



W.A.No.482 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.01.2024

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.482 of 2023

AND

C.M.P.No.4563 of 2023

The General Manager
Tamil Nadu State Transport Corporation
Head Office, Thiruvannamalai Region
Bypass Road, Vengikkal
Thiruvannamalai

.. Appellant

Vs.

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

2.A.Perumal

3.The Managing Director
Tamil Nadu State Transport Corporation
3/137, Salamedu
Vazhuthareddy Post
Villupuram 603 685

4.The General Manager
Tamil Nadu State Transport Corporation
Rangapuram
Vellore 9

.. Respondents



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Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 21.09.2021 passed by the learned Judge in W.P.No.8308 of 2017.

For Appellant : Mr.G.Saravanakumar

For 2nd Respondent : Mr.S.N.Ravichandran

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This Writ Appeal arises from the order dated 21.09.2021 passed by the learned Judge in W.P.No.8308 of 2017.

2. The brief facts of the case are that the 2nd respondent was appointed on 10.09.2007 as a casual driver through Employment Exchange and he joined in the Tamil Nadu State Transport Corporation in Thiruvannamalai Region on 05.02.2008. He served in the Vellore Region from 05.02.2008 to 31.07.2009 and in Villupuram Region from 01.08.2009 to September 2014. While so, on 18.06.2015, the 2nd respondent filed a petition under Section 3(1) of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, before the 1st respondent praying to regularise his services. By proceedings dated 04.01.2016, the 1st respondent directed the appellant to regularise the services of the 2nd respondent. Challenging the said proceedings,



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the appellant filed a writ petition in W.P.No.8308 of 2017. After due contest, the learned Judge, by order dated 21.09.2021, dismissed the said writ petition and directed the appellant/writ petitioner to comply with the order passed by the authority within a period of four weeks. Aggrieved by the same, the appellant Transport Corporation is before this Court with the present appeal.

3. The learned counsel for the appellant Transport Corporation submitted that the 2nd respondent has faced charges of misappropriation, while he was working on 01.07.2012 in Route No.153(b) in the nature of fare collected, but ticket not issued to the passengers and hence, it is not correct on the part of the 1st respondent in computing the past period spent by the 2nd respondent prior to his termination, for the purpose of calculating the period of days he worked. Adding further, the learned counsel submitted that the employment of the 2nd respondent was not a continuous one, as he was not assigned with any continuous duty under regular stream of employment. Only to reiterate that the 2nd respondent was not having any continuous service, it was put forth on the side of the Department before the first respondent that the 2nd respondent was assigned the post of “Daily Wage Conductor” on 21.11.2014 on completion of length of service and not otherwise. Therefore, the 1st respondent ought to have considered that non-employment of break in service while in employment, must



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be considered as some act on the part of the employee, which has the effect of terminating the contract. Thus, according to the learned counsel, reinstatement in the casual appointment on a lenient consideration does not entrust any right for the post. However, the 1st respondent passed the order for permanent appointment of the second respondent, which was also affirmed by the writ court, by the order impugned herein, which is not in accordance with law. Stating so, the learned counsel prayed for setting aside the orders passed by the first respondent as well as the learned Judge.

4. On the other hand, the learned counsel appearing for the 2nd respondent submitted that the persons appointed along with the 2nd respondent were made permanent, however, such benefit was not extended to the second respondent, which is violative of Article 14 of the Constitution of India. Considering the facts and circumstances of the case, the first respondent has rightly passed the order for permanent appointment of the second respondent and the same was rightly affirmed by the learned Judge. Despite the same, the appellant Transport Corporation has not taken any steps to comply with the same. Therefore, the learned counsel prayed for dismissal of this appeal and directing the appellant to comply with the direction of the learned Judge, within a time frame to be stipulated by this court.



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5. Heard the learned counsel on either side and perused the records.

