



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALAU

W.P. (MD) No. 5746 of 2014

and

M.P. (MD) No. 2 of 2014

K.Murugesan

... Petitioner

-vs-

1.The Management of Tamil Nadu,
State Transport Corporation (Kumbakonam) Ltd.,
Represented by its Managing Director,
Kumbakonam.

2.The General Manager,
The Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Karaikudi Region,
Karaikudi.

3.The Branch Manager,
The Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Karaikudi Branch,
Karaikudi.

4.The Branch Manager,
The Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Ulaganeri Branch,
Ulaganeri,
Madurai.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Impugned Order passed by the Second Respondent in Ref.No.ThaNaa.Aa.Po.Ka/Nipi/ AA5/3881 dated 21.11.2011, quash the same in so far as regularizing the Petitioner's service with effect from 01.06.2011 instead of from 30.08.2009 and consequently direct the Respondents to regularize the Petitioner's Services in the post of Driver with effect from 30.08.2009 i.e., the date on which the Petitioner completed 240 days of service within one year and further direct the Respondents to pay arrears of difference in salary and all other attendant benefits payable to the Petitioner from 30.08.2009.



For Petitioner : Mr.A.Rahul
For Respondents : Mr.D.Sivaraman,
Standing Counsel (for R1 and R2)
No appearance (for R3 and R4)

O R D E R
(through video conference)

Heard Mr. A.Rahul, Learned Counsel for the Petitioner and Mr. D.Sivaraman, Learned Standing Counsel appearing for the First and Second Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was sponsored through employment exchange, was engaged as reserve driver in the Transport Corporation of the Respondents from 29.09.2008 onwards and was given appointment as daily rated employee on 23.07.2010. After the petitioner completed 240 days of his service as daily rated employee on 01.06.2011, he was made permanent by Order in Ref. No. Tha. Naa.Aa.Po.Ka/Nipi/AA5/3881 dated 21.11.2011 passed by the Second Respondent. According to the Petitioner, he was entitled to be made permanent with effect from 30.04.2009 itself as he had completed the required period of 240 days of actual work in the continuous period of one year in terms of settlement under Section 12(3) of Industrial Disputes Act, 1947 (hereinafter referred to as the 'I.D. Act' for short) entered by the Respondents with the Trade Union in which the Petitioner was member. The Petitioner made a representation dated 01.02.2014 claiming such benefit, but there was no response for the same. In that backdrop, the Petitioner has filed this Writ Petition seeking a direction to regularize his services in the post of driver from 30.08.2009 with differential amount of wages and other attendant benefits with effect from that date till 01.06.2011, while challenging the order dated 21.11.2011 passed by the Second Respondent insofar as it restricts the date of his confirmation in service.

3. Learned Counsel for the Petitioner submitted that in terms of 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), the Petitioner has completed 480 days of continuous service in a period of 24 calendar months on 26.07.2010 and that the Petitioner would be satisfied if his services are regularized from that date and paid the differential amount of wages with attendant benefits. He has also filed a memo dated 28.07.2011 to that effect through e-mail, which is placed on record.

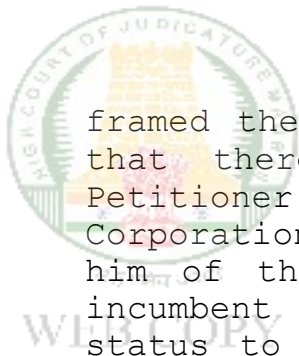
4. The claim made by the Petitioner is repelled by the Respondents by contending that the appointment on 29.09.2008 had been made only as reserve driver on temporary basis against a vacancy that may



arise in future and there had not been any permanent vacancy as on that date for initial engagement of the Petitioner. It was also explained that the permanent vacancy of the post of driver arose only on 23.07.2010 from when the Petitioner had been treated as daily rated employee and he has been made permanent with effect from 01.06.2011 when he successfully completed 240 days in terms of the settlement under 12(3) of the I.D. Act entered between Respondents and the Trade Union in which the Petitioner was member. In short, it is pleaded that since the Petitioner had been rightly made permanent with effect from 01.06.2011 and granted all eligible benefits, he cannot make any claim for permanency under the Permanent Status Act from an earlier date, much less the monetary benefits arising therefrom.

