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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.10.2021

PRONOUNCED ON : 27.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.31897/2019, 15187/2020 &
W.P.Nos.7064, 7118, 8450, 9313 & 9284 of 2021
and Connected Miscellaneous Petitions

In W.P.No.31897 of 2019:-

The Management,
General Manager,
Tamil Nadu State Transport Corporation
(Salem) Ltd.,
Ramakrishna Salai,
Salem-636 007.

... Petitioner

Vs.

1.T.Senthilkumar

2.The Assistant Commissioner of Labour
(Enforcement),
Authority under TN Industrial Establishments
(Conferment of Permanent Status to Workmen)
Act, 1981,Salem.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the order dated 06.12.2018 passed by the second respondent in Na.Ka.No.A/2160/2012 and to quash the same.

For Petitioner : Mr.D.Raghu

For Respondent-1 : Mr.V.Ajoy Khose

WP.No.15187/2020:

1 The Management
Tamil Nadu Government Transport Corporation
(Kovai Division) Kovai Ltd 37 Mettupalayam
Road Coimbatore- 641043 ... Petitioner

Vs



1 R.Vivek
(RC No.3964) C/o.Kovai Government Transport
Corporation Sangam No.109 park St
Coimbatore- 641009

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2 The Assistant Commissioner of
Labour Coonoor Nilgiris Dt ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the
Constitution of India, praying to issue a Writ of Certiorari,
calling for the records in Case No. A 204-2 of 2019 on the file
of the 2nd respondent dated 04.12.2019 and quash the same

For Petitioner : Mr.A.Sundaravadhanan

For Respondent-1 : Mr.V.Ajoy Khose

WP No.7064 of 2021:

1. THE MANAGEMENT
TAMIL NADU GOVERNMENT TRANSPORT CORPORATION
(KOVAI DIVISION) KOVAI LTD 37 METTUPALAYAM
ROAD COIMBATORE- 641 043. ... Petitioner

VS

1.C.PRADEEP[RC No.4053]
C/O.KOVAI GOVERNMENT TRANSPORT CORPORATION
SANGAM BI.109 PARK STREET
COIMBATORE-641 009.

2 THE ASSISTANT COMMISSIONER OF
LABOUR COORNOOR NILGIRIS DISTRICT. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the
Constitution of India, praying to issue a Writ of Certiorari,
Calling for the records in case No.A 204-4 of 2019 on the file
of the 2nd respondent dated 04.12.2019 and quash the same and
Pass.

For Petitioner : Mr.A.Sundaravadhanan

For Respondent-1 : Mr.V.Ajoy Khose

WP No.7118 of 2021:

1 THE MANAGEMENT
TAMILNADU GOVERNMENT TRANSPORT CORPORATION
(KOVAI DIVISION) KOVAI LTD 37 METTUPALAYAM
ROAD COIMBATORE-641043 ... Petitioner



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vs

1 K.PRANESH (RC NO.4109)
C/O.KOVAI GOVERNMENT TRANSPORT CORPORATION
SANGAM NO.109 PARK STREET
COIMBATORE-641 009

2 THE ASSISTANT COMMISSIONER OF
LABOUR COONOR NILGIRIS DISTRICT ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records in Case No. A 204- 3 of 2019 on the file of the 2nd respondent dated 4.12.2019 and quash the same

For Petitioner : Mr.A.Sundaravadhanan

For Respondent-1 : Mr.V.Ajoy Khose

WP No.8450 of 2021:

1.THE MANAGEMENT

TAMIL NADU GOVERNMENT TRANSPORT CORPORATION
(KOVAI DIVISION) KOVAI LTD 37
METTUPALAYAM ROAD COIMBATORE - 641043. ... Petitioner

vs

1.J. MOHANRAJ (RC NO. 4116)
C/O. KOVAI GOVERNMENT TRANSPORT CORPORATION
SANGAM NO. 109 PARK STREET
COIMBATORE 641 009. ... Respondents

2 THE ASSISTANT COMMISSIONER OF
LABOUR COONOR NILGIRIS DISTRICT

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records in Case No. 731 of 2019 on the file of the 2nd respondent dated 4.12.2019 and quash the same

For Petitioner : Mr.A.Sundaravadhanan

For Respondent-1 : Mr.V.Ajoy Khose

WP No.9313 of 2021:

1.THE MANAGEMENT

TAMIL NADU GOVERNMENT TRANSPORT



CORPORATION (KOVAI DIVISION) KOVAI LTD 37
METTUPALAYAM ROAD COIMBATORE- 641043

... Petitioner

vs

1 M.SATHISHKUMAR
(RC. NO 4142) C/O. KOVAI GOVERNMENT
TRANSPORT CORPORATION SANGAM NO 109 PARK
STREET COIMBATORE- 641009

2 THE ASSISTANT COMMISSIONER OF
LABOUR COONOR NILGIRIS DISTRICT.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, Calling for the records in case No 728 of 2019 on the file of the 2nd Respondent dated 4.12.2019 and quash the same.

