

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2019

CORAM

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.30839 to 30856 of 2008

C. Ashok Kumar ...Petitioner in W.P.No.30839 of 2008
G.Prakash ...Petitioner in W.P.No.30840 of 2008
K.Anbu ...Petitioner in W.P.No.30841 of 2008
K.P.Rajan ...Petitioner in W.P.No.30842 of 2008
N.Saravanan ...Petitioner in W.P.No.30843 of 2008
G.Suresh ...Petitioner in W.P.No.30844 of 2008
M.Sugumar ...Petitioner in W.P.No.30845 of 2008
R.Murugan ...Petitioner in W.P.No.30846 of 2008
S.Suresh ...Petitioner in W.P.No.30847 of 2008
K.Loganathan ...Petitioner in W.P.No.30848 of 2008
T.R.Murugan ...Petitioner in W.P.No.30849 of 2008
N.Ravichandran ...Petitioner in W.P.No.30850 of 2008
E.Selvaraj ...Petitioner in W.P.No.30851 of 2008
K.Manivannan ...Petitioner in W.P.No.30852 of 2008
M.Ariva ...Petitioner in W.P.No.30853 of 2008
M.Elangovan ...Petitioner in W.P.No.30854 of 2008
N.Nandakumar ...Petitioner in W.P.No.30855 of 2008
S.Jayaraj ...Petitioner in W.P.No.30856 of 2008

Vs.

1. The Presiding Officer,
II Additional Labour Court,
Chennai.

2. The Management of
Tamil Nadu State Express Transport
Corporation (Div.I) Limited,
Pallavan Salai,
Chennai - 600 002.

...Respondents

Prayer in W.P.No. 30839 of 2008:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent herein pertaining to the award passed in I.D. No.495 of 2001, I.D.No.507, 496, 498, 499, 500, 501,503,504,505,506, 523,524, 525,526, 544, 560 & 709/2001 respectively dated 30.01.2008 quash the same and direct the 2nd respondent herein to reinstate the petitioner with community of service, back wages and other benefits..

For Petitioner : MR.G.Purushothaman
[in all W.Ps.]

For Respondents: R1- Tribunal
[in all W.Ps.] Mr.L.S.M.Hasan Fizal [R2]

COMMON ORDER

The award dated 30.01.2008 passed in I.D.Nos. 495 & 496 of 2001, 507 of 2001, 498 to 501 of 2001, 503 to 506 of 2001, 523 to 526 of 2001, 544 of 2001, 560 of 2011 and 709 of 2011 are under challenge in these present writ petitions.

2. The petitioners are claiming that they were initially engaged as casual labourers to clean the transport bus bodies in the second respondent Tamil Nadu State Express Transport Corporation. The learned counsel appearing on behalf of the writ petitioners mainly contended that all these writ petitioners were engaged as casual labourer and the salary was paid on fees rate basis, for example, if the casual labour cleans one bus then Rs.45/- or Rs.50/- would be paid for cleaning. In view of the fact that these writ petitioners were directly appointed by the Transport Corporation, they are entitled for the benefits on par with other employees. This apart, while terminating the service of the writ petitioners, the mandatory condition under Section 25(F) of the Industrial Dispute has not been complied with. Thus, the petitioners are constrained to move the Industrial Disputes. Earlier the petitioners have filed a writ petition soon after discharge from service and subsequently, the High Court directed the workmen to approach the Labour Court under the Industrial Disputes Act and consequently, all these writ petitioners raised an Industrial Dispute.

3. The learned counsel for the writ petitioners reiterated that no appointments were issued. However, they were engaged as casual labourers and have paid salary directly by the Transport Corporation and therefore they are entitled for the benefit of reinstatement with all other consequential benefits. In support of the said contention, the learned counsel for petitioners relied on the judgment of the learned single Judge of this Court in the case Tamil Nadu State Transport Corporation (Madurai Division -IV) Ltd. Vs. Presiding Officer, Industrial Dispute and anr [reported in (2010) 4 LLN 703]. The learned counsel for the petitioner relied on paragraph 17 of the judgment, which is extracted hereunder:

