



W.A. No. 962 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 25.01.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

W.A. No.962 of 2021

&

C.M.P. No. 5919 of 2021

The Management,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Vellore Region, RAngapuram,
Vellore -9.

..Appellant

Vs.

1. The Inspector of Labour,
Authority Under the Tamil Nadu Industrial
Establishment (Conferment of
Permanent Status) Act, 1981,
Thiruvannamalai.
2. D. Prakasam



W.A. No. 962 of 2021

WEB COPY

3. The Management,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Villupuram Region, Vazhudareddy,
Villupuram (Given up).

4. The Management,
Tamil Nadu State Transport
Corporation (Villupuram)Ltd.,
Thiruvannamalai Region,
Thiruvannamalai Bye-pass,
Thiruvannamalai (Given up)

..Respondents

Prayer: Writ Appeal as against the order dated 01.10.2020 passed in W.P. No. 1302
of 2018.

J U D G M E N T

(Delivered by S. Vaidyanathan,J.)

S. VAIDYANATHAN,J.

AND

J. SATHYA NARAYANA PRASAD,J.

The present appeal has been preferred as against the order dated
01.10.2020 passed in W.P. No. 1302 of 2018.



W.A. No. 962 of 2021

2. The workman/2nd respondent herein was engaged as a Driver on

28.02.1998 and was appointed as a daily wage with effect from 21.12.1999. Pursuant to the settlement dated 31.08.2005 entered into between the Management and its Trade Unions under Section 12(3) of Industrial Disputes Act, 1947 (“I.D.Act” for short), the services of the workman was confirmed with effect from 2005 for having completed 240 days of employment. The workman filed an application before the 1st respondent under Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter referred to as ‘1981 Act’) claiming the benefit of conferment of Permanent Status for having completed ‘continuous service’ for a period of 480 days in a period of 24 calendar months in the appellant establishment. Though the claim made by the workman was resisted by the Management stating that the initial engagement of the workman was made only as a reserve driver on temporary basis against vacancy that may arise in future and there had not been any permanent vacancy as on date of initial engagement of the workman and that the benefit of confirmation in service was in terms of settlement between the Management and the Government with effect from

01.09.2005, the 1st respondent/Inspector of Labour rejected the objections raised by
<https://www.mhc.tn.gov.in/judis>



W.A. No. 962 of 2021

the Management and allowed the application filed by the workman by order dated 26.12.2016 directing the regularisation of the workman from the date of completion of 240 days from the date of joining of service i.e, 28.02.1998. Aggrieved by the said order, the Management approached this Court by way of writ petition in W.P. No. 1302 of 2018 and by order dated, the learned Single Judge dismissed the writ petition confirming the order of the 1st respondent. Hence, the present writ appeal.

3. The main contention of the Management is that the workman's initial engagement was only as a reserve driver on temporary basis in 1998, that he was given order of appointment as a daily wage employee only on 21.12.1999 as could be seen from Ex.W4, that the workman has been made permanent with effect from 03.09.2005, that the said order has not been questioned by the workman for over a decade and suddenly, as if waking up from a slumber, has sought permanent status under 1981 Act. It is the further contention of the employer that the workman having joined the service in 2000 and made permanent with effect from 2005 cannot be permitted to agitate the issue in 2015 and the claim of the workman is hit by



W.A. No. 962 of 2021

laches. Apart from that, the workman having acquiesced of his rights and having accepted the settlement, which has worked for a decade cannot be permitted to reopen the issue. It is also submitted that mere reference to exhibits without discussing the same cannot give right to the authority to confer permanent status and that the procedure adopted is only summary in nature. The authority has no power to take evidence to decide the issue in question. That apart, though the employer has stated that the workman had joined service in 1998, a reading of the counter before the authority would make it very clear that it has no reference to individual employee but to set of employees similarly placed like the workman concerned herein and that the authority ought not to have granted permanent status with effect from 1999. If the workman has any grievance with regard to the settlement which has been entered into between the Union and the Management, it is for the workman to agitate the issue before the appropriate industrial forum and the same cannot be agitated either before the authority or before this Court.



W.A. No. 962 of 2021

4. On the other hand, learned counsel for the workman contended

that the workman had joined the service on 28.02.1998 and he had completed 480 days of continuous service within a period of 24 calendar months on 21.12.1999.

