



W.P.No.18008 of 2021 & W.P.No.18009 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.07.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.18008 of 2021 & W.P.No.18009 of 2021
and WMP.Nos.19237 & 19239 of 2021

Vanajamuniyan

... Petitioner in both WPs

Vs.

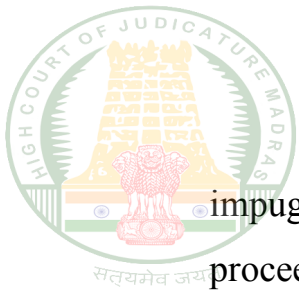
1.The Under Secretary
Labour Department
Government of Puducherry
Puducherry.

2.The Labour Officer (Conciliation)
Office of the Labour Officer
Government of Puducherry
Puducherry.

3.The Managing Director
Tamil Nadu State Express Corporation
Uppalam Depo, Dr.Ambedkar Salai
Puducherry.

... Respondents

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records and quash the (i) impugned order dated 26.03.2018 passed by the first respondent in his proceedings No.01784/AIL/LAB/T/2018/471 and (ii)



impugned order dated 28.03.2018 passed by the first respondent in his proceedings No.011502/AIL/LAB/T/2017/499, and consequently direct the first respondent to refer the dispute raised by the petitioner for adjudication.

For Petitioner : Mr.D.Baskar
(in both WPs)

For Respondents : Dr.B.Ramasamy
(in both WPs) Additional Govt Pleader (Pondy)
for R1 & R2
Mr.L.S.M.Hasan Fizal for R3

COMMON ORDER

Challenging the impugned orders passed by the first respondent dated 26.03.2018 and 28.03.2018, refusing to refer the dispute for adjudication, the petitioner is before this Court.

2. The brief facts are as follows :

- a) The petitioner was working as conductor on daily wages under the Tamil Nadu State Express Corporation, Puducherry, the third respondent herein, from 01.04.1989 to 10.01.1990. Though he had worked for more than 240 days under the third respondent-Corporation, his services had not been regularised.
- b) Be that as it may, on 17.01.1990, a charge memo was issued to



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him stating that he had issued tickets for Rs.16.00 instead of Rs.19.00, for 14 passengers. The petitioner had also submitted a detailed explanation to the said charge memo.

- c) On account of the charge memo subsisting in the name of the petitioner, the third respondent had postponed his regularisation by a period of six months, though he was to be regularised on 01.03.1991.
- d) Questioning the postponement of his regularisation, the petitioner had filed an appeal before the third respondent, however, on 23.04.1991, his appeal was rejected.
- e) Thereafter, the petitioner had approached the Labour Officer (Conciliation), the second respondent herein and submitted his representation dated 23.04.2013 to intervene into the order of the second respondent dated 23.04.1991 and to issue directions for his regularisation.
- f) The petitioner had appeared and submitted the documents during enquiry, but there was no representation on the side of the third respondent. Therefore, the conciliation did not fructify and the second respondent submitted the failure report to the



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first respondent vide his letter dated 14.02.2018.

- g) In the meantime, in the year 2016, the petitioner had submitted yet another representation dated 22.02.2016 to the second respondent, which also ended in a failure, following which, the second respondent had forwarded his failure report to the first respondent vide his letter dated 12.12.2017.
- h) Thereafter, the first respondent vide impugned orders dated 26.03.2018 No.1784/AIL/LAB/T/2018/471 and 28.03.2018 in No.11502/AIL/LAB/T/2017/499, has refused to refer the dispute for adjudication, holding that it is not a fit case for referring to adjudication as the dispute is not an industrial dispute raised by any Union nor espoused by a majority of workmen under Section 2(k) of the Industrial Dispute Act.

Challenging the above impugned orders dated 26.03.2018 and 28.03.2018, the petitioner had filed two separate writ petitions viz., W.P.No.18008 of 2021 and W.P.No.18009 of 2021, before this Court.

3. The arguments put forward by the learned counsel appearing for the petitioner is that as per Section 2-A of the Industrial Disputes Act, 1947



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(hereinafter called as 'Act'), the individual employee can question his discharge, dismissal, retrenchment or any other form of termination, as it would be deemed to be an industrial dispute. He also invited the attention of this Court to the definition of 'industrial dispute' under 2(k) of the Act and would submit that any dispute or difference between the employer and workmen with reference to employment, non-employment or the terms of employment or with the condition of labour, of any person, is a dispute. The postponement of the petitioner's regularization being a condition of his service, is an industrial dispute. Therefore, the impugned orders have to be necessarily set aside.

4.1 The learned Additional Government Pleader appearing for the respondents has filed the counter affidavits and would submit that the petitioner had committed various irregularities, and as per the Rules and Regulations of the Corporation, he was issued with show cause notice. Since the reply to the show cause notice was not found satisfactory and since he had also tendered his apology for his lapses, the petitioner was imposed with minor penalty by the Management. The petitioner having accepted the same without any objections has now raised an industrial dispute belatedly



after a lapse of several years, which is not just and legal. He would further submit that an individual cannot seek reference of his dispute, and it is only a collective dispute that can be referred for adjudication.

