



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 23.03.2018
DELIVERED ON : 05.06.2018
CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD).Nos.14706 and 14707 of 2015

N.Karuppaiah ... Petitioner in W.P.(MD)No.14706 of 2015

Arokkia Arumairaj ... Petitioner in W.P.(MD)No.14707 of 2015

Vs.

1. Tamilnadu State Transport Corporation (Madurai) Ltd.,
Bye Pass Road,
Madurai - 10.

2. The Government of Tamilnadu,
Rep. by its Secretary,
Transport Department, (C2),
St. George Fort,
Chennai - 109.

... Respondents in all petitions

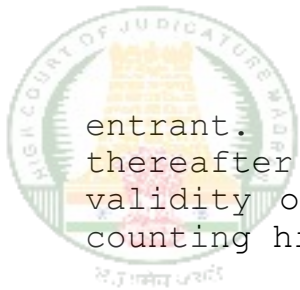
COMMON PRAYER : Writ Petitions are filed under Article 226 of Constitution of India, to issue a Writ of Declaration, declaring the 18(1) settlement dated 14.03.2007 and 13.03.2007 respectively and the fresh employment given to the petitioners on the basis of the settlement as illegal, invalid and violates the constitutional right of the petitioners, consequently direct the respondents to pass appropriate orders treating the petitioners as permanent employees of the first respondent Corporation on the basis of his original employment dated 01.04.1992 with all consequential service benefits.

(in all W.Ps.)

For Petitioners	: Mr.R.Aravindan
For R-1	: Mr.A.Jeyaram
For R-2	: Mr.K.Saravanan,
	Government Advocate.

C O M M O N O R D E R

The petitioner in W.P.(MD)No.14706 of 2015 had joined service of the first respondent Corporation on 01.04.1992 as Conductor. In the year 2001, there was a general strike called by the trade unions. The petitioner had taken part there in. He was dismissed from service on 24.11.2001. The petitioner raised an industrial dispute. During the pendency of the same, the Management entered into an agreement under Section 18(1) of the Industrial Disputes Act. As per the terms of the said settlement, the petitioner was to be reinstated. But then, he would be treated only as a fresh



entrant. Accepting the same, the petitioner had joined service, thereafter. In the present Writ petition, he questioned the validity of the said settlement deed, dated 14.03.2007. He seeks counting his service right from 01.04.1992.

2. The said request was opposed by the Management. They would submit that the petitioner was habitually absent. Therefore, he was issued with charge memos dated 15.04.2000, 10.08.2000 and 18.05.2001. An enquiry was conducted. Therefore, based on the enquiry report, the petitioner was dismissed from service on 24.11.2001. In the counter affidavit, they would rebut the petitioner's contention that his dismissal had any thing to do with participation in the general strike. It is also submitted that the petitioner had voluntarily entered into a settlement under Section 18(1) of the Industrial Disputes Act, cannot question the same after a lapse of more than eight years. As per the statutory provision, it is clearly binding on him. He would therefore call upon this Court to dismiss the Writ petition not only on the grounds of maintainability, but also on the grounds of laches.

3. The petitioner in W.P.(MD)No.14706 of 2015 also claims that he was likewise victimized. But in the counter affidavit filed by the Management, it is pointed out that the disciplinary action was taken against Thiru.Arokkia Arumairaj, alleging misappropriation of the collection amount by him. His Writ petition is also opposed on the same grounds such as in the case of W.P.(MD) No.14706 of 2015.

4. It is true that in both the cases, disciplinary action was taken against the Writ petitioners prior to the general strike. The strike took place during the period from 09.11.2001 and 25.11.2001. But both the Writ petitioners were dismissed from service on 24.11.2001. Hence, this Court is of the view that the timing of dismissal does indicate that it had more to do with the participation of the Writ petitioners in the general strike than to do with their misconduct. The petitioners have enclosed the extract of the Minutes of 199th Board Meeting held on 22.12.2006. The subject was to consider the representations of 14 dismissed employees including reinstatement after entering into 18(1) settlement. The Board had passed a resolution resolving to authorise the Managing Director to reinstate the 14 dismissed employees who were issued dismissal orders during the strike period that occurred in between 09.11.2001 and 25.11.2001 as a fresh entrant after entering into 18 (1) Settlement with them. This clearly shows that the version of the petitioners is more probable.

5. If the dismissal of the petitioners had nothing to do with the participation with the general strike, the said resolution would not have been passed. The next question is with regard to the maintainability of these Writ petitions. Section 18(1) of the Industrial Disputes Act reads that a settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to



the agreement. The learned Standing counsel laid stress on the words "shall be binding on the parties to the agreement". The petitioners being a party to the agreement cannot now resile from their stand, is the contention of the Management.

6. This Court is of the view that if the terms of the agreement are unconscionable and unfair, then it can certainly be challenged as violative of Article 14 of Constitution of India. That apart, if vitiating factors are present, then also the party to the agreement cannot be held bound to the terms of the agreement. In this case, the Writ petitioners were dismissed from service on 24.11.2001. For more than five years, they were out of employment. They should have been literally on the streets. In these circumstances, when an offer came to be made that they can get back their jobs but on condition that they would be treated as fresh entrants, they certainly feel compelled to accept the same. It does not mean that the Management had compelled them or coerced them into accepting. The compulsion is more due to circumstances and the situation in which they were placed. In the very nature of things, the petitioners were not placed at the same level as the Management. The petitioners had joined service on 01.04.1992 and forfeiting their entire past service, can have very serious financial consequences.

7. This Court is therefore of the view that treating the petitioners as a fresh entrant was unfair and reasonable. In this view of the matter, this Court will have to necessarily interfere. But at the same time, granting relief sought for by the petitioners would also completely undermine their position. The fact remains that they were dismissed employees. Only by virtue of the impugned settlement, they got back their jobs. Therefore, the settlement cannot be set aside in toto.

8. This Court is of the view that the interest of justice will be served by directing the respondents to treat the petitioners as permanent employees of the Corporation from the date of their original appointment. They will have continuity of service throughout. But then, they will not be entitled to any wages for the period from 24.11.2001 and 15.03.2007. The said period shall however be treated as one of service for all notional purposes. The first respondent shall issue appropriate orders in this regard within a period of eight weeks and also disburse consequential monetary benefits payable to the Writ petitioners, accordingly.

9. The Writ petitions are allowed, accordingly. No costs.

Sd/-

Assistant Registrar(Crl. side)

/True Copy/



To

1. Tamilnadu State Transport Corporation (Madurai) Ltd.,
Bye Pass Road, Madurai - 10.

2. The Secretary,
Transport Department, (C2),
St. George Fort, Chennai - 109.

+2cc to M/S.R.Aravindan, Advocate SR.No. 67275, 67276
+1cc to Special Government Pleader, SR.No. 57950, 57949

ORDER

MADE IN

W.P.(MD).Nos.14706 and 14707 of 2015

05.06.2018

pmu

JM/SB/SAR 3/04.07.2018/4P/6C