

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition Nos.35652, 35653, 35654, 35655, 35656,
35657, 35658, 35659, 35660 and 35661 of 2015

A.Vadivel	... Petitioner in W.P.No.35652/2015
S.Luca Yogaraj	... Petitioner in W.P.No.35653/2015
K.Sivasubramanian	... Petitioner in W.P.No.35654/2015
R.Gunasekar	... Petitioner in W.P.No.35655/2015
G.Sivakumar	... Petitioner in W.P.No.35656/2015
R.P.Dhandapani	... Petitioner in W.P.No.35657/2015
C.Anandan	... Petitioner in W.P.No.35658/2015
N.Veerappan	... Petitioner in W.P.No.35659/2015
A.Rajendran	... Petitioner in W.P.No.35660/2015
C.Periyasamy	... Petitioner in W.P.No.35661/2015

Vs

1. The State of Tamil Nadu,
represented by its Secretary,
Department of Transport,
Fort St.George, Secretariat,
Chennai - 600 009.
2. The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Villupuram District.
3. The General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Villupuram District.

...Respondents in all petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the proceedings bearing Lr.No.32/1532/E7/TNSTC(VPM)/2005 dated 06.07.2013 issued by the second respondent and quash the same and consequently, direct the respondents to regularize the petitioners' service from the date of completion of service of 240 days from the initial appointment and to pay all other monetary and service benefits.

For Petitioners : Mr.V.Raghavachari
[in all petitions]

For Respondents : Mrs.S.Anitha,
[in all petitions] Special Government Pleader [R1]

Mr.C.Gauthamaraj [R2 & R3]

COMMON ORDER

The order of rejection dated 06.07.2013 issued by the second respondent rejecting the claim of the petitioners to grant retrospective regularization of service on completion of 240 days of service under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 [hereinafter referred to as "the Act"] is under challenge in the present writ petitions.

2.The petitioners are now working as drivers and conductors in the Tamil Nadu State Transport Corporation (Villupuram) Ltd. All the petitioners were initially engaged as daily wage drivers and conductors and the petitioners stated that they have completed 240 days of service and their services ought to have been made permanent on completion of 240 days of service. However, the respondents have not given permanent status on completion of 240 days of service on the ground that the Government imposed ban during the relevant period from 2001-2005 and thereafter, the services of the petitioners were absorbed in regular vacancy and now they are working as permanent employees of the transport corporation.

3.Learned counsel appearing on behalf of the petitioners mainly contended that the petitioners were initially engaged as daily wage employees and therefore, on completion of 240 days of service, they are entitled to be regularized in permanent post under the provisions of the Act. Contrarily, the petitioners were allowed to continue only as daily wage employees and thereafter, a 12(3) Wage Settlement was entered into between the trade union and the transport corporation and based on that, the services of the petitioners were regularized. Thus, the

petitioners are entitled to be regularized with retrospective effect from the date on which they have completed 240 days of service under the provisions of the Act.

4.Learned counsel appearing on behalf of the petitioners reiterated that the respective Branch Managers of the transport corporation recommended the case of the petitioners for permanent absorption on completion of 240 days of service during the relevant point of time and the said recommendation was not considered by the competent authority. Contrarily, the benefit of regularization was granted only with effect from 01.09.2005 instead of the date from which the petitioners have completed 240 days of service. The petitioners stated that they were initially engaged as daily wage employees through employment exchange and by following the recruitment process. Thus, there was no irregularity in engaging the petitioners as daily wage employees and when the petitioners' initial employment was in accordance with the rules, the incumbents are entitled to regularization from the date on which they have completed 240 days of service under the provisions of the Act.

5.It is contended that there was no justification in keeping the petitioners as daily wage employees for a continuous period of more than five years despite the fact that the petitioners were initially appointed through District Employment Exchange. The petitioners submitted a representation to the respondents and the respondents rejected the claim of the petitioners for retrospective regularization in proceedings dated 06.07.2013, which is under challenge in the present writ petitions.

