



W.P(MD)No.11211 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Orders reserved on
30.08.2022

Orders pronounced on
02.09.2022

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

W.P(MD)No.11211 of 2013

and

M.P(MD)No.2 of 2013

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai Limited),
Bye Pass Road,
Madurai - 10.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Madurai Limited),
Virudhunagar Region,
Virudhunagar.

3.The Branch Manager,
Virudhunagar Branch,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Virudhunagar.

... Petitioner

Vs.

1.The Labour Inspector,
137, Kanthapuram Street,
Virudhunagar.

2.D.Pandi

... Respondents



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PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, calling for the records in Pa.Mu.No.A/2382/2012, dated 11.03.2013 on the file of the first respondent and quash the same.

For Petitioner : Mr.Veera Karthiravan
Additional Advocate General
for Mr.S.C.Herold Singh

For R - 2 : Mr.Ajay Khose
for Mr.A.Rahul

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the order passed in Pa.Mu.No.A/2382/2012, dated 11.03.2013 on the file of the first respondent.

2. The case of the petitioners is that the second respondent was appointed as a Reserve Driver with effect from 29.07.2008. The Reserve Driver will be made permanent, if any vacancy arises due to the retirement of permanent Drivers. The second respondent while performing the duty as a driver in a Lorry bearing No.TML-6980 caused a fatal accident. A charge memo, dated 16.03.2012 was issued to him



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and he was stopped from performing duty. An enquiry was ordered and the Enquiry Officer submitted his report, dated 01.12.2012 holding that the charges against the second respondent were proved. Based on the enquiry report, a show cause notice, dated 16.01.2013 was issued to the second respondent proposing the punishment of dismissal. The second respondent filed the petition before the first respondent under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 seeking to regularize the second respondent's service with effect from 31.12.2009, the date on which, the second respondent completed 480 days of service within 24 calendar months. The first respondent has passed an order in Pa.Mu.No.A/2382/2012, dated 11.03.2013 to regularize the second respondent's service with effect from 31.12.2009, which is against the law. Therefore, the present writ petition.

3. The learned Additional Advocate General appearing for the petitioners submitted that the second respondent was appointed only as a Reserve Driver. As per his appointment order, dated 29.07.2008, he is liable to be terminated without any prior notice, if his service is not satisfactory. He would be made permanent as and when the vacancy



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arises on the basis of seniority and efficiency. Only on these conditions, his appointment was given. Having accepted the appointment with these conditions, when he was served only as a Reserve Driver, the petitioner cannot claim permanent status. Not only that, he involved in a fatal accident and the enquiry into the charges on the fatal accident resulted in proving the charges. When the show cause notice was given for imposing punishment, he filed the petition before the Labour Officer seeking conferment of permanent status. The Labour Officer had wrongly allowed the same without properly appreciating the factual and legal position. There is no evidence produced by the second respondent before the Labour Officer to show that he served for 480 days in 24 calendar months. No oral evidence was also produced. Without examining any witness, especially, the second respondent and without producing any documents in support of the claim for 480 days of service, allowing the petition and conferring permanent status, is totally illegal. He further submitted that Section 5 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 requires the Labour Inspector to verify the records. However, the order passed without verification is illegal and thus, the order is liable to be set aside.



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4. Per contra, the learned counsel for the second respondent submitted that the Reserve Driver is performing the same work of regular Driver. The definition of 'workman' does not make any difference between regular and temporary workman. Owing to the settlement, dated 13.04.2015 and 04.01.2018, the Transport Corporation is entitled to appoint Reserve Driver as and when vacancy arises. These settlements are not applicable to the second respondent for the reason that the second respondent was appointed in 2008. The second respondent completed 480 days of continuous service in two years on 01.01.2010. Only subsequent to that, there was an accident occurred on 07.07.2010. The punishment of postponing the daily wages by two years cannot stand in the way of getting permanency under the Act 46 of 1981 on completion of 480 days from 01.01.2010. The petitioners Corporation is bound by settlement, dated 25.09.1986. One Marimuth, who joined along with the second respondent on the same day, was regularly appointed as per the order, dated 06.09.2010. The provisions of TN Act 46/1981 will prevail over the settlements/terms and conditions in the appointment order/contract of service.

