



*WP.Nos.8419, 8570, 8686 & 9183 of 2021
& 14805, 14876, 14917 & 15026 of 2022*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

CORAM :

The HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.8419, 8570, 8686 & 9183 of 2021
& 14805, 14876, 14917 & 15026 of 2022

&

WMP.Nos.8964,9132, 9225 & 9724 of 2021,
3131 & 3132 of 2022 &
23331, 23332, 23334 & 23337 of 2023

The Managing Director, State
Express Transport Corporation
(TN) Ltd., No.2, Pallavan Salai,
Chennai-2.

...Petitioner in WP.Nos.8419,
8570, 8686 & 9183 of 2021
& R1 in 14805,14876, 14917
& 15026 of 2022

Vs

1.K.Gangadharan

...R1 in WP.No.
8419 of 2021 &
Petitioner in WP.
No.14805/2022

2.S.Vinayagamoorthy

...R1 in WP.No.
8570 of 2021 &
Petitioner in WP.
No.14876/2022



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3.G.Kumar

...R1 in WP.No.
8686 of 2021 &
Petitioner in WP.
No.14917/2022

4.M.Ramu

...R1 in WP.No.
9183 of 2021 &
Petitioner in WP.
No.15026/2022

5.State of Tamil Nadu, rep.by
its Secretary to Government,
Transport Department,
Fort St.George, Chennai-9.

...R2 in all the
WP

PETITIONS under Article 226 of The Constitution of India praying
for the issuance of

(i) Writs of Certiorari to call for the records relating to the orders
dated 28.2.2020 passed by the Presiding Officer, III Additional Labour
Court, Chennai respectively in I.D.Nos.142, 141, 140 & 139 of 2016 and to
quash the same as illegal (WP.Nos.8419, 8570, 8686 & 9183 of 2021); and

(ii) Writs of Certiorarified Mandamus to call for the records of the
awards passed respectively in I.D.Nos.142, 141, 140 & 139 of 2016 dated
28.2.2020 by the Third Additional Labour Court, Chennai-104, quash the
same in respect of the conclusive portion of the awards dated 28.2.2020
with regard to denial of continuity of service and other attendant benefits
and grant continuity of service and other attendant benefits to the petitioners
(WP.Nos.14805, 14876, 14917 & 15026 of 2022).



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For State Transport
Corporation

: Mr.S.Silambanan, AAG assisted by
Mr.L.S.M.Hasan Fizal, AGP

For Workmen

: Mr.S.Packiaraj

For State

: Mr.M.S.Prem Kumar, GA

COMMON ORDER

There are twin sets of writ petitions, the first set having been filed by the State Transport Corporation the impugned award dated 28.02.2020 passed by the Presiding Officer, Third Additional Labour Court, Chennai in I.D.Nos.139 to 142 of 2016 and the second set having been filed by the workmen challenging the conclusive portion of the award insofar as the denial of “continuity of service and other attendant benefits”.

2. The facts leading to filing of these cases are as follows :

(i) The State Transport Corporation engaged the services of the workmen as daily wage conductors from the year 1995. They were not appointed through proper channel. Earlier, some retrenched workmen filed



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writ petitions, which ended in a common judgment in favour of the workmen rendered by a Division Bench of this Court dated 08.12.1997 in W.A.Nos.1294 to 1299 of 1997 etc. batch. Thereafter, placing reliance upon the said common judgment of the Division Bench of this Court, on the ground that they were continuously employed and also rendered more than 240 days of service in a year, the workmen concerned in these writ petitions filed W.P.Nos.9511, 9512 and 13024 of 1998. Those writ petitions were disposed of on 18.8.1998 in terms of the said common judgment of the Division Bench of this Court. Pursuant to that, as the workmen involved in these writ petitions failed to produce relevant documents relating to their appointment and continuous service for more than 240 days in a year, they were not given employment. Their non selection was also not challenged.

(ii) Again, the workmen concerned in these writ petitions along with other retrenched employees filed another writ petition in W.P.No. 32389 of 2006 and it was disposed of by this Court by order dated 01.12.2006. However, at the relevant point of time, as the available vacancy in the State Transport Corporation was only to the post of driver-cum-conductor, they



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were denied employment. Once again, the workmen concerned in these writ petitions filed W.P.Nos.17513 to 17516 of 2015, which ended in dismissal on 16.7.2015 with a direction to initiate conciliation proceedings.

(iii) As the conciliation also ended in failure, the workmen preferred industrial disputes seeking to set aside the oral termination and to direct the State Transport Corporation to reinstate them with back wages, continuity of service and other attendant benefits. However, the Third Additional Labour Court, by the impugned awards, partly allowed the industrial disputes with a direction to the State Transport Corporation to reinstate the workmen, however, without back wages, continuity of service and other attendant benefits. Challenging the same, the State Transport Corporation filed W.P.Nos. 8419, 8570, 8686 & 9183 of 2021. In so far as denial of the benefits such as continuity of service, back wages and other attendant benefits is concerned, the workmen are before this Court by filing W.P.Nos. 14805, 14876, 14917 & 15026 of 2022.



