



W.P.Nos.5507 of 2014 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

CORAM:

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

W.P.Nos.5507, 16707, 11884 to 11933 of 2014
and M.P.Nos. 1 & 2 of 2014 (50 Nos) W.M.P.No.2957 of 2021

W.P.No.5507 of 2014 :-

1. V.Thiruppathi
2. C.Sivakumar
3. S.P.Parthiban
4. R.Ramesh
5. T.Murugan
6. M.Gopalan
7. C.Raman
8. E.M.Saravanan
9. N.Govindaraj
10. K.Ramesh
11. U.Johnbasha
12. N.Chinna Narasappa
13. K.Muniraj
14. M.Saravanan
15. R.Malligarjunan
16. Nagabushanam
17. Sivakumar
18. K.Srinivasan
19. K.Marappa
20. T.Rangappan
21. L.Sekar
22. M.Ramesh
23. K.Krishnan
24. N.Ravisankar
25. T.Mariappa
26. K.Ganeshkumar



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27. C.Madevan
28. C.Kumar
29. D.Senthil
30. R.Govindasamy
31. M.Mathesh
32. N.C.Murugan
33. C.Sigamani
34. M.Chandrasekaran
35. M.Shanmugam
36. V.Manickam
37. P.Sanjivan
38. A.Sakthivel
39. P.Vadivel
40. A.Vellaiangiri
41. K.Parthiban
42. R.Annadurai
43. T.Kumar
44. A.K.Suresh
45. R.Dinakaran
46. D.Elumalai
47. T.Gopalakrishnan

...Petitioners

-Vs-

1. Tamilnadu State Transport
Corporation (Salem) Ltd.,
rep. by its Managing Director,
12, Ramakrishna Road,
Salem – 7.
2. The General Manager,
Tamilnadu State Transport
Corporation (Salem) Ltd.,
Dharmapuri Region,
Bharathipuram,
Dharmapuri.

... Respondents



W.P.Nos.5507 of 2014 etc.

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from recruiting and appointing any new persons to the post of drivers and conductors in Dharmapuri Region without and before giving the petitioners re-employment under Section 25H of the I.D. Act as per the common award dated 02.08.2013 passed by the Labour Court, Salem in I.D.No179 of 2009 and batch, award costs.

In W.P.No.5507 of 2014

For Petitioners : Mr.V.Ajoy Khose

For Respondents : Mr.R.Babu
Standing Counsel.

In W.P.No.16707 of 2014

For Petitioners : Mr.V.Ajoy Khose

For Respondents
R1 : Court
For R2 : Mr.R.Babu
Standing Counsel.

In W.P.Nos.11884 to 11933 of 2014

For Petitioner : Mr.R.Babu
Standing Counsel.

For Respondents
R1 : Court
For R2 : Mr.V.Ajoy Khose



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COMMON ORDER

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The Writ Petition in W.P.No.5507 of 2014 has been filed by the workmen for restraining the respondent management from recruiting and appointing any new persons to the post of driver and conductor in Dharmapuri region without giving re-employment to the workmen. The Writ Petition in W.P.No.16707 of 2014 has also been filed by the workmen challenging the award passed by the Labour Court dated 02.08.2013, thereby rejecting their claim of back wages and continuity of their service. The batch of Writ Petitions in W.P.Nos.11884 to 11933 of 2013 have been filed by the Tamilnadu State Corporation challenging the common award dated 02.08.2013 passed by the Labour Court, Salem, in I.D.No.179 of 2009 and batch, thereby directing the management to reinstate the workmen into service.

2. The workmen were appointed in various depots in Dharmapuri region to carry out the work of drivers and conductor after ascertaining their educational qualification, license, batch etc., which are required for the appointment for the post of driver and conductor. Thereafter they were allowed to join various depots on various dates.



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They were paid wages on daily rated basis. They were asked to work on all working days and they were working more than 240 days in the given year. Therefore, they were entitled to get permanency with time scale of pay from the date of completion of 240 days as per 12(3) Settlement.

3. However, the management instead of regularize their service terminated them from service without any notice and without following any provisions as contemplated under the Industrial Dispute Act. Therefore, they raised industrial dispute under Section 2(A) of the Industrial Dispute Act, before the Labour officer, Krishnagiri. Since there was no settlement arose between the parties, the conciliation officer issued failure report and thereafter the workmen filed applications under Section 2(A)(2) of the Industrial Dispute Act, before the Labour Court, Salem.

