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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.29149 & 29150 of 2017
and
W.M.P.Nos.31408 & 31409 of 2017

The Management
Metropolitan Transport Corporation
(Chennai) Ltd.,
No.1, Anna Salai
Chennai-600 002.

... Petitioner in both W.P.s

vs.

1.The Inspector of Labour
Kancheepuram.

... 1st respondent in both W.P.s

2.R.Parani Kumar
Driver - 3464

... 2nd respondent in W.P.No.29149 of 2017

2.N.Murugesan
Conductor - CU 3045

... 2nd respondent in W.P.No.29150 of 2017

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, calling for the records pertaining to the orders passed in Na.Ka.No.A5282/2013 and Na.Ka.No.A5282 of 2013 respectively, dated 14.06.2017 on the file of the 1st respondent herein and quash the same.

For Petitioner
in both W.P.s

: Mr.M.Chidambaram

For Respondents
in both W.P.s

: Mr.D.Suriyanarayanan
Additional Government Pleader
for R1
Mr.V.Ajoy Khose, for R2

C O M M O N O R D E R

These writ petitions are filed challenging the orders of the first respondent dated 14.06.2017, wherein and whereby, the



petitioner-Management is directed to regularize the service of the second respondent in W.P.No.29149 of 2017 with effect from 04.08.2012 and the second respondent in W.P.No.29150 of 2017 with effect from 18.07.2012 and grant the consequential benefits.

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2. The case of the petitioner-Management is as follows:

The second respondent in each writ petition was appointed as temporary reserve driver on 17.02.2011 and 26.03.2011 respectively and the temporary post is to be made permanent based upon their seniority and the person, who had completed 480 days in two years. The second respondent in W.P.No.29149 of 2017 has completed the statutory period of 480 days on 03.08.2012 and he was absorbed as permanent on 01.10.2014. Likewise, the second respondent in W.P.No.29150 of 2017 has completed the statutory period of 480 days on 17.07.2012 and thus, he was absorbed as permanent on 01.09.2014. However, the second respondent in W.P.No.29149 of 2017 claimed regularization with effect from 04.08.2012 and the second respondent in W.P.No.29150 of 2017 claimed regularization with effect from 18.07.2012 based on the provision of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. Since these two persons were appointed based on the Government Order passed in G.O.(D).No.41, Transport (C1) Department, dated 16.03.2007 and they were granted regularization based on their completion of the statutory period of 480 days, these contesting respondents are not entitled to claim such regularization as provided under the above said Act.

3. The first respondent considered the above aspects raised by the petitioner-Management and rejected their contention. Consequently, the first respondent directed regularization of the second respondent in W.P.No.29149 of 2017 with effect from 04.08.2012 and the second respondent in W.P.No.29150 of 2017 with effect from 18.07.2012.

4. The learned counsel for the petitioner-Management contended that since the very appointment itself is based on the Government Order, the second respondent in each writ petition, is not entitled to rely upon the benefit provided under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 for regularization.

5. On the other hand, the learned counsel for the second respondent in each writ petition submitted that though the appointments were made in pursuant to the above said Government Order, once they were appointed, they are entitled to get the benefit of regularization as provided under the said Act and not at the whims and fancies of the petitioner-Management. The learned counsel for the second respondent, in support of his contention, relied upon the judgement of the Division Bench of



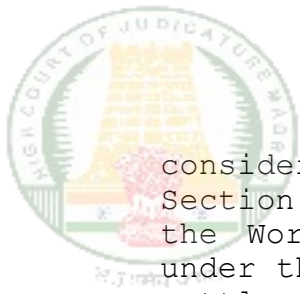
this Court reported in 2019 (4) LLN 790 (DB) (Mad.), Management, Tamil Nadu State Transport Corporation (Madurai) Ltd., Vs. Labour Inspector, Virudhunagar and another, to contend that the benefits provided under the Statute would prevail over the Government Order or the settlement arrived between the parties.

6. Heard both sides and perused the materials placed before this Court.

7. The dispute between the parties is not with regard to the right of getting regularization by the second respondent and on the other hand, the date on which, such benefit is to be conferred. In these cases, it is an admitted fact that the second respondent in W.P.No.29149 of 2017 was regularized on 01.10.2014 and the second respondent in W.P.No.29150 of 2017 was regularized on 01.09.2014. But their claim for regularization is with effect from 03.08.2012 in W.P.No.29149 of 2017 and from 17.07.2012 in W.P.No.29150 of 2017. The only reason stated by the petitioner-Management is that their appointments were made based on the Government Order and therefore, they are not entitled to seek the benefit for regularization as provided under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

8. Perusal of Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, shows that every workman, who is in continuous service for a period of 480 days in a period of 24 calendar months in an Industrial Establishment shall be made permanent, notwithstanding anything contained in any law for the time being in force. Explanation 2 to Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, further contemplates that "law includes any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of this Act." Therefore, it is evident that even the appointment was made based on the contract of service, as in the present case, through the Government Order, such appointment cannot be a reason to deny the benefit of permanent status, if the workman otherwise had rendered continuous service for a period of 480 days in a period of 24 calendar months. In other words, any award, agreement, settlement, instrument or contract of service which may run contra to the benefit provided under Section 3 of the said Act, shall not stand against the Workman in getting the permanent status, if he satisfies the requirement under Sub-Section 1 of Section 3.

9. In 2019 (4) LLN 790 (DB) (Mad.), Management, Tamil Nadu State Transport Corporation (Madurai) Ltd., Vs. Labour Inspector, Virudhunagar and another, the Division Bench of this Court has



considered the issue as to whether the settlement arrived under Section 12(3) of the Industrial Disputes Act, would stand against the Workman therein in getting their confirmation as provided under the relevant Statute. The Division Bench observed that the settlement cannot be relied on to deny the entitlement to the second respondent therein, since the settlement cannot override the provisions of the Act. At paragraph Nos. 17, 21, 22, 23, the Division Bench has observed as follows:

"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.

.....

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, 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



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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."

10. I find that the above decision made by the Division Bench squarely supports my view taken in these writ petitions and therefore, I find that the order passed by the first respondent, which is put to challenge by the petitioner-Management in these writ petitions need not be interfered. Accordingly, both these Writ Petitions are dismissed.

11. In view of the dismissal of these writ petition, the petitioner-Management shall comply with the order of the first respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Inspector of Labour
Kancheepuram.

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No. 6123
+2cc to Mr.M.Chidambaram, Advocate, S.R.No. 5631 & 5632
+1cc to the Government Pleader, S.R.No. 6191

W.P.Nos.29149 & 29150 of 2017

PA (CO)
GN (26/02/2020)