



W.A.(MD)No.376 of 2013

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 29.03.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR**

**AND**

**THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

**W.A.(MD)No.376 of 2013**

Rajendran

... Appellant/Petitioner

**Vs.**

- 1.Tamil Nadu State Transport Corporation  
(Kumbakonam) Limited,  
27, Railway Station New Road,  
Kumbakonam, Thanjavur District.
- 2.The General Manager,  
Tamil Nadu State Transport Corporation  
(Kumbakonam) Limited,  
Thirumayam Road,  
Pudukkottai.
- 3.The Branch Manager,  
Tamil Nadu State Transport Corporation  
(Kumbakonam) Limited,  
Cantonment, Trichy.

...Respondents/Respondents

**PRAYER:** Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 14.03.2013 made in W.P.(MD)No.3985 of 2013 on the file of this Court.



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For Appellant : Mr.P.Ganapathi Subramanian

For Respondents : Mr.D.Sivaraman

### **JUDGMENT**

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This Intra-Court Appeal has been directed against the order passed by the Writ Court in W.P.(MD)No.3985 of 2013 dated 14.03.2013.

2. The writ appellant was the petitioner in the Writ Court also. On his behalf, the learned counsel appearing for the appellant stated the following facts:-

That the appellant was appointed initially as a driver in the respondent Corporation on 31.08.2000. Subsequently, while he was driving the vehicle belongs to the respondent Transport Corporation on 11.07.2002, there was a stone felting incident on the vehicle driven by the appellant, in the result, the appellant sustained injury on the right eye, therefore, his eye was affected, for which, he had some treatment.

3. While he was working so as a temporary employee, it seems that, there has been a settlement under Section 12(3) of the Industrial



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Disputes Act, 1947 between the management and the employees on 31.08.2005, one of such settlement reached between them was that, those who were working on temporary basis as on 01.09.2005 would be brought under daily wage basis, therefore, in order to implement the same, insofar as the appellant also, the said clauses of 12(3) settlement dated 31.08.2005 was invoked, thereby an order was passed by the respondent Corporation on 01.09.2005 against the appellant, appointing him or bringing him under the purview of daily wage employee, where several conditions have been imposed, inter alia condition No.5 speaks about the physical fitness of the appellant, where, with regard to his physical fitness, eye sight etc., certificates must be obtained from the recognized doctors of the respondent Corporation and be produced before the respondent.

4. It is in this context, according to the respondent Corporation, till January, 2006 since the appellant had not come forward to produce such a certificate and the certificate produced by him also does not speak about the fitness of the appellant in the context of his eye sight as he suffered with injury in the right eye, that has got affected, therefore, taking into account of these situations on 06.12.2006, the respondent Transport Corporation



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passed an order cancelling the appointment given to him by order dated 01.09.2005.

5. Challenging the said order dated 06.01.2006, cancelling the appointment, the appellant filed the above said Writ Petition, which was at the admission stage itself disposed, of course, after hearing both sides, where the learned Judge had taken two grounds, firstly on the ground of laches, the said Writ Petition has been dismissed because as against the order dated 06.01.2006, the Writ Petition was filed only in the year 2013, therefore, on the ground of laches it was dismissed, that apart, on merits also, the plea raised by the appellant before the Writ Court that provisions of the Rights of Persons with Disabilities Act, 2016 (shortly “Disabilities Act”) would be made applicable to the case of the appellant was not accepted by the learned Judge because he was admittedly a daily wages temporary employee. Therefore, on these two reasons, the said Writ Petition by order dated 14.03.2013 was dismissed, against which only the present appeal has been filed. Therefore, the learned counsel for appellant would canvass the point that, insofar as the nature of the employment of the appellant is concerned, since he was appointed on 31.08.2000 itself he was



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continuously working, of course, by sustaining injury in the right eye because of the incident narrated hereinabove. However, mechanically, the 12(3) settlement provision has been implemented in respect of the petitioner also by thus, the order dated 01.09.2005 since has been passed, wherein condition No.5 has been imposed, where the respondent Transport Corporation has taken the ground that, the 01.09.2005 order is a fresh appointment order, under which conditions have been imposed, which has not been fulfilled by the appellant and therefore, on that ground, the cancellation order dated 06.01.2006 has been passed.

6. In this context, the learned counsel appearing for the appellant pointed out that, the entitlement of the appellant to have the benefit of the provisions of the Disabilities Act has not been properly projected before the Writ Court or it has not been considered in proper perspective and had it been projected before the learned Judge, who dealt with the Writ Petition, certainly the issue would have been differently viewed, he contended.

7. On the other hand, Mr.D.Sivaraman, learned Standing Counsel, appearing for the respondent Corporation would submit that, since the



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appellant having accepted the 01.09.2005 order, under which, he was brought under daily wage, the benefit which has been sought for by the appellant, whether is applicable to him or not is a question, that has been answered by the learned Judge in the impugned order.

8. That apart, condition No.5 of the order dated 01.09.2005 having been accepted by the appellant, he cannot turn around and say that that condition cannot be imposed against the appellant. Therefore, the order impugned passed by the learned Judge in the said Writ Petition is to be sustained, he contended.

9. We have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

10. Insofar the appellant is concerned, though he was appointed initially on 31.08.2000 and claimed to have been continuously working either on temporary basis or daily wage basis, there has been no break in service and insofar the order dated 01.09.2005 is concerned, it is the claim



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of the appellant that, that order by implementing the provisions of the settlement under Section 12(3) since has been issued and that has been accepted, that does not give any rise to the respondent to treat him as a fresh entrant for which, the certificate sought for as per condition No.5 of order dated 01.09.2005 cannot be put against the appellant.

11. All these points were not canvassed before the learned Judge at the time of hearing the Writ Petition as the appellant as the writ petitioner only has challenged the order dated 06.01.2006, that too belatedly. The learned Judge had no occasion to consider all these aspects, therefore, we cannot find fault with the reasoning given by the learned Judge in rejecting the Writ Petition.

12. However, before us, since all these aspects have been brought by the learned counsel for the appellant, where he has cited some decisions, where, even in respect of the temporary employees like the appellant, the provisions of the Disabilities Act can very well be invoked especially Section 47 of the Act, and those issues so far have not been canvassed by the appellant side before the Writ Court in proper perspective, therefore, for



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all these reasons, we feel that, this matter can be remitted back to the Writ Court for re-hearing the matter, where it is open to the appellant / writ petitioner to re-agitate all these issues comprehensively, so the Writ Court will have a chance of going through all these aspects on merits and to give its verdict.

13. In that view of the matter, for the aforesaid reasons, the Writ Appeal is allowed and the impugned order is set aside and the matter is remitted back to the Writ Court for rehearing and since the Writ Petition is of the year 2013, early hearing is appreciable. No costs.

**(R.S.K., J.) & (K.K.R.K, J.)**

**29.03.2023**

NCC : Yes / No  
Index : Yes / No  
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**AND**

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