

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 388 of 2014
and
M.P. No. 1 of 2014

The Management,
Rep. by its Managing Director,
Tamil Nadu State Transport Corporation (Kovai Division-I) Ltd.,
37, Mettupalayam Road,
Coimbatore - 641 043. ... Appellant/Second Respondent

-vs-

1. The Labour Inspector,
Authority under the Tamil Nadu Industrial Establishments
(Conferment of Permanent Status to Workmen) Act, 1981,
Coimbatore District. ... First
Respondent/First Respondent

2. K. Venkatachalapathy ... Second Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed in W.P. No. 14637 of 2011 dated 14.09.2011. Petition praying to issue a writ of mandamus calling for the records of the 1st respondent relating to the impugned order in Na. Ka. No.E/4332/2007 dt 30.7.2009 and quash the same as illegal in respect of the petitioner and consequently direct the 2nd 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.

For Appellant : Mr. T. Chandrasekaran

For Respondents : Mrs. A. Sri Jayanthi
Special Government Pleader (for R1)

Mr. N. Ponraj (for R2)

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 14.09.2011 in W.P. No. 14637 of 2011 passed by the Learned Judge of this Court. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2. According to the Petitioner, his name was sponsored by the employment exchange to join the services of the Second Respondent, viz., the Tamil Nadu State Transport Corporation (Kovai Division-1) Ltd. as Driver and he was temporarily appointed by order dated 26.05.2000 and allotted Staff No. 18348 by order dated 24.05.2000. It is further contended by the Petitioner that his services ought to have been regularized with effect from 30.04.2001 as per the settlement then in force which had been entered between the Management of the Second Respondent with its recognized Trade Unions as per Section 12(3) of the Industrial Disputes Act, 1947, but the said benefit had not been extended to him, while his junior V. Balakrishnan (Staff No. 18401) was regularized with effect from 01.06.2001 by an order dated 22.03.2003. However, the Second Respondent citing the settlement dated 31.08.2005 entered between its Management and their recognized Trade Unions, made the Petitioner permanent with effect from 01.09.2005. The Petitioner filed an application before the First Respondent, under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, for permanency atleast with effect from 12.04.2001 taking into account the date of completion of 480 days in 24 calendar months under the provisions of that Act which has a overriding effect on the aforesaid settlement dated 31.08.2005. The First Respondent by proceedings R.C. No. E/4332/2007 dated 30.07.2009 rejected the claim of the Petitioner, which was challenged by him in W.P. No. 14637 of 2011 seeking consequential direction to confer permanent status on completion of 240 days with time scale of pay and other monetary benefits.

3. The Writ Court by order dated 14.09.2011 referring to the earlier decision of this Court in the order dated 06.06.2011 in W.P. No. 9080 of 2011 etc., batch, held that the Petitioner was entitled to the same benefits granted to similarly placed persons and directed the Respondents to confer permanent status on the Petitioner with effect from 12.04.2001. Aggrieved thereby, the Second Respondent has preferred this appeal.

4. We have heard Mr. T. Chandrasekan, Learned Counsel appearing for the Second Respondent, Mrs. A. Sri Jayanthi, Learned Special Government Pleader appearing on behalf of the

First Respondent, Mr. N. Ponraj, Learned Counsel appearing for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.

5. The Learned Counsel for the Second Respondent referring to the order dated 02.02.2018 in W.A. No. 2642 of 2012 etc., batch, passed by the Division Bench of this Court has brought to notice that the order dated 06.04.2011 in W.P. No. 18581 of 2009 etc., batch and the order dated 06.06.2011 in W.P. No. 9080 of 2011 etc., batch, have been set aside in that decision and the orders of the First Respondent rejecting the claim made by the similarly placed persons under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, have been restored on the ground that permanent status cannot be conferred during the currency of the ban period during the years from 1999 to 2005. On that basis, it is urged that the order of the Writ Court under appeal in this case would also have to be set aside and the order passed by the First Respondent rejecting the claim of the Petitioner for permanency from 12.04.2001, would have be restored.

6. On the contrary, the Learned Counsel appearing for the Petitioner strenuously urged that de hors the claim made for permanency under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, the Petitioner had also raised other contentions for regularization and the Writ Court had not independently considered the same at that stage and as such, it is necessary that the Petitioner should be permitted to make submissions in that regard to sustain the claim of permanency with effect from 12.04.2001 that had been granted by the Writ Court in the order under appeal. It is also brought to notice that another Co-ordinate Bench of this Court in the order dated 25.01.2019 in W.A. No. 189 of 2019, relating to the Tamil Nadu State Transport Corporation (Salem Division-1) Ltd., has upheld the claim of a similarly placed Driver for regularization on completion of 480 days of service by deciding the matter on the basis of the materials placed on record in that case on finding that the ban on recruitment could not be made applicable to deny permanency to those who had been appointed prior to the date on which it had come into force.