6.Learned counsel appearing on behalf of the respondents transport corporation made a submission that the initial appointment of the petitioners were made on daily wage basis. The Government imposed ban during the relevant period from 2001-2005 and there was no occasion to regularize the services of the petitioners at that point of time. The transport corporation being wholly owned by the Government of Tamil Nadu, the policy of the Government is to be adopted by the transport corporation. During the ban period, considering the emergency circumstances, the drivers and conductors were engaged as daily wage employees and they were allowed to continue in service. Thereafter, the management negotiated with the trade union and entered into a 12 (3) Wage Settlement. As agreed in the 12(3) Wage Settlement, the benefit of permanent absorption was granted to all the daily wage employees. Therefore, the settlement under section 12(3) of the Industrial Disputes Act was implemented by the transport corporation. Once the trade union, in which, the petitioners are also members, agreed and signed 12(3) Wage Settlement and based on the 12(3) Wage Settlement, the benefit of regularization and permanent absorption is granted to the employees, then they are

estopped from claiming retrospective regularization, which is in violation of the terms and conditions agreed in the 12(3) Wage Settlement.

7. That apart, the petitioners have filed writ petitions after lapse of eleven years. Thus, the writ petitions are to be rejected on the ground of laches. In the event of regularizing the services of the petitioners at this length of time, the same will become a wrong precedent and there would be financial implications also and hence, the writ petitions are liable to be rejected.

8. Learned Special Government Pleader appearing on behalf of the first respondent made a submission that there was a ban imposed by the Government during the year 2001-2005. During the ban period, the appointments were made in transport corporation on regular basis. However, exemption was granted by the Government to engage drivers and conductors on daily wage basis and accordingly, various transport corporations engaged daily wage employees during the ban period. After the ban period, the recognised trade unions negotiated with the management and a 12 (3) Wage Settlement under the Industrial Disputes Act was entered into, which was also subsequently implemented. Accordingly, the benefit of permanent absorption was granted to all the eligible employees from 01.09.2005 and they are now regular employees. This being the factum, the retrospective regularization sought for by the petitioners are baseless and thus, these writ petitions are liable to be rejected.

9. This Court has considered the arguments as advanced by the respective learned counsel appearing for the parties to the lis on hand.

10. The claim of the petitioners is to grant retrospective regularization from the date on which they completed 240 days of service. Admittedly, all the petitioners were engaged on daily wage basis as drivers and conductors. They were allowed to continue as daily wage employees for a considerable length of time, more so, during the period of ban imposed by the Government. On expiry of the ban period, the employees made a representation to consider their cases for permanent absorption and based on such representation, negotiations were conducted between the trade union and the management. It was a long pending demand of various trade unions pertaining to daily wage employees and casual employees and in this regard, conciliations were conducted and a settlement was arrived at, at the instance of the Government of Tamil Nadu through a tripartite settlement dated 31.08.2005 between the trade union and the management at the instance of the Government of Tamil Nadu. The benefit of regularization and permanent absorption was granted to 1375

daily wage employees and 2122 casual labourers and accordingly, they were brought under regular time scale of pay with effect from 01.09.2005. The regularization was granted through the tripartite settlement dated 31.08.2005 between the trade union and the management at the instance of the Government of Tamil Nadu. All the petitioners were absorbed as regular employees with effect from 01.09.2005.

11.It is found that all the recognised and elected trade unions along with other unions were the signatories of the settlement. Despite, being the signatories to the settlement through trade unions, the petitioners are now claiming retrospective regularization and fixation of pay.

12.That apart, when the settlement dated 31.08.2005 was implemented, the petitioners had not raised any objection for grant of regularization with effect from 01.09.2005. Contrarily, they have accepted the regularization as per the terms and conditions of the 12(3) Wage Settlement and were working in the transport corporation for several years. Thereafter, they made a representation after several years and the said representation was rejected by order dated 06.07.2013 and thereafter, these writ petitions were filed in the year 2015. Thus, these writ petitions have been instituted after a lapse of more than ten years from the date of grant of regularization.

