

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19190 to 19195 of 2013

- 1 A.RAJAKUMARAN ... PETITIONER in WP No.19190 of 2013
- 1 S.N.IMAYAVARAMBAN ... PETITIONER in WP No.19191 of 2013
- 1 G.KATHAMUTHU ... PETITIONER in WP No.19192 of 2013
- 1 G.PACHAIAPPAN ... PETITIONER in WP No.19193 of 2013
- 1 M.BALAKRISHNAN ... PETITIONER in WP No.19194 of 2013
- 1 S.SARAVANNA PANDIAN ... PETITIONER in WP No.19195 of 2013

vs.

- 1.The Branch Manager,
Tamil Nadu State Transport Corporation Ltd,
Villupuram, Kanchipuarm Mandalam,
Koyambedu Depot-I,
Chennai-107.
2. The Managing Director,
Tamil Nadu State Transport Corporation Ltd,
Villupuram, Kanchipuram Mandalam,
Villupuram.
3. The Presiding Officer,
The Principal Labour Court,
Chennai.

... Respondents
in all W.Ps

Prayer in W.P.No.19190/2013: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the award in I.D.No.333 of 2008 dated 06.11.2012 passed by the third respondent and quash the same and direct the first and second respondent to reinstate the petitioner in service with back wages and all other attendant benefits.

WP No.19191 of 2013

Certiorarified Mandamus Calling for the records pertaining to the Award in I.D. No.334 of 2008 dated 6.11.2012 passed by the Third Respondent and quash the same and direct the First and Second Respondents to reinstate the Petitioner in service as Conductor / Driver with back wages, Continuity of service and all other attendant benefits

WP No.19192 of 2013

Certiorarified Mandamus Calling for the records pertaining to the Award in I.D. No.338 of 2008 dated 6.11.2012 passed by the Third Respondent and quash the same and direct the First and Second Respondents to reinstate the Petitioner in service with back wages and all other attendant benefits

WP No.19193 of 2013

Certiorarified Mandamus Calling for the records pertaining to the Award in I.D. No.335 of 2008 dated 6.11.2012 passed by the Third Respondent and quash the same and direct the First and Second Respondents to reinstate the Petitioner in service with back wages and all other attendant benefits

WP No.19194 of 2013

Certiorarified Mandamus Calling for the records pertaining to the Award in I.D. No.336 of 2008 dated 6.11.2012 passed by the Third Respondent and quash the same and direct the First and Second Respondents to reinstate the Petitioner in service with back wages and all other attendant benefits

WP No.19195 of 2013

Calling for the records pertaining to the Award in I.D. No.337 of 2008 dated 6.11.2012 passed by the Third Respondent and quash the same and direct the First and Second Respondents to reinstate the Petitioner in service with back wages and all other attendant benefits

For Petitioner : Mr.D.Nagasaila
For Respondents : Mr.K.Kulanthaivel for RR1 & 2.
R3-Labour Court.

C O M M O N O R D E R

The common award dated 06.11.2012 in I.D.No.333 to 338 of 2008 are under challenge in the present writ petitions and further, a direction is sought to reinstate the writ petitioners in service with back wages and all other attendant benefits.

2. The writ petitioner states that he was retrenched from the post of Conductor of Tamil Nadu State Transport Corporation Limited. The petitioner was employed from 12.11.2004 to 12.09.2007 in Koyampedu Depot-I continuously for a period of 2 years and 10 months. The petitioner claims that he was retrenched from service in violation of Section 25F, 25G and 25N of the Industrial Disputes Act, 1947. It is stated that the petitioner was neither given notice of retrenchment nor paid any retrenchment compensation. Therefore, he is entitled for reinstatement with full back wages and other attendant benefits. The petitioner states that he was employed in long distance routes and his working hours range from 15 hours to even 25 hours. He had completed more than 240 days service and no retrenchment compensation or notice or notice pay was given to him. Therefore, the respondent/Transport Corporation had violated the provisions of the Industrial Disputes Act.

3. The Government of Tamil Nadu vide G.O.Ms.No.57 dated 21.07.2005 decided to recruit persons for 2000 posts of drivers and conductors. The respondent/Corporation had recruited fresh hands after retrenching the petitioners and other persons. However, the case of other similarly placed workers as considered and those workers were reinstated and their services were brought under the regular establishment. The respondents/Corporation has in principle decided to give re-employment to the retrenched workers. G.O.Ms.No.41 dated 13.07.2006 was passed by the Government, wherein all the Transport Corporations have decided to implement the orders of the High Court in respect of re-employment as per Section 25H of the Industrial Disputes Act, 1947. The retrenched workers who have obtained orders from the High Court as well as those who have not obtained orders would all be given employment on a preferential basis. Therefore, the writ petitioner is also entitled to get the benefit of Government order issued G.O.Ms.No.41. Such benefit was extended to other similarly placed persons also. In this context, the writ petitioner raised an Industrial Dispute in I.D.No.333 of 2008, but the Labour Court dismissed the industrial dispute against which the writ petitioner is constrained to move the present writ petition.

4. The main contention of the writ petitioner is that he is entitled for the benefit as granted to similarly placed workers, pursuant to the Government Order issued in G.O.Ms.No.41, despite the fact that the writ petitioner had served more than 240 days and fully eligible and qualified for the post of Conductor. The said benefit had not been extended either by the Transport Corporation or by the Labour Court. Thus, the Labour Court has committed an error in not extending the benefit granted vide the Government order in G.O.Ms.No.41.

