Petition.

5. Per Contra, learned legal aid counsel appearing for the 2nd respondent would submit that similarly situated persons who were denied employment approached this Court by filing a batch of Writ Petitions in W.P.No.1294-1299 of 1997 wherein, this Court vide its order dated 08.12.1997 had issued directions to give preference to the workers who worked less than 240 days in future vacancies. Subsequently, G.O.Ms.No.41, Transport (C.1) Department, dated 13.07.2006 came to be issued stating that the persons who were appointed from 1997 onwards and terminated later shall be given preference for re-employment in view of the orders passed by the High Court of Madras. However, the said benefit was not extended to the petitioner herein. He further submitted that the period between 05.04.1998 to 20.04.1999 in which, the workman was engaged



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with the petitioner corporation itself is sufficient to show that he has completed 240 days of continuous service for claiming regularization. The above facts have been elaborately discussed by the Labour Court while passing the impugned award which requires no interference. Accordingly, he prayed for dismissal of this Writ Petition.

6. Heard the learned counsel for the petitioner and the learned legal aid counsel appearing for the second respondent.

7. Subsequent to the termination of the workman in the year 1999, G.O.Ms.No.41, Transport (C.1) Department, dated 13.07.2006 was issued by the Government for regularization of services of the temporary/retrenched employees by providing them re-employment in the Petitioner Corporation. At para 3 of the said G.O, it has been held that the Government had decided to give preference to those persons who were appointed from 1997 onwards and terminated later in view of the various directions issued by the High Court of Madras with reference to the retrenched employees.



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8. Since the workman was appointed in the year 1998 and terminated in the year 1999, the benefit of G.O.Ms.No.41 is applicable to the workman herein and therefore, the workman is entitled for reinstatement. Further, it is the stand of the petitioner corporation that though the workman was terminated in the year 1999, however, he raised a dispute only in the year 2009 which is after a lapse of nine years from termination, however, it is to be pointed out that prior to 2010, there was no limitation for raising a dispute under Section 2A-(2) of the Act and, therefore, the limitational bar does not stand attracted. Further, when G.O. Ms. No.41 has been issued for granting certain relief to the workman, who had put in even less than 240 days of continuous service, based on the orders of this Court, definitely the said Government Order would enure to the benefit of the workman.

9. At the time of arguments, it was brought to the notice of this Court that during the pendency of this Writ Petition, the workman was retired from service. Hence, the question of reinstatement would not arise.



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10. However, in order to strike the balance between the warring parties and to render substantial justice, in lieu of reinstatement, this Court modifies the award by directing the petitioner corporation to pay one time compensation of Rs.3,00,000/- to the workman towards full quit. Accordingly, the petitioner corporation is directed to deposit the compensation amount of Rs.3,00,000/- to the credit of the I.D.No.228 of 2008 within a period of eight weeks from the date of receipt of a copy of this order. The 2nd respondent is permitted to withdraw the said amount by filing appropriate application before the Labour Court.

11. Accordingly, this Writ Petition is disposed of with the above modification. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

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