5. It is further submitted by the learned counsel for the second



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respondent that vide impugned order, the first respondent conferred the permanent status on the second respondent and one A.Anand. Against the common order, this Writ Petition and another writ petition in W.P(MD)No.11210 of 2013 were filed. A.Anand is the second respondent in W.P(MD) No.11210 of 2013. An interim order was passed by this Court on 19.01.2016 directing conferment of permanency to the second respondent. As against the interim order in M.P(MD) No.2 of 2013 in WP(MD) No.11211 of 2013, a writ appeal was filed in W.A(MD) No.990 of 2016 and that was dismissed on 23.03.2016. The Review Application was filed against the said order in R.A(MD)No.75 of 2019 and the same was also dismissed on 19.07.2019. Against interim order passed in the case of A.Anand in M.P(MD) No.2 of 2013 in WP(MD) No.11210 of 2013, W.A(MD) No.1062 of 2016 was filed. That was disposed on 15.07.2016 along with W.P(MD) Nos.11210 of 2013 and 18585 of 2014 to confer permanent status from the date of completion of 720 days instead of 480 days. The second respondent is the similarly placed person like A.Anand. Therefore, the same order passed in W.A(MD) No.1062 of 2010 is applicable to the second respondent. In support of his submissions, the learned counsel for the second respondent relied on the following judgments:



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(i) *The Tamil Nadu Civil Supplies Corporation Modern Rice Mill Engineering Section Employees Union, rep by its Secretary, Sundarakottai v. The Tamil Nadu Civil Supplies Corporation represented by Managing Director, reported in 1998 Writ LR 514*

(ii) *Devinder Singh v. Municipal, Sanaur reported in (2011) 6 SCC 584*

(iii) *TNSTC, Madurai Vs Labour Inspector, Virudhunagar reported in 2019 (4) LLM 790*

(iv) *The Management Metropolitan Transport Corporation (Chennai) Ltd Vs The Inspector of Labour, Kancheepuram in W.P.Nos.29149 and 29150 of 2017*

(v) *Metal Powder Company, Ltd and another v. State of Tamil Nadu and another reported in (1985) 2 LLJ 376*

(vi) *The Senior Regional Manager, Tamil Nadu Civil Supplies Corporation and another Vs The Joint Commissioner of Labour, Trichy and others, W.A(MD) No. 353 to 357 of 2014 dated 12.03.2018.*

6. Considered the rival submissions and perused the records.

7. The undisputed facts are that the second respondent was



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appointed as Reserve Driver on 29.07.2008. As rightly pointed out by the learned Additional Advocate General appearing for the petitioners, the Corporation is entitled to take action of terminating the services of the second respondent without any prior notice, if his service is not satisfactory. There is also a condition in the appointment order that the second respondent would be made permanent only when vacancy arises and as per the seniority and efficiency. The case of the petitioners is that the Reserve Drivers would be absorbed as daily wage drivers on satisfactory performance of service and then would be made permanent. Whether this mode of engagement of service is permissible in the light of TN Act 46/1981 is the point to be considered in this petition.

8. The 12(3) settlements entered on 25.09.1986 and in the years 1989 and 1992 are placed before this Court. As per these settlements, the services of Drivers and Conductors will be confirmed after satisfactory completion of 240 days of actual work in a continuous period of one year. This term of settlements along Section 3(1) of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, according to the learned counsel for the second respondent, gives a right to the second respondent to be conferred with permanent



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status. Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, reads as follows:-

“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 four hundred and eighty days in a period of twenty four calendar months in an industrial establishment shall be made permanent.”

9. As per Section (2) (3) (c) of the aforesaid Act, a motor transport undertaking as defined under the Clause (g) of Section 2 of the Motor Transport Workers Act, 1961 is an industrial establishment. As per Section 2(4) “workman” means any person employed in any industrial establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied (and includes of badli worker). This definition makes it clear that even the badli workman is a workman. The Reserve Driver is nothing but a Badli Workman. Normally, Reserve Driver would be engaged when the regular driver is on leave or absent or when there is a need for engaging more buses. Therefore, the Reserve



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Driver is nothing but a Badli driver.

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10. The legal position with regard to conferment of permanent status as held in the judgment reported in **1998 Writ Law Report 514** in the case of ***Tamil Nadu Civil Supply Corporation, Modern Rice Mill Engineering Section employees Union Vs. Tamil Nadu Civil Supply Corporation*** is that Section 3(1) of the Act, being a non-obstante provision, prevails over any law for the time being in force.

11. The term “Law” is defined in Explanation II to Section 3 of the Act as follows:-

“For the purposes of this section, 'law' includes any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of this Act”

This explanation makes it clear that irrespective of any condition made in contract of service/appointment order, the provisions made to the appointment on contract as per provisions in Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, would prevail.



