



W.P.Nos.27716 of 2013 & 7694 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.08.2023

Pronounced on : 19.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.27716 of 2013 & 7694 of 2021 and
MP.No.1 of 2013 & WMP.No.8239 of 2021

WP.No.27716 of 2013

Tamil Nadu State Transport Corporation
(Coimbatore Division I) Ltd.,
represented by its Managing Director,
No.37, Mettupalayam Road,
Coimbatore 641 018

... Petitioner

Vs.

1.The Authority under the Tamilnadu
Industrial Establishment (Conformant
of Permanent Status) Act/Deputy Chief
Inspector of Labour,
Coimbatore
2.K.Velmurugan
3.J.Charles Stephen Jayakumar
4.C.Murugesan
5.P.Udayakumar
6.S.Maheshkumar
7.P.Murugesan
8.R.Venkatesan

... Respondents



W.P.Nos.27716 of 2013 & 7694 of 2021

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari calling for the records made in Case No.A/6048/2012 dated 17.07.2012 on the file of the first respondent and quash the same.

WP.No.7694 of 2021

Tamil Nadu State Transport Corporation
(Coimbatore Division I) Ltd.,
represented by its Managing Director,
No.37, Mettupalayam Road,
Coimbatore 641 043

... Petitioner

Vs.

1.K.Velmurugan
2.J.Charles Stephen Jayakumar
3.C.Murugesan
4.P.Udhayakumar
5.S.Maheshkumar
6.P.Murugesan
7.R.Venkatesan

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari calling for the records in CP.No.163 of 2014 on the file of the Principal Labour Court, Coimbatore dated 21.01.2020 and quash the same.



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For Petitioner
in both WP's

: Mr.A.Sundaravadhanan

For 1st Respondent
in WP.No.27716 of 2013

: Mr.L.S.M.Hasan Faizal,
Additional Government Pleader

For Respondents 2,3,6 to 8
in WP.No.27716 of 2013

: Mr.S.Kamadevan

For Respondents 4 & 5
in WP.No.27716 of 2013

: Mr.V.Sivakumar
for Mrs.C.Selvi

For Respondents 1,2,5 to 7
in WP.No.7694 of 2021

: Mr.S.Kamadevan

For Respondents 3 & 4
in WP.No.7694 of 2021

: Mr.V.Sivakumar
for Mrs.C.Selvi

COMMON ORDER

The writ petition in WP.No.27716 of 2013 has been filed challenging the order passed by the first respondent in Case No.A/6048/2012 dated 17.07.2012, thereby directed the petitioner to make respondents 2 to 8 as permanent. The writ petition in WP.No.7694 of 2021 has been filed challenging the order passed in CP.No.163 of 2014 on the file of the Principal Labour Court, Coimbatore dated 21.01.2020.



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2. In respect of WP.No.27716 of 2013, respondents 2 to 8 were working in the petitioner Corporation as Loadman and they were engaged on 01.12.1997. Therefore, they raised Industrial Dispute before the Labour Court, wherein the Labour Court ordered the petitioner to reinstate them with continuity of service. Thereafter, from 31.12.2005 to 31.12.2007, they had worked continuously for 480 days within the period of 24 months and from 01.01.2008 they have sought for permanent status from the petitioner. They approached the first respondent under The Tamilnadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and order was passed. Thereafter, the petitioner challenged the said order and also respondents 2 to 8 filed separate writ petition and both the writ petitions were disposed of and directed to approach the first respondent. Accordingly, respondents 2 to 8 approached the first respondent to confer permanent status and the same was allowed. Aggrieved by the same, the petitioner has preferred the above writ petition.



