

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

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

W.P. No. 20939 of 2019

and

W.M.P. No. 20126 of 2019

The Management,
Metropolitan Transport corporation Ltd.,
Chennai – 600 002.

... Petitioner

-VS-

1. The Assistant Commissioner of Labour (Enforcement),
Second Circle,
Chennai – 600 035.

2. V.Sambandan

... Respondents

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. 522 of 2016 dated 15.02.2019 on the files of the First Respondent and quash the same.

For Petitioner : Mr. M.Chidambaram, Standing Counsel

For Respondents : Mr. D.Sathyaraj,
Special Government Pleader (for R1)

Mr. S.T.Varadarajulu (for R2)

ORDER
(through video conference)

Heard Mr. M.Chidambaram, Learned Standing Counsel appearing for the Petitioner, Mr. D.Sathyaraj, Learned Special Government Pleader appearing for the First Respondent and Mr. S.T.Varadarajulu, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent, who was sponsored through employment exchange, was engaged as driver by the Petitioner from 22.08.2000 onwards and was given appointment as daily paid on 01.09.2005. 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 Second Respondent on 01.07.2006 for having completed 240 days of employment.

3. While the matter stood as narrated supra, the Second 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 Case No. E/522/2016 before the First Respondent 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 Second 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 Second 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 First Respondent by Order in Case No. 522/2016 dated 15.02.2019 rejected the said objections raised by holding that the Second Respondent was entitled to that benefit with effect from 15.12.2001 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 Petitioner, the aforesaid order passed by the First Respondent is assailed.

4. It is vehemently contended by the Learned Counsel for the Petitioner that when the Second 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 Second Respondent was employed from 22.08.2000 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 Second Respondent had worked only from 01.07.2006 merely because the daily paid appointment was

given from that date. The conferment of permanent status on the Second Respondent with effect from 15.12.2001, 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 01.07.2006. 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 Second 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 Second 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 Second Respondent in approaching the First Respondent for conferring the benefit under the Permanent Status Act, which factor disentitles the Second 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 such, there is no merit in this 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 First Respondent requiring interference by this Court in the exercise of discretionary powers of judicial

review under Article 226 of the Constitution. However, Learned Counsel for the Second Respondent submits that the Second Respondent is willing to forego the payment of differential amount of monetary benefits alone for the period from 15.12.2001 till 09.02.2016 when the application was made before the First Respondent, except the payment of employer's contribution towards Provident Fund/Pension during that period, as a voluntary gesture to minimize financial implications for the Petitioner and he has filed a memo dated 30.09.2020 to that effect through e-mail, which has been placed on record.

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 Second 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.

01.10.2020

vjt

Index: Yes/No

Note: Issue order copy by 04.11.2020.

To

1. The General Manager,
Metropolitan Transport Corporation Ltd.,
Chennai – 600 002.
2. The Assistant Commissioner of Labour (Enforcement),
Second Circle,
Chennai – 600 035.

Copy to

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



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P.D. AUDIKESAVALU, J.

vjt



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