



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2016

CORAM :

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THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Appeal (MD) No.1062 of 2016
and
Writ Petition (MD) Nos.11210 of 2013 and 18585 of 2014
and
M.P(MD) Nos.1 of 2013 and 1 of 2014
and
C.M.P(MD) No.6395 of 2016

1. The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Ltd., Bye Pass Road,
Madurai 10.
 2. The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Ltd., Virudhunagar Region,
Virudhunagar.
 3. The Branch Manager,
Tamil Nadu State Transport Corporation
(Madurai) Ltd., Virudhunagar Region,
Rajapalayam. ... Appellants in W.A(MD) No.1062 of 2016
and Petitioners in in W.P(MD) No.11210 of 2013
- A.Anand ... Petitioner in W.P(MD) No.18585 of 2014

Vs.

1. The Labour Inspector,
137, Kanthapuram Street,
Virudhunagar. ... 1st Respondent in W.A(MD) Nos.1062 of 2016
and W.P(MD) No.11210/2013
 2. A.Anand ... 2nd Respondent in W.A(MD) Nos.1062 of 2016
and W.P(MD) No.11210/2013
1. The Tamil Nadu State Transport Corporation
(Madurai) Ltd., Rep by its Managing Director,
Bye Pass Road, Madurai 10.



2. The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Ltd., Virudhunagar Region,
Virudhunagar. ... Respondents in W.P(MD)No.18585 of 2014

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Prayer in W.A(MD)No.1062 of 2016: Appeal filed under Clause 15 of the Letters Patent against the order dated 19.01.2016 made in M.P(MD)No.1 of 2013 in W.P.(MD).No.11210 of 2013 on the file of this Court.

Prayer in W.P(MD)No.11210 of 2013: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records in Pa.Mu.No.A/2382/2012, dated 11.03.2013 on the file of the 1st respondent and quash the same.

Prayer in W.P(MD)No.18585 of 2014: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned office order passed by the second respondent in Ref.No.Sattam/Sa.3/4132/6B/2012, dated 11.04.2014 and quash the same.

For Appellants : Mr.A.Jeyaram
(In W.A(MD)No.1062 of 2016)

For Petitioners : Mr.A.Jeyaram
(In W.P(MD)No.11210 of 2013)

For Petitioner : Mr.A.Rahul
(In W.P(MD)No.18585 of 2014)

For 1st Respondent : Mr.A.K.Baskarapandian
(In W.A(MD)Nos.1062 of 2016 Special Government Pleader.
and W.P(MD)No.11210/2013)

For 2nd Respondent : Mr.A.Rahul
(In W.A(MD)Nos.1062 of 2016
and W.P(MD)No.11210/2013)

For Respondents : Mr.A.Jeyaram
(In W.P(MD)No.18585 of 2014)

JUDGMENT

(Judgment of the Court was delivered by NOOTY.RAMAMOohana RAO,J)

Since the issue involved in this writ appeal as well as the writ petitions is common, they are taken up together and disposed of by this common judgment.



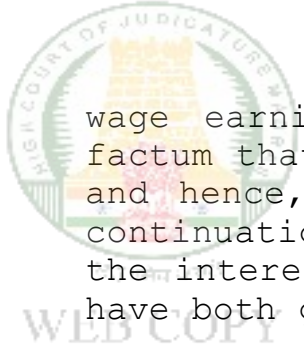
2.Writ Appeal (MD)No.1062 of 2016 is preferred by the Tamil Nadu State Transport Corporation calling in question the interlocutory order passed in M.P(MD)No.1 of 2013 in W.P.(MD) No.11210 of 2013.

3.The respondent workman in W.A(MD)No.1062 of 2016 was employed as a driver with the appellant transport corporation. He was engaged on daily wage basis. But however upon completion of 480 days of such daily wage service, the Corporation is conferring a permanent status on workman. Though the respondent-driver has completed more than 480 days as daily wage service, but nonetheless, he has not been granted any such permanent status as in the meantime, the bus driven by the respondent-driver was involved in a fatal accident. After conducting necessary enquiry, an order was passed on 11.04.2014 directing that he shall be continued as a daily wage earner for a further period of 240 days. It is, in the meantime, that the respondent-workman has moved the competent authority for securing conferment of permanent status. That authority passed an order on 11.03.2013 ordering permanent status to be conferred on the respondent-driver-workman with effect from the next day upon his completing 480 days as daily wage employee. It is in that context, the writ petition came to be instituted against such direction issued by the competent authority.