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3. While entertaining W.P.Nos.8686 and 9183 of 2021, respectively by orders dated 08.4.2021 and 15.4.2021 in WMP.Nos. 9225 and 9724 of 2021, this Court granted an order of interim stay subject to the condition that the State Transport Corporation should pay the last drawn wages under Section 17B of the Industrial Disputes Act, 1947. Subsequently, the workmen concerned in these two writ petitions filed WMP.Nos.3131 and 3132 of 2022 seeking to vacate the orders dated 08.4.2021 and 15.4.2021 respectively and to direct the State Transport Corporation to give employment to them as conductors based on the awards passed by the Third Additional Labour Court, Chennai or in the alternative, to direct the State Transport Corporation to pay the wages under Section 17B of the Act from 01.3.2020 and they are still pending.

4. During the pendency of W.P.Nos.8419 and 8570 of 2021, the workmen concerned also filed WMP.Nos.1051 and 1047 of 2022 seeking to direct the State Transport Corporation to give employment to them as



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conductors based on the awards passed by the Third Additional Labour Court, Chennai or in the alternative to direct the State Transport Corporation to pay wages under Section 17B of the Industrial Disputes Act from 01.3.2020. However, WMP.No.1047 of 2022 was dismissed by order dated 22.4.2022. WMP.No.1051 of 2022 was disposed of on 19.4.2022 granting an order of interim stay subject to the condition that the State Transport Corporation should deposit the arrears of last drawn wages to the credit of the industrial dispute concerned and should continue to pay the same on or before 10th of every succeeding month. Further, on such deposit, the workman was directed to withdraw the amount.

5. Learned Additional Advocate General appearing on behalf of the State Transport Corporation would submit that pursuant to the common judgement rendered by the Division Bench of this Court in W.A.Nos.1294 to 1299 of 1997, the workmen those who have completed 240 days of continuous service were reinstated into service. Now the concerned



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workmen in these Writ Petitions are claiming to have been under continuous employment for 240 days in the petitioner corporation, however, no proof has been placed by them to substantiate the said claim. It is for the workmen to prove that they have completed the mandatory requirement of 240 days of continuous service, however, without establishing the same, their claim for reinstatement is not acceptable. The Labour Court without properly adjudicating the said issue has mechanically passed the impugned award directing the petitioner corporation to reinstate the workmen into service which is not sustainable. Accordingly, he prayed for allowing the Writ Petitions filed by the petitioner corporation.

6. Learned counsel appearing for the workmen would submit that they were orally terminated from the services of the petitioner corporation. Even after the directions of this Court in the Writ Petitions filed by the workmen, the petitioner corporation did not come forward to re-employ the workmen on the ground that they have not fulfilled the mandatory requirement of completing 240 days of continuous service in the petitioner



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corporation. Though, the workmen have produced all the relevant documents relating to their completion of 240 days of continuous service even at the earlier point of time, the management has failed to consider the same. Hence, the contention of the management that no documents have been produced with regard to non-fulfilment of the mandatory requirement for the purpose of reinstatement is wholly unsustainable. The said issue has been elaborately considered by the Labour Court while passing the impugned award and hence, the findings rendered by the Labour Court cannot be interfered with. However, insofar as the continuity of service, backwages and other benefits, the impugned award requires interference.

7. This Court heard the learned counsel appearing on either side and perused the materials available on records.

8. The issue arises in these Writ Petitions is with regard to reinstatement of the contractual employees of the petitioner corporation who were orally terminated from service for which, the workmen raised Industrial disputes under Section 2A(2) of the Industrial Disputes Act, 1947,



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before the Labour Court, wherein the Labour Court has passed a common award directing the petitioner corporation to reinstate the workmen into service without backwages, continuity of service and other attendant benefits.

9. It is the case of the management that the workmen have not completed 240 days of continuous service in the petitioner corporation so as to claim reinstatement. It is seen from the records that the workmen have contended that even at the first instance, they have submitted various documents to the management relating to their completion of 240 days of continuous employment and that the same was not considered by the mangagement.

10. A careful perusal of the entire materials available on record reveals that no original records have been placed by the workmen relating to their fulfilment of requirement mandated under Section 25(F) of the Industrial Disputes Act, as to the completion of 240 days of continuous



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service under the petitioner management. It is seen from the records that the workmen had filed a petition before the Labour Court in I.A.No.44/2007 seeking original documents pertaining to the completion of 240 days of continuous service, however, the management in their counter had contended that the said documents are not available with them. Once the application is filed by the workmen seeking production of certain documents by the management, the same have to be produced by the management. In case, when the documents called upon are not in custody of the management, the burden shifts on the workmen to prove their case. In the present case, it is the contention of the management in the claim petition that those documents are not available with the management. However, the workmen have produced the xerox copy of the certain documents to show that they have completed continuous employment of 240 days, which alone would not be sufficient to prove the same. Though cogent and convincing materials it is for the workmen to prove their case and in the absence of any acceptable material to show that the workmen have completed 240 days of continuous service, the workmen have failed to prove their case and hence,



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they are not entitled for reinstatement and therefore, the question of consequential benefits will not arise.

11. In the result, the Writ Petition Nos. 8419, 9570, 8686 & 9183 of 2021 filed by the Management are allowed. The Writ Petition Nos.14805, 14876, 14917 & 15026 of 2022 are dismissed. Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

23.08.2023

Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

NHS

To

1.The Secretary to Government of
Tamil Nadu, Transport
Department, Fort St.George,
Chennai-9.

2.The Presiding Officer,
Third Additional Labour
Court, Chennai.

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M.DHANDAPANI,J

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9183 of 2021 & 14805, 14876,
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& all connected pending WMPs

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