

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1746 of 2017
and MP No.22225 of 2017

The Management of
Tamil Nadu State Transport Corporation,
(Villupuram Division -I) Ltd.,
(Formerly known as Thanthai Periyar Transport
Corporation Ltd.,)
Rep. By its Managing Director,
Villupuram 605 602. ... Appellant/Petitioner

versus

1. The Presiding Officer,
Labour Court,
Cuddalore.
2. M.V.Dhandapani
C/o. The President CITU,
No.188, Krishna Square,
Thanthai Periyar Nagar,
Kandamanadi Thoppu,
Villupuram. ... Respondents/Respondents

Appeal filed against the order passed by this Court dated
25.11.2008 passed in W.P.No.13940 of 1998.

Prayer in W.P.No.13940 of 1998:-

Petition filed under Article 226 of the Constitution of
India praying to issue a Writ of Certiorari to call for the
records relating to the award dated 31.03.1998 passed in I.D.31
of 1994 on the file of Labour Court, Cuddalore, the first
respondent herein and quash the same.

For Appellant : Mr.K.Kulandaivelu,
for M/s.A.Antony Arockiaraja

For 2nd Respondent : Mr.L.S.M.Hasan Fizal

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this intra Court Appeal is to the order of the learned Single Judge dismissing the Writ Petition filed by the appellant Management challenging the award of the Labour Court, Cuddalore, dated 31.03.1998 made in ID No.31 of 1994. The said Industrial Dispute was raised by the 2nd respondent workman through the President CITU, challenging his termination from service.

2. According to the 1st respondent, he was appointed as a driver in the appellant Corporation on 28.04.1992 and he was also given training in the Road Transport Institute, Gummidipoondi. It is the further case of the 1st respondent employee that he has been working continuously from 28.04.1992, as a driver in the Panruti Branch of the Appellant Corporation. He was paid a daily wage of Rs.48/-, when he joined service of the Corporation and when he was terminated, he was paid a daily wage of Rs.70/-. According the workman, he was not allowed to work on 11.06.1993 and he was informed that he has been removed from service. Complaining that he has been orally terminated from service, the workman raised the Industrial Dispute.

3. The said Industrial Dispute was resisted by the appellant Management contending that there was no relationship of Master and Servant between the appellant and the 2nd Respondent respondent workman and therefore, he has no right to raise the Industrial Dispute. It was also contended that the 2nd respondent was only employed as a temporary driver in the leave vacancy and when the permanent drivers joined duty, the respondent was not appointed in another post but he has been only working as a driver on daily wages. No approval was obtained by the Manager of Panturi Branch, to engage the services of the 2nd respondent as a permanent workman. His services were utilised only in emergency situations. On the above contentions, the Management claimed that the very Industrial Dispute is not maintainable.

4. The Labour Court, on the basis of the available evidence concluded that the claim that the Manager of the Panruti Branch was not permitted to engage his services of the 2nd respondent is false. The Labour Court relying upon the documents produced by the workman, which demonstrates that the Management has collected training fees as well as the Insurance charges, from the workman concluded that there was a relationship of Master and Servant between the appellant Management and the workman. The Labour Court has rejected the evidence of the Management witness holding that the said evidence was unnatural. On the above conclusions, the Labour Court, Cuddalore, held that the non-employment of the 2nd respondent is invalid and directed

reinstatement with backwages.

5. Aggrieved, the management approached this Court, by way of Writ Petition in WP No.13940 of 1998. The said Writ Petition came to be disposed of, by this Court on 25.11.2008, pointing out that the Government had issued a G.O.Ms.No.41, Transport (C.1) Department dated 13.07.2006, wherein, the Government had decided to give preference to persons, who were retrenched from service and obtained orders of High Court for re-employment in terms of Section 25(H) of Industrial Disputes Act, 1947 and to those similarly placed persons, who have approached the Court and whose cases are still under consideration.

