



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	22.07.2021
DELIVERED ON	21.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.8308 of 2017
and WMP.No.9094/2017 & 14392/2018

The General Manager,
Tamil Nadu State Transport Corporation (Villupuram) Limited,
Head office, Thiruvannamalai Region,
Bye pass Road, Vengikal,
Thiruvannamalai. ... Petitioner

VS.

1. The Inspector of Labour,
Authority under Tamil Nadu Industrial Establishments
(Conferment of Permanent Status to Workmen) Act, 1981
(Tamil Nadu Act 46 of 1981),
Thiruvannamalai.
2. A. Perumal
3. The Managing Director
Tamil Nadu State Transport Corporation Ltd,
No.3/137 Salamedu,
Vazhuthareddy Post,
Villupuram 602 605.
4. The General Manager,
Tamil Nadu State Transport Corporation Ltd,
Rangapuram, Vellore. ... Respondents

Writ Petition filed under Article 226 of the Constitution
of India, praying to issue a writ of Certiorari, to call for the
records of the order passed by the 1st Respondent in



Na.Ka.No.E/1617/2015, dated 04.01.2016 and to quash the same as illegal.

For Petitioner : Mr.C.S.K.Sathish

For 2nd Respondent : Mr.S.N.Ravichandran

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ORDER

Challenging the order dated 04.01.2016 passed by the 1st Respondent vide Na.Ka.No.E/1617/2015, in confirming permanent status to the workman on completion of 480 days in a period of 16 calender months, the Transport Corporation has come up with this Writ Petition.

2. Heard the learned counsel on either side and perused the material documents available on record.

3. In the case on hand, though, it has been stated that, the 2nd Respondent/employee was on Leave on Loss of Pay, a perusal of the records shows that, the employee had worked for 25 days in a particular month and that, he is entitled to a weekly off with pay. Merely because Leave on Loss of Pay is mentioned, it does not mean that, the employee is not entitled to a day's off after working continuously for six days.

4. Various Labour Enactments clearly stipulate that, an employee cannot be asked to work continuously for ten days and that, there shall be a weekly off; and that, he cannot be asked to work for more than 54 hours in a week including Overtime, and depending upon the place of employment, there is usually a break in service for 30 minutes or one hour. In the present case on hand, merely because it is mentioned that, the employee was on 'Leave on Loss of Pay' as stated supra, it does not mean that, the employee has not carried on work and it is not correct to state that, 'that day cannot be counted'. As a matter of right, the employee is entitled to a paid holiday.

5. There is no hard and fast rule that, the employee could not have completed 480 days in 16 months. Paid holidays and Sundays will have to be taken into account for the purpose of computing the number of days in terms of the decision of the Apex Court in the case of Workmen of American Express International



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Banking Corporation vs. Management of American Express International Banking Corporation reported in 1985 (2) LLJ 539, wherein, it has been categorically held that, the Management cannot expect the employees to work with hammer and sickle on all days.

6. In the case on hand, it is not in dispute that, pursuant to the appointment order dated 01.02.2008, the 2nd Respondent joined the services of the Petitioner/Transport Corporation. Attendance particulars of the 2nd Respondent produced by the Management shows that, the employee has worked for only 460 days, less 69 days which is Leave on Loss of Pay, thus, making the total number of working days as 391. The Statement would make it clear that, even without a holiday, the employee has been asked to work continuously for a few months, which itself is illegal. In any event, this Court is not going to deal with that aspect for the purpose of deciding the Writ Petition and in case, the employee completes 480 days in a period of 24 calendar months, he is deemed to have been conferred with permanent status in terms of Section 3 of the Permanent Status Act, 1981, and it is not necessary that, the employee should be on the rolls for 24 months, even if he completes 480 days in a lesser period of 24 calendar months.

7. In support of his stand, learned counsel for the Petitioner/Transport Corporation has relied upon a decision of this Court in the case of Management, Tamil Nadu State Transport Corporation (Madurai) Ltd. vs. Labour Inspector, Virudhunagar, reported in 2019 (4) LLN 790 (DB) (Mad.) The said decision is not applicable to the case on hand, as settlement cannot run counter to the provisions of the Tamil Nadu Shops and Establishments (Conferment of Permanent Status) Act, 1981. Even assuming that, the said decision has to be taken as correct law, the employee herein has attained permanent status as early as in 2010 on completion of less than 24 calendar months and he is deemed to have attained permanent status in terms of the decision rendered by this Court in the case of N.Mamundiraj vs. Bharat Heavy Electricals Ltd., Trichy reported in 1999 (1) LLJ 622.

8. The contention of the employer that, the 2nd Respondent/employee was punished in 2014 for various misconducts, may be true and the employer would have been right in taking disciplinary action against the employee. The punishment of



postponement of increment imposed on the employee by the Management by an order dated 31.10.2014, may be justified. But, it cannot be presumed that, the 2nd Respondent herein is not a permanent employee, thereby, depriving other benefits, if he is legally entitled to.

9. I find much force in the contention of the learned counsel appearing for the 2nd Respondent/employee. As the order of the Authority is a finding of fact and that, the records reveal that the employee has completed sufficient days of service to attain permanent status, in order to give a quietus to the matter and to bring down the life of litigation, instead of remanding the matter, this Court postpones the conferment of permanent status of the employee to 05.02.2010. But, it does not mean that, the employee could not have completed 480 days in 16 months.

10. The State Transport Corporation is a 'State' within the meaning of Article 12 of the Constitution of India. This Court, in the case of Indian Bank rep. by its Assistant General Manager, Madras vs. R.S.Thiruvengadam reported in 1990 [2] LLN 26 has held that, even if the Authority has no jurisdiction to entertain a dispute under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947, this Court has granted relief holding that, the Bank is a 'State' and is amenable to the jurisdiction of this Court. The petitioner/Transport Corporation is expected to comply with the order of the Authority within a period of four months from the date of receipt of a copy of this order.

In view of the foregoing, the Writ Petition stands dismissed. No costs. Consequently, connected W.M.P.No.9094 of 2017 and W.M.P.No.14392 of 2018 are closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

(aeb)



To:

1.The Inspector of Labour,
Authority under Tamil Nadu Industrial Establishments
(Conferment of Permanent Status to Workmen) Act, 1981
(Tamil Nadu Act 46 of 1981), Thiruvannamalai.

2.The Managing Director
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No.3/137 Salamedu, Vazhuthareddy Post,
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3.The General Manager,
Tamil Nadu State Transport Corporation Ltd,
Rangapuram, Vellore.

+1cc to Mr.C.S.K.Sathish, Advocate, S.R.No.48650

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.48667

W.P.No.8308 of 2017

SSI(CO)
SB(27/10/2021)