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W.P.Nos.17069 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|               |            |
|---------------|------------|
| Reserved on   | 08.12.2023 |
| Pronounced on | 19/6/2024  |

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

Writ Petition Nos.17069 of 2014  
and M.P.No.1 of 2014

The Management,  
Tamilnadu State Transport Corporate (Villupuram) Ltd.,  
Cuddalre Division,  
Rep., by its General Manager ...  
Petitioner

Vs

1. The Presiding Officer,  
Labour Court,  
Cuddalore.

2. M.krishnaraj ... 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  
1<sup>st</sup> Respondent in I.D.No.25 of 2012 dated 08.10.2023 and to quash the same.

For petitioner ... Mr.M.Aswin

For respondents ... Mr.R.Murakidharan for R2

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## ORDER

W.P.No.17069 is filed by the Tamilnadu State Transport Corporate (Villupuram) Ltd., against the workmen Mr.M.Krishnaraj for issuance of Writ of Certiorari to call for the records pertaining to the award in I.D.No.25 of 2012 dated 08.10.2023 and to quash the same.

2. Second respondent was working in the petitioner's corporation as a Reserve Driver. He joined the service in the year 2009. On 27.07.2011 at about 09.45 hours, when he was driving a bus bearing Registration No.T.N.32.N.2950, he indulged in a road accident and hit a motor cyclist who died on the spot. Since then, the driver stopped reporting to the duty. The driver/workmen has raised Industrial Dispute in I.D.No.25 of 2012 seeking reinstatement with continuity of service and backwages before the first respondent Labour Court and the same was disposed of holding that there was violation of Section 25 F of the Industrial Dispute, thereby directed the petitioner corporation to reinstate the workmen/Driver with continuity of service and pay the backwages. Aggrieved by the same, W.P.No.17069 of 2014 is filed.

3. It is submitted by the learned counsel for the petitioner corporation



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that the respondent/workmen Driver was working only as a Reserve Driver. He was being given the work as and when the regular Driver was not available, he was not given work as Driver continuously, he has not worked for 240 days in 12 months or 480 days in 24 calendar months and after committing accident 27.07.2011, he himself has voluntarily withdrawn from the work and stopped attending the work at Corporation and therefore submitted that the conclusion of the Labour Court that there was violation of Section 25 F of the Industrial Dispute Act is erroneous and contrary to law and therefore sought for allowing the Writ Petition by setting aside the impugned order.

4. Second respondent/workmen though not filed counter affidavit has submitted that the second respondent/workmen was employed as Driver from November 2009 and has worked for 240 days in 12 calendar months and 480 days in 24 calendar months and became permanent workmen and that on 27.07.2011 second respondent was dismissed from service on the allegation that he has killed a man on account of his negligent driving. It is further submitted that petitioner corporation prior to dismissing the second respondent has not conducted any enquiry, no notice was given, no explanation was called for. It is also further submitted that though Criminal case was registered against the second respondent, subsequently, the second respondent was acquitted from



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all the charges and even after acquittal from the Criminal case, the second respondent has approached the petitioner corporation but there was no response.

5. Heard, Mr.M.Aswin, the learned counsel appearing for the petitioner as well as Mr.R.Muralidharan, the learned counsel for the second respondent, and perused the records.

6. The Labour Court while considering the issues raised by the second respondent in I.D.No.25 of 2012 has formulated the following issues for determination.

1. Whether the petitioner was only a driver in reserve and if so whether he could be stopped from working without due inquiry into the charges.
2. If not whether the dismissal of the petitioner is bad in law.
3. Whether the petitioner has worked for 240 days i 12 calendar months or 480 days in 24 calendar months.
4. If so whether he is entitled to the benefits of Chapter V A of the Industrial Dispute Act.
5. Whether the dismissal of the petitioner should be set aside and whether the petitioner is entitled to reinstatement with continuity of service and



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back wages and other benefits.

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7. The Labour Court has discussed at length about the designation of the second respondent "Reserve Driver" while quoting the certified standing orders, the Labour Court has also observed though there are various categories of workmen in the corporation like Probationers, Apprentice, Casual workmen, Temporary workmen and permanent workmen, there is no category as Reserve Driver. Once there is no designation like Reserve Driver which perhaps could have been given basing on the nature of the work of this said Driver whose services are not continuously hired, the position of the second respondent must fit in any one of the categories mentioned in the certified standing orders. Therefore, though the petitioner corporation has mentioned as a Reserve Driver, he can be termed as either workmen or temporary workmen.

