



W.P.(MD).No.20940 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 27.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.20940 of 2015

S.Lakshmanan

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Express Transport Corporation,
Division – I,
Pallavan Salai,
Chennai – 02.

2.The Presiding Officer,
Labour Court,
Tirunelveli.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned award of the second respondent in I.D.No.96 of 2014 dated 18.05.2015 and quash the same as it is illegal and consequently directing the second respondent to consider the I.D.No.96 of 2014 on merits within the prescribed period as stipulated by this Court.



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For Petitioner : Mr.R.Shankar Ganesh

For R-1 : Mr.K.Sathiya Singh,
Standing Counsel.

For R-2 : Court

ORDER

This Writ Petition is filed challenging the impugned award in I.D.No.96 of 2014 dated 18.05.2015 and consequently directing the second respondent to consider the issues raised in I.D. on merits.

2. The petitioner was appointed as Driver in the first respondent Corporation on 29.11.1988 and the petitioner was working until 24.01.1997. Thereafter, the petitioner had some dispute with the respondent Corporation where the allegation is that the respondent Corporation has provided bus in bad condition without safety measures. When the petitioner has raised such issues, the respondent has treated the petitioner in abusive language. However, the allegations stated by the respondent against the petitioner is that the petitioner has used unparliamentary words against the Foreman. On 25.01.1997, when the petitioner was absent, the said Foreman Moorthy lodged a false complaint against the petitioner and FIR was registered in Crime No.35 of 1997 for the



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offences alleged under Sections 341, 323 and 355 I.P.C. Subsequently the petitioner was acquitted on 06.01.2000 in C.C.No.504 of 1998 on the file of the Learned Judicial Magistrate III, Salem. In the meanwhile, based on the allegations, the first respondent initiated disciplinary proceedings by issuing charge memo dated 19.02.1997 and the petitioner was found guilty in the enquiry report dated 23.09.1997. Thereafter, a show cause notice was issued on 28.11.1997. The petitioner has submitted reply on 12.12.1997. Without considering the explanation, the first respondent dismissed the petitioner from service on 08.01.1998. Against which the petitioner preferred an appeal to the first respondent on 26.01.1998 and the same was dismissed confirming the order of dismissal. Aggrieved over the same, the petitioner has filed Writ Petition in W.P.No.42200 of 2002 challenging the dismissal orders. The Principal Seat of this Court vide order dated 27.09.2012 has held that the appropriate forum is the Labour Court and dismissed the Writ Petition with liberty to the petitioner to work out his remedy, in the manner known to law. Thereafter, the petitioner preferred petitioner before the conciliation officer i.e. before the Assistant Commissioner of Labour (Conciliation) on 09.01.2014 and the failure report was filed on 19.09.2014. Aggrieved over the same, the petitioner preferred I.D.No.96 of 2014 on 01.12.2014 and the same was dismissed vide impugned order dated 18.05.2015 stating that the Industrial



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Dispute was filed beyond the period of limitation prescribed in the amended provisions. The contention of the petitioner is that the petitioner has perusing the alternative remedy before the Principal Seat for all these years and subsequently only I.D was filed. Therefore, the period for which the case was pending before the High Court ought to be considered while considering delay.

3. On perusal of the order dated 27.09.2012 passed in W.P.No.42200 of 2002, it is evident that the petitioner had preferred an appeal before the first respondent and the first respondent has passed an order dated 28.10.2002 confirming the order of dismissal dated 08.01.1998. From 28.10.2002 onwards, the petitioner was litigating the case before the High Court. Therefore, the period that the case was pending before the High Court ought to be condoned and ought to be construed that there is no delay as such. If the petitioner has slept over his right without filing any Writ Petition, then the contention of the respondent Corporation that there is delay ought to be accepted. When the petitioner has filed the petition before the wrong forum, that cannot be considered as if the petitioner has slept over his right. Therefore, this Court is inclined to condone the delay. The delay is condoned.



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4. However, the petitioner attained superannuation in the year 2011 itself and at this stage the petitioner cannot be directed to agitate his case before the Tribunal. Hence, in order to grant overall justice, this Court is modifying the punishment of dismissal from service as compulsory retirement. However, the period of service ought to be taken from the date of his appointment that is 29.11.1988 until the appellate order passed by the respondent Corporation that is on 28.10.2002. The said service shall be taken for granting terminal benefits and the pensionary benefits to the petitioner. Hence, the impugned order of dismissal is modified to this effect and consequently, the terminal benefits and monetary benefits shall be granted. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

5. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs.

27.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr



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S.SRIMATHY, J.

Nsr

To

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