



W.A(MD)No.281 of 2016

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 02.01.2024**

**CORAM:**

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN  
AND  
THE HON'BLE MR JUSTICE C.KUMARAPPAN**

**W.A(MD)No.281 of 2016**

Prince Packianathan

... Appellant/Petitioner

.Vs.

1.The General Manager,  
Tamil Nadu Transport Corporation,  
Nagercoil Division,  
Ranithottam Branch,  
Nagercoil-1,  
Kanniyakumari District.

2.The Presiding Officer,  
Labour Court,  
Tiruneveli.

... Respondents/Respondents

**PRAYER:** Writ Appeal filed under Clause 15 of Letters Patent Act praying this Court to set aside the order passed by the learned Single Judge of this Court made in W.P(MD)No.15552 of 2015, dated 28.08.2015.

For Appellant : Mr.R.Shankar Ganesh

For Respondent-1 :Mr.K.Sathiya Singh



WEB COPY

For Respondent-2 :Labour Court.

W.A(MD)No.281 of 2016

### **JUDGMENT**

**DR.G.JAYACHANDRAN,J.**  
**AND**  
**C.KUMARAPPAN,J.**

This Writ Appeal is directed against the order passed by the learned Single Judge of this Court made in W.P(MD)No.15552 of 2015, dated 28.08.2015.

2.The appellant herein joined Tamil Nadu Transport Corporation, Nagercoil Division as a temporary employee on 3.4.1995 through Employment Exchange. His service was regularized on 1.1.2009. On 2.1.2009, he went on Medical Leave and joined duty on 28.8.2009. After two days, again he opted for medical leave. When he attempted to join duty on expiry of his medical leave, he was not allowed to join duty. A charge memo was issued on 31.10.2009 and thereafter he was dismissed from service, after enquiry on 6.8.2010. The appellant initiated conciliation proceedings under Section 2A of the Industrial Disputes Act. Failure Report by the Conciliation officer was passed on 16.5.2014. Proceedings under Section 33(2)(b) of the above Act was initiated and an order was passed on 17.12.2012. An industrial dispute is raised by the appellant before the Labour



W.A(MD)No.281 of 2016

WEB COPY Court, Tirunelveli in I.D.No.75 of 2014 on the ground that his dismissal is against the principles of natural justice and erroneous and devoid of merits. The Labour Court at Tirunelveli, considering the submissions made by the appellant and management, on 5.5.2015 framed two points for consideration:

1. Whether the Petition is barred by limitation?
2. Whether the Petition is barred by the principle of res-judicata?

3.Regarding the point of limitation, the Labour Court held that de-hors of the State amendment brought under Section 2A of the Industrial Disputes Act in the year 1988, the amendment to Section 2A inserting sub-section(2) and (3) of Section 2A of Industrial Disputes Act came into force w.e.f. 15.10.2010 by the Central Act, which shall prevail upon the State Act and amendment brought to sub-section is stand alone provision prescribing limitation for a workman to raise an industrial dispute and since the industrial dispute is raised by the appellant after four years and two months, this Petition is barred by limitation.

4.Regarding the question of res-judicata, the Labour Court held that the proceedings passed under Section 33(2)(b) of the Act will not operate as res-



W.A(MD)No.281 of 2016

WEB COPY

judicata in the proceedings under Section 2A(2) of the above Act. Challenging the award of the Labour Court, the appellant has preferred W.P.No.15552 of 2015. The learned Single Judge, after considering the submissions made by the appellant through his counsel, has confirmed the order of the Labour Court and dismissed the Writ Petition.

5.The learned counsel for the appellant, who is aggrieved by the order of the learned Single Judge, submitted that the order of dismissal, dated 6.8.2010 was confirmed only on 17.12.2012 through an Approval Petition and therefore, the limitation is to be reckoned from the date of confirmation of the dismissal order and not from the date of order of dismissal.

6.This Court is unable to countenance the said submission on the fact that the confirmation made subsequently will have the retrospective effect and would relate back to the date of dismissal. This legal position has support from the judgment of the Honourable Supreme Court as early as on 1960 in ***Punjab National Bank Limited .vs. its workman reported in 1960 AIR 160*** which has been relied upon by the Labour Court and referred to the judgment in



W.A(MD)No.281 of 2016

***Smt.Swapna Adhikari v.s. The State of West Bengal reported in (2004) 1***

***CALLT 431 HC.*** To add, it is suffice to point out that the appellant herein had gone on medical leave without prior intimation, but subsequently had not participated in the enquiry proceedings and after a lapse of four years, he had approached the Labour Court. His cause of action to raise the industrial dispute before the Labour Court arises on the date of dismissal and if he had raised any conciliation proceedings, even then he is entitled to raise industrial dispute after the expiry of 45 days and he should have approached the Labour Court, as contemplated under Section 2A(2) of the Industrial Disputes Act. Having failed to challenge the dismissal within a period of three years, on the ground of limitation and laches, the order of the learned Single Judge has to sustain.

7. Accordingly, the Writ Appeal stands dismissed. There is no order as to costs. The dismissal of the Writ Petition will not stand in the way of the appellant herein to seek for his service benefits, if any, in the manner known to law.

**[G.J.,J.] [C.K.,J.]**

**02.01.2024**



W.A(MD)No.281 of 2016

WEB COPY

NCS : Yes/No  
Index : Yes / No  
Internet : Yes / No  
vsn

To

- 1.The General Manager,  
Tamil Nadu Transport Corporation,  
Nagercoil Division,  
Ranithottam Branch,  
Nagercoil-1,  
Kanniyakumari District.
- 2.The Presiding Officer,  
Labour Court,  
Tiruneveli.



WEB COPY



W.A(MD)No.281 of 2016

**DR.G.JAYACHANDRAN, J.**  
**and**  
**C.KUMARAPPAN,J.**

vsn

**JUDGMENT MADE IN**

**W.A(MD)No.281 of 2016**

**02.01.2024**