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W.A. No.1959 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.1959 of 2023 & C.M.P. No.16695 of 2023

The Management

Tamil Nadu State Transport Corporation

(Villupuram-III) Ltd.

Kancheepuram Region

Appellant

v

1 The Presiding Officer
Principal Labour Court
Chennai 600 104

2 S. Manavalan

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 19.09.2022 passed in W.P. No.25340 of 2009.

For appellant

Mrs. S. Pavithra

R1

Court

For R2

Mr. V. Ajay Khose

JUDGMENT

(delivered by S. VAIDYANATHAN, J.)

For the sake of clarity and convenience, the appellant, the first respondent and the second respondent will be referred to as the Corporation, Labour Court and workman, respectively.

<https://www.mhc.tn.gov.in/judis>



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The facts leading to the filing of this writ appeal could succinctly be stated thus:

2.1 The workman, who was born in 1974, joined at the age of 14, as a Cleaner in the canteen attached to Thanthai Periyar Transport Corporation (for short “TPTC”) on 16.04.1987. After the formation of MGR Transport Corporation (for short “MGRTC”) on 01.04.1992, the employees of TPTC were shifted to different Transport Corporations. Out of 26 employees whose names were recommended to be made permanent, 23 were directed to be made permanent in TPTC and 3, including the workman, were sent to MGRTC. Though the other 2 workers were made permanent, the workman was not, which resulted in his non-employment.

2.2 Hence, seeking reinstatement in service with continuity of service and backwages, he raised an industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947, (for short “the ID Act”) in I.D. No.678 of 2003. In the said industrial dispute, the Corporation filed an affidavit stating that the MGRTC was formed on 01.04.1992 and that as and when services of workmen were required, casual workmen were taken in service and they were employed on piece-rate wages; as they were only casual labourers and they were not sponsored



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by the employment exchange, they have no right to seek employment/reinstatement/permanent status/absorption; the Corporation being a State Government undertaking, will have to follow the rules and regulations prescribed and there is no question of non-employment or termination of the workman and hence, the dispute raised under Section 2-A(2) of the ID Act has got to be dismissed.

2.3 Before the Labour Court, the workman examined himself as W.W.1 and marked 24 exhibits. On the side of the Corporation, no evidence, either oral or documentary, was let in.

2.4 The Labour Court, while considering the evidence on record, by taking note of Ex.W.5 dated 15.05.1990, viz., letter of the Corporation to the Government about its decision to bring the canteen workers who have completed two years of service as on 01.10.1986 in the appropriate time scale and to initially place them on consolidated wage basis, and also considering that the Managing Director of TPTC further felt that approval for regularisation of the services of the canteen workers needs to be obtained from the Government, observed that a trend has been set by TPTC to make permanent such of those workers who had completed two years, but, without being sponsored by Employment Exchange.



2.5 The Labour Court further found that in the said exhibit *viz.*, Ex.W.5, the name of the workman, *viz.*, Manavalan, was found at Serial No.11; a request was made by the workman *vide* Ex.W.6, which was forwarded by the Branch Manager to the General Manager *vide* Ex.W.7; thereafter, several requests were made by the workman and those requests were forwarded by the Corporation to the Government *vide* Ex.W.11 dated 27.05.1995.

2.6 The Labour Court, by referring, *inter alia*, to the letter of the TPTC to the Government *vide* Ex.W.13, wherein, the details of 19 workers who were employed by TPTC and were not terminated, out of whom, the workman is one, rendered a finding that out of 26 workmen mentioned, 23 were employed in TPTC and 3 were recommended to be taken by MGRTC, of whom, the workman was also one.

2.7 Further, the Labour Court came to the conclusion that though the name of the workman was not sponsored by employment exchange, given the length of his service, *viz.*, 7 years, he should not have been deprived of his employment.



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2.8 The Labour Court, observing that Section 2(oo) of the ID Act is a comprehensive one intended to cover any action of the Management to put an end to the employment of an employee for any reason whatsoever and considering that the denial of employment amounts to retrenchment and noncompliance of Section 25-F of the ID Act, would vitiate the order of termination, came to the further conclusion that the Corporation has violated the mandatory provisions of the ID Act and directed the Corporation to reinstate the workman in service with all other attendant benefits, but, without backwages, which award was assailed by the Corporation before the Single Bench. However, for his part, the workman did not file any writ petition against deprivation of backwages.

