



W.P. No.19749 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.19749 of 2012

and

M.P.No.2 of 2012

M.Rajagopal (Died)

P2-Manjula

P-3 Selvi

P-4 Rogini

P-5 Lokesh

... Petitioners

(*P2 to P5 substituted as LR's of deceased sole petitioner vide order dated 13.09.2022 made in WMP.16347 of 2022 in WP.19759 of 2012)

Vs.

Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Vellore Region,
Rep by its General Manager,
Ranagapuram, Vellore – 09.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 1st respondent in Memo No.14853/PS3/TNSTC (VPM) Vellore/2005-1 dated 20.09.2005 and to quash the order to the extent of regularizing the petitioner's service with effect from 01.09.2005 and to direct



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the respondents to regularize the petitioner's service with effect from 20.11.1999 and grant all accrued service and monetary benefits with continuity of service and all attendant benefits.

For Petitioner : Mr.N.Desinghu for
M/s.M.Guruprasad

For Respondent : Ms.S.Pavithra

ORDER

The petitioner herein was appointed as a Driver in the respondent Corporation on 31.12.1999 on daily wage basis and he has been continuing in the said post. While so, the petitioner made a claim for confirmation of services in the post of Driver in terms of memorandum of settlement entered into between the management of various Transport Corporations and their respective workmen under Section 12(3) of the Industrial Disputes Act, 1947 (in short 'Act 1947') vide settlement No.C1/066566/92 dated 30.09.1992. The said claim of the petitioner was considered and the services of the petitioner were confirmed by issuing the proceedings dated 20.09.2005 along with others vide Memo No:14853/PS3/TNSTC (VPM) Vellore/2005-1 with effect from 01.09.2005. It is aggrieved by the said memo dated 20.09.2005, the petitioner approached this Court by claiming reconfirmation of the



services in terms of the settlement from the date on which the petitioner completed 240 days satisfactory service in a year.

2. The learned counsel for the petitioner placed strong reliance on paragraph 4 to 8 of the said settlement in support of the case of the petitioner to claim confirmation of services on completion of 240 days of satisfactory service.

3. The respondent filed counter affidavit and additional counter affidavit contending that the petitioner's case was not considered for confirmation of services on completion of 240 days of services, as the petitioner was subjected to disciplinary proceedings and various punishments were imposed and also on the ground that there was a ban on fresh engagement of casual labour, Drivers and Conductors or regularisation of the services of the existing casual labour imposed vide Letter No.53/Cho/2001 dated 05.07.2001 issued by the Secretary to Government and Chariman of STUs, Transport Department of the State of Tamil Nadu.

4. Further, as seen from the additional counter affidavit filed by the



respondent Corporation, it is noticed that there was no punishment that was imposed on the petitioner during the year 2000 and 2001, but there were some allegation of negligence on the part of the petitioner resulting in recovery of amount of Rs.115/- & R.75/- on two occasions. Hence, the same does not come in the way of confirmation of the services of the petitioner in terms of the settlement.

5. Heard Mr.N.Desinghu, learned counsel for the petitioner and Ms.S.Pavithra, learned counsel for the respondent.

6. This Court has carefully considered the submissions made on either side and also perused the entire material on record.

7. The basis for the claim that is being made by the petitioner in this writ petition is the settlement that was entered into between various Transport Corporations and the workmen under Section 12(3) of Act, 1947. The relevant portion from the said settlement reads as under:

“CONFIRMATION

4. A person recruited through the employment



exchange against a regular vacancy for the post of driver, conductor, junior tradesman, security guard or administrative staff and engaged on daily wage rate shall be confirmed after satisfactory completion of 240 days of actual work within a continuous period of one year in the category for which such person was originally selected and employed.

5. *During the employment of such a person on daily wage rate, i.e., during the first 240 days of actual work, if any disciplinary action is initiated, such disciplinary proceedings shall normally be completed within 60 days. During the pendency of such proceedings, the daily rated employment shall not be extended beyond three months after completion of 240 days of actual work by the concerned.*

6. *In case where such disciplinary proceedings end up with a decision to extend the daily wage period, such extension also shall not exceed three months beyond the completion of 240 days of actual work by the concerned provided such person does not commit any other offence within such extended period.*

7. *In the event of a minor punishment like recorded warning or censure or fine, a person so punished shall be confirmed retrospectively from the date he completed 240*



days of actual work within a continuous period of one year where such disciplinary proceedings end after completion of 240 days of such employment.