4. The management had taken specific stand that the workmen were employed basis on exigency of work i.e., either during festival seasons or whenever there was extra rush of passengers or during leave vacancies and when the permanent drivers and conductors go on strike.



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Further, the regular appointment would be made only after getting names of the candidates sponsored by the employment exchange. The workmen were not issued with any appointment order as such the order of termination did not arise. There was no relationship of employer and employee between the management and workmen.

5. The Labour Court framed two issues i.e., (1) whether the workmen completed 240 days of service in the management prior to their termination (2) whether the workmen were entitled to reinstatement with continuity of service and back wages. Before the Labour Court, the workmen examined 50 witnesses as W.W.1 to W.W.50 and marked 100 documents in W.Ex.1 to W.Ex.100. On the side of the Management, they examined one witness as M.W.1 and marked three documents in M.Ex.1 to M.Ex.3.

6. On considering the oral and documentary evidences, the Labour Court held that the workmen proved that they had completed 240 days of service in each year prior to their termination, on the basis of cash remittance receipts and diesel cards. Further, the Labour Court also



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had drawn adverse inference against the management that they had failed to produce records to show that total number of days worked by the workmen ever after their categorical admission. Even then, the Labour Court awarded reinstatement of the workmen, failed to award continuity of service with back wages and other attendant benefits.

7. Therefore, the workmen filed the Writ Petition in W.P.No.16707 of 2014, challenging the award passed by the Labour Court and seeking reinstatement with continuity of service, back wages and other attendant benefits. In the mean time, the management proposed to appoint new persons to the post of driver and conductors without giving reemployment to the workmen. Therefore, the workmen filed Writ Petition in W.P.No.5507 of 2014, forbearing the management from recruiting and appointing any new persons to the post of drivers and conductors.

8. Though this Court granted injunction as against the management not to fill up any third persons to the post of drivers and conductors, they started to fill up the said posts. Therefore, the workmen



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were constrained to file contempt petition. Only thereafter, in the year 2014, the workmen were employed to the post of drivers and conductors.

There were totally 47 workmen out of which, 41 workmen were re-employed as drivers and conductors and others were rejected due to their ineligibility.

9. The learned Standing Counsel appearing for the management submitted that the workmen service may be regularized from the date of their reinstatement into service viz., from 2014 without any back wages and other attendant benefits for the period from their initial appointment till their reinstatement.

10. The learned counsel appearing for the workmen submitted that in the similar award passed by the Labour Court in the Madurai, Virudhunagar region, the management challenged the award in which, the Madurai Bench of this Court by an order dated 29.04.2019 in W.P.(MD)No.14443 of 2012 batch., set aside the award and directed the management to accord permanency to the workmen from the date of completion of 240 days of service.



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11. He further submitted that the workmen were completed their 240 days of service even at the time of their termination. Therefore, their service seniority can be taken for consideration from the date of their termination and they were entitled for reinstatement with all back wages and other attendant benefits. In fact, till date, they are receiving salary as per Minimum Wages Act, and they are not still regularized on par with other drivers and conductors.

12. In view of the above facts and circumstances, the Writ Petitions filed by the management are dismissed. The Writ Petitions filed by the workmen are disposed of with the following directions :-

(i) The management is directed to regularize the service of the workmen from the date of their termination as drivers and conductors without back wages till the date of award viz., 02.08.2013 with continuity of service and other attendant benefits.

(ii) The workmen are not entitled for back wages from the date of their termination till the date of award viz., 02.08.2013.

(iii) The workmen are entitled to continuity of service and other attendant benefits from the date of their termination. The entire service of



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the workmen from the date of their regularization viz., from the date of their termination to be taken into account for calculating other attendant benefits.

(iv) The management is directed to fix the time scale of pay from the date of award on par with regular drivers and conductors, within a period of twelve weeks from the date of receipt of a copy of this Order

13. With the above directions, the Writ Petitions in W.P.Nos.5507 & 16707 of 2014 are disposed of and the Writ Petitions in W.P.Nos.11884 to 11933 of 2014 are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to cost.

18.07.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

rts



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WEB COPY To

1. The Presiding Officer,
Labour Court, Salem.
2. The Managing Director
Tamilnadu State Transport
Corporation (Salem) Ltd.,
12, Ramakrishna Road,
Salem – 7.
3. The General Manager,
Tamilnadu State Transport
Corporation (Salem) Ltd.,
Dharmapuri Region,
Bharathipuram,
Dharmapuri.



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G.K.ILANTHIRAIYAN. J.

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