

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 22037 of 2018
and
W.M.P. No. 25832 of 2018

The Management,
Metropolitan Transport Corporation,
Anna Salai,
Chennai - 600 002.

...Petitioner

-vs-

I.Vellaisamy

...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the order passed in Case No. 5184 of 2013 dated 13.04.2018 on the file of the Labour Inspector - II, Conferment to Permanent Status to Workmen Office, Nandanam, Chennai - 600 035 and quash the same.

For Petitioner : Mr. M.Chidambaram, Standing Counsel
For Respondent : Mr. V.Ajoy Khose

ORDER
(through video conference)

Heard Mr. M.Chidambaram, Learned Standing Counsel appearing for the Petitioner and Mr. V.Ajoy Khose, Learned Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent, who was sponsored through employment exchange, was engaged as driver by the Petitioner from 26.12.2008 onwards and was given appointment as daily paid on 21.11.2013. In furtherance to a settlement dated 31.08.2005 entered between the Petitioner and its Trade Unions representing its employees under Section 12(3) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'I.D. Act' for short), the Petitioner confirmed the services of the Respondent on 01.05.2016 for having completed 240 days of employment.

3. While the matter stood as narrated supra, the Respondent made an application under Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter referred to as the 'Permanent Status Act' for short) in Na. Ka. No. 5184/2013 before the Labour Inspector - II, Nandanam, Chennai - 600 035 (hereinafter referred to as the 'Labour Inspector' for clarity and convenience) claiming the benefit of conferment of permanent status on having completed 'continuous service' for a period of 480 days in a period of 24 calendar months in the industrial establishment of the Petitioner. The claim made by the Respondent was resisted by the Petitioner by contending that the appointment was made only as reserve driver on temporary basis against vacancy that may arise in future and there had not been any permanent vacancy as on date of initial engagement of the Respondent. It was also pleaded that the benefit of confirmation in service in terms of settlement under Section 12(3) of the I.D. Act entered between the Petitioner and its Trade Union representing its employees had been granted on completion of 240 days of continuous service from the date of appointment on daily paid wages subject to the satisfactory performance without any charges/punishment during that period. The Labour Inspector by Order in Case No. 5184/2013 dated 13.04.2018 rejected the said objections raised by holding that the Respondent was entitled to that benefit with effect from 10.09.2011 in terms of the Permanent Status Act, which has overriding effect on all laws which also includes the agreements between the parties. In this Writ Petition, the aforesaid order passed by the Labour Inspector is assailed.

4. It is vehemently contended by the Learned Counsel for the Petitioner that when the Respondent had accepted the benefit of confirmation in service in terms of settlement under Section 12 (3) of the I.D. Act without any demur, he is estopped from invoking the provisions of the Permanent Status Act. It must, at once, be pointed out here that the Hon'ble Supreme Court of India in *Oswal Agro Furane Ltd., -vs- Oswal Agro Furane Workers Union* [(2005) 3 SCC 224] has reiterated the legal position that a settlement cannot be arrived between the employer and its employees under the provisions of the I.D. Act, without satisfying the requirements of law or in contravention of legal provisions. When it is not in dispute that the Respondent was employed from 26.12.2008 onwards following the prescribed procedure of recruitment through employment exchange, he is entitled to the constitutional guarantee of equality of opportunity and treatment in public employment under Articles 14 and 16 of the Constitution. As such, the Petitioner could not unilaterally treat as if the Respondent had worked only from 21.11.2013 merely because the daily paid appointment was

given from that date. The conferment of permanent status on the Respondent with effect from 10.09.2011, when he completed 480 days of 'continuous service' in a period of 24 calendar months in the establishment of the Petitioner, is more beneficial than the confirmation of service granted by the Petitioner to him with effect from 01.05.2016. In this context, it would be beneficial to refer to the observations made by the Hon'ble Supreme Court of India in State of Punjab -vs- Jagjit Singh [(2017) 1 SCC 148] that squarely applies to the fact situation that has arisen in the Writ Petition, as extracted below:-

"58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."

Having due regard to the aforesaid fact situation borne out from the record, the non-obstante clause, viz., 'notwithstanding anything contained in any law for the time being in force' in Section 3 of the Permanent Status Act, coupled with Explanation II thereto that for purpose of that legal provision, 'law' includes any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of the Permanent Status Act, it is not possible to countenance the submissions made on behalf of the Petitioner so as to deprive the concomitant benefits that the Respondent is entitled in law. This view expressed is fortified by the decisions of the Division Benches of this Court in Managing Director, Tamil Nadu State Transport Corporation Ltd., Coimbatore Division -vs- Shanmugam (Judgment dated 30.09.2019 in W.A. Nos. 2871 and 2872 of 2018) and Management, Tamil Nadu State Transport Corporation (Madurai) Ltd., -vs- Labour Inspector (Judgment dated 28.11.2019 in W.A. (MD) No. 768 of

2015) in respect of the certain other employees of the Petitioner, who are similarly placed to the Respondent in this case.

5. The next submission of the Learned Counsel for the Petitioner is that there has been inordinate delay and unexplained laches on the part of the Respondent in approaching the Labour Inspector for conferring the benefit under the Permanent Status Act, which factor disentitles the Respondent for any relief under the Permanent Status Act. In the first place, when no period of limitation has been prescribed under the Permanent Status Act for making an application for conferment of permanent status, there is no scope for entertaining such contention. Moreover, the Division Bench of this Court in R.Lakshmi -vs- Chief Engineer (Personnel), Tamil Nadu Electricity Board [(2012) 6 MLJ 480] has held that a workman, who had completed 480 days of continuous service in a period of 24 calendar months, would become automatically a permanent employee under the employer, even if the employer had not conferred him with the permanent status, or even if no direction was issued by the competent authority in that regard under the Permanent Status Act or the Rules framed thereunder. As a matter of fact, the Labour Inspector has restricted the monetary benefits to the Respondent only for the period from the date on which the application was made before the Labour Inspector, which substantially reduced the financial implications for the Petitioner. In other words, when no prejudice has been caused to the Petitioner, there is no merit in the objection raised so as to deserve any consideration.

6. In view of the foregoing discussion, there does not appear to be any infirmity in the decision-making process of the Labour Inspector requiring interference by this Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution.

7. It is incumbent upon the Petitioner to forthwith give effect to the impugned order by issuing necessary orders fixing the pay scale of the Respondent to which he is legitimately entitled in terms thereof and furnish a working-sheet showing the notional benefits and the actual amount payable for the entire period including contribution payable towards Provident Fund/Pension Scheme by 30.11.2020, and the payment of the arrears due shall be made under written acknowledgment and report of such compliance shall be filed by 31.03.2021 before the Registrar (Judicial) of this Court.

The Writ Petition is dismissed with the aforesaid clarifications. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The General Manager,
Metropolitan Transport Corporation,
Anna Salai,
Chennai - 600 002.
2. The Labour Inspector - II,
Conferment to Permanent Status to Workmen Office,
Nandanam,
Chennai - 600 035.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

+1cc to M/s.M.Chidambaram, Advocate, S.R.No.32261

W.P. No. 22037 of 2018

BP(CO)
KKV/05/11/2020

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