



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.27540 to 27546 of 2013

and

M.P.Nos. 1 of 2013 (2 Nos), 2 of 2013 (6 Nos)

W.P.No.27540 of 2013:-

The Management,
Tamil Nadu State Transport Corporation
(Salem Division-I) Limited,
12, Ramakrishna Salai,
Salem 636 007.

... Petitioner

-Vs-

1. The Presiding Officer,
Labour Court,
Salem.

2. A.Sridharan

... Respondents

Prayer in W.P.No.27540 of 2013:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, to call for the records of the award passed by the first respondent in Industrial Dispute No.575 of 2001 dated 04.12.2012 and to quash the same as illegal and against the provisions of the Industrial Disputes Act 1947.



In W.P.Nos.27540, 27543, 27546 of 2013

For Petitioner : Mr.Anand Gopalan
for Mr.R.Babu

For Respondents

R1 : Court
R2 : Notice Served
No appearance

In W.P.Nos.27541, 27542, 27544 of 2013

For Petitioner : Mr.Anand Gopalan
for Mr.R.Babu

For Respondents

R1 : Court
R2 : Mr.R.MD.Nasrullah
for Mr.K.V.Shanmuganathan

In W.P.No.27545 of 2013

For Petitioner : Mr.Anand Gopalan
for Mr.R.Babu

For Respondents

R1 : Court
R2 : Mr.T.Sellapandian

COMMON ORDER

These Writ Petitions have been filed for the issuance of Writ of Certiorari, calling for the records of the award passed by the first respondent dated 04.12.2012, arising out of individual industrial disputes, thereby directing the petitioner to give fresh appointment on the basis of the physical fitness, educational qualification and required license as per Recruitment Rules and Regulations.



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2. Heard the learned counsel on either sides and perused the materials available on record.

3. The petitioner used to engage Drivers and Conductors on temporary basis of day-to-day wages to meet the emergency situation. In order to meet the emergencies and with a view to provide adequate and uninterrupted transport services to the travelling public, in situation like employees strike, employees absences, fairs and festival seasons etc., such engagements were in vogue. Therefore, all the second respondents in all the writ petitions (herein after called as “Workmen”) were engaged casually and on purely temporary basis then and there. They were never sponsored by Employment Exchange. While being so, the Workmen were engaged by the petitioner on casual basis of day-to-day wages as Drivers and Conductors. Thereafter, the petitioner had stopped their engagement. Therefore, the Workmen raised their respective Industrial Disputes, on the ground that the petitioner had contravened with the provisions under Section 25(f) and 25(g) of the Industrial Disputes Act, 1947.

4. The specific contentions of the petitioner are that the period of employment was neither continuous or there was long spell of employment by the Management. The period of employment was only for one or two days in



some of the cases and there was no documents even to suffice that the period of employment was continuous one. There cannot be regularization of contractual employees. In the case of Workmen engaged on daily wages as casual labour, their services were terminated due to non availability of work. Even assuming that the order of retrenchment is passed in violation of Section 25f of the Industrial Disputes Act, the labour Court ought not to have passed an order to reinstate the Workmen.

5. The Hon'ble Supreme Court of India distinguished between a daily wager who does not hold a post and a permanent employee. Further, the daily wagers had worked for more than 240 days, merely on that ground the reinstatement could not have been justified.

6. A perusal of award passed by the first respondent dated 04.12.2012 revealed that the Workmen failed to prove their employment for continuous period of 240 days in the given year. In fact, some of the Workmen were engaged by the petitioner only for a period of one year on leave vacancies. Therefore, the petitioner failed to prove their continuous employment of 240 days by any iota of evidence. Though the petitioner failed to produce any log book, the first respondent ought not to have drawn adverse inference for non



production of those documents.

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7. The learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2020 SCC Online SC 150** in the case of ***Oil and Natural Gas Corporation Vs Krishan Gopal and others***, in which the propositions laid down by the Hon'ble Supreme Court of India are as follows:-

“(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularization, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;

(ii) The Statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularized similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularized to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14 ; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.”



8. Thus, it is clear that the Labour Court cannot issue direction for regularization of an employee and it would offend the provisions contained in Article 14 of Constitution of India and it is impermissible. The Labour Court also has no power to create permanent or sanctioned posts. Therefore, the award passed by the first respondent dated 04.12.2012 cannot be sustained and is liable to be quashed.

9. Accordingly, the award passed by the first respondent dated 04.12.2012 is hereby quashed. The writ petitions are allowed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

27.07.2023

Internet : Yes
Index : Yes
Speaking order
Neutral Citation: Yes
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To

The Presiding Officer,
Labour Court,
Salem.



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G.K.ILANTHIRAIYAN, J.

mn

W.P.Nos.27540 to 27546 of 2013

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