



W.A.No.75 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.01.2023

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal No.75 of 2022
and
C.M.P.No.669 of 2022

The Management,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
Head Office, Tiruvannamalai Region,
Bye-pass Road, Vengikal,
Tiruvannamalai,
Rep. by its General Manager,

.. Appellant

Vs.

1. The Inspector of Labour,
Authority under Tamil Nadu
Industrial Establishments (Conferment
of Permanent Status to Workmen) Act, 1981.
(Tamil Nadu Act 46 of 1981),
Tiruvannamalai.

2. Thiru.V.Pandiyan

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the
order dated 31.03.2021 passed by the learned Single Judge, in Writ Petition

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No.41005 of 2016 on the file of this Court.

For appellant : Mr.M.Aswin

For respondents : Ms.E.Ranganayaki, Addl.G.P. for R-1

Mr.D.Veerasekaran for R-2 (Caveator)

JUDGMENT

(The Judgment of the Court was delivered by S.Vaidyanathan,J)

The present appeal has been filed against the order dated 31.03.2021 passed by the learned Single Judge, in W.P.No.41005 of 2016, granting relief as follows:

"7. Accordingly, this Court is inclined to pass the following order:

(i) The second respondent/workman is not entitled to any monetary benefits for the interregnum period between 18.03.2013 and 21.05.2015.

(ii) The amount payable towards employer's contribution for the interregnum period shall be adjusted from the terminal benefits payable to the second respondent/workman.

(iii) The petitioner is directed to settle all the terminal benefits after adjusting the dues towards



employer's contribution, within a period of eight weeks from the date of receipt of a copy of this order."

2. The main contention of the appellant/Management is that the second respondent/employee was engaged as a Reserve Driver and thereafter, on temporary basis by proceedings dated 05.12.2000 and that he has not completed 480 days of continuous service in a period of 16 calendar months. The Authority has mechanically calculated the number of days as 480 days and granted permanent status. There is no iota of evidence produced by the second respondent/workman to show that he has completed 480 days of continuous service in a period of **LESS THAN** 24 calendar months and the order of the Authority, as confirmed by the learned Single Judge, is erroneous.

3. It is further stated by the Management that the employee was also involved in a serious misconduct by participating in an agitation/strike, which resulted in initiation of disciplinary proceedings and he was removed



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from service. The Management has also filed Approval Petition, which was rejected by the Authority and that the same has become final. Since the Approval Petition has been rejected by the Authority concerned, the second respondent-employee claims to be deemed to be in service, in the light of the decision of the Supreme Court reported in 2002 (2) SCC 244 (Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and others).

4. It is also stated by the Management that pursuant to the settlement of the year 2005, the employee (second respondent) has been granted permanent status and that he is not entitled to any relief much less the one granted by the Authority concerned, as modified by the learned Single Judge.

5. The learned counsel appearing for the second respondent/workman contended that the employee has joined the service as early as on 10.02.1998, pursuant to the Telegram received by him on 23.01.1998, asking him to report for work and that he has completed 480 days of continuous service as on 04.06.1999.

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6. A reading of the order of the Authority makes it clear that a detailed discussion on the submissions made by the parties, have been referred to, however, the second respondent/employee has not discharged his initial burden of proving 480 days of continuous service in 24 calendar months. However, before the learned Single Judge, the Management has stated that the employee has been granted permanent status with effect from the date of joining and the relevant portion of the order of the learned Single Judge is extracted below:

"6. During the arguments, the learned counsel for the petitioner would submit that there is no dispute with regard to granting of permanent status to the second respondent. The actual dispute is with regard to the date of granting the same. **Now that the first respondent has granted permanent status with effect from the date of his joining.** However, the Writ Petitioner alleges that there is enormous delay in filing the petition before the first respondent in spite of the orders passed by this Court in W.P.No.13854 of 2008 dated 26.02.2013. For that purpose, the second



respondent has filed an Affidavit, dated 28.03.2021 giving up his backwages for the interregnum period between 18.03.2013 and 21.05.2015 and has undertaken to pay the employer's contribution, for the purpose of getting pension."

7. Even going by the appointment order, dated 05.12.2000, the employee was temporarily selected to the post of Driver on daily wage basis, and in the light of the statement recorded by the learned Single Judge, the employee has been granted permanent status with effect from 05.12.2000. The contention that there was a ban for the year 2001 for recruitment, may not be applicable to the facts and circumstances of the present case on hand, as the employee has been made permanent based on the statement given before the learned Single Judge, even though it has been contended that it was erroneously recorded, and not even a petition has been filed for modification for eschewing the said remarks, or even a review has also not been filed to delete the observations made therein. The learned Single Judge who passed the impugned order on 31.03.2021 has retired



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from service only in May 2022. Nothing prevented the Management in filing a petition before the learned Single Judge who passed order.

8. That apart, the Transport Corporation being a "State" amenable to Writ jurisdiction of this Court, and the employee has already attained the age of superannuation, it is not necessary that he must be relegated to one more round of litigation, more so, he has given up the service benefits that has been recorded in paragraph 7 of the order passed by the learned Single Judge extracted above.

1. Taking note of the submissions made by the parties, we are of the view that there is no reason to interfere with the impugned order passed by the learned Single Judge, more so, the employee has given up many benefits and even consented to contribute including that he has agreed to contribute to the Provident Fund of the employer's share, as could be seen from paragraph 6 of the impugned order passed by the learned Single Judge extracted above. The same contention has been reiterated verbally before this Court by the



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learned counsel for the second respondent/workman.

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10. In view of the above discussion and taking into consideration the facts and circumstances of the case, without going into the question as to whether the second respondent/workman's permanency needs to be considered based on 2005 settlement or as to whether he was not even regularised during the period of ban, and the same need not be answered in the present Writ Appeal and the issue is let open.

11. Hence, we are of the view that the impugned order passed by the learned Single Judge does not call for any interference by us and the appellant/Management is expected to settle all the benefits to the second respondent-employee, if not already settled, within a period of four months from the date of receipt of a copy of this judgment, as if the second respondent-employee is deemed to have attained permanent status with effect from 05.12.2000 and he is entitled to all the benefits that are not

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prohibited under law.

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12. The present Writ Appeal is disposed of with the above observations/directions. There shall be no order as to costs. Consequently, the miscellaneous petition is closed.

(S.V.N.,J) (J.S.N.P., J)
20.01.2023

Index: Yes/no

Speaking Order: Yes/no

Neutral Citation: Yes/no

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Note: Issue order copy on 10.02.2023.

To

1. The Management,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
Head Office, Tiruvannamalai Region,
Bye-pass Road, Vengikal,
Tiruvannamalai,
Rep. by its General Manager.
2. The Inspector of Labour,
Authority under Tamil Nadu
Industrial Establishments (Conferment

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of Permanent Status to Workmen) Act, 1981.
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S.VAIDYANATHAN, J

and

J.SATHYA NARAYANA PRASAD, J

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