5. The learned counsel appearing on behalf of the Transport Corporation contended that the writ petitioner was not recruited through employment exchange. Thus, the initial appointment of the writ petitioner was not in accordance with the recruitment rules in force. In fact, the writ petitioner as well as other similarly placed persons have served 240 days and their initial appointment was not made through employment exchange. Therefore, the benefit of Government Order issued in G.O.Ms.No.41 had not been extended to them. The benefit of permanent absorption was extended to all eligible persons strictly in accordance with the terms and conditions stipulated in the Government Order cited above. Thus, the Labour Court is right in arriving at a conclusion that the writ petitioner is not entitled for the relief as he is unable to establish even the initial appointment.

6. A perusal of the award reveals that all the contentions raised by the respective parties were considered by the Labour Court. The Labour Court, while considering the documents, more specifically, the Government Order issued G.O.Ms.No.41 dated 13.07.2006 considered the eligibility and the terms and conditions for extending the benefit of the Government Order.

7. The fact that the writ petitioner/workman was employed as a conductor with the Transport Corporation, during the period 2005 to 2007, only on daily wage basis and he was engaged, whenever exigencies arises and at the end of day work, his services were disengaged, was accepted by the writ petitioner himself. Even during the cross-examination, the petitioner admitted that he had worked on daily wage basis and in respect of such daily wage employees, the other benefits were not granted. Thus, it was established before the Labour Court that the petitioner was a daily wage employee and engaged on need basis and at the end of day work, he will be disengaged by the respondent/Corporation. The Labour Court considered the terms and conditions of the Government Order issued in G.O.Ms.No.41. In paragraph No.12 of the award of the Labour Court, the Labour Court arrived at the findings as follows:

12. Admittedly in this case, the petitioner is not a employment exchange sponsored candidate. In Ex.W.13 order in the first para it is stated that

"From the year 1997 onwards appointment to the post of Drivers and Conductors were made by the State Transport Corporations on daily wage basis from the candidates sponsored by the Employment Exchange or without referring to the concerned Employment Exchange and on compassionate grounds also and subsequently their

services were terminated as their services were no longer required at that time. Of them 1685 retrenched persons filed writ petitions before the High Court, Madras. The High Court of Madras directed to provide re-employment to 952 retrenched persons under Section 25(H) of the Industrial Disputes Act, in preference to new entrants.

As per the above said para of the G.O. As daily wage basis candidates sponsored by the employment exchange and candidates those who are appointed on compassionate ground and candidates whose services were terminated as their services were no longer required at that time can be considered under Section 25H of the I.D.Act. In the case on hand, there is no evidence how he entered into service. The petitioner has not filed any termination order issued by the respondents Corporation to the petitioner. The petitioner himself has admitted that he worked on daily wage basis. Therefore, no termination order issued to the petitioner. Further, the petitioner was neither sponsored by the employment exchange and appointed by the respondent nor he was a candidate appointed on compassionate ground and hence, the G.O. Clause 4(iii) will not be applicable to the petitioner and such a clause is applicable only to the persons who have been sponsored by the employment exchange and also given application to the Management. Therefore, the petitioner cannot avail the benefit of Ex.W.13 G.O.No.41, dated 13.07.2006. Further in the judgment reported in 2004 STPL(LE) 33558 SC(A.Umarani vs. Registrar of Co-operative Societies and othes), the Hon'ble Supreme Court has held that the backdoor entry method is not permissible. Since in the case on hand, the petitioner is neither a candidate sponsored by the employment exchange nor a candidate on compassionate ground and hence the petitioner cannot seek appointment on the backdoor entry method and further it is held that the petitioner is not entitled to the benefit of Ex.W.13 G.O., and hence, the petitioner is not entitled to the benefit of Ex.W.13 G.O. And hence, the petitioner is not entitled for reinstatement in service with backwages, continuity of service and all other attendant benefits and accordingly, the points are answered."

8. On a perusal of the entire findings, this Court is of the opinion that the writ petitioner has not established that he was initially appointed through employment exchange and no order of appointment was issued. Even during the cross-examination, the petitioner admitted that he was a daily wage employee and further, he is not entitled for the benefit on par with other regular employees. As far as the extension of benefits granted

in Government order is concerned, the Labour Court itself found that the writ petitioner is not entitled as he is not possessing requisite qualification as contemplated in the Government Order. Therefore, the Labour Court arrived at a conclusion that the writ petitioner is not entitled for reinstatement in service with back wages, continuity of service and all other attendant benefits. When the writ petitioner is unable to establish the fact that he was appointed in accordance with rule and continued for 240 days, the benefit of Government Order cannot be extended.

9. This being the factum, this Court do not find any error or perversity in considering the documents and evidences placed before the Labour Court by the writ petitioner as well as the Transport Corporation. Accordingly, this Court has no hesitation in coming to a conclusion that the award of the Labour Court is in consonance with the legal principles and is not perverse. Thus, the award dated 06.11.2012 in I.D.Nos.333 to 338 of 2008 is confirmed and the writ petitions stand dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssb

To

1. The Branch Manager,
Tamil Nadu State Transport Corporation Ltd,
Villupuram, Kanchipuarm Mandalam,
Koyambedu Depot-I,
Chennai-107.
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Tamil Nadu State Transport Corporation Ltd,
Villupuram, Kanchipuram Mandalam,
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The Principal Labour Court,
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JP(CO)
SP(17/02/2020)