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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3664 of 2012

V.Sadhasivam

... Petitioner

-vs-

The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
(Coimbatore Division),
Erode Region, Sennimalai Road,
Erode 638 001.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent Management to confirm the petitioner in service with effect from 07.03.2008 as per the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status on the Workman) Act, 1981 and fix him in appropriate pay scale and pay him the arrears of wages and award costs.

For Petitioner : Mr.S.Ayyathurai

For Respondent : Mr.A.Sundaravadanam

O R D E R

The petitioner has come forward with the Writ Petition, seeking a direction to the the Respondent Management to confirm the petitioner in service with effect from 07.03.2008 in terms of Provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status on the workman) Act, 1981.

2. The case of the petitioner is that, he joined service in the Respondent Corporation in March 2008 as "Reserve Conductor" along with other employees. According to the petitioner, though his service has been utilized frequently and he has completed the required period of 480 days of service in a 24 calender months for attaining permanent status, the Management, instead of giving permanent status after completion of 480 days i.e.,



w.e.f. 2010 on par with the other employees, granted permanent status to the petitioner only from the year 2013. It is further case of the petitioner that when other employees have been granted permanent status on the date of joining, the non-grant of permanent status on completion of 480 days amounts to discrimination. Even assuming for the sake of argument that the petitioner was additionally placed in terms of the Provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status on the workman) Act, 1981, the absorption on permanent basis should at least take place after completion of 480 days in not less than 24 calendar months. Hence, the action of the respondent is not only discriminatory, but also a violation of the principles of natural justice.

3. The respondent has filed a counter affidavit, wherein it has been stated that the petitioner was appointed as a Reserve conductor in Coimbatore region and as per norms, as and when the post of conductor falls vacant on account of superannuation, voluntary retirement, those vacancies would be filled up among the Reserve category conductors. It is further stated that on assessment of permanent vacancy position as on 31.07.2012 as per norms, it was found that there were 10 permanent vacancies in existence and the same were filled among 47 Reserve conductors with persons, who had undergone training at that time. It is also stated that though the petitioner was one among them, who was engaged as Daily Wage Conductor on temporary basis and allotted duty in Nambiyur branch, of the Respondent Corporation, Erode Region vide Ref. No.697/P1/PD/TNSTC/CBE/ER/13, dated 20.03.2013, he has not produced any evidence to show that he has completed 480 days in not less than 24 Calendar Months and the burden of proof lies only on the employee to establish that he has completed required number of days to get permanent absorption. Since the petitioner has got an alternative remedy before the Labour Court under the Industrial Dispute Act, 1947, he has to approach the Appropriate Forum or to raise Industrial Dispute through Union, as the disputed question of facts cannot be gone into in this Writ Petition.

4. In reply, Mr.S.Ayyathurai, learned counsel for the petitioner submitted that the relevant documents sought for by the Management have already been produced and therefore, the petitioner is entitled for permanency in terms of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status on the workman) Act, 1981.

5. Heard the learned counsel on either side and perused the materials available on record.

6. The Hon`ble Supreme Court in the case of Hindustan Petroleum Corporation Limited and Another v.s. Dolly Das



reported in (1999) 4 SCC 450, held that if the facts are not in dispute, the High Court can decide the issue without relegating the affected party to approach the Alternate Forum.

7. In the present case on hand, the petitioner has not produced any document to show that he worked for 480 days in a period of less than 24 Calendar months. As rightly pointed out by the respondent that the facts are in dispute, the petitioner will have to workout his remedy only before the appropriate forum available under the Industrial Dispute Act, 1947 or under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status on the workman) Act, 1981. The Management has taken a plea that the petitioner will have to get alternate remedy under Industrial Dispute Act. When there are two provisions / enactments available to an employee to redress his grievance, it is open to the petitioner to resort to the one. In case the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status on the workman) Act, 1981 are invoked, an employee can individually approach the Authority to get remedy under the said Act, whereas Union has to raise an industrial dispute under the Industrial Disputes Act, 1947.

8. The relief sought for by the petitioner cannot be granted as such, especially when the facts are disputed by the Respondent / Management. Merely because co-employees were made permanent does not mandate the Respondent / Management to compulsorily grant permanent status to the petitioner. Since there is no time limit prescribed in approaching the Authorities concerned, the petitioner can very well avail the alternative remedy, so that he can establish that he had completed 480 days in less than 24 Calendar months and adduce an evidence to that effect so that he can get all the monetary and consequential benefits in terms of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status on the workman) Act, 1981.

9. With the above observation and discussion, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vum

W.P.No.3664 of 2012



To

WEB COPY

The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
(Coimbatore Division),
Erode Region, Sennimalai Road,
Erode 638 001.

+1cc to Mr.A. Sundaravadanam, Advocate, Sr.24416
+1cc to Mr.Ayyathurai, Advocate, Sr.23599

GSM[co]
NSK 15/07/2021