



W.P.No.20812 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 18.07.2023	Pronounced on 26.07.2023
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

W.P.No.20812 of 2008
and M.P.No.1 of 2008

State Express Transport Corporation,
Rep. by its Managing Director,
Pallavan Salai,
Chennai – 600 002.

... Petitioner

Vs.

1.The Presiding Officer,
1st Additional Labour Court,
Chennai.

2.K.Revathy

... Respondents

Prayer: Writ Petition has been filed under Article 226 of Constitution of India, to issue a writ of Certiorari, calling for the records on the file of the 1st respondent pertaining to his award made in I.D.No.377 of 2001 dated 09.06.2007 and quash the same.

For Petitioner

: Mrs.Rita Chandrasekar
for Mr.Jayesh B.Dolia



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For Respondents

For R1

: Court

For R2

: Mr.P.Rakeshkumar
for Mr.L.Rajasekar

ORDER

This writ petition has been filed to set aside the award dated 09.06.2007 made in I.D.No.377 of 2001 on the file of the I Additional Labour Court, Chennai.

2. The Transport Corporation has filed the above writ petition challenging the award passed in I.D.No.377 of 2001 dated 09.06.2007 on the file of the I Additional Labour Court, Chennai.

3. The 2nd respondent herein is the daughter of late R.Balaji, and she was working as typist in the respondent Transport Corporation from 11.12.1997 and she was paid salary of Rs.800/- per month. The Transport Corporation did not issue any appointment order to the petitioner and she completed 290 days of employment and the Transport Corporation does not regularize the employment



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of the petitioner. Hence, she made a representation/Ex.W1 on 01.04.1998 through her mother to the Chief Minister of Tamil Nadu for regularization of her employment. She further alleged that the Transport Corporation has terminated her from service on 11.10.1998 and failed to reinstate the petitioner. Hence, she filed a writ petition in W.P.No.18103 of 1998 and this Court by an order dated 10.12.1998 directed the respondents to regularize or reinstate the petitioner within three months. However, the respondents failed to reinstate the petitioner in service and hence, she raised an Industrial Dispute before the I Additional Labour Court, Chennai, under Section 2-A(2) of the ID Act, 1947 seeking reinstatement of the petitioner in service with full back wages and consequential benefits and the same has been awarded. Aggrieved against the same the present writ petition has been filed.

4. In the counter affidavit filed before the Labour Court it is averred that the petitioner was neither sponsored through Employment Exchange nor selected and appointed to any sanctioned post. The petitioner was not issued with any appointment order or any termination order. The petitioner was a temporary casual labour engaged by the respondent to do the casual work. The petitioner was neither recruited through Employment Exchange nor in



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continuous duty for 240 days in a period of 12 months as contemplated under Section 25F of the ID Act. The petitioner was not given any termination order as she was engaged purely as temporary casual labour and such engagement of the petitioner is governed under Section 2(a)(bb) of the ID Act. The termination of the petitioner from service was not in violation of any existing labour legislation. The petitioner has not completed 240 days of service in a period of 12 months. Hence, the question of compliance under the ID Act does not arise.

5. Before the Labour Court, on the side of the petitioner, she was examined as W.W.1 and Ex.W1 to Ex.W7 were marked and on the side of the respondent one Thiru Manivasagam was examined as M.W.1 and no exhibit was marked. After trial, the Labour Court has gave a finding that the petitioner was employed as casual labour is admitted and the petitioner was not sponsored candidate through Employment Exchange is also admitted.

6. According to the Transport Corporation, the petitioner has not completed 240 days and she is only a casual labour and hence, there is no violation of Section 25F of the ID Act. The Labour Court has rendered a finding



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that when the petitioner was employed and there is an assurance from the Transport Corporation that she would be given employment, by relying upon the Ex.W2, the Labour Court ordered for reinstatement in service without back wages and continuity of service and all other attendant benefits. Challenging the said award passed by the Labour Court, the writ petition has been filed.

7. Mrs.Rita Chandrasekar on behalf of Mr.Jayesh B.Dolia, the learned counsel for the petitioner would contend that the 2nd respondent herein is only a casual labour and there is no appointment order or termination order and she has sought for appointment on the ground of compassionate appointment on the death of her father, which will be considered based on the seniority and reliance is placed upon Ex.W6 and also disputed that she has not worked for 240 days and hence, the burden of proof is lies on the 2nd respondent to prove that she worked for 240 days.

