



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
13.11.2019	28.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.768 of 2015
and
M.P. (MD) No.1 of 2015

The Management
Tamil Nadu State Transport
Corporation (Madurai) Ltd.
Madurai Bye Pass Road
Virudhunagar-001

... Appellant/Petitioner

-VS-

1.The Labour Inspector
137, Kantharapuram Street
Virudhunagar

2.K.Annadurai ... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 22.04.2015, passed in W.P.(MD) No.9465 of 2014, on the file of this Court.

Prayer in WP(MD). 9465 of 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in Na.Ka.No. 263/2013 dated 07 .03.2014 on the file of the 1st respondent and quash the same and to pass such further or other orders.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.S.Angappan
Government Advocate for R1
Mr.Ajay Khose
for Mr.A.Rahul for R2



J U D G M E N T

T.S.SIVAGNANAM, J.,

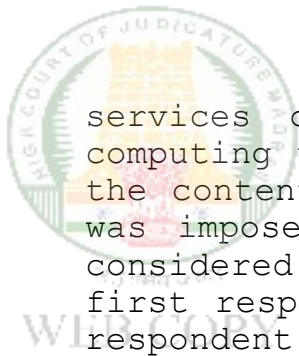
This writ appeal by the Management of Tamil Nadu State Transport Corporation (Madurai) Limited has been filed challenging the order, dated 22.04.2015, passed in W.P.(MD) No.9465 of 2014.

2. The appellant Corporation filed the writ petition challenging the proceedings, dated 07.03.2014, issued by the Inspector of Labour / first respondent, who is the competent authority under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (in short, "the Act"). By the said proceedings, the Authority conferred permanent status on the second respondent workman.

3. The appellant Management questioned the correctness of the said proceedings in the writ petition by contending that the second respondent workman was not in service as he was suspended from duty and the Inspector of Labour ought to have seen that a petition for regularizing his services is not maintainable in such circumstances. Further, it is contended that the second respondent was a reserve conductor and in terms of his engagement, his services will be considered for appointment as daily wage conductor on seniority basis and as and when vacancies arise in permanent post, if his services are found to be satisfactory, then there is a possibility of being absorbed as a regular employee. It is submitted that the conduct of the second respondent was far from satisfactory, he was unauthorisedly absent, abused the authorities and therefore, the question of making the second respondent a regular employee would not arise.

4. The second respondent workman contended that he was recruited to the post of conductor after his name was sponsored by Employment Exchange and joined duty on 21.02.2011 at Virudhunagar Branch and directed to work on daily wage basis. It was further submitted that he had completed 480 days, within a period of 24 calendar months reckoning the date of his first appointment as 21.02.2011. Though he had completed 480 days, the appellant Management did not regularize his services and therefore, he filed a petition under the said Act before the first respondent. It was further stated that in the counter affidavit filed by the appellant Management before the first respondent, it was contended that only when vacancies are available, the workman can be appointed on permanent basis.

5. The first respondent, after verifying the documents filed by both the parties and after hearing both sides, by order dated 07.03.2014, directed the appellant Management to regularize the



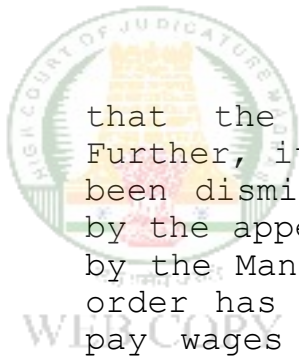
services of the second respondent upon completion of 480 days computing the days from 21.02.2011. Further, it was contended that the contention raised before the Writ Court stating that punishment was imposed on the second respondent and therefore, he cannot be considered to be absorbed as permanent employee was examined by the first respondent and after taking note of the documents, the first respondent found that it was not a case of unauthorised absence, but, the second respondent had applied for leave.

6. Further, it is submitted that no disciplinary enquiry was conducted in spite of the direction issued in W.P.(MD) No.20513 of 2013, dated 18.12.2013. Further, it was contended that in terms of the Memorandum of Settlement entered into under Section 12(3) of the Industrial Disputes Act, 1947 (in short, "the I.D.Act"), dated 25.09.1986, the services of the employee, who has completed 240 days, has to be regularized and the second respondent had completed more than 900 duties as of August, 2014 and the challenge to the order of regularization is not sustainable.

7. The writ petition was dismissed by the impugned order. The learned Single Bench held that the appellant Management has not disputed the fact that the second respondent has completed 480 days of continuous service in a period of 24 calender months and taking note of the deeming provision in Section 3 of the Act, the employee is deemed to have attained permanent status and the fact that he had been suspended from service or disciplinary proceedings were initiated will have no impact as long as there was no cessation of employee and employer relationship.

