



W.P.(MD).No.14028 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.14028 of 2021
and WMP(MD)No.11016 of 2021

The General Manager (Administration),
TNSSTC (KUM) Ltd., No.27 Railway Station,
New Road, Kumbakonam-612 001.

... Petitioner

Vs

1. K.Selvaraj
2. The General Manager (Administration),
TNSSTC (KUM) Ltd., Nagapattinam Region,
140, Public Office Road, Velipalayam,
Nagapattinam-611001.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the entire record pertaining to the impugned order, passed by the Assistant Labour Commissioner, Thanjavur vide his proceedings in Na.Ka.No.A/13/2014, dated 06.08.2019 and quash the same as illegal.

For Petitioner : Mr.PM.Vishnuvarthanan

For Respondents : Mr.A.Rahul (R1)
No Appearance (R2)



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W.P.(MD).No.14028 of 2021

ORDER

The present writ petition has been filed seeking a direction to the to quash the impugned order, passed by the Assistant Labour Commissioner, Thanjavur vide his proceedings in Na.Ka.No.A/13/2014, dated 06.08.2019.

2.By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3.(i)The first respondent filed a petition before the Assistant Labour Commissioner, Thanjavur under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, (hereinafter referred to as the Act) stating that he was appointed on temporary basis as a Driver on 02.05.2000 in the petitioner Transport Corporation.

(ii)The petitioner Transport Corporation also filed a counter and contended that the said petition is not maintainable under law, for the reason that the first respondent was already made permanent from 01.07.2006 as per the settlement arrived between the Transport Corporation and the Employees Union on 01.09.2005.



W.P.(MD).No.14028 of 2021

WEB COPY

(iii)The petitioner Corporation further contended that the grant of relief under Section 3 of the Act and other benefits are maintainable and the same will lead to wrong precedent and the scope of the Act will certainly exceed, if the petition is entertained by the Assistant Labour Commissioner. Further, it is contended that the respondent filed a petition with a delay of 11 years, from his alleged date of appointment and hence, it is clearly a time barred claim.

(iv)Without adverting to the submission made by the petitioner Corporation, the impugned order, dated 06.08.2019 came to be passed. Challenging the same, this writ petition has been filed.

4.The issue that arises for consideration in this writ petition is no longer *res integra*, since the same has already been decided by this Court in W.P(MD) No.27374 of 2022 batch, dated 14.02.2023, wherein, this Court has held as follows.

“4. The learned counsel appearing for the private respondents would submit that though the private respondents were regularised in the year 2006, i.e., after a lapse of five years from the date of their initial appointment, subsequently, the Government Order was issued for fixing the cut-off date for extending the



W.P.(MD).No.14028 of 2021

pensionary benefits for the persons who were appointed before 01.04.2003, thereby depriving their rights to get pensionary benefits. Hence, the private respondents forced to file an application before the Labour Court under Section 3 of the Act in order to avail the benefits of the old pension scheme. After adjudication, the Labour Court granted permanent status to the private respondents on completion of 480 days from the date of their initial appointment which cannot be interfered with. He further submitted that as per the Act, there is no time limit prescribed for making application. Further, they filed an undertaking affidavit forgoing the monetary benefits from the date of initial appointment to till the date of filing application for a period of thirteen years.

5. Paragraph 2 and 3 of the undertaking affidavit filed by the private respondents reads as follows:

"2. I state that no limitation is prescribed under the TN Act No 46 of 1981. Therefore, the delay or latches cannot be a ground either to oppose or to refuse relief under section 3(1). However, in order to put a quietus to the matter and in order to avoid any further appeal, I am willing get permanency as per the order of the Assistant Commissioner of Labour (Enforcement) in Thanjavur made in Na.Ka.No.Aa. 3044/14, dated 12.07.2019 with effect



W.P.(MD).No.14028 of 2021

from 02.02.2003, the date next to date of completion of 480 days notionally up to date of filling of application before the authority, only with the Employer Contribution of PF alone to be remitted by the Writ Petitioner Transport Corporation to the Administrator of Tamil Nadu State Transport Corporation Employees' Pension Fund Trust Chennai for the period from 02.02.2003 to 07.11.2014.

3. I do hereby state and declare that I will not claim monetary benefits other than employer contribution of PF for the period from 02.02.2003 to 07.11.2014, the date on which I filed application before the 02.02.2003 to 07.11.2014."

6. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

7. The facts in the present case are not in dispute. Admittedly, the private respondents entered into services as NMRs' between 2000 and 2001 in the petitioner Transport Corporation on various dates. It is also an undisputed fact that the private respondents services were regularised in the year 2006 by considering the past services rendered by them. However, the New Pension Rules were framed and the persons, who were appointed on or after 01.04.2003, are not entitled for old pension scheme. In order to avail such benefits, the



W.P.(MD).No.14028 of 2021

private respondents filed an application under Section 3 of the Act before the Labour Court. The Labour Court, after elaborate consideration, granted permanency in favour of the private respondents on completion of 480 days. Since there is no limitation prescribed for making application, this Court cannot interfere with the order impugned in these Writ Petitions. The impugned orders were passed on the ground that there was a 12(3) settlement in favour of the private respondents for regularization, pursuant to which, their services regularised in the year 2006, thereafter they filed application under Section 3 of the Act before the Labour Court for regularization.

