



WEB COPY

W.A.(MD) No.704 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.A. (MD) No. 704 of 2020

and C.M.P. (MD) No. 4172 of 2020

(Through Video Conferencing)

The Management of
Tamil Nadu State Transport Corporation
(Madurai) Limited, Bye Pass Road
Dindigul.

: Appellant/Petitioner

-Vs-

1. The Labour Inspector
52, Nethaji Nagar 3rd Street
Dindigul - 624 004.

2. P.Chandrakumar, Staff No.658759
C/o.Tamil Nadu State Transport Labour Union
V.P.Chinthan Memorial
51, East Arockiya Matha Street
Dindigul - 3.

: Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 23.11.2018 passed in W.P.(MD)No.4361 of 2018.

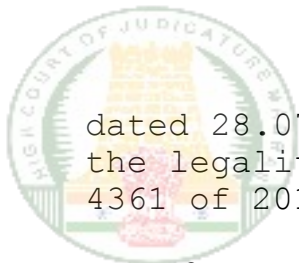
Prayer in W.P.(MD)No.4361 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records of the 1st respondent in his proceeding in Case No.06/2013 (Na.Ka.No.E/654/13) dated 28.07.2017 quash the same.

For Appellant : Mrs.S.Srimathy
For Respondents : Mr.G.M.Xavier for R2

JUDGMENT

[Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.**]

The petitioner in W.P.(MD)No.4361 of 2018 is the appellant. The private respondents viz., Tvl.S.Jailabdeen and P.Chandrakumar (second respondent in this writ appeal) filed a petition before the first respondent, who is also the Authority constituted under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status) Act, 1981 and the said application vide order

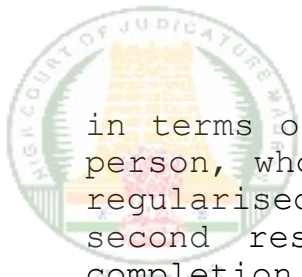


dated 28.07.2017, came to be allowed in their favour and challenging the legality of the same, two writ petitions in W.P.(M)DNos.4360 and 4361 of 2018 have been filed.

2. It is a case of the Appellant/Writ Petitioner/Management that the second respondent viz., Mr.P.Chandrakumar, was engaged as a Reserve Conductor with effect from 28.10.2010, and he has been engaged during the days of fairs and festivals and deployed in the leave place of permanent Conductor and has been paid daily wages as per the Acts and Rules and if his service is found to be unsatisfactory, his service is liable to be dispensed with also. It is further averred that the second respondent is also facing disciplinary proceedings for his misconduct and he did not put in 480 days of qualified/continued service within 24 calendar months and as such, the calculation of 240 days given in the application seeking permanent status before the first respondent is also incorrect and however, the first respondent without taking note of the contents of the counter statement as well as the materials placed, has erroneously passed an order conferring permanent status. It is also pleaded that pendency of the proceedings before the first respondent, a Settlement under Section 12(3) of the Industrial Disputes Act, 1947 also came to be entered on 13.04.2015 and as such, the petition before the first respondent for permanent status is not at all maintainable and prays for setting aside the order.

3. Writ petition was entertained and both the writ petitions came up for final disposal before the learned Single Judge on 23.11.2018 and the learned Single Judge, upon hearing the rival submissions, consideration and appraisal of the materials, observed that the Settlement dated 13.04.2015 have not even been pleaded and no such a stand has been taken pendency of the proceedings before the first respondent and further observed that the similar challenge made by the writ petitioner/Management as to the conferment of permanent status in W.P.(MD)Nos.3493 and 3557 of 2016 also came to be dismissed on 20.02.2018 and the Writ Appeal preferred against the said orders also came to be dismissed and having found that the cases on hand are almost similar and that the workmen/private respondents had also fulfilled the conditions set out in the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, they are entitled as a matter of right to be made permanent and having found no merit had dismissed both the writ petitions. Writ petitioner/Management aggrieved by the dismissal of the Writ Petition in W.P.(MD)No.4361 of 2018 has filed this Writ Appeal.