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3. The learned counsel for the petitioner in WP.No.27716 of 2013 would submit that respondents 2 to 8 were not given any appointment order or they were not recruited through Employment Exchange. Therefore, the question of conferment of permanent status shall not arise. Even as per the records produced by the petitioner management which clearly show that they were not continuously engaged for more than 480 days in two years. Respondents 2 to 8 did not establish their right by way of documentary and oral evidence to satisfy the first respondent to invoke the provision under The Tamilnadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

4. The learned counsel appearing for respondents 2 to 8 in WP.No.27716 of 2013 submitted that the writ petition itself is not maintainable since there is no perverse in the order passed by the first respondent. Though respondents 2 to 8 were not recruited through Employment Exchange, they can approach the first respondent to seek remedies within the scope of the said Act as long as they were found to



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be workmen of the industrial establishment. The premises of the petitioner are coming under the definition of industrial establishment within the meaning and definition of Section 2(3)(a) of Industrial Disputes Act and therefore, respondents 2 to 8 are working under the petitioner and they are entitled to be made permanent.

5. In respect of WP.No.7694 2021, the learned counsel for the petitioner submitted that the order passed by the Labour Court, Coimbatore has been challenged in the writ petition and this Court granted stay of further proceedings of the said order. Even then, the respondents approached the Labour Court by way of computation petition in CP.No.163 of 2014 under Section 33(C)(2) of Industrial Disputes Act claiming computed minimum wages. The Labour Court in spite of production of the interim order passed by this Court, proceeded with the computation petition and allowed the same. In fact, the order of stay was produced before the Labour Court and the same was marked and even then, the Labour Court without considering the interim order passed by this Court, allowed the computation petition. As such, it is



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perverse and liable to be set aside. The first respondent passed order against Labour and Service Rules Jurisprudence and more particularly Tamilnadu Conferment of Permanent Status Act, 1981. That apart, the respondents were not appointed through Employment Exchange. They had worked only on piece rate basis and whenever necessary to load and unload the lorry. They also failed to produce any documentary evidence and oral evidence to support their claim. On the other hand, the petitioner Management produced necessary documents to establish that they did not work continuously for 480 days within a period of consecutive two years. The respondents were engaged by the petitioner Corporation whenever required for loading and unloading and immediately they were paid their wages. Therefore, the Act itself would not apply to respondents 1 to 7 to confer them permanent status.

6. The learned counsel for respondents in WP.No.7694 of 2021 submitted that the respondents completed 480 days of service within a period of two years and accordingly, they have made themselves eligible to get conferred with permanent status by all means as contemplated



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under Section 3 of The Tamilnadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. The petitioner also failed to prove that the respondents have not rendered the required minimum service of 480 days in the industrial establishment of the first petitioner. Further, even assuming that there was no proper supervision and control by the petitioner herein, the supervision and control of respondents by the petitioner is not a mandatory requirement under the said Act. They were engaged by the petitioner and they were paid wages continuously for the period of 480 days in the given years of period. Therefore, they are eligible to receive permanent status.

7. Heard, the learned counsel appearing on either side.

8. Insofar as WP.No.27716 of 2013, admittedly respondents 2 to 8 in WP.No.27716 of 2013 and respondents in WP.No.7694 of 2021 were engaged by the petitioner as Loadman and thereafter, they were disengaged on 01.12.1997. Further, they were not recruited through Employment Exchange. They were engaged on daily wage basis.



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Therefore, aggrieved by their disengagement by the petitioner, they approached the Labour Court and the Labour Court directed the petitioner to reinstate them with continuity of service. Thereafter, they were engaged by the petitioner from 31.12.2005. After completion of two years, they filed petition before the first respondent under The Tamilnadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 in Case No.3475 of 2005. The first respondent refused to order to make them permanent.

9. It was challenged by respondents 2 to 8 in WP.No.21821 of 2008 and the petitioner challenged the order passed by the Labour Court in WP.No.13072 of 2006. Both the writ petitions were disposed of by this Court by common order dated 23.07.2010 and observed that the order passed by the first respondent declining the request of respondents 2 to 8 at that stage cannot be found fault with. Since respondents 2 to 8 are now in service on their reinstatement as per the award of the Labour Court from 31.12.2005, it is open to respondents 2 to 8 to approach the first respondent to seek permanency in terms of The Tamilnadu Industrial



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Establishments (Conferment of Permanent Status to Workmen) Act, 1981, if they are not given permanency as on the date. As directed by this Court, respondents 2 to 8 approached the first respondent in Case No.A/6048/2012 dated 17.07.2012, which was allowed.