8. It is the contention of the learned counsel for the petitioner corporation that the second respondent will not fall under any of the categories in the mentioned in the certified standing order as his services were not taken continuously. He is only a Reserve Driver, as and when regular Driver absents, when there is no substitute Driver in the department, only then the services of the Reserve Driver will be utilised. In fact, the issue as to whether he was a



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temporary workmen or a casual workmen or Reserve Driver, are not material at all in order to determine the issue before the Court. Because it is the contention of the second respondent Driver that he has worked continuously for 240 days in one year or 480 days in two years, thereby, according to him he has attained the status of continuous service and thereby, Section 25F of Industrial Dispute Act is violated. Therefore, whatever may be the nomenclature of the second respondent, basing on his nature of work the question to be considered is whether second respondent has worked either 240 days in one year or 480 days in two years.

9. Learned counsel for the petitioner has cited authority in ***D.K. Yadav vs. J.M.A. Industries Ltd.*** Reported in MANU/SC/0529/1993, in Civil Appeal No.166 (NL) of 1983.

*“10. In State of West Bengal v. Anwar Ali Sarkar MANU/SC/0033/1952 : 1952 CriLJ510 per majority, a seven Judge Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In Maneka Gandhi v. Union of India MANU/SC/0133/1978 :*



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*[1978] 2SCR621 another bench of seven judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article.14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made there under for showing cause against action proposed to be taken against an individual, which affects the rights of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done by manifestly appears to be done. They have a duty to proceed in a way which is free from even the*



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*appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.”*

*“14. It is thus well settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted' complying with the principles of natural justice. In D.T.C v. D.T.C Mazdoor Congress and Ors. (Supra) the Constitution bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without enquiry offended Article 14. The order terminating the service of the employees was set aside.”*



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10. Second respondent was deposed as ww.1 that he has been continuously working as a Driver. Apart from the filing the documents, the petitioner corporation has produced Thiru. Ganapathy, the Branch Manager, Cuddalore, as Management witness and was examined as MW.1 who has admitted in his evidence that second respondent has worked for 480 days in 24 calendar months prior to dismissal. Therefore, even according to the petitioner corporation, the second respondent has worked for 480 days in 24 calendar months.

11. Section 25F of the Industrial Dispute Act reads as under:

*“25F. Conditions precedent to retrenchment of workmen.—  
No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until— (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; 1 \* \* \* \* \*  
(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days’ average pay 2 [for every completed year of continuous*



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*service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”*

12. On perusal of Section 25F of the Industrial Dispute Act, no workman who has been in continuous service not less than one year, shall be retrenched without giving one month notice in writing without making retrenchment compensation etc. According to the evidence of Corporation through MW.1 the petitioner has worked for more than 480 days then in period of two years. Once the second respondent workmen has worked continuously for a period of one year, he cannot be dismissed or terminated or retrenched from work without following the process as contemplated in Section 25F of the Industrial Dispute Act. That means, prior to his dismissal one month notice should have been given and he should have given retrenchment compensation. In the case on hand, neither one month notice was given, nor retrenchment compensation was given.

13. It is the contention of the petitioner corporation that subsequent to accident on 27.07.2021, the petitioner has stopped attending the office. If



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really that is correct, the petitioner corporation was expected to issue notice as to why he was not attending the office. Since contention of the corporation is that he was only Reserve Driver and he was not given employment regularly, is not acceptable on account of evidence of MW.1. The contention of the petitioner corporation is that the respondent himself has stopped attending office cannot be accepted. Therefore, whether the petitioner was terminated orally or retrenched, it is in violation of Section 25F of the Industrial Dispute Act, the second respondent workmen is entitled for reinstatement.

14. In order to intervene and set aside the award of the Labour Court the Management is expected to demonstrate before this Court that the order of the Labour Court is erroneous on the face of it and that the award passed ignoring the settled legal principle. However, as already observed first respondent/Labour Court has passed well reasoned order and therefore it cannot be said that impugned order is perverse. In view of the above, the order of the first respondent in I.D.No.25 of 2012 dated 08.10.2013 is confirmed. Writ Petition is dismissed. No costs. Connected miscellaneous petition is closed.

19.06.2024

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Index : Yes / No

Speaking/Non-speaking Order

Neutral Citations: Yes/No

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To

1. The Presiding Officer,  
Labour Court,  
Cuddalore.

**Dr.D.NAGARJUN, J.**

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Pre-delivery order made in

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19/6/2024

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