There is a settlement which enables the employer to confer permanent status on completion of 240 days in 12 calendar months which is more beneficial than the one provided under the Act. Even otherwise, the workman is entitled to have the benefit of enactment namely, 1981 Act and Section 3 clearly stipulates that an employee is deemed to have attained permanent status on completion of 480 days in 24 calendar months. The contention that in the counter it refers to all the similarly placed employees may not be correct as a reading in its entirety would make it very clear that the employer wanted to make the workman permanent and before decision could be taken, the workman had caused an accident which made the employer to defer the grant of permanent status and a narrow interpretation would not be proper, more so, when a finding of fact has been rendered by the authority, the same need not be interfered with by exercising extraordinary powers of this Court, that too, when the finding of fact has been confirmed by the learned Single Judge.



W.A. No. 962 of 2021

5. Inter alia, learned counsel for the Management would submit that

the Rules framed under the Act are not wider in nature and that in the light of Section 5 of 1981 Act read with Rule 3 of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Rules, the authority is empowered to exercise limited powers and he cannot take in evidence and hence, the subject matter being summary in nature, the authority is empowered to inspect the place, give certain guidelines to the employer and thereafter direct the employer to rectify the defects and in case of non-compliance of the same, the authority is empowered to initiate action for prosecution and punishment by means of summary procedure. There cannot be any direction to confer permanent status. Hence, the order of the authority conferring him permanent status that stand confirmed by the learned Single Judge needs to be interfered with. Learned counsel for the employer relied upon the judgment of the Apex Court rendered in *Prabhakar V. Joint Director, Sericulture Department and another* reported in *2015 (15) SCC Pg 1* and also the decision reported in *2022 SCC Online (Madras) 1003 (The Superintending Engineer, Erode Distribution Circle V. The Inspector of Labour and Others)*.



W.A. No. 962 of 2021

WEB COPY

6. Relying upon the aforesaid decisions, the main contention of the Management is that when there is a delay in raising a dispute, the workman will have to be non-suited to approach the Court and for inordinate delay/laches, equity takes a backseat. Besides, the employer cannot be asked to maintain the records to establish the case, in case, a workman approaches the Court after a decade, more so, when casual employees and the documents pertaining to the same would have been destroyed.

7. We are unable to accept the said contention put forth by the Management. Firstly, the decision the two Judges Bench of the Apex Court in **2015 (15) SCC Pg.1** is rendered in the context of I.D. Act where a workman approaches the Court seeking non-employment to be set at nought under Section 2-A of I.D. Act or on reference under Section 10(1) of I.D. Act. In such circumstances, the Hon'ble Supreme Court held that the delay may be fatal to the dispute that may be raised by the workman. This decision may not be applicable to a case where an employee



W.A. No. 962 of 2021

seeks relief under Section 33(C)(2) of I.D. Act in the light of the decisions of the

Hon'ble Apex Court in ***Bombay Gas Co. Ltd V. Gopal Bhiva and Others*** reported in ***1963 (2) LLJ 608, Chief Mining Engineer, East India Coal Co. Ltd. V. Rameswar and Others*** reported in ***(1968) 1 LLJ 6 (SC)*** and ***Town Municipal Council, Athani V. The Presiding Officer, Labour Court, Hubli and Others*** reported in ***1969 II LLJ 651.***

8. However, that is not the case here. Section 3 of 1981 Act makes it very clear that the workman is deemed to have been conferred permanent status after completion of 480 days in 24 calendar months.

9. Though it has been contended that there is no provision enabling the authority to let in evidence, a reading of Section 5 of 1981 Act and Rule 3 of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Rules, 1981 would make it very clear that the Inspector is empowered to record evidence of such person for carrying out the purposes of the Act. The relevant



W.A. No. 962 of 2021

provision, namely, Section 5(b) of 1981 Act is extracted hereunder for useful reference:

"5. Powers and duties of Inspectors:

(a) ...

(b) *make such examination of the industrial establishment and of any registers, records and notices and take on the spot or elsewhere the evidence of such person as he may deem necessary, for carrying out the purposes of this Act, and.."*

The Constitution Bench of Hon'ble Apex Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd Vs. Ram Gopal Sharma and Others*** ((2002) 2 SCC 244) has categorically held that no word in the enactment should be made redundant and each and every word should be given a proper meaning. The relevant portion of the said judgment reads thus:

"13. ...It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. The interpretation of the statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it...."

