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W.P.No.3791 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.12.2023

Pronounced on : 10.06.2024

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

W.P.No.3791 of 2014

AND

M.P.No.1 of 2014

The General Manager,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Vellore Region,
Rangapuram,
Vellore – 9.

...Petitioner

Vs

1. The Inspector of Labour,
Authority under Tamil Nadu Industrial
Establishments (Conferment of Permanent Status
to Workmen) Act, 1981 (Tamil Nadu Act 46 of 1981),
Thiruvannamalai.

2. K.K.Venkatesan

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records of the order passed by the first respondent in Na.Ka.No.E/2574/2011 dated 08.05.2013.

For petitioner	:	Mr.M.Aswin
For R1	:	Ms.C.Sangamithirai Special Government Pleader
For R2	:	Mr.Sunny Sheen for Ms.V.Srimathi



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ORDER

This writ petition is been filed to quash the order dated 08.05.2013 passed by the first respondent in Na.Ka.No.E/2574/2011.

2. The facts in brief as per the affidavit enclosed in this writ petition are as follows:

2.1. The petitioner is the Tamil Nadu State Transport Corporation (Villupuram) Ltd. The second respondent was appointed on 01.11.1997 as a daily wage Conductor on sponsorship from the Employment Exchange. He worked continuously for about seven years. The second respondent filed a petition dated 21.11.2011 before the Inspector of Labour (Tiruvannamalai) under Industrial Establishment (Granting of Permanent Status to the Workmen) Act, 1981 for conferment of permanent status. The said petition was considered by the Inspector of Labour Court and proceedings dated 08.05.2013 in Na.ka.E/2574/2011 was issued directing the petitioner Corporation to regularize the services of the second respondent within a period of 30 days, as he has completed 480 days of service continuously from 01.11.1997. Aggrieved by the same, the present writ petition has been filed by the petitioner Corporation.



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3. It is submitted by the learned counsel for the petitioner that the second respondent was appointed as a daily wage Conductor from 01.11.1997. As there was a ban for a period of five years and 12 (3) Settlement was entered between the petitioner management and the employees that the grant of regularization shall be carried out prospectively from the date of entering into 12 (3) Settlement from the year 2005. Further, the Government as a matter of policy has made necessary amendments in the service rules on account of which there was a complete ban in the regularization of the employees. Thereby, during the said ban period, the services of the second respondent could not be regularized and therefore, the orders of conferment shall come into effect only from the date of 12 (3) Settlement which was entered only after the ban was lifted.

4. It is submitted by the learned counsel for the petitioner Corporation that the Inspector of Labour has not discussed about the ban imposed by the government for regularization and about 12 (3) Settlement between the petitioner management and employees and that there was no materials considered and no materials place before the authority to show that the second respondent worked for 480 days continuously.

5. Though, counter affidavit has not been filed by the second



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respondent, on perusal of the impugned orders, the defense taken by the second respondent can be gathered. According to the second respondent, after completion of 240 days from the date of joining of the services of the workman including the second respondent shall be regularized by granting time scale of pay. In respect of the ban imposed by the Tamil Nadu government, the stand taken by the second respondent is that the Tamil Nadu Government has banned only new appointments and did not ban regularization of services of the persons who were already appointed. In respect of 12 (3) Settlement, agreement between the petitioner management and the employees on 01.09.2005 is concerned, it is the stand of the second respondent that the said agreement is against Section 3 and Explanation II of the Tamil Nadu Industrial Establishment Act, 1981.

6. Heard both sides and perused the record.

7. The Inspector of Labour under the Tamil Nadu Industrial Establishment Act, 1981 has putforth the following points for consideration:

“1. Whether the petitioner is an employee as per above rules and regulations who has made request?

2. Whether the Tamil Nadu Industrial Establishment Act, 1981 (Granting permanent



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Status to the Workmen) is applicable to the State Transport Corporation?

