



W.P.No.3793 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

THE HONOURABLE DR. JUSTICE D.NAGARJUN

W.P.No.3793 of 2015

and

W.M.P.Nos.1 and 2 of 2015

The Management,
Tamil Nadu State Transport Corporation Ltd.,
No.12, Ramakrishna Road,
Salem - 07,
Rep. by its General Manager

...Petitioner

Vs

1. The Presiding Officer,
Labour Court,
Salem.
2. A.Periannan

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, to call for records of the order passed in I.D.No.325/2002 dated 06.07.2013 on the file of the first respondent, and to quash the same.

For petitioner	: Mr.R.Babu
For R1	: Court
For R2	: No appearance



W.P.No.3793 of 2015

ORDER

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This writ petition is filed seeking a certiorari or any other direction to quash the order passed in I.D.No.325 of 2002 dated 06.07.2013.

2. The facts in brief as per the records enclosed in the affidavit of this writ petition are as follows:

2.1. The petitioner Corporation is established for welfare of the public and used to engage temporary Drivers and Conductors on casual basis on day to day wages to meet the exigency. The second respondent was engaged on temporary basis for a few days and the temporary employee does not gain any legal status for consideration of regular employment.

2.2. The second respondent was engaged on temporary basis and he was not regularly engaged and did work continuously for 240 days or 480 days in 24 months. On the other hand, two more persons were also taken as temporary Drivers on daily basis and if necessity arise they would be called for.



W.P.No.3793 of 2015

2.3. The petitioner terminated the second respondent orally, as his service was not required any more and also his service was not regularized as there was no rules pertaining to regularization of services.

2.4. The second respondent along with two others filed I.D.No.325 of 2002 and the Labour Court directed the petitioner to reinstate the second respondent as a fresh entrant. Aggrieved by the same, the petitioner Corporation has filed this present writ petition.

3. Heard learned counsel for the petitioner Corporation and perused the materials available on record.

4. There is no representation on behalf of the respondent.

5. The learned counsel for the petitioner has relied on a Single Bench judgement of this Court in *The Management, Tamil Nadu State Corporation (Salem Division -I) Ltd.,Salem vs The presiding Officer, Labour Court, Salem and others*, wherein, it is held 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; 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.”

6. Considering the facts and submission made by the learned



W.P.No.3793 of 2015

counsel for the petitioner, it is clear that the Labour Court has no power to create or sanction any post. Therefore the award passed by the Labour Court in I.D.No.325 of 2002 dated 06.07.2013 does not sustain.

7. Accordingly, this writ petition is allowed setting aside the order dated 06.07.2013 passed by the Labour Court in I.D.No.325 of 2002. Connected W.M.Ps are closed. Costs made easy.

29.11.2023

vca
Internet: Yes
Index: Yes/No

To
The Presiding Officer,
Labour Court,
Salem.



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W.P.No.3793 of 2015

Dr.D.NAGARJUN.J,

vca

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