

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.Nos.2642 to 2655 of 2012 and
M.P.Nos.1, 2, 2, 2, 2, 2, 2, 2, 2, 2, 2, 2 and 2 of 2012
and

W.A.Nos.681 to 686 of 2012 and
M.P.Nos.1 & 2, 2 & 3, 2, 2, 2 & 3 and 2 of 2012

W.A.Nos.2642 to 2655 of 2012:

The Management rep.by its Managing Director,
Tamil Nadu State Transport Corporation
(Kovai Division-I) Ltd.,
37, Mettupalayam Road,
Coimbatore-641 043. Appellant in all appeals

-vs-

Labour Inspector Authority
under the Tamil Nadu Industrial
Establishments (Conferment of
Permanent Status to Workmen)
Act, 1981, Coimbatore District. First respondent in all appeals

A.Kandasamy Second respondent in
W.A.No.2642 of 2012

S.Sreekanth Second respondent in
W.A.No.2643 of 2012

S.Murugesan Second respondent in
W.A.No.2644 of 2012

N.Sakthiparimalam Second respondent in
W.A.No.2645 of 2012

N.Arumugam Second respondent in
W.A.No.2646 of 2012

M.Nagendiran Second respondent in
W.A.No.2647 of 2012

A.Padmanaban Second respondent in
W.A.No.2648 of 2012

S.Ramakrishnan	...	Second respondent in W.A.No.2649 of 2012
T.Elangovan	...	Second respondent in W.A.No.2650 of 2012
K.P.Velliangri	...	Second respondent in W.A.No.2651 of 2012
P.Murugan	...	Second respondent in W.A.No.2652 of 2012
C.Mylsamy	...	Second respondent in W.A.No.2653 of 2012
J.Durai Raj	...	Second respondent in W.A.No.2654 of 2012
S.M.Ponnusamy	...	Second respondent in W.A.No.2655 of 2012
W.A.Nos.681 to 686 of 2012:		
Tamil Nadu State Transport Corporation (Coimbatore) Ltd., rep.by its Managing Director, 37, Mettupalayam Road, Coimbatore-641 043.		
	...	Appellant in all appeals
-vs-		
The Inspector of Labour / Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, Coimbatore.		
	...	First respondent in all appeals
A.Jabeeer Hussain	...	Second respondent in W.A.No.681 of 2012
B.Anandaraju	...	Second respondent in W.A.No.682 of 2012
P.Chinnasamy	...	Second respondent in W.A.No.683 of 2012
N.Gnanavelu	...	Second respondent in W.A.No.684 of 2012
A.Vasanthakumar	...	Second respondent in W.A.No.685 of 2012
K.Mani	...	Second respondent in W.A.No.686 of 2012

W.A.Nos.2642 to 2655 of 2012 filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.Nos.9080 to 9087 of 2011 and 9743 to 9748 of 2011, respectively, dated 06.06.2011.

Prayer in WP.Nos.9080 to 9087 of 2011:

and Prayer in WP.Nos.9743 to 9748 of 2011:Writ petitions filed under Article 226 of Constitution of India for issuance of a writ of certiorarified mandamus calling for the records of the first Respondent relating to the impugned order dated 30.07.2009 in Na.Ka.No. E/4332/07, Na.Ka.No.E/4055/2008 (WP.9748 of 2011) and quash the same as illegal and consequently direct the second Respondent to confer the petitioner permanent status with effect from the date of completion of 480 days or from the date of completion of 240 days and in the time scale of pay and to pay all other the monetary benefits that may arise thereon within a time limit.

W.A.Nos.681 to 686 of 2012 filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.Nos.18581 to 18586 of 2009, respectively, dated 06.04.2011.

Prayer in WP.No.18581 to 18586 of 2009:

Prayer in WP.No.18581 of 2009:Petition filed under Article 226 of the constitution of India for a writ of certiorarified mandamus, after calling for the records pertaining to the order of the first Respondent dated 30.07.2009 quash the same in so far as dismissing the Petitioner claim in Na.Ka.No.E/4333/07 and consequently direct the second Respondent to confer the Petitioner permanent status with effect from 01.05.2000 the date of completion of 480 days of service in 24 calendar months with arrears and all other consequential and attendant benefits, award costs.

Prayer in WP.No.18582 of 2009:

Writ petitions filed under Article 226 of Constitution of India for issuance of a writ of certiorarified mandamus after calling for the records pertaining to the order of the first Respondent dated 30.07.2009 quash the same in so far as dismissing the Petitioner claim in Na.Ka.No.E/9390/07 and consequently direct the second Respondent to confer the Petitioner permanent status with effect from 14.04.2000 the date of completion of 480 days of service in 24 calendar months with arrears and all other consequential and attendant benefits award costs

Prayer in WP.No.18503 of 2009: Writ petitions filed under Article 226 of Constitution of India for issuance of a writ of certiorarified mandamus after calling for the records pertaining to the order of the first respondent dt.30.7.2009 quash the same in so far as dismissing the Petitioner's claim in Na.Ka.No.E/13293/07 and consequently direct the second Respondent to confer the Petitioner permanent status with effect

from 26.12.1999 the date of completion of 480 days of service in 24 calendar months with arrears and all other consequential and attendant benefits award costs.