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4.2 The learned Additional Government Pleader in his counter has drawn reference to Section 12(5) of the Act and would submit that if on a consideration of the report Conciliation Officer, the appropriate Government is satisfied that there is a case for reference to a Board [Labour Court, Tribunal or National Tribunal], it may make such reference, if otherwise, it shall record and communicate to the parties concerned its reasons therefor. Accordingly, since the petitioner had not made out a case for reference for adjudication, the claim of the petitioner was rejected vide impugned orders. Reliance was placed on the Full Bench judgment of the Hon'ble Supreme Court in *Workmen of M/s.Dharampal Premchand (Saughandhi) Vs M/s.Dharampal Premchand (Saughandhi)* reported in (1965) 3 S..C.R.394 and he seeks for the dismissal of the writ petitions.

5. The learned counsel appearing for the petitioner would submit that the petitioner had made a representation dated 27.04.2013 to the Union to



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which he was attached to. Since no steps were taken by them, he had approached the second respondent herein. He would also distinguish the judgement in **(1965) 3 S.C.R.394** relied upon by the learned Additional Government Pleader (Puducherry), where the Hon'ble Supreme Court has drawn the attention to Sections 2(k), 10 and 36 of the Industrial Dispute Act and had held that only an Union can raise a dispute inasmuch as the members of the said Union were dismissed. He would state that the judgment in **(1965) 3 S.C.R.394** was pronounced on 16.03.1995, which was much before the amendment to the Industrial Disputes Act, in and by which, Section 2-A had been inserted. Therefore, he would pray that the writ petition be allowed.

6. Heard the learned counsels on either side.

7. No doubt Section 2-A of the Act holds that the discharge, dismissal, retrenchment or termination of an individual workman, is also an Industrial Dispute. It is relevant to extract Section 2-A of the Industrial Disputes Act, which reads as below :

"2-A. Dismissal etc., of an individual workman to be deemed to be an industrial dispute :



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[(1)] Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

[(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal,



retrenchment or otherwise termination of service as specified in sub-section (1).]"

However, a perusal of the judgment relied upon by the Additional Government Pleader (Pondy) in ***Workmen of M/s.Dharampal Premchand (Saughandhi) Vs M/s.Dharampal Premchand (Saughandhi)*** reported in ***(1965) 3 S.C.R.394***, the Hon'ble Supreme Court has held that a dispute between a single employee and the employer should be validly referred under Section 10 of the Act, and it can be done only if it is sponsored or espoused by the Union of workmen or by a number of workmen. The learned Larger Bench has held as follows :

".... But the decisions of this Court have consistently taken the view that in order that dispute between a single employee and his employer should be validly referred under s. 10 of the Act, it is necessary that it should have been taken up by the Union to which the employee belongs or by a number of employees. On this view, a dispute between an employer and a single employee cannot, by itself, be treated as an industrial dispute, unless it is sponsored or espoused by the Union of workmen or by a number of workmen. In other words, if a workman is dismissed by his employer and the dismissed workman's case is that his dismissal is wrongful, he can legitimately have the said dispute referred to adjudication before an Industrial Tribunal under s.10(1) of the Act, provided a claim for such a reference is supported either by



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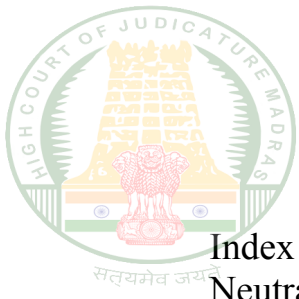


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*the Union to which he belongs or by a number of workmen, vide **Central Provinces Transport Services v. Raghunath Gopal Patwardhan [1956] S.C.R.956 and The Newspapers Ltd. v. The State Industrial Tribunal, U.P. [1947] S.C.R.754.***"

It is not the petitioner is remediless. It is no doubt true, that the judgement in the case cited supra was prior to the insertion of Section 2-A. A reading of Section 2-A shows that in case of failure of the conciliation proceedings, the workman can directly make an application to the Labour Court or Tribunal for adjudicating his dispute. When such an application is filed, the provisions of Section 2-A(2) states that such an application shall be entertained as if it has been referred to the Labour Court or Tribunal by the appropriate Government. Therefore, under Section 2-A(2), it is well open to the petitioner-workman to file industrial dispute directly before the Labour Court. Therefore, the relief now claimed by the petitioner seeking to quash the impugned order and to direct the first respondent to refer the dispute raised by him for adjudication, cannot be granted and accordingly, both the writ petitions are dismissed. However, it is open to the petitioner to take recourse in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

03.07.2025



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Index : Yes/No

Neutral Citation : Yes / No

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P.T. ASHA, J.

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