"17. However in the present case, the stand of the petitioner -Corporation was that they never employed these workmen and there are no

records available about their employment. But so far as the second respondent trade union is concerned it had completely discharged its burden, first by examining a witness of their side namely W.W.1 and also marked available documents. They had also summoned C.W.1 and C.W.2 as Court witnesses. It was elicited from those witnesses that the registers were maintained in Dindigul Unit II, Ottanchathiram and Palani branches, the petitioner-Corporation having held that they have no records now cannot turn back and state that the workmen have failed to prove through documents that they were employed by the petitioner-Corporation. It is rather surprising that the State owned Transport Corporation have come even after committing acts of unfair labour practice which were not only prohibited by the I.D.Act but penalties has been prescribed under law. The fact that there are 700 buses running and each bus has to be kept clean before it is put on road cannot be denied. Having taken a stand that the workmen whose names were found against the order of reference are not their workmen and that they have no records maintained, the only course open to the workmen is to assert on the basis of their claim statement, oral evidence as well as whatever documentary proof that they had in their possession filed before the Tribunal. It must be noted that the Industrial Tribunal is not trapped by the provisions of the Evidence Act and under Rule 39 of the Tamil Nadu Industrial Disputes Rules 1958, the Tribunal can call for admit or accept any evidence which in equity and good conscience if it is deem fit. Even if it is held that principles underlined in the Indian Evidence Act, 1872, will apply, a reference can be made to S.106 wherein it is clearly stated that it a fact is especially within the knowledge of any person the burden of proving that fact is upon him. In this case the workmen have discharged their burden and it is the petitioner who had not co-operated in the effort to unravel the truth and are attempting to take advantage of the adversarial nature of the litigation."

4. The learned counsel for the petitioners reiterated that the engagement of the casual labourers during the relevant point of time were made directly by the Transport Corporation and

therefore they are bound to comply with the provisions of the Industrial Disputes Act and under these circumstances, the Labour Court has committed an error in rejecting the Industrial Dispute raised by the writ petitioners.

5. The learned counsel appearing on behalf of the second respondent Management opposed the contentions by stating that at no point of time the writ petitioners were appointed by the Transport Corporation. No appointment order were issued and they were engaged as casual labourers on fees rate basis and the nature of the job is also on need basis. In view of the fact that these writ petitioners were not engaged by following the procedures contemplated in the Rules of the Transport Corporation and they were provided work on need basis to clean the bus bodies and the salary was also paid on fees rate basis, they were not at all the employees of the Transport Corporation and they cannot be granted any other relief as such sought for in the claim petition and therefore, the order of rejection passed by the Labour Court is in accordance with law.

6. This Court has gone into the findings of the Labour Court. The Labour Court has considered the documents and evidences produced by the respective parties and the common claim raised by these writ petitioners are that they were engaged as casual labourers for cleaning bus body, the wages are paid on fees rate basis and therefore, they are entitled for the benefit of reinstatement with all consequential benefits. It is claimed that they have worked for more than 240 days and accordingly, the respondent Management is bound to comply with the mandatory provisions under the Industrial Disputes Act.

7. The common counter filed by the Transport Corporation, in all these disputes, are that the respondent Corporation is a Government of Tamil Nadu undertaking. Therefore, the recruitments are to be made by following the Recruitment Rules in force. The appointments made only by following the Rules alone can be valid and admittedly, all these petitioners were not appointed by following the recruitment rules in force. Thus, the casual labourers were engaged for the purpose of maintaining the Transport Corporation buses cleanly and whenever those labourers are engaged they were paid on fees rate basis then and there. Therefore, they cannot be considered as the employees of the Transport Corporation and even no appointment order or any assurance or otherwise has been provided for grant of permanent absorption or permanent status.

8. The Labour Court has considered these issues and arrived at a finding that based on the records only gate passes were issued to these casual labourers which were marked as documents.

The gate pass as well as the entry are entered in the documents and further the writ petitioners were engaged to clean the bus body. The entry permission was granted and these petitioners were engaged as casual labourers to clean the bus body from 1995 to 1997 during different spell. The wages of Rs.45/- or Rs.50/- were paid to these casual labourers to clean one bus on fees rate basis. The appointments were made once in 10 days.