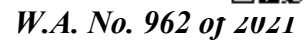


W.A. No. 962 of 2021

10. Though it is contended on behalf of employer that Inspector can

do certain things as enumerated under the Act, the entire provisions and the Rules have got to be looked into. This makes it very clear that in addition to the benefits conferred, under Section 5 of 1981 Act, the Inspector, shall for the purpose of giving effect to the provisions of the Act, has the power to do all or any of such things, which means apart from taking evidence, he is empowered to carry out such other exercise as enumerated under the Rules. Apart from that, Section 5(c) of 1981 Act empowers the Inspector to exercise such other powers as may be necessary for carrying out the purposes of the Act. So, the employer and the employee can let in evidence, mark documents and eventhough it is summary in nature, the authority is empowered to pass a quasi-judicial order. Reliance has been placed on the decision reported in **2022 SCC Online Madras 1003 (cited supra)** and the relevant paragraph Nos. 29 to 31 are extracted below:

"29. From a perusal of the order of the Labour Inspector, we find that after referring to the testimonies of the parties and the documents, a finding has been recorded, without disclosing the period of 24 calendar months and 480 days working of each workman therein. The finding has been recorded in a superficial



31. As we recorded a finding about the jurisdiction of the Labour Inspector and applicability of the Act of 1981, we accept the argument of learned counsel for the respondents to remand the case for fresh enquiry by the Labour Inspector to find out the continuous working of each employee for continuous period of 480 days in a period of 24 calendar months for passing the appropriate orders."

12\24



W.A. No. 962 of 2021

sufficient number of days of service. Merely stating that by virtue of a particular exhibit, the employee has completed 480 days of service in 24 calendar months is not sufficient. The details will have to be extracted. In some cases, he would not have seen the documents that would have been produced before the authority or in some cases, he might have inspected the place of work and taken summary of documents, which needs to be reflected. That apart, the Inspector of Labour, Tiruvannamalai, while answering issue No.3 as to whether the employee has completed 480 days of service in 24 calendar months and whether he is entitled to get permanency under Section 3 of 1981 Act has referred to clause (e) of Settlement dated 30.09.1992 and the relevant portion is extracted below:

"மேலும் மனுதாரரால் தாக்கல் செய்யப்பட்டுள்ள 30.9.1992 நாளிட்ட தொழிற்சாலை சட்டம் பிரிவு 12(3)ன்படி, செய்யப்பட்ட ஒப்பந்தத்தில் பிரிவு "இ"ல் கீழ்க்கண்டவாறு தெரிவிக்கப்பட்டுள்ளது.

'In case of a misconduct or offence committed by such daily rated person after satisfactory completion of 240 days of actual work but before the actual issue of confirmatory order, such person shall be deemed to have been confirmed on the completion of 240 days of actual work and such order confirming his employment in regular scale of pay shall be issued retrospectively from such date without prejudice to the disciplinary action against the misconduct



W.A. No. 962 of 2021

or offence committed by him.'

மேற்சொன்ன 30.09.1992 தேதியிட்ட 12(3) ஒப்பந்தத்தில்

WEB COPY

தெரிவித்துள்ளவாறு, விபத்திற்கு முன்னர் மனுதாரர் தகுதியான 240 பணி நாட்கள் முடித்துள்ள தேதியில் பணி நிரந்தர உத்தரவு வழங்கி அதன்பிறகே ஒழுங்கீனத்திற்கு தண்டனைகள் வழங்கப்பட்டிருக்க வேண்டும். மேலும், எதிர்மனுதாரர் நிர்வாகத்தால் மனுதாரர் 240 நாட்களை பூர்த்தி செய்திருந்தும் பின்னர் ஏற்படுத்திய விபத்தைக் காரணம் காட்டி மனுதாரருக்கு பணிநிரந்தரம் மறுக்கப்பட்டுள்ளது தெளிவாகிறது.

மேலும் எதிர்மனுதாரர் தனது பதிலுரையில், 2001 ம் ஆண்டு பணி நியமன தடைச் சட்டம் அமலில் இருந்ததால் மனுதாரருக்கு பணி நிரந்தர ஆணை வழங்கவில்லை என்று தெரிவித்துள்ளார். ஆனால் பணி நியமன தடைச் சட்டம் புதியதாக ஒருவரை பணிக்கு நியமனம் செய்வதற்காக வழங்கப்பட்ட தடையா அல்லது பணியில் உள்ள ஒருவரை நிரந்தரம் செய்வதற்கு விதிக்கப்பட்ட தடையா என்பதை தகுந்த ஆவணங்கள் கொண்டு நிரூபிக்கவில்லை. மேலும், மனுதாரர் தனது மனுவில் பணி நியமன தடைச்சட்டம் அமலில் கொண்டுவரப்பட்ட 2001 க்கு முன்பே தான்

480 நாட்களை முடித்துள்ளதாக தெரிவித்துள்ளார்.