8. Mr.D.Sivaraman, learned counsel for the appellant, after reiterating the contentions putforth in the counter affidavit filed in the writ petition submitted that in terms of the rules of the appellant Management, a fixed percentage of vacancies in the post of conductor will be filled-up by the reserve conductors, who will be paid on daily wage basis. Thereafter, as and when there are vacancies, they will be treated as temporary conductors and only when sanctioned posts of conductor are fell vacant, they will be brought into regular establishment. However, in the instant case, the first respondent has directed the second respondent to be made as a permanent employee, though he was only a reserve conductor paid on daily wage basis. Further, it is submitted that the first respondent exceeded his jurisdiction by examining the charge against the second respondent as to whether his absence was authorized or unauthorised and virtually took over the role of the Disciplinary Authority, which is impermissible and it is perverse.

9. Further, it is submitted that the first respondent could not have usurped the jurisdiction of the Disciplinary Authority and had no jurisdiction to decide as to whether the charges against the first respondents stand proved or not. Therefore, it is submitted



that the first respondent clearly exceeded his jurisdiction. Further, it is submitted that subsequently, the first respondent has been dismissed from service. Further, the approval petition filed by the appellant Management was dismissed, which has been challenged by the Management in W.P.(MD) No.18957 of 2018, in which an interim order has been passed giving option to the appellant Management to pay wages from 01.09.2017 or to reinstate into service. It is submitted that pursuant to the order passed by the General Manager, dated 04.07.2019, the second respondent is now working at Aruppukkottai Branch. Therefore, it is the contention of the appellant Management that the writ petition ought to have been allowed and the order passed by the first respondent ought to have been set aside.

10. Mr.Ajay Khose, learned counsel appearing for Mr.A.Rahul, learned counsel on record for the second respondent submitted that though the second respondent applied for six days leave by sending a telegram followed by a leave letter, without conducting enquiry, punishment of censure was imposed. It is further submitted that the second respondent's right to get permanency fell due on 12.12.2012, prior to the settlements dated 13.04.2015 and 04.01.2018, which came into force from 01.09.2013 and 01.09.2016 respectively. These two settlements being prospective cannot be applied to the second respondent's case. Further, a settlement under Section 12(3) of the I.D.Act cannot override the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. In support of such argument, reliance was placed on the Judgment of the Division of this Court in the case of **J.Harikrishnan and others vs. Management of Hanil Tube Private Limited**, reported in **2015-I-LLJ-402 (Mad)**.

11. Further, it is submitted that no disciplinary action could have been initiated against the second respondent, especially, when the allegation of unauthorized absence will not amount to a misconduct as per Clause 16(7) of the Certified Standing Orders of the appellant Management. Further, it is submitted that the appellant Management did not produce the attendance record of the reserve drivers and reserve conductors, but they marked only as engaged, if they report for duty and on other posts as not engaged. Further, all the regular vacancies in the post of drivers and conductors are now manned by reserve drivers and reserve conductors in spite of appointing as temporary driver and temporary conductor as was done earlier and these reserve conductors and drivers are carrying out the regular work of the drivers and conductors. However, they are paid a paltry amount and made to work regularly and continuously. Thus, it is contended that except for the nomenclature i.e. reserve, there is no change in the duties and responsibilities. It is further submitted that "workman" does not make any difference between regular and temporary workman based on either status or nomenclature or based on mode of appointment. In



support of such contention, reliance was placed on the decision of the Honourable Supreme Court in the case of **Devinder Singh vs. Municipal Councils, Sanaur**, reported in **2011 (6) SCC 584**.

12. We have heard Mr.D.Sivaraman, learned counsel appearing for the appellant Management, Mr.S.Angappan, learned Government Advocate appearing for the first respondent and Mr.Ajay Khose, learned counsel appearing for Mr.A.Rahul, learned counsel on record for the second respondent.

13. The short issue, which falls for consideration is whether the order passed by the first respondent, the Authority exercising powers under the Act, suffers from any perversity or illegality warranting interference by a Writ Court. The appellant Management was unsuccessful before the learned Single Bench as their challenge to the order of the first respondent failed. By way of this writ appeal, the Management argues that the Writ Court ought to have interfered with the orders passed by the first respondent. The jurisdiction of the first respondent is akin to that of a Tribunal. The parties are entitled to place their oral and documentary evidence before it. The power is exercised under the provisions of the said Act, which is a labour welfare legislation. Thus, the test, which is required to be applied while considering the correctness of the award of the Labour Court or the Industrial Tribunal would equally apply to the cases, where the correctness of the orders passed by the Conferment of Permanent Status Authority is decided in a writ proceedings. The test is, does the order suffer from perversity, does the order suffer from errors apparent on the face of the order and was there violation of the principles of natural justice, did the Authority ignore vital evidence and placed reliance on irrelevant material thereby misdirected itself resulting in an erroneous order. These are all some of the well settled tests, which a Writ Court would apply while testing the correctness of the orders passed by the Tribunal.

14. We have gone through the orders passed by the first respondent and we find that it does not satisfy any of the above tests for the Writ Court to step in and interfere with the findings. If the Writ Court were to re-appreciate the findings and come to a different conclusion, then it would be exercising the jurisdiction as if it is an Appellate Court, which is clearly barred.

