



W.A. No. 3541 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No. 3541 of 2023

&

C.M.P. No. 28945 of 2023

P. Kumar

..Appellant

Vs.

The Management,
Tamil Nadu State Transport,
Corporation (Salem) Ltd.,
Dharmapuri Region,
Bharathipuram,
Salem Main Road,
Dharmapuri – 5.

..Respondent

Prayer: Writ Appeal as against the order dated 31.10.2023 in W.P. No.
2229 of 2019.

For Petitioner :: Ms.R. Hemalatha

For Respondent :: Mr.M. Aswin



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Standing Counsel
JUDGMENT

(Delivered by *S. Vaidyanathan, J.*)

The writ appeal has been filed by the workman as against the order dated 31.10.2023 passed in W.P. No. 2229 of 2019 in and by which the award dated 19.10.2016 passed in I.D. No. 136 of 2012 has been confirmed.

2. The employee, who was employed as a Conductor in the respondent Corporation at Salem was terminated from service on 30.12.2007. According to the employee, he had served in the respondent Corporation for more than 240 days in a calendar year and his verbal termination is in contravention of Sections 25F and 25G of the Industrial Disputes Act, 1947 ("I.D.Act" in short). It is his further case that there was a mass recruitment of Conductors and he was not given any priority in employment, which is in violation Section 25H of the I.D. Act, 1947. The employee, after a lapse of 5 years from the date of dismissal, raised an industrial dispute on failure of conciliation. The said industrial dispute was taken up by Labour Court, Salem and two issues were framed, namely,
(i) whether the industrial dispute was barred by limitation and (ii)



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whether the workman would be entitled to reinstatement with continuity of service, backwages and other attendant benefits. The Labour Court, on consideration of the materials placed before it, rejected the case of the employee, which has also been confirmed by the learned Single Judge, more so, the learned Single Judge has observed that there was a delay on the part of the employee in raising the industrial dispute. Aggrieved by the dismissal of the writ petition, the present writ appeal has been filed.

3. Heard both sides.

4. As far as the first issue is concerned, ie. with regard to delay in raising the industrial dispute, we are of the view that the finding of the Labour Court is erroneous. The employee was dismissed from service in the year 2007. During 2010, there was an amendment to Section 2-A of the I.D. Act, 1947, which took effect from 15.09.2010 and the period of limitation for raising an industrial dispute was fixed as 3 years. However, the said amendment can have only prospective effect and cannot be applied retrospectively. Assuming for the sake of argument that the amendment will have retrospective effect, in that event as well, the employee will have three



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years time from 15.09.2010 and he had raised the dispute well within three years from the date of amendment. As stated supra, as the employee was dismissed from service prior to 2010, the amendment will not apply and the question of delay cannot be put against the employee. Therefore, the finding of the Labour Court qua the delay in raising the dispute, is perverse.

5. However, on facts, the Labour Court had come to the conclusion that the employee had not established that he had rendered continuous service of 240 days preceding the date of termination. Even though Ex.W4 was filed, the Labour Court did not agree with the plea of the employee. It is true that the employer had accepted that the employee was engaged as a temporary staff/Conductor, but that acceptance alone would not be sufficient to hold that the employee had rendered 240 days of continuous service preceding the date of termination. On that score, the award of the Labour Court is perfectly valid.

6. For the foregoing reasons, even though there was no delay in raising the industrial dispute and the delay cannot be put against the



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employee, we are of the view that on merits, as the employee had failed to establish his case that he had rendered 240 days of continuous service preceding the date of termination, the order under challenge confirming the

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AND

K. RAJASEKAR,J.

nv

award of the Labour Court warrants no interference. Hence, the writ appeal stands dismissed. No costs. Connected C.M.P. is closed.

(S.V.N.J.) (K.R.S.J.)

nv

22.12.2023

To
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