For Petitioner : Mr.A.Sundaravadhanan

For Respondent-1 : Mr.V.Ajoy Khose

WP No.9284 of 2021

1 THE MANAGEMENT
TAMIL NADU GOVERNMENT TRANSPORT CORPORATION
(KOVAI DIVISION) KOVAI LTD 37 METTUPALAYAM
ROAD COIMBATORE-641043

... Petitioner

vs

1 L.SURESH KUMAR (RC NO.4124)
C/O.KOVAI GOVERNMENT TRANSPORT CORPORATION
SANGAM NO.109 PARK STREET
COIMBATORE-641 009

2. THE ASSISTANT COMMISSIONER OF
LABOUR COONOR NILGIRIS DISTRICT

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records in Na.Ka.No.204-8 of 2019 on the file of the 2nd respondent dated 4.12.2019 and quash the same

For Petitioner : Mr.A.Sundaravadhanan

For Respondent-1 : Mr.V.Ajoy Khose

O R D E R

In all these Writ Petitions, the Management has challenged the order of the Authority dated 06.12.2018 & 04.12.2019



respectively passed under Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 [hereinafter referred to as "Act"], whereby the Management was directed to confer permanent status to the respective workmen, (first respondent in each of their respective Writ Petitions), from the date of completion of 480 days of their continuous service in 24 calendar months.

2. Heard the learned counsel for the parties.

3. The learned counsel for the petitioner-Corporation contended that the workmen were appointed as reserved drivers/conductors on temporary basis and only for the vacancies that may arise in future. As per the conditions in their appointment orders, they were informed that they would be made permanent based on their seniority and performance, as and when vacancies arise. These conditions were in compliance with the Government Order in G.O.(D) No.41, Transport (C1) Department, dated 16.03.2007 and since the workmen have accepted the terms and conditions of the appointment order, which is in accordance with the Government Order, they cannot seek permanency under Section 3(1) of the Act.

4. Per contra, the learned counsel for the workmen submitted that the appointment order, being in the form of a contract, cannot prevail or override Section 3(1) of the Act. It is also his submission that the very same plea and contentions were considered by this Court in the case of The Management, Metropolitan Transport Corporation (Chennai) Ltd. [MTC], Chennai V. The Inspector of Labour, Kancheepuram and 2 Others passed in W.P.29149 & 29150 of 2017, dated 27.01.2020, which were rejected and the order of the Authority, granting permanent status to the workmen on completion of 480 days of continuous service in 24 calendar months, in which decision, the learned Single Judge had placed reliance on the judgment of the Hon'ble Division Bench in the case of Management, Tamil Nadu State Transport Corporation (Madurai) Ltd., V. Labour Inspector, Virudhunagar and another reported in 2019 (4) LLN 790 (DB) (Mad.).

5. I have given careful consideration to the submissions made by the learned counsels.

6. For the sake of convenience, Section 3 of the Act is extracted:-

"3. Conferment of permanent status to workmen.-(1) Notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of



workmen, this contention was considered by the learned Single Judge of this Court in MTC's case (supra) in W.P.29149 & 29150 of 2017 and such a contention was rejected by finding that the terms of the appointment or the Government Order, which runs contra to the benefit provided under Section 3 of the Act, shall not stand opposed to the workmen who claims permanent status. The relevant portion of the order reads as follows:-

"7. The dispute between the parties is not with regard to the right of getting regularization by the second respondent and on the other hand, the date on which, such benefit is to be conferred. In these cases, it is an admitted fact that the second respondent in W.P.No.29149 of 2017 was regularized on 01.10.2014 and the second respondent in W.P.No.29150 of 2017 was regularized on 01.09.2014. But their claim for regularization is with effect from 03.08.2012 in W.P.No.29149 of 2017 and from 17.07.2012 in W.P.No.29150 of 2017. The only reason stated by the petitioner-Management is that their appointments were made based on the Government Order and therefore, they are not entitled to seek the benefit for regularization as provided under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

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, not withstanding 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



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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.

.....

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



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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."

10. I find that the above decision made by the Division Bench squarely supports my view taken in these writ petitions and therefore, I find that the order passed by the first respondent, which is put to challenge by the petitioner-Management in these writ petitions need not be interfered. Accordingly, both these Writ Petitions are dismissed."

9. The facts and grounds raised in the aforesaid decisions are almost similar to the present facts in hand and the ratio laid down in the aforesaid decision, would be squarely applicable to the present case also.

