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W.P. No.29798 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.29798 of 2014

and

M.P.No.1 of 2014

The Management,
Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Regional Office,
Bye Pass Road,
Venkikkal – 606 604
Thiruvannamalai
rep. by General Manager

... Petitioner

Vs

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

2. A.R.Balaji,
C/o Arasu Pokuvarathu Kazhaga Uuliyur Sangam,
Registration No.185/TVM (CitU affiliated)
187, Gangaianman Kovil Street,
Thenimalai,
Thiruvannamalai – 606 603

... Respondents



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Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the order passed by the 1st respondent in Na.Ka.No.E/2700/2013 dated 05.02.2014 and to quash the same as illegal.

For Petitioner	...	Mr.M.Aswin
For Respondents	...	Mr.A.M.Ayyadurai, Government Advocate for R1 Mr.R.Krishnaswamy for R2

ORDER

This writ petition has been filed challenging the order of the first respondent dated 05.02.2014, wherein the petitioner Management is directed to regularise the service of the second respondent with effect from 10.03.2008.

2. Heard the learned counsel for the petitioner, the learned Government Advocate appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent.

3. Learned counsel for the petitioner would state that the second



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respondent was appointed as a daily wage employee on 10.03.2008 on sponsorship from Employment Exchange and has completed 240 days of service on 20.10.2009. Learned counsel would further state that the grant of regularisation to the 2nd respondent after a period of 7 years was illegal and that the second respondent was only working in a spare place and therefore, not entitled for permanency. He would further state that the 2nd respondent had indulged in road accidents on 17.07.2007 and 06.08.2013 respectively and there was no continuity of service also.

4. On the contrary, the learned counsel appearing for the 2nd respondent would submit that the petitioner was appointed as a driver on daily wage basis on 10.03.2008 and has completed 480 days of continuous service in 24 calendar months. Therefore, the petitioner is entitled for regularisation and there is no infirmity in the order passed by the 1st respondent.

5. Learned counsel for the 2nd respondent also relied on the order passed by this Court in W.P.Nos.29149 & 29150 of 2017 dated 27.01.2020



wherein at paragraph Nos.8 and 9, it has been observed as follows:

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8. *Perusal of Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, shows that every workman, who is in continuous service for a period of 480 days in a period of 24 calendar months in an Industrial Establishment shall be made permanent, notwithstanding anything contained in any law for the time being in force. Explanation 2 to Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, further contemplates that "law includes any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of this Act." Therefore, it is evident that even the appointment was made based on the contract of service, as in the present case, through the Government Order, such appointment cannot be a reason to deny the benefit of permanent status, if the workman otherwise had rendered continuous service for a period of 480 days in a period of 24 calendar months. In other words, any award, agreement, settlement, instrument or contract of service which may run contra to the benefit provided under Section 3 of the said Act, shall not stand against the Workman in getting the permanent status, if he satisfies the requirement*



under Sub-Section 1 of Section 3

9. In 2019 (4) LLN 790 (DB) (Mad.), Management, Tamil Nadu State Transport Corporation (Madurai) Ltd., Vs. Labour Inspector, Virudhunagar and another, the Division Bench of this Court has considered the issue as to whether the settlement arrived under Section 12(3) of the Industrial Disputes Act, would stand against the Workman therein in getting their confirmation as provided under the relevant Statute. The Division Bench observed that the settlement cannot be relied on to deny the entitlement to the second respondent therein, since the settlement cannot override the provisions of the Act. At paragraph Nos. 17, 21, 22, 23, the Division Bench has observed as follows:

"17. The second contention raised before us is that the second respondent was only a reserve conductor and not a temporary conductor to be entitled for permanency. This argument is based upon the Section 12(3) settlements, dated 13.04.2015 and 04.01.2018. The completion of 480 days continuous employment in 24 calendar months by the second respondent was much prior to the settlement dated 13.04.2015, as the second respondent completed the required number of working days even in 2012. Therefore, those settlements cannot be relied on to deny the entitlement to the second respondent. Apart from that, a settlement cannot override the provisions of the Act.

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21. Reliance was placed on the memorandum of settlement under Section 12(3) of the I.D. Act, dated 25.09.1986 and in Clause-12 of the settlement, which deals with confirmation of temporary employees, in sub-clause (a), which deals with drivers and conductors, it has been agreed to that the services of the drivers and conductors will be confirmed after satisfactory completion of 240 days of actual work in a continuous period of one year. Similar condition is found in Clause-13 of the Settlement under Section 12(3) of the I.D. Act entered in the year 1992.

22. The contentions raised by Mr. Ajay Khose, learned counsel, stating that the provisions of the Act prevail over the settlement is right and this question has been decided in several matters and it would be beneficial to take note of the decision in *Metal Powder Co. Ltd., Thirumangalam and another vs. the State of Tamil Nadu and another*, 1985 (2) LLJ 376, which was followed by the Division Bench of this Court in the Judgment dated 30.09.2019 in W.A. Nos. 2871 and 2872 of 2018 [*The Managing Director, Tamil Nadu State Transport Corporation Ltd. vs. Shanmugam (died) and another*].

23. Similar issue was decided by us in favour of the workmen in the case of the Senior Regional Manager, Tamil Nadu Civil Supplies Corporation and another vs. The Joint Commissioner of Labour, Trichy, and others, W.A.(MD) Nos. 353 to 357 of 2014, dated 12.03.2018."



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6. This Court is of the view that the above decision made by the Division Bench would squarely apply to the present case. In the case on hand, the stand taken by the 1st respondent in the impugned order is that petitioner had worked as a conductor from 10.03.2008 and has completed 480 days of continuous service in 24 calendar months which was also not disputed by the petitioner Management before the 1st respondent. Therefore, the petitioner is entitled for regularisation from 10.03.2008. Following the judgment referred to supra, this Court finds that the order passed by the first respondent, needs no interference.

7. Accordingly, the Writ Petition is dismissed. In view of the dismissal of this writ petition, the petitioner Management shall comply with the order of the first respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
vsi

J.NISHA BANU, J.

vsi

To
The Inspector of Labour,
Authority under Tamil Nadu Industrial
Establishment (Conferment of
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