3. Whether the petitioner had rendered service as per the time limit prescribed in the above Act?

8. In respect of the three aspects are concerned, as formulated by the concerned authority in the impugned order there is no much dispute. The Tamil Nadu Industrial Establishment Act, 1981 is admittedly applicable to the second respondent and he started working as a daily wage Conductor. The second respondent has requested the petitioner Corporation to confer his services after completion of 240 days. The petitioner Corporation, though, has mentioned in the grounds that there are no records to show that the second respondent has worked for 240 days, the petitioner Corporation itself has admitted many a times in the affidavit that the second respondent joined the service in the year 01.11.1997 as a Conductor on daily wages and continued to work as such. It is not mentioned that there was a gap in service or any such thing which has stopped the second respondent in claiming the permanent status. Therefore, In respect of the three issues raised by the competent authority, there is no dispute at all. The major ground which has been agitating strenuously by the petitioner Corporation is that the competent authority under the Act failed to mention and discuss in the impugned order that though, the second respondent has joined the service on 01.11.1997, his



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services could not be regularized under the Act on account of the ban imposed by the Tamil Nadu Government by amending the necessary rules in the recruitment of the employees. The impugned orders which were passed on 05.05.2003 speaks that the services of the second respondent shall be regularized on completion of 240 days w.e.f. 01.11.1997. That means, as per the impugned orders the services of the second respondent deemed to have been regularized on completion of 240 days. It is the case of the second respondent that since 12 (3) Settlement was entered into on 01.09.2005 as in the case of other employees whose services were regularized, the services of second respondent should have also been regularized.

9. Section 3 of the Tamil Nadu Industrial Establishments

(Conferment of Permanent Status to Workmen) Act, 1981 runs as under:

“3.Conferment of permanent status to workmen.—(1) Notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty four calendar months in an industrial establishment shall be made permanent.

*(2) A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike, which is not illegal, or a lock-out 1[***] or a cessation of work*



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which is not due to any fault on the part of the workman.

2 Explanation I.-- 3 [For the purposes of computing the continuous service referred to in sub-sections (1) and (2), a workman shall be deemed to be continuous service during the days on which ---] ;

(i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (Central Act XX of 1946) or under any other law applicable to the industrial establishment ;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment ; and

(iv) in the case of a female, she has been on maternity leave ; so, however, that the total period of such maternity leave does not exceed twelve weeks.

4[Explanation II. – For the purposes of this section, ‘law’ includes any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of this Act.] “

10. On careful perusal of the above provision, it is clear that every employee whose has rendered service continuously for a period of 480 days in 24 month calendar shall be made permanent. There is no dispute that the second respondent has completed more than 480 days in two calendar years and thereby, he is eligible to be made permanent. However, on going through the provision the second respondent will not be automatically



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absorbed on completion of 480 days in two calendar years, the authority concerned has to issue proceedings confirming the permanent status of the second respondent.

11. It is the contention of the second respondent that the ban was imposed only in respect of new appointments and not in respect of the persons who were already appointed. This submission appears to be convincing. The learned counsel for the petitioner Corporation has not filed any orders for imposing ban on the appointed employees. The contentions of the petitioner Corporation cannot be appreciated and accepted as the ban for recruitment is only an executive order and not a statutory order. Whereas, the second respondent has claimed conferment of services under the enactment.

12. The learned counsel for the second respondent has submitted an authority in ***R. Lakshmi vs. Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai and Ors*** reported in ***2012 SCC Online Mad 2941: (2012) 6 Mad LJ 480***, the relevant portion of which is extracted hereunder:

“36. Also, on the basis of Equity, Fair play, Good Conscience and even a matter of prudence, we direct the Respondents/Tamilnadu



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Electricity Board Authorities to issue appropriate proceedings in making the petitioner's deceased husband Raju as a permanent employee of the Board and to pay the petitioner family pension, family benefit and other terminal benefits including Gratuity as per Rules and regulations from time to time in force. The respondents are further directed to consider and dispose of the representation of the petitioner's dated 8.12.2003 and 8.1.2004 wherein she had prayed for Compassionate Appointment being provided to her daughter Valarmathi as per Rules and in accordance with law within a period of four weeks from the date of receipt of copy this order, (if not already considered and disposed of.) The respondents are directed to pay the petitioner's family pension and other terminal benefits including gratuity etc., due to be paid to the petitioner's deceased husband within a period of eight weeks from the date of receipt of copy of this order. As such, the writ petition is allowed in above terms. No costs."

13. Considering the above, it is clear that the second respondent has worked for 480 days continuously in 24 calendar months and if an employee who has worked in such a manner becomes a permanent employee even if the employer does not give conferment of permanent status or any direction.

14. In view of the above discussion, the impugned orders passed by the competent authority regularizing the service of the second



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respondent cannot be interfered with.

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15. Accordingly, this writ petition is dismissed. Connected
M.P.is closed.

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Internet : Yes/No
Index : Yes/No
Citation : Yes/No

To,

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Dr.D.NAGARJUN,J

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Pre-delivery order made in
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