5. The short point that arises for consideration in this Writ Petition is whether the Petitioner is justified in his claim for permanency from 26.07.2010?

6. The refusal of the Respondents to accord permanent status to the Petitioner on completion of 480 days from 29.09.2008 is on account of the fact that there was no permanent vacancy as on the said date of initial engagement. It is not disputed that the Petitioner had been engaged as driver in the Transport Corporation of the Respondents from 29.09.2008 onwards and he had been attending duty regularly. Section 3 of the Permanent Status Act creates an indefeasible right in favour of the person employed on completing 480 days of continuous service in 24 calendar months in the industrial establishment for conferment of permanent status. The claim of the Petitioner that he had completed the required period of service for permanent status on 26.07.2010 is supported by the reply dated 01.01.2014 received by the Petitioner from the Second Respondent showing the details of the dates on which he had attended duty during the relevant period, which is also not controverted in any manner. 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 providing that for the 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, makes the legal position clear that such right of permanency has an overriding effect on any impediment denying such entitlement. In this context, reference must be made to the decision of the Division Bench of this Court in **R. Lakshmi -vs- Chief Engineer (Personnel), Tamil Nadu Electricity Board** [(2012) 6 MLJ 480] where it has been held that a workmen, 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

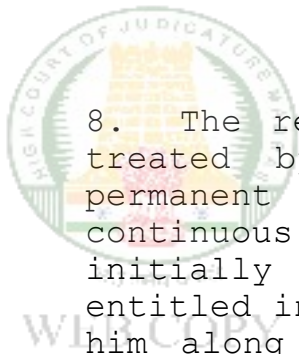


framed thereunder. This would obviously mean that the circumstance that there was no permanent vacancy on 29.09.2008 when the Petitioner was initially engaged as reserve driver in the Transport Corporation of the Respondents cannot be used as a ruse to deprive him of the statutory right accrued to him. Consequently, it is incumbent up on the Respondents to grant the benefit of permanent status to the Petitioner by computing the required period of 480 days of continuous service in 24 calendar months from 29.09.2008 when the Petitioner was initially engaged and such computation could not be restricted to be reckoned only from 23.07.2010 when he was treated as daily rated employee. This conclusion arrived is fortified by the Division Bench 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 certain other employees of the Respondents, who are similarly placed to the Petitioner in this case.

7. It is equally beyond cavil that the payment of wages of an amount equivalent to that of a regular employee is a natural consequence that flows from such conferment of permanent status by operation of the Permanent Status Act. At this juncture, it would be useful to extract from the decision of the Hon'ble Supreme Court of India in **State of Punjab -vs- Jagjit Singh** [(2017) 1 SCC 148] where it has been held as follows:-

"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."

As such, the claim of the workmen for the differential wages for the relevant period in the instant cases is absolutely justified. In view of this legal position, the Petitioner is entitled to the differential wages for the relevant period as claimed.



8. The result of the foregoing discussion is that it has to be treated by the Respondents that the Petitioner had acquired permanent status on 26.10.2010 when he completed 480 days of continuous service in 24 calendar months from 29.09.2008 when he was initially engaged and differential amount of wages that he is entitled in consequence thereof would have to be immediately paid to him along with a working-sheet showing calculation for the same under written acknowledgment and the report of compliance in that regard shall be filed by 31.12.2021 before the Registrar (Judicial) of this Court.

9. In the upshot, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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

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4. The Branch Manager,
The Tamil Nadu State Transport
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Ulaganeri Branch,
Ulaganeri, Madurai.

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Copy to

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.RAHUL, Advocate (SR-24579[F] dated 29/07/2021)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-24323[F] dated 29/07/2021)

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NSN(CO)
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