8. Mr.P.Rakeshkumar on behalf of Mr.L.Rajasekar, the learned counsel for the 2nd respondent would contend that it is the onus of proof, which is upon the Management and further he draw my attention to the finding at Paragraph No. 8 of the award, wherein the Labour Court has relied upon the reply given by the Management/Ex.W2, which is extracted hereunder:



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“ Ex.W2 is the reply given by the respondent Management on 27.04.1998. The above letter reads as follows:

“ தங்களின் மகள் செல்வி கே.ரேவதியை தட்டச்சு பணியில் தற்காலிக அடிப்படையில் அமர்த்தப்பட்டுள்ளார். இறந்த தொழிலாளரின் வாரிசுதாரரின் வேலை நியமன அடிப்படையில் பணிமூப்பினப்படி கல்வித் (seniority) தகுதிகேற்ப நிரந்தர பணி அளிக்க வாய்ப்பு அளிக்கப்படும் எனத் தெரிவித்துக் கொள்கிறேன்.”

9.(a). In support of his contention, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of ***The Government of Tamil Nadu and Another Vs. Tamil Nadu Makkal Nala Paniyalargal and Others*** passed in ***Civil Appeal Nos.10563 to 10569 of 2017*** wherein it is stated as follows:

“ 45. The question which emerges for our consideration is whether the order dated 8th November 2011 is untenable in the eyes of law, such employees who were discontinued are eligible for reinstatement and regularization of service?”

9.(b). He further relied upon the order passed by this Court in



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W.P.(MD).No.5121 of 2015 in the case of Vijayan and Others Vs. The Secretary to the Government, Local Administration Department, Government of Tamil Nadu and Others, wherein this Court held as follows:

“9. In view of the legal principles settled, the writ petitioners, who were appointed as daily wage employees on temporary basis, cannot seek the benefits of regularization and permanent absorption.”

10. After perusing the records filed in the typed set of papers, the 2nd respondent was neither issued with any appointment order or termination order nor she was recruited through Employment Exchange. From the earlier writ petitions in W.P.Nos.17272 to 17276 of 1998, the 2nd respondent herein along with others sought for regularization of employment to the 1st respondent, wherein this Court has directed the respondents to consider and pass orders.

11. The father of the 2nd respondent, who appears to have worked as a driver in the Transport Corporation, died in harness and the mother of the 2nd respondent seems to have made a representation to the Chief Minister's Cell for regularization of employment of the 2nd respondent's appointment by a



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representation/Ex.W2. The Management has stated that the 2nd respondent should be appointed in any of the vacancy that may arise subject to the condition that she satisfies the requirement of qualification that is to say for the compassionate ground of appointment and at no stretch of imagination, this can be stated as a promissory estoppel against the Management.

12. Admittedly, it is seen from the records that the 2nd respondent herein is only a casual labour worked for few days and the 2nd respondent has not produced any appointment order or termination order or any order or even a scrap of paper to show that she received the amount in a consolidated manner so as to infer that she worked as a temporary employee and she has worked for 240 days.

13. The W.W.1/the 2nd respondent herein in her cross-examination, has admitted that she was employed as Typist in the Transport Corporation and also admitted that she has not filed any document from the Transport Corporation and M.W.1 in his cross-examination has stated that the 2nd respondent herein was temporarily engaged for 10 to 15 days and it is a clear case that the 2nd respondent herein was not appointed through Employment Exchange and in



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case of a candidate appointed through Employment Exchange, attendance register will be maintained.

14. The petitioner has sought for regularization on the following grounds:

(i) The daughter of the deceased driver namely on compassionate appointment as stated supra, Ex.W2 sent by the 2nd respondent will not confer any right of compassionate appointment as recited supra it only stated that as per the appointment on compassionate grounds will be considered that will not give any right for regularization of service.

(ii) Though she claimed that she has worked for 240 days, no scrap of paper has been placed in order to prove the same.

15. In view of the appointment made by the M.W.1, I find that the petitioner was only a casual labour and regularization of her service cannot be granted as the 2nd respondent herein does not fall under Section 25F of the ID Act. In the absence of any proof for continuous period of 12 months as contemplated under Section 25F of the ID Act, the 1st respondent/Labour Court has ordered for reinstatement of service. Hence, the order reinstating the service of the 2nd respondent is hereby set aside.



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16. Accordingly, the writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

26.07.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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RMT.TEEKAA RAMAN.J.

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To

1.The Presiding Officer,
Ist Additional Labour Court,
Chennai.

2.The Managing Director,
State Express Transport Coporation
Pallavan Salai,
Chennai – 600 002.



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**Pre-delivery Judgment made in
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Dated: 26.07.2023