

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.31715 of 2004
and W.M.P.No.38436 of 2004

Tamilnadu State Transport Corporation
(Kumbakonam Division-I) Ltd.,
No.27, Railway Station New Road,
Kumbakonam 612 001.

.. Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Cuddalore.

2.S.Valayapathi

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the entire records culminating in the passing of the award dated 12.11.2003, on the file of the 1st respondent herein, made in I.D.No.51 of 1998, quash the same.

For Petitioner : Mr.D.Venkatachalam,

For R2 : Ms.T.Lavanya,
for M/s.S.Sounthar

O R D E R

The present Writ Petition is filed for an issuance of a Writ of Certiorari, calling for the entire records culminating in the passing of the award dated 12.11.2003, on the file of the 1st respondent herein, made in I.D.No.51 of 1998 and quash the same.

2.The 2nd respondent raised an Industrial Dispute in I.D.No.51 of 1998, challenging his order of termination of traineeship on the ground that he was working as a conductor in the petitioner Transport Corporation from the year 1985. The petitioner used to give one month break every year. Lastly, the 2nd respondent was appointed as a trainee conductor by the order dated 03.04.1996 and the 2nd respondent joined as a trainee on 21.04.1996. The petitioner in order to appoint another person, terminated the services of the 2nd respondent. The order of termination is invalid.

3.The petitioner contended that the 2nd respondent was not employed from 1985 onwards. The petitioner denied all the averments that the 2nd respondent was working continuously from the year 1985 and contended the statement of the 2nd respondent that he was working throughout the year and was given break for one month per year is false. The 2nd respondent was appointed as a trainee conductor only by the order dated 03.04.1996 and he joined as a trainee on 21.04.1996. He was given practical training and was paid consolidated payment of Rs.1,500/- per month. Subsequently, his services were not satisfactory and hence, as per the conditions imposed in the order of appointment dated 03.04.1996, the petitioner terminated the 2nd respondent by the order dated 05.11.1996. At the time of appointment, the 2nd respondent accepted the conditions imposed in the appointment order. The training period is six months. As per the conditions, after 6 months training, the 2nd respondent will be appointed as and when vacancies arise, following the procedure and he cannot claim permanency after completion of the training period. The service of the 2nd respondent was not satisfactory and he was terminated. As per the conditions in the appointment order which was accepted by the 2nd respondent, he can be terminated without assigning any reason. The Industrial Dispute raised by the 2nd respondent is not maintainable as he was not a worker, but only a trainee. The proper remedy to the 2nd respondent is only to approach the Civil Court.

4.Before the 1st respondent Labour Court, the 2nd respondent did not let in any oral and documentary evidence. The petitioner examined two witnesses as M.W.1 and M.W.2 and marked 5 documents as Exs.M1 to M5. The 1st respondent, Labour Court considering the oral and documentary evidence let in by the petitioner, ordered reinstatement, continuity of service and 50% back-wages to the 2nd respondent. Against the said award, the present Writ Petition has been filed.

5.The learned counsel appearing for the petitioner contended that the 2nd respondent was appointed only as a trainee and after training period, the 2nd respondent was not appointed as a permanent worker as his service was not satisfactory. As per the conditions imposed in the appointment order, the 2nd respondent will be appointed as and when vacancy arises provided his services are satisfactory. The 1st respondent has erroneously held that the 2nd respondent automatically became a permanent employee on completion of training as he continued his service on daily wage basis. The 2nd respondent has not let in any oral or documentary evidence to prove that he was working from 1985 onwards and he worked for 240 days in 12 calendar months. The 1st respondent on surmises and assumptions has held that the contention of the 2nd respondent that he worked from 1985 is

possible. Even assuming that 2nd respondent was continuing after training period, the 2nd respondent would not automatically become the permanent employee and the 1st respondent erroneously held that the petitioner failed to follow the procedure of retrenchment.

6. Per contra, Ms. T. Lavanya, learned counsel representing M/s. S. Sounthar, learned counsel appearing for the 2nd respondent contended that the 2nd respondent was working as a conductor in the petitioner Corporation from 1985 onwards. The witnesses examined on behalf of the petitioner had admitted that the service register would be open in respect of the worker only when he worked for three years. Since the service register for the 2nd respondent was opened, the 1st respondent has rightly held that the 2nd respondent worked for 240 days in one year. The petitioner continued the service of the 2nd respondent even after the training period was over and hence, the 2nd respondent has automatically become permanent conductor. The 1st respondent has appreciated all the materials on record in proper perspective and set aside the order of termination and ordered reinstatement with continuity of service and 50% back-wages. The petitioner failed to follow the procedure for retrenching its worker and prayed for dismissal of the Writ Petition.

7. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 2nd respondent and perused the materials available on record.

8. From the materials on record, it is seen that the 1st respondent has held that as per Ex.M1, appointment order and Ex.M3, service register, the 2nd respondent has become worker in petitioner Corporation as he was paid daily wages as conductor after the training period. The said finding is erroneous. As per Ex.M1, appointment order, it is specifically stated that after completion of training period, the trainee conductor would be appointed as conductor as and when the vacancy arises. In the present case, the petitioner has not issued any order appointing the 2nd respondent as conductor. On the other hand, by the order dated 05.11.1996, the 2nd respondent was terminated as his performance was not satisfactory. In the said order of termination, the appointment order dated 03.04.1996 appointing the 2nd respondent as trainee has been referred to. The 1st respondent without considering the said reference, has erroneously held that the petitioner has terminated the service of the 2nd respondent without conducting the domestic enquiry and without paying retrenchment compensation as contemplated under the Industrial Disputes Act. The finding of the 1st respondent that 2nd respondent became automatically worker without the petitioner confirming the service of the 2nd respondent, after

completion of the training period is not correct and is contrary to the conditions mentioned in Ex.M1, appointment order appointing the 2nd respondent as trainee conductor.

9.From the materials on record, the specific case of the 2nd respondent is that he was working in the petitioner Corporation from the year 1985. According to the 2nd respondent, the petitioner used to engage the 2nd respondent for 11 months in a year and terminate the service of the 2nd respondent for one month and then he will continue to work as such till he was terminated by the order dated 05.11.1996. The 2nd respondent has not produced any material to show that he worked as conductor in the petitioner Corporation from 1985 onwards. It is pertinent to note that the 2nd respondent did not let in any oral or documentary evidence before the 1st respondent Labour Court to prove that he was working from the year 1985 onwards. The 1st respondent on improper consideration of evidence of petitioner witnesses with regard to opening of service register, has erroneously held that the 2nd respondent has worked for 240 days in a year. The finding of the 1st respondent that the 2nd respondent worked for 240 days in a year is without any basis and the same is only on an assumption without there being any materials on record.

10.Considering all the materials on record, it is seen that the 2nd respondent was appointed as a trainee conductor by the order dated 03.04.1996 and he joined the duty as trainee conductor on 21.04.1996. Within 16 days of completion of training period, the service of the 2nd respondent was terminated on 05.11.1996 as his performance was not satisfactory. The petitioner has not issued any order appointing the 2nd respondent as permanent conductor. It is not the case of the 2nd respondent that on the date of completion of training, there were vacancies in the petitioner Corporation and the petitioner appointed the 2nd respondent in any one of the existing vacancies.

11.For the above reasons, the award of the Labour Court is set aside and the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.
gsa

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court, Cuddalore.

+1cc to Mr.D.Venkatachalam, Advocate, SR.No.59149

+1cc to Mr.S.Sounthar, Advocate, SR.No.59146

W.P.No.31715 of 2004

Kak (17/09/2019)



WEB COPY