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Writ Petition No.33174 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2024

Coram

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.33174 of 2024

&

W.M.P.No.35920 of 2024

1. The Managing Director
TamilNadu State Transport Corporation (Kovai) Ltd.,
37, Mettupalayam Road
Coimbatore – 641 043
 2. The General Manager
Tamil Nadu State Transport Corporation (Kovai) Ltd.,
Erode Region, Chennimalai Road
Erode – 638 001
- .. Petitioners

vs.

1. R.R.Kadirvel, Conductor 6945
S/o.Rangasamy
 2. The Assistant Commissioner of Labour
Erode, Erode District
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records in Case No.Na.Ka.A/1556/2017 on the file of 2nd respondent dated 30.12.2020 and quash the same.

For Petitioner : Mr.M.Murali Vinodh

For Respondents : Mr.R.Jaikumar for R1



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ORDER

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This writ petition is filed challenging the order passed by the second respondent, namely Assistant Commissioner of Labour being the Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, dated 30.12.2020.

2. The brief facts on which this writ petition arises are that the workman was registered with the Employment Exchange. While so, an interview card was sent to him to attend the interview on 06.03.1995. Based upon the interview, the workman was appointed as a trainee by an order dated 06.05.1995 directing the workman to report of duty on or before 12.05.1995. In the said order, it was mentioned that if the workman completes the conductor training successfully, after completion of the training at the discretion of the management, the workman will be considered for appointment to the post of Conductor in any future vacancy. When the workman was working as a trainee, on 21.03.1998, the workman was temporarily appointed as a Conductor. Even though in the said order it was expressly stated that the temporary appointment does not give rise to any permanency, still in about a period of one year,



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on 01.04.1999, the workman was conferred with permanent status and workman is working all along. While so, in the year 2017, the workman filed the present application before the second respondent to confer permanent status upon him with effect from 06.05.1997 i.e., from the date on which he completed 480 days within a period of two years. The said application was resisted by the Management. The Authority, thereafter, considering the case of the parties, allowed the petition, aggrieved by which the present writ petition is filed.

3. The learned counsel appearing on behalf of the management would submit that in this case even the temporary appointment is only from the year 1998 and even before two years or 480 days could be completed, the workman was made permanent in April 1999 itself. Therefore, the Authority ought not to have conferred permanent status on the workman. He would also submit that the petition suffers from delay and laches. He would further submit that there is not even any specific finding as to 480 days that is put in by the workman. Even though the order is for 11 pages, it is a one line order where the Authority says that he finds the claim of the workman justifiable and orders the petition.



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4. The learned counsel would rely upon the order of this Court in

W.P.Nos.22550 and 25535 of 2008 and 8751 of 2009 dated 19.08.2014

and the order in W.P.No.9116 of 2017 dated 27.07.2023 .

5. Per contra, the learned counsel appearing on behalf of the workman would submit the issue is no longer *res integra* and it has been settled by a Division Bench of this Court vide judgment in W.A.No.962 of 2021 dated 25.01.2023. The Division Bench has framed three questions. Whether the claim of the workman after accepting the permanency long back and thereafter claiming under the Act from an anterior period would be hit by delay and laches. Secondly the Division Bench also considered the question about accepting the settlement or the order of the Management. The Division Bench found that in these cases, the matters cannot be dismissed on the ground of delay and laches. Further, the statutory right which is conferred under Section 3 cannot be taken away by the settlement or by the order of the Management and therefore, the Division Bench allowed appeal. Therefore, the said judgment governs the field and this writ petition is liable to be dismissed.



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6. I have considered the submissions made on either side and perused the material records of the case.

7. At the outset, in the first judgment produced by the learned counsel for the Management in W.P.Nos.22550 of 2008, the Court considered the settlement which is there in the Corporation, to confer permanent status within a period of one year where the workman put in 240 days. Therefore, the same cannot be relied upon for this context. Similarly, the second order in W.P.No.9116 of 1997 also, upholds the contention of the Management only on the factual considerations that there is no finding of 240 days per year by the Authority. Therefore, that order cannot also be pressed into service for the issues which are raised in the present case. Similarly, even the Division Bench in W.A.No.962 of 2021 was concerned with a case where the employee was engaged as a driver on temporary basis in the year 1998 and was thereafter made permanent only in the year 2005 and in that context, the Division Bench has allowed the claim. Even while allowing the claim, the Division Bench has categorically held that it is the duty of the Authority to actually look into the aspect whether the employee has completed 480 days of service or not.



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8. Therefore, I am of the view that none of the three judgments would be directly applicable to the facts and circumstances of the present case. In this case, it can be seen that if the workman's claim has to be allowed, that would be virtually deciding that when the workman was initially appointed in the year 1995, he was not induced in the training for the post of becoming conductor but it is an actual employment. That is a question which has to be raised and gone into by the Authorities. As a matter of fact, the workman's initial appointment to service even on temporary basis was only on 21.03.1998. Therefore, firstly it can be seen that without even any specific finding that initial training from 12.05.1995 is not a training but is only an employment, the claim has been allowed. Secondly, there is not even a finding on facts that there is 480 days of service that is said to have been completed.

9. Be that as it may, in the facts and circumstances of the present case, when the workman was given an order appointing him as a Trainee, in the said order itself it has been expressly mentioned that if the petitioner successfully undergoes the training, thereafter he may be absorbed in subsequent vacancies. By an express order dated 21.03.1998, the workman was thereafter appointed on temporary basis.



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The workman accepts his employment. Within 480 days from the date of appointment on temporary basis when the workman has been conferred permanency by the respondent management itself, the petitioner cannot be permitted to claim permanency from the date of his engagement as a Trainee in the facts and circumstances of the present case.

10. I am of the view that the petitioner should have challenged the order dated 21.03.1998 at the relevant point of time. Having accepted the employment and also the permanency conferred thereafter, without questioning the earliest appointment on temporary basis, the workman cannot indirectly raise a dispute that whether the training was actually a training or employment.

11. For all the above reasons, I find merits in the case of the petitioner Management. Accordingly, this writ petition stands allowed and the impugned order dated 30.12.2020 made in Case No.Na.Ka.A/1556/2017 is quashed. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

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Index:Yes
Speaking Order
Neutral Citation:Yes
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D.BHARATHA CHAKRAVARTHY., J

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To

The Assistant Commissioner of Labour
Erode, Erode District

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