15. The main contention of the appellant before us is that the first respondent virtually usurped the jurisdiction of the Disciplinary Authority and held that the charges were not proved. Therefore, the order passed suffers from perversity. We do not agree with the submission for the following reasons. The necessity to consider as to whether the second respondent had applied for leave by sending a telegram followed by a letter is correct or not was required to be considered because the Management took a stand



that the second respondent was unauthorizedly absent. Thus, on account of the stand taken by the Management before the first respondent, it necessitated an adjudication on the said point and a finding. Therefore, it is incorrect to state that the first respondent usurped the jurisdiction of the Disciplinary Authority. Based on records, the first respondent found that the allegation made against the second respondent that he was unauthorizedly absent has not been established.

16. One more reason as to why the first respondent had to render a finding on the issue was because the Management took a stand that punishment of warning was issued to the second respondent, therefore, he cannot maintain the petition before the first respondent. Hence, the first respondent considered as to whether there was a case of unauthorized absence and on seeing the documents placed by the Management, it came to the conclusion that the Management was not able to sustain its defence that the workman was unauthorizedly absent. Further, the first respondent noted that the disciplinary proceedings though initiated were not concluded, yet punishment of warning was issued. Before the first respondent, the Management did not dispute the fact that the second respondent had completed 480 days of continuous employment in 24 calendar months. If such is the fact situation, Section 3 of the Act would come to the aid of the second respondent and the deeming provision will apply. This aspect has been rightly noted by the learned Single Bench in the impugned order.

17. The second contention raised before us is that the second respondent was only a reserve conductor and not a temporary conductor to be entitled for permanency. This argument is based upon the Section 12(3) settlements, dated 13.04.2015 and 04.01.2018. The completion of 480 days continuous employment in 24 calendar months by the second respondent was much prior to the settlement dated 13.04.2015, as the second respondent completed the required number of working days even in 2012. Therefore, those settlements cannot be relied on to deny the entitlement to the second respondent. Apart from that, a settlement cannot override the provisions of the Act.

18. One more aspect, which we need to note is that the appellant Management never pleaded cessation of employee and employer relationship. In the absence of any such plea being raised, the present challenge to the impugned order has to necessarily fail.

19. It is the submission of Mr. Ajay Khose that none of the conductors and drivers in the appellant Management are recruited on regular basis and substantial part of the fleet is operated by the reserve conductors extracting work as that of the regular conductors by paying a paltry sum as daily wages.



20. One more argument advanced by Mr.D.Sivaraman, learned counsel, is that the charge memo, which was the subject matter of consideration by the first respondent, is not the only charge memo, but there were other charge memos, which were issued to the second respondent, which had ended in imposing punishment of censure / warning and the charges were for absence from duty. Copies of charge memo and the orders of censure have been filed by the learned counsel appearing for the second respondent in the form of a typed set of papers and we find that invariably the absence from duty ranges between one to three days. Though such charge memos were issued, the appellant Management continued to engage the services of the second respondent and it is not their case that he was disengaged or no employment as reserve conductor was issued after the issuance of the charge memo. Only one such charge memo dated 13.11.2013, ended in an order of punishment of dismissal from service. However, approval for such dismissal was denied by the competent Authority, consequently, the second respondent was deemed to be in employment of the appellant Corporation subject to the challenge to the order declining approval, dated 23.08.2017, which is now pending in a writ petition before this Court in W.P.(MD) No.16167 of 2018 filed by the Management.

21. Reliance was placed on the memorandum of settlement under Section 12(3) of the I.D.Act, dated 25.09.1986 and in Clause-12 of the settlement, which deals with confirmation of temporary employees, in sub-clause (a), which deals with drivers and conductors, it has been agreed to that the services of the drivers and conductors will be confirmed after satisfactory completion of 240 days of actual work in a continuous period of one year. Similar condition is found in Clause-13 of the Settlement under Section 12 (3) of the I.D.Act entered in the year 1992.

22. The contentions raised by Mr.Ajay Khose, learned counsel, stating that the provisions of the Act prevail over the settlement is right and this question has been decided in several matters and it would be beneficial to take note of the decision in **Metal Powder Co. Ltd., Thirumangalam and another vs. the State of Tamil Nadu and another**, reported in 1985 (2) LLJ 376, which was followed by the Division Bench of this Court in the Judgment dated 30.09.2019 in W.A.Nos.2871 and 2872 of 2018 [**The Managing Director, Tamil Nadu State Transport Corporation Ltd., vs. Shanmugam (died) and another**].

23. Similar issue was decided by us in favour of the workmen in the case of **the Senior Regional Manager, Tamil Nadu Civil Supplies Corporation and another vs. The Joint Commissioner of Labour, Trichy**, and others, W.A.(MD) Nos.353 to 357 of 2014, dated 12.03.2018.



24. Thus, for all the above reasons, we find no valid ground to interfere with the order passed by the learned Single Bench.

25. In the result, the writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

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To:
The Labour Inspector,
137, Kantharapuram Street,
Virudhunagar.

+1CC TO MR.D.SIVARAMAN, Advocate Sr. No. 102578
+1CC TO MR.A.RAHUL, Advocate Sr. No. 102139

JUDGMENT

IN

W.A. (MD) No.768 of 2015

and

M.P. (MD) No.1 of 2015

28.11.2019

SRG(CO)
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