7. We have given our anxious consideration to the rival submissions made and we find that the Writ Court had granted relief to the Petitioner in this case by merely following the order dated 06.06.2011 in W.P. No. 9080 of 2011 etc., batch, without examining the other contentions raised by the Petitioner in support of the claim. Inasmuch as the order dated 06.04.2011 in W.P. No. 18581 of 2009 etc., batch and the order dated

06.06.2011 in W.P.No. 9080 of 2011 etc., batch, have been set aside by the Division Bench of this Court by the order dated 02.02.2018 in W.A. No. 2642 of 2012 etc., batch, the order passed by the Writ Court in this case also has to be necessarily set aside. The effect of the ban on recruitment for regularizing the services of the Petitioner is, however, still a contentious issue between the parties which requires proper pleadings containing factual particulars for complete and effectual adjudication and we are of the considered view that for the said purpose, the matter has to be remitted back to the Writ Court for fresh determination of the claim made, uninhibited and uninfluenced by the earlier orders in this case. Since the Respondents had not filed Counter Affidavit before the Writ Court, the Second Respondent is permitted to file the same in response to all factual and legal contentions raised by the Petitioner in the Writ Petition. The parties shall also be at liberty to produce relevant documents in support of their respective contentions.

8. In that view of the matter, the order dated 14.09.2011 in W.P.No. 14637 of 2011 is set aside and the matter is remitted to the Writ Court for fresh adjudication on all the contentions raised by the Petitioner in support of his claim in the light of our aforesaid observations.

9. Accordingly, the Writ Appeal is allowed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

vjt

To

1. The Managing Director,
Tamil Nadu State Transport Corporation (Kovai Division-I) Ltd.,
37, Mettupalayam Road,
Coimbatore - 641 043.
2. The Labour Inspector,
Authority under the Tamil Nadu Industrial Establishments
(Conferment of Permanent Status to Workmen) Act, 1981,
Coimbatore District.

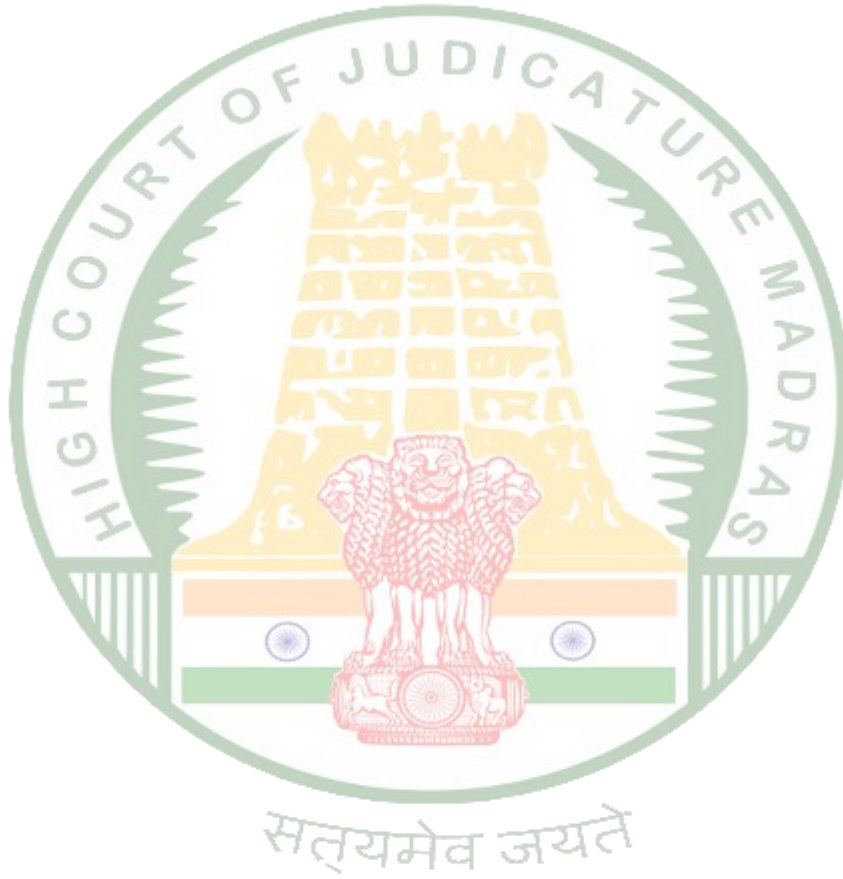
+1cc to Mr.T.Chandrasekaran, Advocate SR.No.38111

+1cc to Mr.N.Ponraj, Advocate SR.No.38381

W.A. No. 388 of 2014

SSI (CO)

GMV (27/04/2019)



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