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6. There is no dispute that the second respondent was appointed in the appellant Transport Corporation through Employment Exchange, on 10.09.2007. By order dated 04.01.2016, the first respondent directed the appellant to regularise the services of the second respondent as per Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, on the ground that the second respondent had worked continuously for more than 480 days in 24 calendar months from the date of his joining i.e., on 05.02.2008. The writ petition filed by the appellant Transport Corporation, challenging the said order of the first respondent, was dismissed by the learned Judge, by order dated 21.09.2021, which is impugned in this appeal.

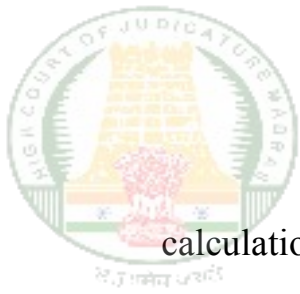
7. It is the specific contention of the learned counsel for the appellant Transport Corporation that the 2nd respondent has faced charges of misappropriation, while he was working on 01.07.2012 in Route No.153(b) in the nature of fare collected, but ticket not issued to the passengers, for which, domestic enquiry was conducted and resultantly, he was terminated from service and hence, there was no continuous service rendered by the second



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respondent. In such circumstances, it was not correct on the part of the 1st respondent in computing the past period spent by the 2nd respondent prior to the termination, for the purpose of regularisation of service. The learned Judge though observed that the punishment imposed on the second respondent, may be justified, he erred in dismissing the writ petition, stating that it cannot be presumed that the 2nd respondent is not a permanent employee thereby depriving other benefits, if he is legally entitled to.

8. This court finds some *bona fide* in the contentions so raised on the side of the appellant Transport Corporation. It is seen from the order of the first respondent dated 04.01.2016, that as per the documents produced on the side of the 2nd respondent, the 2nd respondent had worked continuously for more than 480 days in 24 calendar months and hence, as per Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, the 2nd respondent has to be regularised. It has also been observed in the earlier portion of the said order that the 2nd respondent had not committed any flaw during his service periods, i.e., 2008 and 2009 and therefore, the appellant Transport Corporation did not frame any charge against him or give any punishment to the second respondent. On the other hand, in the order impugned herein, the learned Judge has proceeded to pass the order only on the point of



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calculation of eligible days in order to have regularisation of employment of the second respondent. The point of computing the past period spent by the 2nd respondent prior to the termination for arriving at the period of days he worked, has not been taken note of. That apart, the submission of the appellant Transport Corporation that the second respondent during his employment, has faced the charge of misappropriation, which ended in termination order, and that, there was no continuous service, has also not been considered by the learned Judge. The Hon'ble Supreme Court in *Dharmapur Sugar Mills Ltd v. Bhola Singh* [AIR 2005 SC 1790], has held that “when a workman is appointed in terms of a scheme on daily wages, he does not derive any legal right to be regularised in his service. It is now well known that completion of 240 days of continuous service in a year may not by itself be a ground for directing regularisation particularly in a case, when the workman had not been appointed in accordance with the extant rules”. Therefore, in the given factual matrix, this court is of the view that the first respondent and the learned Judge, without properly appreciating the contentions put forth by the appellant Transport Corporation, have passed the orders impugned in the writ petition and the writ appeal respectively, which are liable to be set aside.



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9. At this juncture, the learned counsel for the 2nd respondent submitted that for the similarly placed persons like that of the 2nd respondent, regularisation orders have been issued by the appellant Transport Corporation and the copies of such regularisation orders dated 21.12.2009 and 05.10.2010 have also been enclosed in the typed set of papers.

10. In view of the above, the orders impugned in this appeal and the writ petition, are set aside and the matter is remanded to the appellant Transport Corporation, which shall consider the case of the appellant for regularisation of his service, in the light of the orders earlier passed in respect of similarly placed and pass appropriate orders, as expeditiously as possible, preferably, within a period of eight weeks from the date of receipt of a copy of this judgment.

11. The writ appeal is disposed of, on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

[R.M.D,J.] [M.S.Q, J.]

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Internet : Yes
Neutral Citation : Yes/No
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