<https://www.mhc.tn.gov.in/judis>



W.A. No. 962 of 2021

இவ்வழக்கில் எதிர்மனுதாரர் தனது எதிர்நரையில் மனுதாரர்

28.02.1998 முதல் தற்காலிக ஓட்டுநராக நியமிக்கப்பட்டதையும்,

பின்னர் 21.12.1999 முதல் தினக்கூலி அடிப்படையில் ஓட்டுநராக

நியமிக்கப்பட்டுள்ளதையும் ஒப்புக் கொண்டுள்ளதால் 28.02.1998 முதல்

தொடர்ந்து இரண்டு ஆண்டுகளில் 480 நாட்களை 22.06.1999

முடித்துள்ளதாலும், மனுதாரர் விபத்து ஏற்படுத்திய நாளான 14.03.2001

க்கு முன்பே மனுதாரர் 480 நாட்களை முடித்துள்ளதும்

தெளிவாகிறது."

The authority has rendered a finding of fact that the employee has completed 480 days of continuous service in a period of 24 calendar months. No settlement can be entered into contrary to the provisions of the Act. Similarly, 1981 Act does not have a similar provision like Section 4(5) of Payment of Gratuity Act, 1972. If such powers are provided under the Act, then the authority would have been empowered to adjudicate whether conferment can be granted if an employee completes 480 days in a period of 24 calendar months.

12. The crux of the entire argument of the Management appears to be



W.A. No. 962 of 2021

that the benefit of pension scheme had been stopped with effect from 2003 and that the employee cannot seek extension of that benefit. Even going by the averment that the employee had joined service in 2000, he had rendered 480 days of continuous service in 2002, which is prior to stoppage of pensionary benefits to all the employees as stoppage of pensionary scheme came into effect from 01.04.2003. The employer may be aggrieved by the grant of backwages for delay in raising the dispute. Firstly, there is no time frame fixed for filing a case seeking grant of permanent status. Secondly, Section 3 of 1981 Act clearly stipulates a deeming provision, which mandates the employer to confer permanent status since the employee is deemed to have attained permanent status on completion of 480 days. Since the employee has been allowed to continue, loss of backwages does not arise as the employee has already been granted permanent status with effect from 2005. The only issue is whether it should be anterior to that date or not. That apart, the employee has already made a submission before the learned Single Judge that he is not claiming any benefits for the period from 22.06.1999 to 30.10.2015 and the paragraph No.6 of the order passed in the writ petition would be relevant to quote:



W.A. No. 962 of 2021

“6. In view of the foregoing discussion, there does not appear to be any infirmity in the decision-making process of the First Respondent requiring interference by this Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution. However, Learned Counsel for the Second Respondent submits that the Second Respondent is willing to forego the payment of differential amount of monetary benefits alone for the period from 22.06.1999 till 30.10.2015 when the application was made before the First Respondent, except the payment of employer’s contribution towards Provident Fund/Pension during that period, as a voluntary gesture to minimize financial implications for the Petitioner and he has filed a memo dated 29.09.2020 to that effect through e-mail, which has been placed on record.”

13. The other contention that as there was a ban from 2001 to 2006 vide G.O.Ms.No.212, Personnel and Administrative Reforms (P) Department, dated 29.11.2001, there was no recruitment and therefore, the said period cannot be taken into account for the purpose of counting 480 days is concerned, the same cannot be accepted. The Government Order in G.O.Ms. No. 212 Personnel and Administrative Reforms (P) Department, dated 29.11.2001 would make it very clear that there was a ban only on recruitment and not for continuance of employment and for conferment



W.A. No. 962 of 2021

of permanent status.

WEB COPY

14. The workman had joined the service of the Transport Corporation in 1998 and 25 years have gone by now. When the issue pertaining to applicability of Tamil Nadu Shops and Establishments Act, 1947 to Nationalised Bank was questioned, in *Indian Bank represented by its Assistant General Manager V. R.S. Thiruvengadam and another* reported in *1990 II LLN 335* and *Indian Bank represented by its General Manager V. K.S. Gurumurthy* reported in *(1990) II LLN 355*, it has been held by this Court that eventhough the Bank may not be amenable to the jurisdiction of the authority under Tamil Nadu Shops and Establishments Act, 1947, the Bank, being a State, is amenable to the jurisdiction of this Court. Similarly, the Tamil Nadu State Transport Corporation is a State within the meaning of Article 226 of the Constitution of India and is amenable to writ jurisdiction of this Court. Taking note of the fact that 25 years have gone by and in order to shorten the life of litigation, we postpone the regularisation with effect from 2001 when the benefits have been given up by the employee, which is found reflected in the order of the learned Single Judge extracted supra.