8. When the very same issue came up for consideration before the Principal Seat of this Court in W.P.No.15461 of 2017, following the order of the Hon'ble Supreme Court of India in the case of State of Punjab vs. Jagjit Singh reported in (2017) 1 SCC 148, this Court rejected the prayer sought for by the Transport Corporation. For better appreciation, paragraph Nos.4 and 5 reads as follows:

“4. It is vehemently contended by the Learned Counsel for the Petitioner that when the Second Respondent had accepted the benefit of confirmation in service in terms of settlement under Section 12(3) of the I.D. Act without any demur, he is estopped



W.P.(MD).No.14028 of 2021

from invoking the provisions of the Permanent Status Act. It must, at once, be pointed out here that the Hon'ble Supreme Court of India in Oswal Agro Furane Ltd., -vs- Oswal Agro Furane Workers Union [(2005) 3 SCC 224] has reiterated the legal position that a settlement cannot be arrived between the employer and its employees under the provisions of the I.D. Act, without satisfying the requirements of law or in contravention of legal provisions. When it is not in dispute that the Second Respondent was employed from 07.04.1998 onwards following the prescribed procedure of recruitment through employment exchange, he is entitled to the constitutional guarantee of equality of opportunity and treatment in public employment under Articles 14 and 16 of the Constitution. As such, the Petitioner could not unilaterally treat as if the Second Respondent had worked only from 04.08.1998 merely because the daily paid appointment was given from that date. The conferment of permanent status on the Second Respondent with effect from 27.11.1999, when he completed 480 days of 'continuous service' in a period of 24 calendar months in the establishment of the Petitioner, is more beneficial than the confirmation of service granted by the Petitioner to him with effect from 24.08.2007. In this context, it would be beneficial to refer to the observations made by the Hon'ble Supreme Court of



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W.P.(MD).No.14028 of 2021

India in State of Punjab -vs- Jagjit Singh [(2017) 1 SCC 148] that squarely applies to the fact situation that has arisen in the Writ Petition, as extracted below:- “58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled (emphasis added) to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his selfworth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.” Having due regard to the aforesaid fact situation borne out from the record, 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



W.P.(MD).No.14028 of 2021

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. This view expressed is fortified by the decisions of the Division Benches of this Court in Managing Director, Tamil Nadu State Transport Corporation Ltd., Coimbatore Division -vs- Shanmugam (Judgment dated 30.09.2019 in W.A. Nos. 2871 and 2872 of 2018) and Management, Tamil Nadu State Transport Corporation (Madurai) Ltd., -vs- Labour Inspector (Judgment dated 28.11.2019 in W.A. (MD) No. 768 of 2015) in respect of the certain other employees of the Petitioner, who are similarly placed to the Second Respondent in this case.

5. The next submission of the Learned Counsel for the Petitioner is that there has been inordinate delay and unexplained laches on the part of the Second Respondent in approaching the First Respondent for conferring the benefit under the Permanent Status Act, which factor disentitles the Second Respondent for any relief under the Permanent Status Act. In the first place, when no period of limitation has been prescribed under the Permanent Status Act for making an application for



W.P.(MD).No.14028 of 2021

conferment of permanent status, there is no scope for entertaining such contention. Moreover, the Division Bench of this Court in R.Lakshmi -vs- Chief Engineer (Personnel), Tamil Nadu Electricity Board [(2012) 6 MLJ 480] has held that a workman, who had completed 480 days of continuous service in a period of 24 calender months, would become automatically a permanent employee under the employer, even if the employer had not conferred him with the permanent status, or even if no direction was issued by the competent authority in that regard under the Permanent Status Act or the Rules framed thereunder. As such, there is no merit in this objection raised so as to deserve any consideration.”

5.The private respondent also filed an undertaking affidavit, dated 14.08.2023, which is extracted hereunder:

2) I state that no limitation is prescribed under the TN Act No 46 of 1981. Therefore, the delay or latches cannot be a ground either to oppose or to refuse relief under section 3(1). However, in order to put a quietus to the matter and in order to avoid any further appeal, I am willing get permanency as per the order of the Assistant Commissioner of Labour (Enforcement) in Thanjavur made in na. Ka. No.Aa. 13/2014 dated 06.08.2019 with effect from



W.P.(MD).No.14028 of 2021

29.05.2002, the date next to date of completion of 480 days notionally up to date of filling of application before the authority, only with the Employer Contribution of PF alone to be remitted by the Writ Petitioner Transport Corporation to The Administrator of Tamil Nadu State Transport Corporation Employees Pension Fund Trust Chennai for the period from 29.05.2002 to 04.01.2014.

3) I do hereby state and declare that I will not claim monetary benefits other than employer contribution of PF for the period from 29.05.2002 to 04.01.2014, the date on which I filed application before the Permanent Status Authority.

6.In view of the above facts, this Writ Petition is disposed of and the impugned order is modified to the effect that the private respondent is not entitled to monetary benefits except employer contribution from the date of initial appointment till the date of filing application under Section 3 of the Act. No costs. Consequently, connected Miscellaneous Petition is closed.

16.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
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W.P.(MD).No.14028 of 2021

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The General Manager (Administration),
TNSTC (KUM) Ltd., Nagapattinam Region,
140, Public Office Road, Velipalayam,
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W.P.(MD).No.14028 of 2021

L.VICTORIA GOWRI, J.

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**ORDER IN
W.P.(MD).No.14028 of 2021
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16.08.2023