4.Learned counsel for the corporation would contend before us that when the bus driven by the respondent-workman was involved in a fatal accident, his conduct is bound to be examined and if it is found to be blameworthy, he can be penalised as well. Therefore, since the respondent-workman was only a daily wage earner, the Corporation has taken a sympathetic view and ordered for continuing him as a daily wage earner for a further period of 240 days. If the order of the competent authority passed now, that is the impugned order, is to be given effect to, then the order passed by the Corporation on 11.03.2013 would not be given effect to or acted upon. The net result would be the respondent-driver-workman though found guilty to a certain extent in involving in a fatal accident but still he will go scot-free.

5.Per contra, learned counsel for the respondent-driver-workman would contend that if only the Corporation has faithfully acted upon its own policy decision to regularise the services of those who have completed 480 days of daily wage earnings, they are entitled to be conferred permanent status. For the failure to have adhered to such a norm, the respondent-workman-driver cannot be penalised or subjected to hardship.

6.Upon considering the rival submissions, we are of the opinion that even though the Corporation may not have been justified in not conferring a permanent status upon the workman concerned, upon his satisfactorily completing 480 days of daily



wage earnings but nonetheless, we cannot completely ignore the factum that the bus driven by him was involved in a fatal accident and hence, the Corporation is justified in ordering for further continuation as a daily wage earner for 240 days more. Therefore, the interest of the Corporation as well as the respondent-workman have both got to be balanced.

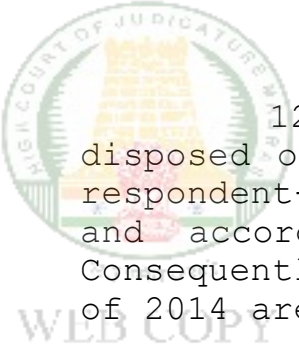
7.The criticism of the learned counsel for the respondent-workman that the Corporation has taken the stand before the competent Court that the accident in question has not been caused due to negligence of the bus driver of the Corporation but nonetheless the fact cannot be wished away that the bus driven by the workman was involved in a fatal accident. We could realise that such a stand could have been adopted to avoid the owning up of the full responsibility for causing the accident and then deny the compensation to the victim or his dependents.

8.However, the said order passed by the Corporation to treat the respondent-workman concerned as a daily wage earner for a further period of 240 days was the subject matter of writ petition in W.P(MD)No.18585 of 2014.

9.Though we find that to treat an employee for a further period as a daily wage earner, could not have been construed or considered as a penal act for whatever reasons, the employees are allowed to be continued as daily wage earners for a while more before permanent status is conferred upon a workman by the Corporation, in the absence of any positive material to come to a firm conclusion that the accident has not been caused due to the negligence on the part of the driver employee, we find that the stand taken by the Corporation to treat the respondent-workman is concerned, as a daily wage earner for a further period of 240 days is not without justification.

10.It is obviously intended by the Corporation to utilise the said period for the purpose of evaluating the performance of the respondent-daily wage earner vis-a-vis factors such as discipline, promptness in reporting to duty, non refusal to undertake night trips or to undertake journey on long trips etc. Therefore, it is difficult to find the order passed on 11.04.2014 ordering for continuation of the respondent-workman to be a daily wage earner by a further period of 240 days as totally unjust.

11.Considering the overall facts and circumstances, there will not be any justification whatsoever for the Corporation not to confer upon him the permanent status after the expiry of 480 + 240 days, totally working out to 720 days. Perhaps, a direction to the Corporation to confer permanent status on the respondent-workman from the next day, upon his completion of 720 days as a daily wage earner, would meet the ends of justice.



12. Accordingly, the writ appeal and writ petitions are disposed of by a direction to the Corporation to confer upon the respondent-workman permanent status upon completion of 720 days and accordingly regulate his pay and allowances. No costs. Consequently, C.M.P(MD)No.6395 of 2016, M.P(MD)Nos.1 of 2013 and 1 of 2014 are closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS)

To
The Labour Inspector,
137, Kanthapuram Street,
Virudhunagar.

+1cc to the Special Government Pleader, Sr.No.37246

sms

JM/NGM-MP/SAR-III/5P-3C

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