W.A. No. 962 of 2021

15. In order to give a quietus to the issue on hand, we direct the

employer who is amenable to writ jurisdiction of this Court to confer permanent status on and from 1st September, 2002 in the light of the appointment order dated 12.07.2000 produced by the employer and paragraph No.10 of the award, which reads as under:

"10. அதேபோல் மேற்சொன்ன 24 காலண்டர் மாதங்களான 13.07.2000 முதல் 12.07.2002 வரையான காலத்தில், நான் மாதத்திற்கு 26 நாட்கள் பணிசெய்துவந்ததன் அடிப்படையில் கணக்கீடு செய்யப்பட்டாலே, நான் 14.01.2002ல் 468 நாட்கள் பணிமுடித்துள்ளேன். மேலும் அந்த மாதங்களில் எனக்கு சம்பளத்துடன் கூடிய வாரவிடுமுறை நாட்களான 72 நாட்களையும் சேர்த்தால் 540 நாட்கள் பணிமுடித்துள்ளேன். அதன்படி நான் வார விடுமுறையில் உள்ள 70 நாட்களில் 12 நாட்களை சேர்த்தால் நான் 14.01.2002ல் நான் 480 நாட்கள் பணிமுடித்துள்ளேன். எனவே மேற்சொன்ன கணக்கீட்டின்படியாவது என்னை பணி நிரந்தரம் செய்திருக்க வேண்டும்."

The Government Order had come into force only with effect from 2003 and therefore, that cannot take away the benefit conferred either under the settlement or available to a person under an enactment . Though it has been stated that the Rules



W.A. No. 962 of 2021

framed under 1981 Act are not wide enough to empower the authority to decide, we cannot issue any direction to the Legislature to amend the act in a particular manner or frame the Rules. However, a suggestion can be made in the light of the judgment of the Hon'ble Apex Court reported in *AIR 1987 SC 1960 (Krishna District Co-operative Marketing Society Ltd., Vijayawada V. N.S. Purnachandra Rao and others)* wherein a suggestion was made with regard to amending I.D. Act to enable the employee to approach the Court directly and the Apex Court has held that we cannot give a direction, but can make a suggestion that it is for the Legislature to decide as to whether suitable amendment needs to be incorporated in the Act or not.

“11. We may incidentally observe that the *Central Act* itself should be suitably amended making it possible to an individual workman to seek redress in an appropriate forum regarding illegal termination of service which may take the form of dismissal, discharge, retrenchment etc. or modification of punishment imposed in a domestic enquiry. An amendment of the *Central Act* introducing such provisions will make the law simpler and also will reduce the delay in the adjudication of industrial disputes. Many learned authors of books on industrial law have also been urging for such an amendment. *The State Act* in the instant case has to some extent met



W.A. No. 962 of 2021

the above demand by enacting [section 41](#) providing for a machinery for settling disputes arising out of termination of service which can be resorted to by an individual workman. In this connection we have one more suggestion to make. The nation remembers with gratitude the services rendered by the former Labour Appellate Tribunal which was manned by some of our eminent Judges by evolving great legal principles in the field of labour law, in particular with regard to domestic enquiry, bonus, gratuity, fair wages, industrial adjudication etc. The Industrial Disputes (Appellate Tribunal) Act, 1950 which provided for an all-India appellate body with powers to hear appeals against the orders and awards of Industrial Tribunals and Labour Courts in India was repealed in haste. If it had continued by now the labour jurisprudence would have developed perhaps on much more satisfactory lines than what it is today. There is a great need today to revive and to bring into existence an all- India Labour Appellate Tribunal with powers to hear appeals against the decisions of all Labour Courts, Industrial Tribunals and even of authorities constituted under several labour laws enacted by the States so that a body of uniform and sound principles of Labour law may be evolved for the benefit of both industry and labour throughout India. Such an appellate authority can become a very efficient body on account of specialisation. There is a demand for the revival of such an appellate



W.A. No. 962 of 2021

*body even from some workers' organisations. This suggestion is worth considering. All this we are saying because we sincerely feel that the **Central Act** passed forty years ago needs a second look and requires a comprehensive amendment."*

16. The writ appeal is disposed of accordingly. No costs. Connected

C.M.P. is closed.

(S.V.N.J.) (J.S.N.P.J.)

25.01.2023

nv

Index: Yes/No

Internet: Yes/No



W.A. No. 962 of 2021

To
WEB COPY

1. The Management,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Vellore Region, RAngapuram,
Vellore -9.

2. The Inspector of Labour,
Authority Under the Tamil Nadu Industrial
Establishment (Conferment of
Permanent Status) Act, 1981,
Thiruvannamalai.



W.A. No. 962 of 2021

S. VAIDYANATHAN,J.

AND

J. SATHYA NARAYANA PRASAD,J.

nv

W.A. No. 962 of 2021

25.01.2023