10. The nature of the work of respondents 2 to 8 are to load and unload the consignments from the lorry by which they were paid on piece rate basis. Their services were utilised whenever the lorry comes to the godown or work spot and the payments were made immediately at the work spot itself. There was no schedule of time contemplated for their service. Further, there was no compulsion for their employment. Respondents 2 to 8 / individuals whenever they want money, they will come to the work spot if the lorry with load is available and they will be engaged to unload the vehicle and will get money at the spot itself. In fact, on the same day, they are also working for other establishments and earning money doing unskilled work. Therefore, the petitioner did not maintain any attendance register and any log book in order to maintain their employment. Without any records, the first respondent concluded



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that respondents 2 to 8 had continuously worked for 480 days in the given academic year i.e. from 31.12.2005 to 01.01.2008. Therefore, the findings of the first respondent is perverse without any evidence. Only on the direction issued by this Court, respondents 2 to 8 approached the first respondent for their confirmation. However, the first respondent without any proof, only on assumption concluded that respondents 2 to 8 had worked continuously for 480 days in the given two years and ordered to confer their permanency.

11. In view of the above, the award passed by the first respondent cannot be sustained and it is liable to be quashed. Accordingly, the award dated 17.07.2012 passed in Case No.A/6048/2012 on the file of the first respondent is quashed and the writ petition in WP.No.27716 of 2013 is allowed.

12. Insofar as WP.No.7694 of 2021, even though the petitioner produced the interim order passed by this Court, the Labour Court proceeded with the computation petition filed by the respondents



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claiming minimum wages. Admittedly, the respondents were engaged by the petitioner and they were paid on piece rate basis. They were not even engaged on daily wage basis. Therefore, the question of daily wages does not arise. That apart, when the conferment of their permanent status is under challenge and this Court granted interim stay and even then, the Labour Court proceeded with the computation petition claiming arrears of minimum wages which are not entitled by them. The computation petition can be entertained under Section 33(C)(2) of Industrial Disputes Act only after adjudication. It is also relevant to extract the provision under Section 33(C)(1)&(2) of Industrial Disputes Act hereunder:

33C. Recovery of money due from an employer:-

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any



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money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

13. Thus, it is clear that where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money, the workman can file a petition for computation under Section 33(C)(2) of Industrial Disputes Act. Further, where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman can file application to recover the said amount.



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14. In the case on hand, respondents were not engaged by the petitioner on daily wage basis and they were engaged only whenever lorry comes to the godown or work spot for the purpose of loading and unloading the consignments. Immediately after completion of their service, they would be paid on piece rate basis.

15. In fact, the respondents themselves admitted in their computation petition that they were worked on piece rate basis. Therefore, they were not received any daily wages from the petitioner. The respondents have claimed wages for the post of Junior Tradesman without any basis, which is disputed whether the respondents are to be regularised for what post and whether they have to be brought in what scale of pay are questions to be determined. Though they can file petition under Section 33(C)(2) of Industrial Disputes Act claiming wages, but so far, the said questions have not been decided and as such, it is not maintainable.



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16. Therefore, the findings of the Labour Court is perverse and against the evidence. Hence, the order passed by the Labour Court cannot be sustained and it is liable to quashed, Accordingly, the order passed in CP.No.163 of 2014 on the file of the Principal Labour Court, Coimbatore dated 21.01.2020 is quashed and the writ petition in WP.No.7694 of 2021 is also allowed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

19.09.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Authority under the Tamilnadu
Industrial Establishment (Conformant
of Permanent Status) Act/Deputy Chief
Inspector of Labour,
Coimbatore
- 2.The Government Advocate
High Court, Madras.

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