9. Considering the nature of employment as well as the manner in which these petitioners were engaged by the Transport Corporation, the Labour Court arrived at a conclusion that the provisions of the Industrial Disputes Act are not applicable. At no point of time, the petitioners were appointed by the Transport Corporation by following the procedures contemplated. Thus, the casual labourers were engaged on contract basis and therefore, they cannot be considered as the employees of the Transport Corporation. They were engaged to clean the bus body and no other works were provided to these employees. The Labour Court further relied on the judgment of the Supreme Court of India in the case of National Fertilizers Ltd. And ors. Vs. Somvir Singh [reported in (2006) 5 SCC 493], wherein the Supreme Court observed as follows:

"HELD: The Supreme Court observed before appointing respondents, no advertisement was issued nor employment exchanges notified as regard the existence of the vacancies. A 'State' within the meaning of Article 12 of Constitution of India, 1950 such as the appellant company was bound to comply with constitutional requirements in Articles 14 and 16 thereof besides its own recruitment rules. Any appointment in violation such as those in question here would render them nullities. The plea of the respondents that for Class IV employees, Employment Exchange were not required to be notified in view of Section 3(1)(d) of Employment Exchange (Compulsory Notification of Vacancies) Act, 1959, was held not sustainable."

.....It is true that the respondents had been working for a long time. It may also be true that they had not been paid wages on a regular scale of pay. But, they did not hold any post. They were, therefore, not entitled to be paid salary on a regular scale of pay. Furthermore, only because the respondents have worked for some time, the same by itself would not be a ground for direction regularization of their services in view of the decision of this Court in Uma Devi."

10. Relying on the above judgment of the Apex Court of India, the Labour Court arrived at a conclusion that all these writ petitioners were engaged on contract basis and the wages are paid on fees rate basis and further, there is no order of appointment or any other proceedings are issued to arrive at a conclusion that the writ petitioners were appointed by the Transport Corporation. Even, there is no order of permanent employment has been produced. Thus, the casual labourers were engaged by the branch officials to clean the bus body then and there and considering all these facts and circumstances, the Labour Court rejected the claim of the writ petitioners.

11. This Court is of the considered opinion that the respondent Transport Corporation is a State within the meaning of 12 of the Constitution of India, owned by the Government of Tamil Nadu. The Transport Corporation being the Government of Tamil Nadu is bound to follow the Recruitment Rules in force. Even, in case, where the appointment orders were not issued, the aggrieved persons while approaching the competent Court, themselves established that they were engaged in accordance with the procedure contemplated. Mere engagement to clean bus body cannot be considered as an employment made within Recruitment Rules. The practice of engaging persons in an illegal manner and granting permanent absorption is criticized and the principles are also deprived by the Constitution Bench in the case of State of Karnataka Vs. Uma Devi [reported in 2006 (4) SCC 1]. The Supreme Court, in unequivocal terms, held that all the appointments are to be made under Constitutional schemes and by following the Rules in force. The illegal appointments cannot be valid. Length of service cannot be a ground to claim for permanent absorption or regularization.

12. In the present case, all these writ petitioners were engaged as casual labourers to clean the bus body on fees rate basis and the wages are paid but no order of appointment were issued and no permanent order has been issued. They were engaged on need basis and under these circumstances, the engagement are to be considered as illegal and there is no sanctioned post.

13. It is brought to the notice of this Court that cleaning of the bus, as of now, is out sourced and no such casual labourers are engaged to clean the bus.

14. This being the factum, this Court is of an opinion that the writ petitioners have not established before the Labour Court that they are entitled for reinstatement or their engagement were made by following the procedures contemplated.

The Labour Court under these circumstances as well as the evidences produced, rejected the claim of the petitioners.

15. Accordingly, the writ petitioners have not made any acceptable legal ground for the purpose of considering the relief in the writ petitions. Thus, writ petitions stand dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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II Additional Labour Court,
Chennai.
2. The Management of
Tamil Nadu State Express Transport
Corporation (Div.I) Limited,
Pallavan Salai,
Chennai - 600 002.

+lcc to Mr.L.S.M.Hasan Fizal, Advocate Sr.99035

+lcc to Mr.G.Purushothaman, Advocate Sr.98355

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rv[co]
srg 23/01/2020

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