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W.P.(MD)No.16579 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2024

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.(MD)No.16579 of 2024

and

W.M.P.(MD)No.14345 of 2024

The Management,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
No.27, Railway Station New Road,
Kumbakonam-612 001.

... Petitioner

Vs.

1.The Assistant Commissioner of Labour (Enforcement),
Thanjavur, Thanjavur District.

2.D.Sivasankaran,

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records on the files of the learned Assistant Commissioner of Labour (Enforcement), Thanjavur pertaining to the order passed in Na.Ka.No.A.1994/2017 dated 22.05.2023 and to quash the same as illegal.

For Petitioner	: Mr.S.C.Herold Singh
For R1	: Mr.P.Thambidurai Government Advocate
For R2	: Mr.R.V.Rajkumar for Mr.H.Mahamad Hussain



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ORDER

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2.The Management of the Transport Corporation (Kumbakonam) Ltd., is the petitioner in this writ petition. There were some difficulties expressed by the drivers and conductors that they were directed to work for more hours and also they were not granted sufficient leave. Hence, a decision was taken by the Corporation to engage drivers and conductors in the reserve crew and such drivers came to be appointed by calling for eligible candidates from the employment exchange. As such, the second respondent in this writ petition came to be appointed as temporary driver in the petitioner Corporation with effect from 23.07.2001. Thereafter, 12(3) settlement was arrived on 31.08.2005 between the petitioner management and the employees who were appointed on temporary basis and on that basis, all the employees were given permanent status.

3. However, the second respondent and other similarly placed employees approached the first respondent, seeking conferment of permanent status with effect from the date when they completed 480 days continuous service from the date of their original appointment on temporary basis. According to the



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petitioner, the first respondent authority concerned, without considering the 12(3) settlement reached between the employees and the petitioner/management, merely considering the statements and on verification of the records, has granted permanent status to the second respondent with effect from 11.01.2003 onwards. Challenging the same, the petitioner/management has filed the present writ petition.

4.The learned counsel for the petitioner submits that the second respondent was granted permanent status only based on 12(3) settlement arrived at between the second respondent and the petitioner/management on 31.08.2005. Therefore, without considering this aspect, the first respondent conferred the permanent status on the second respondent with effect from the date on which he had completed 480 days of service from the date of his initial appointment. In support of his contention, the learned counsel relied upon a judgment of a Division Bench of this Court in W.P.No.1566 of 2018 in the case of ***“The Management, Tamil Nadu State Transport Corporation vs. The Labour Inspector and another dated 26.03.2024”***, wherein, it has been held that once 12(3) settlement had arrived between the employee and the management, the employee should abide by the same and he cannot ask any benefit retrospectively. Therefore, he submits that the order of the first respondent cannot be sustained and the same is liable to be quashed in view of



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the law laid down by the Division Bench of this Court.

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5. Per contra, the learned counsel for the second respondent would fairly submit that 12(3) settlement was arrived at between the employee/second respondent and the Management on 31.08.2005, however, he states that even though such settlement is arrived, the same would be subject to the provisions of Section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act, 1981 (in short 'the Act'), which provides that every workman, who is in continuous service for a period of 480 days in a period of 24 calendar months in an Industrial Establishment, shall be made permanent, notwithstanding anything contained in any law for the time being in force.

6. By referring to Section 3 of the Act, the learned counsel would submit that while granting permanent status to the employee, the Act will exclude the agreement, settlement, instrument or contract of service whether made before or after the commencement of the Act. Hence, the 12(3) settlement need not be followed and irrespective of the terms of settlement, the employee is entitled to conferment of permanent status from the date of completion of 480 days of his continuous service in 24 calendar months as per Section 3 of the Act. Accordingly, in the light of the said provision, the first respondent has rightly passed the order conferring permanent status on the second respondent from 11.01.2003, the date on which, he completed 480 days in a period of 24 calendar months in the petitioner management. Further, with regard to the



judgment referred to by the learned counsel for the petitioner in W.P.No.1566 of 2018, the learned counsel for the second respondent submits that though this Court referred to the provisions of the Act, the issue pertaining to the provision under Section 3 of the Act, which clearly excludes any agreement, settlement or contract entered between the parties while providing conferment status, has not been considered and hence, no reliance can be placed on the said judgment.

7. In support of his contention, the learned counsel for the second respondent has relied upon a judgment of this Court in the case of “***The Management, General Manager, Tamil Nadu State Transport (Salem) Limited., vs. T.Senthilkumar and another***” in W.A.No.2775 of 2022 dated 30.08.2023, wherein, the Division Bench observed that the settlement cannot be relied on to deny the entitlement to the second respondent therein, since the settlement cannot override the provisions of the Act. Therefore, he would submit that there is no substance in the contention raised by the learned counsel for the petitioner/management. Therefore, he would urge this Court to dismiss this writ petition.

8.I have carefully considered the submissions made by the learned counsel appearing on either and perused the materials placed on record.



9. There is no dispute as regards the date of conferment of permanent status given to the second respondent. The second respondent was initially appointed on 23.07.2001 and he completed 480 days of continuous service in 24 calendar months in the petitioner/management. According to the petitioner, his service was regularized on the basis of 12(3) settlement dated 31.08.2005 and permanent status was granted only with effect from 01.08.2006. According to the petitioner/management, having entered into 12(3) settlement, the second respondent cannot take shelter and claim permanency from the date of completion of 480 days of his continuous service in 24 calendar months, which is against the law laid down by the Division Bench of this Court.