6. When this Government Order was sought to be challenged, the employees who wanted to take advantage of the said G.O., were directed to approach the Labour Court, to establish that their cases are covered by Sections 25(F) and 25(H) of the Industrial Disputes Act. The said direction of the learned Single Judge made in K.Kumaran and others vs. State of Tamil Nadu, rep. by its Secretary, Transport Department, Chennai and others, reported in (2007) (3) MLJ 233, was also confirmed by the Division Bench of this Court in the Writ Appeal in WA No.894 of 2007 etc. batch. The learned Single Judge also took note of the fact that in the case on hand, the employee had in fact had approached the Labour Court and has got a declaration that his termination is invalid, in view of Section 25 of the Industrial Disputes Act.

7. The learned Single Judge has also recorded that there is no serious challenge to the findings rendered by the Labour Court. On the above factual back drop, the learned Single Judge concluded that once it is found that the workman is entitled to the protection under Section 25(F) of the Industrial Disputes Act. He would also be entitled to re-employment in terms of Section 25(H). On the above conclusion, the learned Single Judge dismissed the Writ Petition, refusing to interfere with the award of the Labour Court. It is this order of the learned Single Judge that is subject matter of the challenge before us.

8. We have heard Mr.K.Kulandaivelu, learned counsel for Mr.A.Antony Arockiaraja, appearing for the appellant and Mr.L.S.M.Hasan Fizal, learned counsel appearing for the 2nd respondent.

9. Mr.K.Kulandaivelu, learned counsel appearing for the appellant Corporation would contend that G.O.Ms.No.41, Transport (C.1) Department dated 13.07.2006, would apply only in case of temporary employees, who were appointed after 1997. Therefore,

according to him, the learned Single Judge was not right in refusing to interfere with the award, on the ground that G.O. Ms.No.41, Transport (C.1) Department dated 13.07.2006, provides for reinstatement of retrenched workman, irrespective of the date of their employment. We are unable to agree with the said interpretation placed by the learned counsel on the said Government Order.

10. Of course, paragraph 3 of the Government Order refers to the appointments made after 1997, but the operative portion of the Government order in paragraph 4, which reads as follows:

"4.The Government accordingly issue the following orders to the Managing Directors of all the State Transport Corporations on implementation of the directions of the High Court of Madras in regard to appointment of Drivers and Conductors:

(i) preference shall be given to the persons who were retrenched from service but obtained orders from High Court for reemployment in terms of section 25H of Industrial Disputes Act, 1947.

(ii) Preference shall, also be given to similarly placed persons who have approached the Court and whose cases are still under consideration."

11. A reading of the above clearly shows that the conferment of benefit under the G.O. is not restricted to employees appointed on or after a particular day. Therefore, we see no reason to interfere with the judgment of the learned Single Judge. From the records, it is seen that the respondent workman has been paid 17(b) wages till the date of disposal of the Writ Petition. He has also been permitted to withdraw a sum of Rs.1,35,000/- which was deposited towards back wages. In view of the said facts, we dispose of this Appeal with the following directions:

The appellant Corporation shall reinstate the 2nd respondent workman, as a fresh appointee from the date of G.O.Ms.No.41, Transport (C.1) Department viz 13.07.2006. It is made clear that he will not be entitled to claim back wages or any other monetary benefits based on the award, apart from 17(b) wages for the period, from the date of disposal of the Writ Petition till the date of actual re-employment. He would however entitle to claim pension and other retirement benefits, as if, he has been employed as a permanent employee from the date of the Government Order in G.O. Ms.No.41, Transport (C.1) Department viz. 13.07.2006. The service for the period between 13.07.2006 the actual re-employment will be

taken into account only for the purposes of calculating his retirement benefits and pension.

12. The Writ Appeal is disposed of with the above directions. Consequently, the connected miscellaneous petition is closed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Presiding Officer,
Labour Court,
Cuddalore.
2. The Managing Director,
Management of Tamil Nadu State Transport Corporation,
(Villupuram Division -I) Ltd.,
(Formerly known as Thanthai Periyar Transport
Corporation Ltd.,)
Villupuram 605 602.

+2cc to M/s.A.Antony Arockiaraja, Advocate, S.R.No.43710 & 43786
+1cc to Mr.K.Aruna Giri, Advocate, S.R.No.44144

W.A.No.1746 of 2017
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