2.9 The Single Bench, *vide* order dated 19.09.2022, referring to Ex.W.16, letter dated 16.11.1995 addressed by MGRTC to the Joint Secretary to Government, Transport Department, wherein, there is a categorical mention about the names of three persons, including the workman and that there are three vacancies to accommodate the workman and also Ex.W.17, note of circulation, wherein, it is stated that the workman had been working for years together, held that noncompliance of the statutory provisions would vitiate the order of termination and as such, the finding of the Labour Court does not suffer from any



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infirmity, illegality or perversity, requiring interference by exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

2.10 The said order passed by the Single Judge is under assail in this writ appeal.

3 At the outset, be it noted, the Labour Court has rendered a finding of fact. There is a categorical admission that the workman was working as a Cleaner. It is true that he was 14 years old at the time of appointment. The Motor Transport Workers Act enables the employer to employ any person who is 14 years of age and an adult is one who has completed 18 years of age. What is required under the terms of the Motor Transport Workers Act is that the employee who is less than 18 years of age and above 14 years of age, must be required to work for lesser hours. In the instant case, though it has been the stand of the Corporation that the workman was required to work only for one or two hours a day, there is no evidence let in by the Corporation before the Labour Court in support of the said stand. It is an admitted fact that other similarly placed workmen have been taken in service and their services regularised. Hence, there is a clear discrimination on the ground that the name of the workman has not been sponsored by employment exchange. At this juncture, it is apropos to point out



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that the Supreme Court, in **Excise Superintendent, Malkapatnam Krishna**

District, Andhra Pradesh v K.B.N. Visweshwara Rao [(1996) 6 SCC 216],

has held that employment exchange alone cannot be the source of recruitment and there should be a paper advertisement and other methodologies will have to be followed to avoid backdoor entry.

4 As adverted to above, in this case, the workmen who had worked with the workman have already been regularised and made permanent. In the light of the judgment of the Supreme Court in **Padma Sundara Rao and others v State of Tamil Nadu and others [(2002) 3 SCC 533]**, even the Constitution Bench judgment of the Supreme Court in **State of Karnataka v Umadevi [(2006) 4 SCC 1]** cannot be made applicable to the facts of this case, as the present case is against the award of the Labour Court and there is a finding rendered by the Labour Court with regard to the number of days of work rendered by the workman.

5 Be that as it may, the workman is now aged around 50 years and he has filed an affidavit dated 07.08.2023 expressing his willingness to give up certain benefits, as could be seen from paragraph 7 therein, which is extracted below for ready reference:



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“I do hereby state and declare that I am willing to forego the balance wages payable to me from the date of award upto 31.07.2023, after the adjustment of the 17B wages which I have already received and after the adjustment of the entire employer and employee PF contributions for the entire non-employment period from Marcy 1998 to 31.07.2023, if the Management does not reinstate me with continuity of service and all other attendant benefits and if the Management gives me notional fixation of pay on par with my colleagues who were originally working like me in Thanthai Periyar Transport Corporation and who were regularised in the year 1996 and by taking as if I continued in service without termination. I am prepared to join duty from the date as may be fixed by this Hon'ble Court.”

6 Since the act of the Corporation is in violation of Section 25-F of the ID Act, and taking note of a catena of judgments which go to hold that in case of reinstatement, the employee would be entitled to full backwages and that in all cases, full backwages is not automatic and also in view of the affidavit filed by the workman to the effect that he gives up certain benefits which have been in extracted in the preceding paragraph, we direct the Corporation to reinstate the workman within a period of one month from the date of receipt of a copy of this judgment by depriving him of the benefits given up by him *vide* his affidavit of undertaking dated 07.08.2023. It is made clear that on reinstatement, the workman shall be paid on par with his counterparts.

This writ appeal stands disposed of in the above terms, sans costs.
Connected C.M.P. stands closed.

(S.V.N., J.) (K.R.S., J.)
07.08.2023

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To
The Presiding Officer
Principal Labour Court
Chennai 600 104



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