10. Likewise, whether the terms and conditions in the appointment order or the Government Order, which is akin to the terms of a settlement, can override the statutory provisions or not, was dealt by a Hon'ble Division Bench of this Court in the case of Management, Tamil Nadu State Transport Corporation (Madurai) Ltd., Vs. Labour Inspector and another reported in 2020 (2) LLJ 130 in the following manner:-

"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



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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, reported in 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."

11. In the light of the above decisions, the main contentions of the learned counsel for the petitioner cannot be sustained, since the law is well established that the terms and conditions of a contract or the Government Order cannot override and take away the rights given to the workmen under Section 3(1) r/w. Explanation II of the Act. The learned counsel for the petitioner relied upon a decision of the Hon'ble Supreme Court in the case of National Engineering Industries Ltd., Vs. State of Rajasthan reported in 2000 (1) SCC 371 to stress on the binding effect of a Settlement under Section 12(3). There cannot be any contrary view with regard to the binding effect of a 12(3) Settlement. However, this decision will not come to the rescue of the petitioner, since the legal proposition which stands against the petitioner-Corporation is as to whether 12(3) Settlement can override the statutory provision or not? This proposition was neither the facts before the Hon'ble Supreme Court nor was such a ratio laid down therein and hence the judgment would be no avail to the petitioner.

12. The learned counsel for the petitioner-Corporation relied upon another decision of the Hon'ble Supreme Court in the case of Hindustan Machine Tools Vs. M.Rangareddy reported in



2000 (7) SCC 741 and submitted that, the Government Establishments cannot abdicate its constitutional duty to consider for absorption of workers engaged over long periods on daily wage basis. This decision also will not be applicable to the facts of the present case, since, the facts before the Hon'ble Supreme Court arose when a relief was sought to be claimed by directly filing the Writ Petition for absorption and regularization, unlike the present case where a right had accrued under Section 3(1) of the Conferment of Permanent Status Act. The workers who were engaged on daily basis for a considerable period were not protected for conferment of permanent status under any Statutory Act, whereas the workers in the present case had the protection of Section 3(1) under the Conferment of Permanent Status Act.

13. The learned counsel also placed reliance on the decision of the Hon'ble Supreme Court in the case of Union of India and others V. N.Murugesan etc., passed in Civil Appeal Nos.2491 -2492 of 2021, as well as the decision in International Airport Authority of India Vs. International Air Cargo Workers' Union and Another reported in 2009 (13) SCC 374. The ratio laid down in these two decisions and the facts involved therein, has no nexus with the issue involved in the present Writ Petitions. In both these cases, the Hon'ble Supreme Court did not deal with the overriding powers of an appointment order or a Government Order, over a statutory provision of law.

14. For all the foregoing reasons, I do not find any merits in the grounds raised by the petitioner-Corporation. When Section 3(1) of the Act specifically provides for conferment of permanent status, notwithstanding any thing contained in a contract of service, every workmen, who has been in continuous service for a period of 480 days in 24 calendar months, shall be made permanent and hence, there is no infirmity in the findings of the Authorities in the impugned orders. As a matter of fact, a Hon'ble Division Bench of this Court in the case of R.Lakshmi V. The Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai reported in 2012 (6) MLJ 480, had held that in terms of Section 3(1) of the Act, a workman who completes 480 days of service, is "deemed" to have been made permanent automatically, even if no orders are passed by the employer or the concerned Authority.

15. In the result, all the Writ Petitions stands dismissed. Consequently, the petitioner-Corporation is directed to comply with the impugned orders dated 06.12.2018 & 04.12.2019 respectively passed by the Authority in the case of T.Senthilkumar in W.P.No.31897 of 2019, R.Vivek in W.P.No.15187 of 2020, C.Pradeep in W.P.No.7064 of 2021, K.Pranesh in W.P.No.7118 of 2021, J.Mohanraj in W.P.No.8450 of 2021,



M.Sathishkumar in W.P.No.9313 of 2021 and L.Suresh Kumar in W.P.No.9284 of 2021 and pass appropriate orders, preferably, within a period of two weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Assistant Commissioner of Labour
(Enforcement),
Authority under TN Industrial Establishments
(Conferment of Permanent Status to Workmen)
Act, 1981, Salem.

2.The Assistant Commissioner of Labour,
Coonoor, Nilgiris District.

+1cc to Mr.A.Sundaravadhanan, Advocate, S.R.No.5426
+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.4993

W.P.Nos.31897/2019, 15187/2020 &
W.P.Nos.7064, 7118, 8450, 9313
& 9284 of 2021
and Connected Miscellaneous Petitions

PL(CO)
SB(08/03/2022)