

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2020

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.13228 of 2007

and

W.M.P.No.2 of 2007

P. Balasubramanian

...Petitioner

Vs

1. Tamil Nadu State Transport Corporation,
(Kovai) Limited,
Rep. by its Managing Director,
Erode Zone, Chennimalai Road, Erode.

2. General Manager,
Tamil Nadu State Transport Corporation,
(Kovai) Limited,
Erode Zone, Chennimalai Road,
Erode - 638 .

...Respondents

Prayer: Writ Petition filed praying to issue writs, orders or directions and in the nature of Certiorarified Mandamus after calling for the concerned records from the 2nd respondent, quash the order of the 2nd respondent bearing Pa.Na.4103/B1/Pa.P1/Tha.A.Po./Ko/EM/07 dated 29.03.2007, in so far as calling for the petitioner for interview for the post of conductor as a fresh candidate instead of calling the petitioner for appointment in accordance with the order passed in W.A. No.2985 of 2003 etc. dated 08.12.2005, order dated 09.12.2005 in W.P. No.37063 of 2005, order dated 14.09.2006 in W.P. No.33357 of 2006 and in accordance with G.O. Ms. No.41 Transport (C1) Department, dated 13.07.2006 and consequently, direct the respondents to appoint the petitioner as conductor on the basis of the certificate verification and in accordance with the order passed in W.A. No.2985 of 2003 etc., dated 08.12.2005, order dated 09.12.2005 in WP 37063 of 2005 order dated 14.09.2006 in WP No.33357 of 2006 and in accordance with G.O.Ms.No.41 Transport (C1) department dated 13.07.2006.

For Petitioner : Mr. S. Parthasarathy

(For M/s. Balan Haridas)
For Respondents 1&2 : Mr.A. Sundaravadanan
(Standing Counsel for
Transport Corporation)

O R D E R

This writ petition has been filed praying to issue a writ of Certiorarified Mandamus relating to the order in Pa.Na.4103/B1/Pa.P1/Tha.A.Po./Ko/EM/07 dated 29.03.2007 passed by the 2nd respondent and consequently, direct the respondents to appoint the petitioner as conductor on the basis of the certificate verification, Judgments of this Court and G.O. Ms. No.41 Transport (C1) Department, dated 13.07.2006.

2. When the matter came up for hearing today, the learned standing counsel appearing for the respondents has produced the common order dated 25.04.2007 passed by this Court on the same facts of the case in the batch of Writ Petitions filed by the Writ petitioners in W.P. Nos.13370, 13383 to 13387 of 2007. The operative portion of the said order is as under:-

" The petitioners in the above writ petitions claim that they are employed for a number of days in the Transport Corporation and they are eligible for re-employment under Section 25H of the Industrial Dispute Act. They also rely upon G.O. Ms. No.41 Transport Department, dated 13.07.2006 with reference to their absorption. The maintainability and their right to enforce the said Government Order and also the nature of right claimed under the Industrial Disputes Act have been considered by this Court in an elaborate Judgment in W.P. Nos.11455 to 11457 of 2007 dated 24.04.2007. In that Judgment, paragraphs 36, 37 and 38 read as follows:

36. These two sub-paragraphs found in paragraphs 4(ii) and 4(iii) are completely contrary to the preferential right carved out under Section 25H of the I.D. Act as interpreted by the Apex Court and, therefore, these two paragraphs, viz., 4(ii) and 4 (iii) of G.O.Ms.No.41 Transport Department dated 13.07.2006, which are sought to be enforced by the petitioners in these writ petitions and several other writ petitions, had to be rejected for the following reasons:

(i) Right of re-employment under Section 25H of the I.D. Act will have to be determined only if an

employee's retrenchment comes within the definition of the term 'retrenchment' found in Section 2(oo) of the I.D. Act and that it is not hit by the exception found in sub-section (bb) introduced by Central Act 49 of 1984 w.e.f.18.08.1984.

(ii) Further, the claims of workmen will have to be determined in terms of paragraph 139(3) (b) of the order passed by the learned Judge in the batch of cases, disposed on 14.12.2006, wherein the learned Judge clearly states that only persons who are qualified under Section 25F of the I.D. Act, are eligible for re-employment but it will not apply to persons, who have not actually worked under the Corporation but made a bogus claim.

(iii) The workmen, who have approached this Court including the petitioners though made a false claim about the length of their service, and by the impugned order, the respondent Corporation had taken a definite stand that they had worked less than 20 days and 11 days that too, they had worked in vacancies due to unforeseen circumstances like strike, festivals and large scale absentism, are not eligible for any preferential treatment.

37. It is for them to prove to the satisfaction of the Labour Court that they were actually retrenched in terms of the main definition under Section 2(oo) of the I.D. Act and not covered by the exception found under sub-section (bb) of Section 2(oo) of the I.D. Act.

38. As can be seen from the various decisions of the Supreme Court referred to the above, viz., Jaipur Development Authority, State of Rajasthan and Gangadhar Pillai's Cases, even in pre-1984 cases, the Labour Court has discretion to award compensation and not retrenchment since the entry into employment was not proper and it was made as a stop gap arrangement. Though the object of the first respondent in issuing G.O. Ms.No.41 Transport Department dated 13.07.2006 to accommodate persons covered by paragraph 4(i) may be inevitable, but with reference to paragraphs 4(ii) and 4(iii) of the G.O., the said exercise cannot be undertaken by the second respondent Corporation either until further orders are passed by this Court in cases which are pending consideration, or in other cases, the workmen get declaration from the appropriate Labour Court after establishing that they were actually retrenched in terms of Section 2(oo) of the I.D. Act and their cases do not fall under sub-

section (bb) of Section 2(oo) of the I.D. Act.

In view of the same, all the writ petitions are dismissed. No costs. Connected M.P.s are dismissed.

3. Following the aforesaid order passed by this Court dated 25.04.2007, on the identical facts of the case, this Writ petition is dismissed holding that the claim of the petitioner is not sustainable. No Costs. Consequently, connected miscellaneous petitions is closed if any.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

lbm

To:

1. Tamil Nadu State Transport Corporation,
(Kovai) Limited,
Rep. by its Managing Director,
Erode Zone, Chennimalai Road, Erode.
2. General Manager,
Tamil Nadu State Transport Corporation,
(Kovai) Limited,
Erode Zone, Chennimalai Road,
Erode - 638 .

+1CC to Mr.A. Sundaravadanan, Advocate, SR39110

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W.P.No.13228 of 2007
and
W.M.P.No.2 of 2007

CO (SPD)
BDL/08/01/2021

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