



W.P.No.9116 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.9116 of 2017

and

W.M.P.No.10046 of 2017

The Management,
Tamil Nadu State Transport Corporation
Coimbatore Limited., Erode Division,
Chennimalai Road, Erode.

... Petitioner

Vs.

1.General Secretary,
Salem, Dharmapuri, Erode, Namakkal
District Transport and General Workers Union,
Represented by P.Mohanasundaram,
S/o.Palanisamy,
1/299, Saanar Garden,
Pulavapalayam, Nambiyur,
Gopi, Erode District.

2.Presiding Officer,
Labour Court, Salem.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the order dated 10.02.2016 passed in I.D.No.124 of 2013 on the file of the Labour Court, Salem and quash the same as being illegal, arbitrary and unconstitutional.



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For Petitioner : Mr.M.Murali Vinodh
Standing Counsel

For Respondents : Mr.K.V.Shanmughanathan [R1]
Labour Court [R2]

ORDER

This Writ Petition has been filed by the petitioner seeking to quash the order dated 10.02.2016 in I.D.No.124 of 2013 on the file of the second respondent.

2. One P.Mohanasundaram/workman was sponsored through the Employment Exchange concerned. He joined as a training driver on 19.04.2001 on consolidated pay of Rs.2,500/- per month for the first year and Rs.3,000/- per month for the second year. However, subsequently, the Government, vide letter No.73/ChO/2003 Transport Department dated 03.04.2003, instructed the petitioner to cancel such appointments. Pursuant to that, the training drivers including the workman were removed from service on 18.04.2003. Challenging the said order of removal, the workman filed W.P.No.31538 of 2005 and it was disposed of on 08.12.2005. In compliance of the order of this Court, the workman was appointed on daily wage basis at the rate of Rs.179/- vide proceedings dated



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28.02.2006. After seven years of appointment, contending that the workman joined duty on 31.03.2001 and worked continuously for 240 days in the petitioner Corporation and that his services should be regularized on 02.03.2002 instead of 04.08.2007, the first respondent raised an industrial dispute under Section 2K of the Industrial Disputes Act, 1947 (in short 'the ID Act') seeking regularization of the services of the workman from 02.03.2002 instead of 04.08.2007. According to the petitioner Corporation, after completion of the training period, the workman was not engaged during the period from April 2003 to February 2006. However, only pursuant to the orders of this Court dated 08.12.2005 in the earlier writ petition, he was given appointment on daily wages from 25.11.2006. The members of the first respondent union are coming under the Contributory Pension Scheme and the first respondent, with an intention to join in the General Pension Scheme, which existed prior to 01.04.2003, filed the industrial dispute. Though these facts were brought to the knowledge of the second respondent by way of filing counter to the industrial dispute, the second respondent allowed the industrial dispute by the impugned award directing the petitioner Corporation to regularise the services of the workman from 02.03.2002. Aggrieved by that, the petitioner Corporation is before this Court.



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3. The learned counsel appearing for the petitioner Corporation submitted that the workman was appointed as a trainee employee in the year 2001 and he has not completed 240 days at the relevant point of time. Based on the government order dated 03.04.2003, he was terminated from service, since he has not completed 240 days, which was challenged before this Court. Pursuant to the orders passed by this Court, he was re-appointed by the petitioner Corporation and his services were regularised in the year 2008 with effect from 04.08.2007. After a lapse of seven years, the first respondent raised a dispute claiming regularisation of the workman from the date of his initial appointment, which is not sustainable. If the claim of the first respondent is allowed, it will open the Pandora box to give regularisation from the date of initial appointment, which initial appointment is irregular during the ban period, which is not sustainable. Accordingly, he prays for appropriate orders.

4. The learned counsel appearing for the first respondent submitted that, the workman/member of the first respondent entered the service of the petitioner Corporation on 31.03.2001 and subsequently, the petitioner directed the workman



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to undergo training on 18.04.2001 and thereafter, he was declared as workman on 25.02.2002. In view of the government letter dated 03.04.2003, employment of the workman was cancelled on 18.04.2003, which was successfully challenged before this Court. Pursuant to the orders passed by this Court, regularisation order was passed in the year 2008. All these facts were elaborately considered by the Labour Court and ultimately, the Labour Court arrived at a conclusion that the workman is entitled for regularisation from 02.03.2003, which cannot be interfered with. Accordingly, he prays for dismissal of the writ petition.

5. Heard the learned counsel appearing for the parties and perused the materials available on record.

6. Admittedly, the workman was appointed as trainee driver in the year 2001 i.e., during the ban period imposed by the government for recruitment for the entire State of Tamil Nadu, and subsequently, he was terminated from service vide order dated 18.04.2003 based on the government letter dated 03.04.2003. Thereafter, pursuant to the orders passed by this Court, he was re-appointed vide order dated 24.11.2006 and was subsequently regularised vide order dated



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09.09.2008 with effect from 04.08.2007. The said aspect is not in dispute.

However, no material was placed before the Labour Court for completion of 240 days in a calendar year at the relevant point of time. In the absence of establishing completion of 240 days in a calendar year, the Labour Court had mechanically passed an order for regularisation of service of the workman with effect from 02.03.2002, which is not sustainable.

7. When the service of the workman was regularised upon the orders of this Court, there arises no necessity for the Tribunal to order permanent status to the said workman, as the Tribunal cannot pass any order in contravention of the orders passed by this Court. Hence, this Court is inclined to interfere with the order passed by the Labour Court, since the same is perverse.

8. In view of the above, the impugned order dated 10.02.2016 passed in I.D.No.124 of 2013 on the file of the Labour Court, Salem is set aside. However, the workman/P.Mohanasundaram is entitled to receive his benefits based on the regularization made by the petitioner Corporation with effect from 04.08.2007.



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9. Accordingly, this writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

Speaking Order / Non-speaking order
sp

To

The Presiding Officer,
Labour Court,
Salem.



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M.DHANDAPANI,J.,

sp

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