Prayer in WP.No.18584 of 2009:Writ petition filed under Article 226 of Constitution of India for a writ of certiorarified mandamus, after calling for the records pertaining to the order of the first Respondent dated 30.07.2009 quash the same in so far as dismissing the Petitioner claim in Na.Ka.No.E/13292/07 and consequently direct the second Respondent to confer the Petitioner permanent status with effect from 14.05.2000 the date of completion of 480 days of service in 24 calendar months with arrears and all other consequential and attendant benefits award costs.

Prayer in WP.No.18585 of 2009:Writ petition filed under Article 226 of the Constitution of India for a writ of certiorarified mandamus after calling for the records pertaining to the order of the first Respondent dated 30.07.2009 quash the same in so far as dismissing the Petitioner claim in Na.Ka.No.E/4332/07 and consequently direct the second Respondent to confer the Petitioner permanent status with effect from 10.01.2000 the date of completion of 480 days of service in 24 calendar months with arrears and all other consequential and attendant benefits award costs.

Prayer in WP.No.18586/2009:Writ petition filed under Article 226 of the Constitution of India for a writ of certiorarified mandamus after calling for the records pertaining to the order of the first Respondent dated 30.07.2009 quash the same in so far as dismissing the Petitioner claim in Na.Ka.No.E/11005/07 and consequently direct the second Respondent to confer the Petitioner permanent status with effect from 28.10.1999 the date of completion of 480 days of service in 24 calendar months with arrears and all other consequential and attendant benefits award costs.

For Appellant :: Mr.T.Chandrasekaran in all the W.As.

For Respondents :: Mr.P.S.Sivashanmugasundaram,
Special Government Pleader for R1
in all the W.As.

Mr.K.V.Shanmuganathan for R2
in W.A.Nos.2642 to 2655 of 2012

Mr.R.Krishnasamy for R2
in W.A.Nos.681 to 686 of 2012

COMMON JUDGMENT
(Delivered by HULUVADI G.RAMESH, J.
and
RMT.TEEKAA RAMAN, J.)

The second respondent in these appeals who were appointed as casual labourers in the appellant Transport Corporation, filed applications before the first respondent claiming that they have completed 480 days of service within the two calendar years and hence they should be brought into time scale of pay as per Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

2.Before the first respondent, the appellant-Management contended that there was a settlement under Section 12(3) of the Industrial Disputes Act, between the appellant and various Unions representing the workmen, and their services were regularised with effect from 01.09.2005. According to the appellant-Management when a settlement had been arrived at between the appellant and the Unions, the same is binding on these workmen, since these workmen are members of the Union.

3.On consideration of the facts, the first respondent has not gone into the factual position as to whether they have completed 480 days or not. But on the legal issue, in view of Section 12(3) Settlement arrived at between the parties, the first respondent rejected their applications. Challenging the same, they filed writ petitions before this Court. Totally there are two common orders, passed by different learned single Judges. The first order was passed on 06.04.2011 in W.P.Nos.18581 to 18586 of 2009 and the same was followed in the subsequent order passed on 06.06.2011 in W.P.Nos.9080 to 9087 and 9743 to 9748 of 2011. The relevant paragraphs of the order passed by the learned single Judge in W.P.Nos.18581 to 18586 of 2009 on 06.04.2011, is extracted hereunder:-

"5.Admittedly, this is the case where the petitioners were appointed as Drivers and Conductors in the second respondent Corporation. From the date of their appointments, they have also completed 480 days of service. Therefore, as per Section 3(1) of the Industrial Disputes Act, the second respondent should have given the benefit of settlement reached under Section 12(3) of the Industrial Disputes Act on 31.08.2005. Since the second respondent declined to consider the claim of the petitioners in terms of Section 12(3) Settlement, they have made their claim before the first respondent, but, the first respondent without considering the fact that they have already reached 12(3) Settlement dated 31.08.2005, wrongly dismissed the claim. According to him, it should not have been done. He added that the second respondent cannot deprive the right to get permanency from the date of completion of 480 days, merely because they have already issued the order of permanency dated

01.09.2005 on the ground that such orders have been accepted by the petitioners by further stating that they did not raise any dispute questioning the respondent for giving permanency only from 01.09.2005.

6.The learned counsel for the petitioners further submitted that though the petitioners have accepted the orders passed by the first respondent, the fact remains fact that the settlement reached under Section 12(3) of the Industrial Disputes Act, dated 31.08.2005, is binding upon the second respondent as well as the petitioners, therefore I am of the considered view that the impugned order rejecting the case of the petitioners is liable to be interfered with for the reason that the first respondent being an authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, has no jurisdiction to review or go into the correctness of the 12(3) Settlement reached before the Conciliation Officer, inasmuch as a workman who has completed 480 days in 24 calendar months is entitled to permanency from the date of completion of 480 days as per Section 3(1) of the Act. Therefore, the impugned order suffers from illegality.

