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W.P.(MD).No.9236 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.9236 of 2021

and

W.M.P.(MD)No.6965 of 2021

The Management,
Tamil Nadu State Transport Corporation
Tirunelveli Limited,
Ranithottam, Nagercoil.

... Petitioner

Vs.

M.Ebinezer

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the Labour Court, Tirunelveli dated 25.02.2020 passed in I.D.No.18 of 2019.

For Petitioner : Mr.R.Rajamohan

For Respondent : Mr.B.Christopher

ORDER

This writ petition has been filed seeking direction to call for the records relating to the impugned order passed by the Labour Court, Tirunelveli, dated 25.02.2020 passed in I.D.No.18 of 2019.



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2. The brief facts which are necessary for the disposal of this Writ Petition are as follows:-

The writ petitioner herein is the management of the Transport Corporation which was the respondent in I.D.No.18 of 2019 on the file of the Labour Court, Tirunelveli. The respondent herein is the employee of the petitioner Corporation who had worked as a conductor in the petitioner Corporation. On 20.08.2011, when the respondent was engaged in route No. 87 (bus No.TN 67 M 450), from Enayam to Marthandam, on inspection of the bus by checking inspector, it was found two passengers were travelling without tickets. It was recorded that the respondent conductor had not issued any tickets to the passengers which had caused a loss of Rs.14/- (Rupees Fourteen only), that is, ticket of cost of Rs.7/- (Rupees Seven only) per head to the petitioner Corporation. However, for the said delinquency, the petitioner Corporation had visited the respondent with a charge memo, for which, an explanation was submitted by the respondent on 11.10.2011. The respondent was also suspended on 08.09.2011, following which, a disciplinary proceeding was also initiated as against him and an enquiry was also conducted in which, by an order dated 26.11.2012, the General Manager of the petitioner Corporation had imposed a punishment of postponement of increment for three years with cumulative effect. In the



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meanwhile, the suspension came to be revoked and on attaining the age of superannuation, he also retired from service. The respondent made an appeal as against the order of punishment dated 26.11.2012 before the Managing Director of the petitioner Corporation. The Managing Director had adjudicated the appeal and modified the punishment by reducing the punishment as stoppage of increment for a period of two years with cumulative effect by an order dated 12.06.2013. Challenging the modification order passed by the Managing Director of the petitioner Corporation, the respondent had filed W.P.(MD)No.11325 of 2014 before this Court and this Court, by an order dated 29.11.2018 disposed of the same, directing the respondent to approach the Labour Court within a period of two (2) weeks from the date of receipt of a copy of the order thereon and further, the Labour Court was directed to consider the appeal to be filed by the respondent. Pursuant to the same, the respondent had raised an industrial dispute in I.D.No.18 of 2019 before the learned Labour Court, Tirunelveli, in which the Labour Court, by an order dated 05.02.2020 had set aside the order of punishment of General Manager. Challenging the same, this writ petition came to be filed by the petitioner Corporation.



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3. The learned counsel appearing for the petitioner Corporation submitted that, taking cue from the order passed by this Court in W.P. (MD)No.11325 of 2014, the respondent had filed an Industrial Dispute in I.D.No.18 of 2019 before the learned Labour Court. However, having not raised an industrial dispute under Section 2(k) of the Industrial Dispute Act, 1947, and further reference be made to the Labour Court under Section 10-A of the Industrial Dispute Act, 1947, the respondent had preferred an application under Section 11-A, which is not maintainable. The learned Labour Court though discussing the maintainability of the respondent's application under Section 11-A in para 11 of the impugned order had proceeded to pass an order in favour of the respondent for the sole reason that this Court in W.P.(MD)No.11325 of 2014 had directed the respondent to make an appeal before the Labour Court concerned. Pressing on the fact that the application which has filed in a non-existent provision of law is not maintainable, pressed for allowing the writ petition.

4. Per contra, the learned counsel appearing for the respondent drew my attention to the order passed by this Court in W.P.(MD)No.11325 of 2014 in which the counsel for the petitioner Corporation had submitted before this Court in the aforesaid proceedings that an appeal under Section 11-A of



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the I.D.Act, 1947, is maintainable and on that basis pressed for dismissal of the writ petition.

5. Heard the learned counsels on either sides and carefully perused the materials available on record.

6. Section 2(k) of the Industrial Dispute Act, 1947, is extracted as follows:

“(k) “industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;”

7. Section 10-A(1) of the Industrial Dispute Act, 1947, deals with voluntary reference of dispute to arbitration. For better appreciation Section 10- A(1) of the Industrial Dispute Act, 1947, is extracted as follows:

“10-A. Voluntary reference of disputes to arbitration.-(1)

Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at



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any time before the dispute has been referred under section 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.”

8. A conjoint reading of Section 2(k) and Section 10-A(1) would make us understand that once an Industrial Dispute between the employer and the employee is agreed to be settled amicably, the same has to be referred voluntarily for arbitration under Section 10 before a Labour Court or Tribunal or National Tribunal by a written agreement. However, in the instant case, though there is a disagreement as to the modified punishment imposed on the respondent by the General Manager of the petitioner Corporation, the respondent herein ought to have sought for referring the same for arbitration under Section 10-A to the Labour Court. On the other hand by the strength of the order passed by this Court in W.P.(MD)No. 11325 of 2014, the respondent had made an application under Section 11-A of the Industrial Dispute Act, 1947. Section 11-A deals with the power of the Labour Court, Tirunelveli and National Tribunal to give appropriate reliefs in case of discharge or dismissal of workmen. From the heading of the



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said provision itself is quite clear that the same, elaborates the powers of the Labour Court and other forums, Tribunal and National Tribunal only in case of discharge or dismissal of workmen. However, the instant case is one of implementation of the modification of the punishment of postponement of increment for the period of three years with cumulative effect as postponement of increment for the period of two years with cumulative effect. Since it is not a case of discharge or dismissal from service, the respondent herein cannot made application under Section 11(1) of the Industrial Dispute Act, 1947.

9. A careful perusal of the order passed by this Court would reveal that this Court has directed the respondent to file an appeal before the Labour Court. I am of the considered view that the argument of the respondent counsel that the said application was filed by the respondent herein under Section 11-A Industrial Dispute Act, 1947, only on the basis of the submission of the petitioner's counsel before this Court in W.P. (MD)No.11325 of 2014 is not sustainable. The learned Labour Court having discussed the question of maintainability of the respondent's application under Section 11-A has blindly proceeded in favour of the respondent only for the sole reason that the said application came to be filed by the



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respondent on the basis of the order passed by this Court in W.P.(MD)No. 11325 of 2014. I am of the considered view that the learned Labour Court ought not to have blindly proceeded without going into the appropriate provision of the Industrial Dispute Act, 1947.

10. That apart, this Court appreciates the fact that the punishment which was imposed on the respondent conductor was duly modified by reducing the punishment. An application which was filed under a wrong provision of law ought not to have been dismissed on limitation at the very instance for one of maintainability and the Labour Court ought not to have proceeded to pass an order in favour of the respondent. Accordingly, the impugned order is hereby quashed.

11. With the above observations, this writ petition stand allowed. There shall be no order as to costs. Consequently connected miscellaneous petition is allowed.

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NCC : Yes / No
Index : Yes / No
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L.VICTORIA GOWRI, J.

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