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12. In the Judgment of the Hon'ble Supreme Court reported in **2011 (6) SCC 584** in the case of **Devinder Singh vs Municipal Counsel, Sanaur**, it is observed as follows:

13. The source of employment, *the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. It is apposite to observe that the definition of workman also does not make any distinction between full-time and part-time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on a regular basis or a person employed for doing whole-time job is a workman and the one employed on temporary, part-time or contr basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*

13. When the case of Reserve Conductor came up before this Court in W.A.(MD) No.768 of 2015, dated 28.11.2019 reported in **(2019) 4 LLN 790** in the case of **Management, Tamil Nadu State Transport**



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Corporation (Madurai) Limited Vs Labour Inspector and another with

regard to conferment of permanent status, this Court 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 calender 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 Section 12(3) of the I.D.Act entered in



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the year 1992.”

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14. In another case involving the Reserve Driver in W.P(MD) Nos. 29149 and 29150 of 2017 in the case of ***The management, Metropolitan Transport Corporation (Chennai) Ltd Vs The Inspector of Labour, Kancheepuram and another***, it was observed as follows:

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



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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 [The Managing



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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."

15. From the legal proposition laid down in these judgments, it is made clear that the source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act, but Section 3(1) being the *non-obstante* provision, prevails over any law for the time being in force. The petitioner Corporation is bound by the terms of 12(3) settlements entered before the second respondent joined the service. Even the Reserve Conductors and Reserve Drivers cases were considered for permanency.

16. In the case on hand, there is no doubt that the second respondent was appointed as a Reserve Driver. One of the main



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contentions of the learned Additional Advocate General appearing for the petitioners is that without any evidence, oral and documentary, to show that the second respondent had completed 480 days of service in a calander year, the impugned order was passed. However, this contention was countered by the second respondent stating that in the claim petition filed before the Labour Officer, the second respondent has clearly given the number of days he worked from 2008 to 2011. He worked almost all the days in a month. These details are not challenged in the counter affidavit by denying that the second responent did not work for 480 days as claimed by him. Though the impugned order did not refer about the marking of documents and examination of witnesses, it certainly refers about the consideration of submissions made by the parties, documents produced by the second respondent to come to the conclusion that the second respondent worked for 480 days in 24 calendr months.

17. This Court also finds that there is no specific pleading in the counter of the petitioners in the proceedings before the Labour Officer that the second respondent had not worked for 480 days in 24 calander months. Unless it is specifically denied, it goes without saying that the undisputed facts are admitted. Therefore, this Court finds no reason to



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take a different view from the view taken by the Labour Officer that the second respondent completed 480 days works as on 01.01.2010.

18. Along with the second respondent, one A.Anand had filed the claim petition before the Labour Officer for conferment of permanent status. He was also granted similar relief, that was granted to the second respondent. The impugned order in Pa.Mu.No.A/2382/2012 dated 11.03.2013 is a common order. Against that order, W.P(MD) No. 11210 was also filed. It is now brought to the notice of this Court that in the Writ Appeal filed against the order passed in M.P(MD) No.2 of 2013 in WP(MD) No.11210 of 2013, this Court disposed of the writ appeal along with writ petitions in W.P(MD) Nos.11210 of 2013 and 18585 of 2014, directing the Corporation to confer upon the respondent-workman therein, namely, A.Anand permanent status upon completion of 780 days and accordingly, to regulate his pay and allowances. It is observed as follows:

11.Considering the overall facts and circumstances, there will not be any justification whatsoever for the corporation not to confer upon him the permanent status after the expiry of 480 + 240 days, totally working out to 720 days. Perhaps, a



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direction to the corporation to confer permanent statust on the respondent-workman from the next day, upon his completion of 720 days as a daily wage earner, would meet the ends of justice.

12.Accordingly, the writ appeal and writ petitions are disposed of by a direction to the corporation to confer upon the respondent-workman permanent status upon completion of 720 days and accordingly, regulate his pay and allowances. No costs. Consequently, C.M.P(M)d No.6395 of 2016, M.P(MD)Nos.1 of 2013 and 1 of 2014 are closed.

19. In the said order, A.Anand, a similarly placed person like second respondent, was ordered to be conferred with permanent status on completion of 720 days and regulation of his pay and allowances. No doubt, the second respondent is also entitled for the same relief.

20. In view of the matter, this Court confirms the order of the first respondent in Pa.Mu.No.A/2382/2012, dated 11.03.2013 and directs the petitioner Corporation to confer the permanent status on the second respondent on completion of 720 days as indicated in W.A(MD) No.1062 of 2016 and W.P(MD) Nos.11210 of 2013 and 18585 of 2014 with



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consequential service and monetary benefits within a period of three months from the date of receipt of a copy of this Order. Accordingly, this Writ Petition is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

02.09.2022

Internet :Yes
Index :Yes / No
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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

The Labour Inspector,
137, Kanthapuram Street,
Virudhunagar.



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G.CHANDRASEKHARAN, J.

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Order made in
W.P(MD)No.11211 of 2013

02 .09.2022