



W.A.Nos.1165, 1169, 1177 and 1179 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2024

PRONOUNCED ON : 07.08.2024

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND

THE HONOURABLE MR. JUSTICE P.DHANABAL

W.A.Nos.1165, 1169, 1177 and 1179 of 2024

and connected CMPs

M.Ramu	..Appellant in WA.1165/2024
K.Gangadharan	..Appellant in WA.1169/2024
S.Vinayagamoorthy	..Appellant in WA.1177/2024
G.Kumar	..Appellant in WA.1179/2024

.Vs.

1.The Managing Director
State Express Transport Corporation (TN) Ltd
No.2, Pallavan Salai, Chennai 600 002.

2.State of Tamil Nadu
Rep.by its Secretary to Government
Transport Department, Fort St.George
Chennai 600 009.

... Respondents in all the
above Writ Appeals.

PRAYER: Writ Appeals filed under Clause 15 of the Letters Patent Act, to set aside the Common Order dated 23.08.2023 passed in W.P.Nos.8419, 8570, 8686 and 9183 of 2021.



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2. The cases on hand are arising out of the award dated 28.02.2020 passed by the Presiding Officer, Third Additional Labour Court, Chennai, in I.D.Nos.139 to 142 of 2016.

3. To the extent necessary, we shall now go into the facts of the case as follows:-

(i) The appellants-workmen were employed as conductors under daily wages from the year 1995. They were not appointed through proper channel. They were orally terminated after one year. Since the appellants completed 240 days of employment, they approached this court for employment. This court directed the Transport Corporation to provide employment to the workmen.

(ii) Challenging the said direction, transport corporation filed W.A.Nos.1294/1997 to 1299/1997. The Division Bench directed the Transport Corporation to confer permanency to the workmen, who completed 240 days of service.

(iii) Based on the said order, the workmen were served notice dated 03.06.2000 to appear for interview with the proof of their service for 240 days. The workmen furnished copy of the duty challans. However, the Transport



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Corporation did not provide employment to the workmen. Therefore, workmen filed Writ Petitions before this court and this court passed order to confer permanency to workmen who were working more than 240 days.

(iv) Before the Additional Labour court, the transport corporation taken the stand that the benefit of preference or priority, is contrary to the judgments of the High Court and Supreme Court, therefore, the workmen are not entitled to any relief.

(v) After trial, the Labour Court, after elaborate discussion, allowed the industrial dispute; set aside the oral termination; directed the transport corporation to reinstate the workmen in the present pay scale for the conductors with no back wages, continuity of service and other attendant benefits.

4. Aggrieved by the said order, in respect of denial of service and other attendant benefits, workmen preferred a batch of Writ Petitions and the Management, challenging the direction of reinstatement, filed a batch of Writ Petitions. The learned Single Judge, as extracted in para 2 of this judgment, allowed the writ petitions filed by the Management and dismissed the writ petitions filed by the workmen. Challenging the said impugned order dated



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23.08.2023, the present batch of Writ Appeals are filed by the workmen.

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5. The learned counsel for the appellants would contend that the observation of the learned Single Judge that the workmen produced only the xerox copy of documents relied on by them and no original documents were marked and the same would not be sufficient to show that they have completed continuous employment of 240 days is not sustainable.

6. The learned counsel for the respondent-Transport corporation supported the order of the learned Single Judge and submitted that no interference is required in the well reasoned order.

7. Heard both sides and perused the records.

8. A perusal of the proceedings before the Additional Labour Court would go to show that during pendency of the main industrial dispute, the workmen filed Interlocutory Application for a direction to the transport corporation to produce the records under the custody of the Management. But, the Management did not



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produce those documents and stated that they are not available and that those records were destroyed due to efflux of time. Before the Labour Court, the respondent-Management neither examined any witnesses nor marked documents, to rebut the workmen's side evidence.

9. The Labour Court, in its Award, elaborately discussed and drawn adverse inference as against the respondent-corporation. The duration of the employment period served by the workmen has not been disputed by the corporation. It is the presumption that they continuously worked, unless the contrary is proved. Therefore, in the absence of contra evidence adduced by the respondent-corporation, the evidence of workmen is reliable and acceptable. It is the cogent evidence of all the workmen that they were continuously working for 240 days and therefore the findings of the Labour Court that the workmen completed continuous service of 240 days, is perfectly in order.

10. In the impugned order, the learned Single Judge observed that once the application is filed by the workmen seeking production of certain documents by the Management, the same need to be produced by the Management. In case when



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the documents called upon are not in custody of the Management, the burden shifts on the workmen to prove their case. The said view of the learned Single Judge, did not take into consideration the aspect that the custodian of the documents is the management and they have to produce the documents and if they failed to produce the documents, adverse inference can be drawn as against them. Therefore, the common order of the learned Single Judge is liable to be set aside and the award passed by the Labour Court is to be restored.

11.In view of the above said discussions, the Writ Appeals are allowed and the common order passed by the Writ Court in W.P.Nos.8419, 8570, 8686 and 9183 of 2021 dated 23.08.2023 is set aside. The award passed in I.D.Nos.139 to 142 of 2016 dated 28.02.2020 on the file of the Labour Court, Chennai, are restored. No costs. Consequently, connected CMPs are closed.

nvsri

(J.N.B.,J) (P.D.B.J)
07.08.2024



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To

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- 3.The Secretary to Government
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