



W.P.(MD)No.17045 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 05.06.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.17045 of 2021

and

W.M.P.(MD)No.13975 of 2021

K.V.Hariharan

... Petitioner

Vs.

1.The Additional Chief Secretary to Transport Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Under Secretary to Government,
Transport Department,
Secretariat, Fort St. George,
Chennai – 600 009.

3.The Managing Director,
State Express Transport Corporation Tamil Nadu Ltd.,
Pallavan Salai,
Chennai – 600 002.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter No. 002212/HR1/SETCTN/2010 dated 05.01.2021, on the file of the respondent no.3 and quash the same as illegal and consequently to direct the respondents to regularize the petitioner's service from 02.01.1990 to 01.02.1992.



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W.P.(MD)No.17045 of 2021

For Petitioner : Mr.S.Louis
For Respondents 1 & 2 : Mr.C.Satheesh
Government Advocate
For 3rd Respondent : Mr.K.Sathiya Singh
Standing Counsel

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in Letter No. 002212/HR1/SETCTN/2010 dated 05.01.2021, on the file of the respondent no.3 and to direct the respondents to regularize the petitioner's service from 02.01.1990 to 01.02.1992.

2.The petitioner joined duty in Thiruvalluvar Transport Corporation (now State Express Transport Corporation Tamil Nadu Ltd) as a Casual Labourer on 30.06.1980. Thereafter, he was made permanent with effect from 01.02.1982. While so, yet another colleague of the petitioner named M.Dayalan was appointed as a Casual Labourer on 01.05.1982. However, his service came to be regularized with effect from 02.01.1990. In view of the same, the petitioner made a representation requesting the respondent Corporation to regularize his service with effect from 02.01.1990 on par with his colleague M.Dayalan. However, rejecting the petitioner's claim, the impugned order dated 05.01.2021 came to be passed. Challenging the same, this Writ Petition came to be filed.



W.P.(MD)No.17045 of 2021

3.The learned counsel appearing for the petitioner submitted that the impugned order is *per se* illegal for the pertinent reason that the petitioner had made a representation seeking parity in declaration of his permanent status on par with one M.Dayalan. However, even without referring to the name of his junior M.Dayalan, just referring the names of few other Juniors, A.Palani, J.Amarnath and Haribabu, without application of mind by a cryptic order, the respondents have rejected the petitioner's representation for the reason that the petitioner has been regularised from 1992 instead of 1994 as per the Government letter No. 2853/C1/94-6, dated 16.03.1995. Hence, the petitioner pressed for allowing the Writ Petition.

4.The third respondent has filed a counter. The learned Standing Counsel appearing for the 3rd respondent submitted that there was break in service in the service of the petitioner and the petitioner cannot seek parity with the case of M.Dayalan because he had worked continuously in the respondent Corporation as Record Clerk, whereas the petitioner was absent, when the name list was sent to the Government and it is only as per G.O.Ms.No.6, Transport Department dated 02.01.1990, which was issued subsequently, the petitioner was appointed as Store Keeper, since there was vacancy in that category at that time. However, no record which would substantiate the said claim that, the petitioner was absent at the time of issuance of G.O.Ms.No.6, Transport Department dated



W.P.(MD)No.17045 of 2021

02.01.1990 has been produced before this Court.

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5. Heard the learned counsel for the petitioner, the learned Government Advocate for the respondents 1 and 2, the learned Standing Counsel for the 3rd respondent and carefully perused the entire materials available on record.

6. However, the facts narrated by the learned Standing Counsel for the third respondent is not reflected in the impugned order and this Court is of the considered view that the third respondent in exercise of a statutory function had issued the impugned order dated 05.01.2021, based on Government letter No.2853/C1/94-6, dated 16.03.1995, thereby rejecting the petitioner's claim to regularize him with effect from 02.01.1990 on par with his junior one M.Dayalan. Having done so, by way of filing a counter affidavit, he cannot supplement the impugned order by fresh reasons. The Hon'ble Apex Court in the case of ***Mohindeer Singh Gill and Others v. The Chief Election Commissioner and Others*** reported in ***AIR 1978 SC 851***, has dealt with the aspect of supplementing impugned orders with fresh reasons in counter affidavit and the relevant portion of the same is extracted as follows:-

“The second equally relevant matter is that when a statutory functionary makes an order based on certain



W.P.(MD)No.17045 of 2021

grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (1) "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

7. In view of the same, this Court hereby quash the impugned order dated 05.01.2021 and remand back the case back to the third respondent and consequently, direct the respondents to regularize the petitioner's service on par with his junior, M. Dayalan.

8. Accordingly, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

05.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes



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W.P.(MD)No.17045 of 2021

L.VICTORIA GOWRI, J.

Mrn

To

- 1.The Additional Chief Secretary to Transport Department,
Secretariat, Fort St. George,
Chennai – 600 009.
- 2.The Secretary to Government,
Transport Department,
Secretariat, Fort St. George,
Chennai – 600 009.
- 3.The Managing Director,
State Express Transport Corporation Tamil Nadu Ltd.,
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W.P.(MD)No.17045 of 2021

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