13.It is the contention of learned counsel appearing on behalf of the petitioners that the provisions of the Act is to be applicable and accordingly, on completion of 240 days of service, permanent status should be accorded to the petitioners. Even presuming that the Act is applicable to the State Transport Corporation despite the fact that there is a separate rules for transport corporations with regard to appointment and regularization, the said benefit is to be considered only if the petitioners approach the competent authority under the provisions of the Act. More specifically, the person, who is claiming the conferment of permanent status must approach the Inspector of Labour at the first instance for establishing the facts. The High Court cannot conduct a roving enquiry regarding the factual aspects and service particulars of the individuals. Even if a person claims permanent absorption on the ground that he has completed 240 days of service, the factum is to be established through documents and evidence before the competent authority by way of an adjudication. Only thereafter, a writ petition needs to be entertained. The High Court cannot enter into an adjudication of these factual disputes nor the nature of the services are to be presumed or taken into consideration merely based on the affidavit filed in the writ proceedings. When a permanent status is claimed by an employee, an adjudication on facts is imminent and warranted. Only after such

adjudication, the High Court would be in a position to exercise its power of judicial review under Article 226 of the Constitution of India in an effective manner. Admittedly, in the present case, the writ petitioners have not approached the competent authority/Inspector of Labour under the Act.

14. Even presuming that the services of 240 days is accepted by the respondent transport Corporation then also a question arises whether retrospective regularization from the date of completion of 240 days can be granted at this length of time, more specifically, when the trade unions signed the 12(3) Wage Settlement and accepted the permanent absorption of all those employees from 01.09.2005.

15. In the present cases, engagement of the petitioners as daily wage employees is not disputed. However, there is no adjudication with reference to the completion of 240 days of service before the competent authority. Contrarily, 12(3) Wage Settlement was entered between the trade union and the management, at the instance of Government of Tamil Nadu on 31.08.2005. Based on the tripartite settlement, the services of the petitioners were regularized with effect from 01.09.2005 and now they are working as regular employees in State Transport Corporation.

16. Admittedly, there was a complete ban of recruitment and regularization from 2001-2005. The ban on public employment is a policy decision arrived at by the cabinet of the State. Thereafter, the claim of regularization and pending demand of various unions pertaining to daily wage employees and casual labourers was considered and after negotiation, a tripartite agreement was signed between the parties on 31.08.2005 and it was mutually agreed between the parties to grant permanent absorption with effect from 01.09.2005 and the said permanent absorption was granted to all the petitioners and accordingly, they were brought under the regular time scale of pay and now, they continue in service. This being the factum, now after a lapse of many years, the petitioners are not entitled for retrospective regularization from the date on which they completed 240 days of service. The petitioners have admittedly not approached the competent authority under the Act. Even the application of the Act itself is questionable in view of the fact that there is a specific rule for transport corporation regarding appointment and grant of regularization. In the event of any such special rules in force, the general law cannot be applicable. However, the fact remains that the petitioners have not approached the competent authority during the relevant point of time and accepted the terms and conditions of 12(3) Wage Settlement and accordingly, working as regular employees with effect from 01.09.2005 and thus, they are estopped from claiming

retrospective service after a lapse of many years. This being the factum, the petitioners have not established any acceptable ground for considering the relief as such sought for in the present writ petitions.

Accordingly, these Writ Petitions are dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Secretary,
Department of Transport,
Fort St.George, Secretariat,
Chennai - 600 009.
2. The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Villupuram District.
3. The General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Villupuram District.

+10cc to M/s.V.Raghavachari, Advocate, S.R.No.40006

+1cc to Mr.C.Gautham Raj, Advocate, S.R.No.39916

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AJS(CO)
RGA(13/07/2022)