10. Now the issue to be decided is, as to whether the 12(3) Settlement dated 31.08.2005 will prevail over the provision of Section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act, 1981?

11. Section 3 of the Act is extracted hereunder for easy and ready reference:

*“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.*



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

Explanation I.-- [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.

[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.]

12. A bare reading of the above provision clearly shows that not



withstanding anything contained in any law for the time being in force, every workman who is in continuous service for a period of 480 days in a period of 24 calendar months in an industrial establishment, shall be made permanent. This means that any person, who works continuously for 480 days in a period of 24 calendar months, then it is just and necessary for the employer to provide him permanent status.

13. In the present case, the petitioner was appointed initially on 23.07.2001 and he has completed 480 days of continuous service. Permanent status was granted by the first respondent authority with effect from 11.01.2003. Now, the petitioner management argued that the petitioner and other the employees have arrived at 12(3) settlement on 31.08.2005 with the petitioner/management, as per which, the second respondent is entitled to permanent status with effect from 01.08.2006 only.

14. However, this Court is not in a position to accept the contention of the petitioner for the following reasons, viz.,

(i) The Statute will always prevail over the Settlement to the extent provided in the Agreement/settlement contrary to the Statute.

(ii) The explanation to Section 3(2) of the Act clearly states that 'law' includes any award, agreement, settlement, instrument or contract of service



whether made before or after the commencement of this Act. Therefore, 'law' referred in Section 3 would include the present settlement. Section 3 states that 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. Even if the agreement/settlement is entered between the workman and the Management, still the Act will prevail over the settlement arrived at between the parties. In other words, any award, agreement, settlement, instrument or contract of service which may run contra to the benefit provided under Section 3 of the said Act, shall not stand against the Workman in getting the permanent status, if he satisfies the requirement under Sub-Section 1 of Section 3 of the Act. Thus, irrespective of 12(3) Settlement, if a temporary workman completes continuous service for a period of 480 days in a period of 24 calendar months in the petitioner Management, he is entitled for permanent status from the date on which, he completed 480 days of continuous service. On the basis of the said aspect only, the first respondent authority has rightly passed the order conferring permanent status on the respondent with effect from 11.01.2003 the date on which, he completed 480 days of continuous service.

15. A similar issue came up before the Division Bench of this Court in



the case of “*The Management, Tamil Nadu State Transport Corporation (Madrai) Ltd., vs. Labour Inspector and another*” reported in 2020(2) LLJ

130, wherein, this Court has considered the issue as to whether the settlement arrived under Section 12(3) of the Industrial Disputes Act, would stand against the Workman therein in getting his confirmation as provided under the relevant Statute. The Division Bench observed that the settlement cannot be relied on to deny the entitlement to the second respondent therein, since the settlement cannot override the provisions of the Act. Relevant portion as found in paragraphs 21 to 23, is extracted as under:

“21. Reliance was placed on the memorandum of settlement under Section 12(3) of the I.D. Act, dated 25.09.1986 and in Clause-12 of the settlement, which deals with confirmation of temporary employees, in sub- clause (a), which deals with drivers and conductors, it has been agreed to that the services of the drivers and conductors will be confirmed after satisfactory completion of 240 days of actual work in a continuous period of one year. Similar condition is found in Clause-13 of the Settlement under Section 12(3) of the I.D. Act entered in the year 1992.

22. The contentions raised by Mr. Ajay Khose, learned counsel, stating that the provisions of the Act prevail over the settlement is right and this question has been decided in several matters and it would be beneficial to take note of the decision in Metal Powder Co. Ltd.,



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Thirumangalam and another vs. the State of Tamil Nadu and another, reported in 1985 (2) LLJ 376, which was followed by the Division Bench of this Court in the Judgment dated 30.09.2019 in W.A.Nos.2871 and 2872 of 2018 [The Managing Director, Tamil Nadu State Transport Corporation Ltd., vs. Shanmugam (died) and another].

23. Similar issue was decided by us in favour of the workmen in the case of the Senior Regional Manager, Tamil Nadu Civil Supplies Corporation and another vs. The Joint Commissioner of Labour, Trichy, and others, W.A.(MD) Nos.353 to 357 of 2014, dated 12.03.2018.”

16. Therefore, this Court is of clear view that the provisions of the Act will prevail over 12(3) Settlement dated 31.08.2005. However, in the judgment referred to by the petitioner in W.P.No.1566 of 2018, though the provision of the Act is referred, the same was not dealt with by the Division Bench of this Court. Thus, this Court is of the view that the ratio laid down in the said judgment, cannot be made applicable to the present case.

17. In the light of the above discussion, this Court does not find any merits in the Writ Petition to entertain the same. Therefore, there is no scope to interfere with the order passed by the first respondent and the same is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.



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Index:yes/no
Internet:yes/no
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To

The Assistant Commissioner of Labour (Enforcement),
Thanjavur, Thanjavur District.



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KRISHNAN RAMASAMY, J.

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