7.Accordingly, the impugned order is set aside. The writ petitions are allowed by directing the second respondent to confer the petitioners the permanent status with effect from 01.05.2000 in respect of the petitioner in W.P.No.18581 of 2009, A.Jabeer Hussain with effect from 01.05.2000, K.Mani with effect from 28.10.1999, A.Vasanthakumar with effect from 10.01.2000, N.Gnanavelu with effect from 14.05.2000, P.Chinnasamy with effect from 26.12.1999 and E.Anandaraju with effect from 14.04.2000 respectively, from the date of completion of 480 days of service in 24 calendar months. Consequently, connected Miscellaneous Petitions are closed. No costs."

4.Challenging the correctness of the orders passed by the learned single Judges, the Management has come up with these appeals.

5.The core question that arises for consideration in these appeals is as to whether the settlement arrived at between the Management and the Trade Union to which these workmen belongs, is binding on them, or the statutory benefit of conferring the permanent status on the workmen will prevail.

6.The learned counsel for the appellant-Management has relied upon the judgment of the Hon'ble Supreme Court in Barauni Refinery Pragatisheel Shramik Parishad v. Indian Oil Corporation Limited, reported in 1990 CJ(SC) 67, in which it is stated that a settlement arrived at in the course of conciliation proceedings with a recognised majority Union will be binding on

all workmen of the establishment, even those who belong to the minority Union which had objected to the same; that to that extent it departs from the ordinary law of contract. Relying upon the said judgment, the learned counsel has submitted that the case of the second respondents herein, lies in the similar footing and hence these appeals have to be allowed.

7.The learned counsel for the second respondent in each of these appeals, relied upon the judgment of this Court in Tata Tea Ltd. v. State of Tamil Nadu, reported in 2010-II-LLJ-762 (Mad), and submitted that a settlement cannot supersede the statutory right. He also relied upon a decision of this Court in Kumar Polydot Mills Ltd. v. Dy.Chief Inspector of Factories, reported in 2010-III-LLJ-756 (Mad) and submitted that the contention that the settlement provided a scheme of absorption and therefore, they need not be made permanent cannot be accepted in the light of the amendment made to Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, whereby the Explanation II was added by the Amending Act 44/1985 and Section 3 will henceforth override any settlement. He further submitted that when the above said amended provisions were challenged before the Hon'ble Supreme Court, the Act was held to be intravires of the Constitution by the Hon'ble Supreme Court in State of Tamil Nadu and others v. Nellai Cotton Mills Ltd and others, reported in 1990 (2) SCC 518. For this, he relied upon the order passed by this Court in The Management of Tamil Nadu Civil Supplies Corporation Ltd. v. Inspector of Labour, in W.P.No.4371 of 1998 dated 30.07.2008, and submitted that objections based on the award and settlement by the learned counsel for the Management must necessary fail and these writ appeals have to be dismissed.

8.The learned Special Government Pleader appearing for the first respondent in all these appeals, has submitted that between the year 1999 and 2005, viz. till the end of the Section 12(3) settlement reached between the Management and the Unions, there was a total ban on recruitments by the Government and as such, conferment of permanent status to the workmen in the present cases, does not arise at all.

9.We have given our anxious consideration to the submissions made by the learned counsel on either side and perused the materials available on record carefully and meticulously, with regard to the operation of Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, and also Section 12(3) Settlement arrived at between the Management and the Unions.

10.As projected by the Management, between the years 1999 to 2005 there was a ban on recruitments by the Government, during which period the private respondents alleged to have been working for 480 days within a period of 24 calendar months. However, permanent status cannot be conferred during the

currency of the said ban period from the year 1999 to 2005. It is not disputed by the learned counsel for the workmen that the alleged dates of conferment of permanent status on these workmen, falls during the ban period. When such being the case, we find no hesitation to come to the conclusion that permanent status cannot be conferred on the workmen, on the dates falling within the ban period.

11. In view of the above stated circumstances, we hereby allow these appeals, setting aside the impugned orders passed by the learned single Judges. Thus, the orders passed by the first respondent herein, which were impugned in the writ petitions under challenge in these appeals, dated 30.07.2009 are restored. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Managing Director,
Tamil Nadu State Transport Corporation
(Kovai Division-I) Ltd.,
37, Mettupalayam Road,
Coimbatore-641 043.

2. Labour Inspector Authority
under the Tamil Nadu Industrial
Establishments (Conferment of
Permanent Status to Workmen)
Act, 1981, Coimbatore District.

+10cc to Mr.K.V.Shanmuganathan, Advocate SR.No.8181/2018
+1cc to Mr.Ajoykhose, Advocate Sr.No.8217/18
+1cc to Mr.T.Chandra sekar, Advocate sR.No.8494/18
+1cc to Mr.T.Chandra sekar, Advocate Sr.no.8493/18
+1cc to Government pleader SR.No.8396/18

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