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W.P.No.8172 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.8172 of 2022 &
W.M.P. No.8176 of 2022

The General Manager,
Tamil Nadu State Metropolitan Transport
Corporation,
Pallavan Illam, Pallavan Salai,
Chennai 600 002.

... Petitioner

Vs.

1. Tamil Nadu Industrial Establishment (Conferment &
Permanent Status Workman) Act Authority,
Assistant Labour Commissioner (Amalakkam)
III Zone, Nandanam, Chennai 600 035.
 2. M. Rajeswari
 3. M. Mathanraj
 4. M. Sandhiya
 5. Auvadaiyammal Madasamy
- Respondents

...

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or any other appropriate Writ, order or direction of like nature calling for the records pertaining to the order passed in Case No.E/2649 of 2017 dated 01.09.2021 on the file of the 1st respondent and quash the same.

For Petitioner : Mr. M.Chidambaram



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For Respondents : No appearance

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ORDER

Challenging the orders of the Inspector of Labour appointed under Tamil Nadu Industrial Establishment (Regulation of Service) Act 1981, in E/2649/2017 dated 01.09.2021, this petition is filed by the General Manager, Tamil Nadu State Metropolitan Transport Corporation.

2. Briefly into the facts of the case:

2.1 The deceased M.Maharaja was recruited as a Reserve Crew Conductor on 17.06.1999. This selection was through the Employment Exchange on a temporary basis to tide over the temporary vacancies to manage the crowds during festive seasons. There was a ban on recruitment between 2001 and 2005. In 2005, there was a Settlement under Section 12(3) of the Industrial Disputes Act 1947 arrived between the Management and the Employees Union by which the said Maharaja was regularised in service with effect from 01.09.2005. The said Maharaja approached the Inspector of Labour seeking permanency under Section 3(1) of the Tamil Nadu Industrial Establishment (Permanency) Act 1981 in 2017. His contention was that he was entitled for permanency after the completion of four hundred and eighty days of



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continuous service in twenty four calendar months from the date of joining. According to him the Settlement under Section 12(3) of the Industrial Disputes Act in 2005 was overridden by the powers under Section 3(1) of the said Act and therefore ought to have been regularised on 12.02.2000.

2.2. Maharaja expired on 15.03.2021 during the pendency of the petition. The Inspector of Labour passed the impugned order dated 01.09.2021 stating that the deceased was entitled to be regularised from the completion of four hundred and eighty days of twenty four calendar months from 17.06.1999 when he joined as reserve crew conductor. The Legal Heirs of the deceased Maharaja have been impleaded as respondents. Challenging the said orders the present Writ Petition is filed by the Tamil Nadu State Metropolitan Transport Corporation.

3. The learned counsel for the petitioner Corporation would contend that the Inspector of Labour dealing with permanency of employees under the Act, did not apply her mind and mechanically passed the impugned order. According to him, the deceased Maharaja was recruited only as a reserve crew conductor and whose terms of



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employment was clearly spelt out in the appointment order dated 17.06.1999. One of the conditions is that his employment is purely temporary and is liable to be terminated without any notice if it is found to be unsatisfactory and that only on falling of permanent vacancies, his employment could be converted to that of daily wages one based on seniority. According to the Counsel, these conditions indicate the nature of his employment on 17th June 1999 when he was recruited as Reserve Crew Conductor. He also pointed out that his services was regularised on 01.09.2005 consequent upon the Settlement under Section 12(3) of the Industrial Disputes Act, 1947. Therefore, he argued that the impugned order is liable to be quashed.

4. Section 3(i) of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, reads as under:

"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 twenty four calendar months in an industrial



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establishment shall be made permanent."

WEB COPY **Section 25 B (1) of the Industrial Disputes Act, 1947**, reads as under:

"A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman."

4.1. In this context it is vital to extract the relevant portion of the G.O.(D) No.41 dated 16.03.2007 which elaborates on how a Reserve Crew is created and as to how they would be confirmed as and when vacancy arose.

.....3. It has also been decided to permit the Managing Directors to create a reserve crew for spare buses at 0.5 per bus for Drivers and Conductors (i.e. 10% of total staff norm of 6.5 per bus) by selection through Employment Exchange initially on temporary basis and to be confirmed as and when vacancy arises as per rules in force. They will be paid minimum wages when their services are utilised."

4.2. Additionally, the contents of the judgment in



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W.P.No.22852/2012 also adds credibility to the extant guidelines how permanency is granted.

"In view of the same, the Writ Petition is disposed of with a direction to the respondent to fill up the vacancies as per the regular permanent norms per bus as provided in G.O.(D) No.41, dated 16.03.2007, first by regularising the reserve category staff strictly based on their seniority. There shall be no appointment as against the permanent regular vacancies without appointing these reserve category employees. Further it is made clear that the reserve category employees against whom specific cases are pending like fatal accident, misbehaviour, major accident, theft, fare collected ticket not issued cases need not be considered. consequently, the connected miscellaneous petition is closed."

4.3. It is not the case of the deceased Maharaja that his peers were regularised in the service prior to him or at the time they had completed service of four hundred and eighty days in twenty four calendar months, when they were temporary employees. It is also not substantiated by Maharaja as to how he had completed that prescribed length of service even when he was a reserve crew conductor. The regularisation cannot be applied mechanically and he himself had



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admitted that a few of his peers in Coimbatore depot had approached this Court for relief and they were advised to approach the Appropriate Authority. Thus, it is clear that there is no merit in the case of the deceased Maharaja. The petitioner Corporation has acted in a fair and just manner and there is no reason as to find how he alone can be regularised when he has not substantiated the prerequisite of continuous service. Moreover, his initial appointment order is very clear that as and when vacancies arise, the regularisation would happen based on seniority. Therefore, I do not find any merit in the impugned order. In the result, the Writ Petition is allowed. No costs. Consequently connected Writ Miscellaneous Petition is closed. The impugned order passed in Case No.E/2649 of 2017 dated 01.09.2021 on the file of the 1st respondent is quashed.

22.11.2023

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Index : yes/no

Speaking /Non speaking Order

To

Tamil Nadu Industrial Establishment (Conferment &



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R.HEMALATHA, J.

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