4. The learned counsel appearing for the Appellant/Management would submit that in the light of the Settlement under Section 12(3) of the Industrial Disputes Act, 1947, dated 13.04.2015, it would prevail over the order conferring the permanent status by the first respondent upon the second respondent and she would further add that



in terms of G.O.Ms.No.41, Transport Department, dated 16.03.2007, a person, who completes 240 days as daily wage Conductor, he would be regularised as a permanent Conductor and she would further add that second respondent was appointed as a Reserve Conductor and on completion of 240 days only his service would be regularised and she also points out that during his performance as daily wages, some delinquency was also noted and as such, the impugned order passed by the first respondent in conferring permanent status upon the second respondent warrants interference and prays for allowing the Writ Appeal.

5. *Per contra*, the learned counsel appearing for the second respondent would submit that the petition for permanent status came to be filed as early as on 01.03.2013 and during the course of enquiry, the Appellant/Management filed more than one counter affidavit and in none of the counter affidavits, they took the plea as to the Settlement under Section 12(3) of the Industrial Disputes Act, 1947 as well as G.O.Ms.No.41, Transport Department dated 16.03.2007 and even otherwise, the performance of the function by the first respondent under the provisions of the said Act is statutory in nature and when a Statute confers more benefit than the Government Orders, the orders passed under the relevant Statute hold good the field and the first respondent on an exhaustive analysis of the materials placed and the evidence let in during the course of enquiry, has rightly reached the conclusion conferring permanent status upon the second respondent and the writ petition filed by the Management also came to be dismissed and therefore, this Court in exercise of appellate jurisdiction under Clause 15 of the Letters Patent may not interfere with the concurrent findings and prays for dismissal of the writ appeal with costs.

6. This Court bestowed it's anxious consideration and best attention to the rival submissions and also perused materials placed on record.

7. A perusal of the order dated 28.07.2017 passed by the first respondent in exercise of statutory functions under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status) Act, 1981, would disclose that in none of the counter affidavits, the present stand taken by the Appellant/Writ Petitioner/Management had been taken. The private respondents have also been cross-examined and not even suggested as to the applicability of G.O.Ms.41, Transport Department, dated 16.03.2007.

8. The second respondent has also filed the written arguments on 13.10.2014 and even though the stand with regard to G.O.Ms.No.41, Transport Department, dated 16.03.2007 has not been taken, the first respondent having taken note of the documentary evidence and other materials found that the private respondents/workmen have put in 480 days of continuous service for the two years and the same is also



evidenced under Ex.B1 and also the salary slip issued to them, in the considered opinion of this Court the findings have been reached on a careful scrutiny and appreciation of materials placed.

9. A challenge made to the said order of the first respondent in W.P.(MD)No.4361 of 2018 also came to be dismissed by the learned Single Judge vide impugned order dated 23.11.2018 and the learned Single Judge had also taken note of the fact that identical challenge made in W.P.(MD)Nos.3493 and 3557 of 2016 by the Appellant/Management had ended in dismissal on 2018, so also Writ Appeals preferred against the said order and further noted that when the workmen have fulfilled the conditions contemplated under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, they are entitled to permanency as a matter of right and the first respondent has nearly fulfilled the statutory mandate in this case.

10. In the considered opinion of this Court, the findings reached by the first respondent as well as the reasons assigned by the learned Single Judge for dismissing the writ petition cannot said to be perverse or bristles with infirmity or based upon no materials and finds no merit in the writ appeal.

11. In the result, this **writ appeal is dismissed**, confirming the order dated 23.11.2018 made in W.P.(MD)No.4361 of 2018. The Appellant/Management is directed to implement the order dated 28.07.2017 passed by the first respondent as confirmed by the order dated 23.11.2018 made in W.P.(MD)No.4361 of 2018 and confirmed vide judgment dated 26.08.2020 made in this Writ Appeal, within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken to the second respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The Labour Inspector
52, Nethaji Nagar 3rd Street
Dindigul - 624 004.

W.A. (MD) No. 704 of 2020
and C.M.P. (MD) No. 4172 of 2020
26.08.2020

CS: 14.09.2020 5P 2C