8. *In case of a misconduct or offence committed by such daily rated person after satisfactory completion of 240 days of actual work but before the actual issue of confirmatory order, such person shall be deemed to have been confirmed on the completion of 240 days of actual work and such order confirming his employment in regular scale of pay shall be issued retrospectively from such date without prejudice to the disciplinary action against the misconduct or offence committed by him.”*

In terms of the above settlement, a person who was recruited through the employment exchange against a regular vacancy for the post of Driver, Conductor, Junior Tradesman etc and engaged on daily wage rate shall be confirmed after satisfactory completion of 240 days of actual work within a continuous period of one year in the category for which person was originally selected and employed.

8. In the instant case, there is no dispute that the petitioner having



been appointed through employment exchange against a regular vacancy and continued in the said post and accordingly, his case was considered for confirmation by passing the order dated 20.09.2005 and services were confirmed with effect from 01.09.2005, but the petitioner was denied the benefit of confirmation of services on completion of 240 days on the ground that the petitioner was subjected disciplinary proceedings and also on the ground of imposing a ban by the Secretary through Letter dated 05.7.2001.

The contents of the said Letter dated 05.07.2001 reads as under:

“The Managing Directors are hereby instructed to stop making any fresh engagement of casual labour Drivers and Conductors or regularise the services of the existing casual labour, without prior approval of the Board.”

9. Therefore, the issue that arise for consideration is whether the Letter dated 05.07.2001 of the Secretary to Government, Transport Department can be said to be a valid ban imposed on the regularisation of the services of the Drivers and Conductors working in the respondent Corporation or not?



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10. As already noted above, the claim of the petitioner is based upon the settlement entered under Section 12(3) of Act, 1947 which has a statutory force and statutory backing. Such terms of settlement cannot be set at not by the Secretary to Government by passing simple Letter in the name of instructions. The above Letter dated 05.07.2001 of Secretary to Government has no force of law and even if it has force of law i.e.,force of executive instruction, the same cannot prevail over the settlement that was entered under Section 12(3) of Act, 1947. Hence, there is no justification for the respondent Corporation to deny the benefit of the settlement dated 30.09.1992 entered under Section 12(3) of Act, 1947.

11. From paragraph 4 to 8 of the said settlement as extracted above, it is evident that the same is exhaustive in nature and it takes purview into its various circumstances including the circumstances where there was disciplinary proceedings against the workmen and the punishment that were imposed and as to how the same is to be treated. But unfortunately, the respondent Corporation, instead of considering the claim of the petitioner in terms of paragraph 4 to 8 of the settlement, postponed the consideration of the case till September 2005 and finally, confirmed the services only with



effect from 01.09.2005 instead of confirming the services from the date on which the petitioner was entitled to in terms of the settlement referred to above.

12. As this Court has already come to the conclusion that, so called ban that is imposed on regularisation of services of the workmen working in the respondent Corporation has no legal basis, the same cannot put to rest the settlement arrived at under Section 12(3) of Act, 1947. Hence, the respondent Corporation is under obligation to consider the case of the petitioner for regularisation from the date on which he is otherwise entitled to in terms of the settlement dated 30.09.1992. Though the impugned proceedings dated 20.09.2005 is challenged, the same need not be set aside for the simple reason that the same is in favour of the petitioner viz., confirming the services with effect from 01.09.2005 as the claim of the petitioner is only for reconsideration & confirmation from the date on which he has completed 240 days in terms of settlement. Hence, the writ petition is allowed directing the respondent Corporation to consider the claim of the petitioner for confirming the services strictly in terms of Paragraph 4 to 9 of Settlement No.C1/066588/92 dated 30.09.1992 duly considering the

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observations made herein above and pass appropriate orders confirming the services of the petitioner in terms of the said settlement as expeditiously as possible at any rate within a period of two (2) months from the date of receipt of a copy of this order.

13. Accordingly, the writ petition is allowed and the connected miscellaneous petitions if any, shall stand closed. No costs.

10.09.2024

Index : Yes/No
Speaking Order : Yes/No

dpa

To:

The General Manager,
Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Vellore Region,
Ranagapuram, Vellore – 09.

MUMMINENI SUDHEER KUMAR,J.



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