



W.P.No.11389 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

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- 1.B.Srinivasan
- 2.M.Venkatesan
- 3.P.Radhakrishnan
- 4.S.K.Munusamy
- 5.S.Sankar
- 6.C.Ravichandran
- 7.M.Rajasekhar
- 8.G.Uthayakumar
- 9.N.Sakthivel
- 10.V.Velayuthan
- 11.N.Anandan
- 12.G.Desugan
- 13.S.Karnan
- 14.D.Devaraji

all C/o. State Transport Corporation Workers Union,
No.2, Pallavan Salai,
Kalaingaranga Valagam,
Chennai – 600 002.

... Petitioners

Vs



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

2.The Management,
Tamil Nadu State Transport Corporation,
Kancheepuram.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records from the 1st respondent - Authority relating to the impugned order dated 29.01.2016 passed in Na.Ka.No.A/971/2012, quash the same and direct the 2nd respondent - State Transport Corporation to make the petitioners permanent from the date, on which, they had completed 480 days of continuous service within a period of 24 calendar months and pay all back wages and other attendant benefits.

For Petitioners : Mr.R.Rajaram
For R-1 : Mr.M.S.Premkumar, GA
For R-2 : Mr.M.Aswin

ORDER

This Writ Petition has been filed by the petitioners seeking to quash the order dated 29.01.2016 passed by the first respondent and to direct the second respondent to make them permanent from the date, on which, they



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completed 480 days of continuous service and pay back wages and all other attendant benefits.

2. The names of the petitioners were sponsored by the Employment Exchange for the posts of drivers and conductors. After due selection process, the petitioners underwent a training for a period of one month. On completion of the training, the petitioners were working as drivers and conductors continuously. They completed 480 days of continuous service in the years 1999, 2000 and 2001 as detailed in the affidavit filed in support of the writ petition. They were entitled to conferment of permanent status as per Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (in short 'the Permanent Status Act'). However, the second respondent entered into a settlement dated 31.08.2005 with the workers' union under Section 12(3) of the Industrial Disputes Act, 1947 and made the petitioners permanent along with others only from 01.09.2005. Therefore, the petitioners filed the joint petition before the first respondent claiming permanent status retrospectively i.e.



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from the date of completion of 480 days of continuous service. But, it was dismissed by the impugned order holding that the claim made by the petitioners seeking permanent status from the date, on which, the respective petitioners completed 480 days of continuous service would be contrary to the said settlement dated 31.08.2005 and contrary to their agreement. Challenging the same, the petitioners are before this Court.

3. The learned counsel appearing for the petitioners submitted that, the Labour Inspector rejected the claim made by the petitioners on the ground that there was a settlement in between the petitioners and the second respondent and based on the settlement, their services were regularized. After regularization, the petitioners filed applications before the Labour Inspector under the Permanent Status Act on completion of 480 days from the date of initial appointment. However, the subsequent award will not restrain the petitioners from getting permanency status. In the case of ***Management, Tamil Nadu State Transport Corporation (Villupuram) Ltd., Vellore Vs. Inspector of Labour*** reported in ***2020 IV LLJ 685 (Mad)***,



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this Court has held that, the non-obstante clause viz., notwithstanding anything contained in any law for the time being in force' in Section 3 of the Permanent Status Act, coupled with explanation II thereto that for purpose of that legal provision, 'law' includes any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of the Permanent Status Act, it is not possible to countenance the submissions made on behalf of the petitioner so as to deprive the concomitant benefits that the second respondent is entitled in law. In view of the said decision rendered by this Court, the claim of the petitioners rejected on the ground that there was settlement in between the employee and employer, which is not correct. However, the petitioners have not marked any documents to substantiate that they have completed 480 days before the Labour Inspector. On the sole ground, he submitted that this Court may set the impugned order and remand the matter to the Labour Inspector for fresh consideration to ascertain whether the petitioners were employed for 480 days for getting permanency status.



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4. The first respondent filed a counter affidavit mainly stating that the petitioners accepted the conferment of permanent status as per the settlement under Section 12(3) of the Industrial Disputes Act, 1947 without any written objections and that having accepted the same, the petition for conferment of permanent status retrospectively came to be filed before the first respondent, which was not at all maintainable. Ultimately, she sought for dismissal of the writ petition.

5. The learned counsel appearing for the second respondent has no serious objection for remanding the matter to the Labour Inspector for fresh consideration.

6. In view of the above, the impugned order passed by the first respondent dated 29.01.2016 passed in Na.Ka.No.A/971/2012 is set aside and the matter is remanded to the first respondent for fresh consideration. Further, the first respondent is directed to re-consider the matter only to the



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extent whether the petitioners have completed 480 days at the relevant point of time.

7. Accordingly, this writ petition is allowed. No costs.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order / Non-speaking order
sp

To

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M.DHANDAPANI,J.,

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