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W.A(MD).Nos.147 and 148 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.02.2024

CORAM:

**THE HON'BLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN**

**AND**

**THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN**

W.A(MD). Nos.147 and 148 of 2016

and

C.M.P.(MD).Nos.661 & 662 of 2016 and 2451 and 2452 of 2020

W.A.(MD).No.147 of 2016:

The Management of Tamil Nadu  
State Express Transport Corporation Limited,  
Rep. by its The General Manager,  
Pallavan Salai,  
Chennai-600 002.

... Appellant/Petitioner

Vs.

1. V.Sahyaya Carmel Rajan

2. The Presiding Officer,  
Labour Court,  
Tirunelveli.

... Respondents/Respondents

**Prayer** : Writ Appeal filed under Clauses 15 of Letters Patent, praying to set aside the order passed by the Learned Judge in W.P.(MD).No.5744 of 2012 dated 13.02.2015 on the file of this Court.

For Appellant : Mr.K.Sudalaiyandi



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For Respondents : Mr.V.Kannan for R1

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W.A.(MD).No.148 of 2016:

1. The Managing Director,  
State Express Transport Corporation Limited,  
Pallavan Salai,  
Chennai-600 002.
2. The Branch Manager,  
State Express Transport Corporation Limited,  
Kanyakumari Branch,  
Kanyakumari District.

Vs.

1. V.Sahyaya Carmel Rajan ... 1<sup>st</sup> Respondent/Petitioner
2. The State of Tamil Nadu,  
Rep. by its Secretary to Government,  
Transport Department,  
Secretariat,  
Chennai-600 009. ... 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

**Prayer** : Writ Appeal filed under Clauses 15 of Letters Patent, praying to set aside the order passed by the Learned Judge in W.P.(MD).No.8127 of 2012 dated 13.02.2015 on the file of this Court.

For Appellant : Mr.K.Sudalaiyandi

For Respondents : Mr.V.Kannan for R1

: Mr.A.K.Manickam,  
Additional Government Pleader for R2



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### **COMMON JUDGMENT**

[Order of the Court was made by **K.K.RAMAKRISHNAN, J.**]

These Writ Appeals have been filed to set aside the order passed by the learned Judge of this Court in W.P.(MD).Nos.8127 & 5744 of 2012 dated 13.02.2015.

2.The appellant corporation called interview through the Employment Exchange in the year 1994 and the respondent appeared on 02.04.1994 and he was given employment as a driver-cum-conductor in the appellant corporation on 04.04.1994 for the payment of Rs.125/- per day. Without permanent status, he was working in the appellant corporation from 04.04.1994 to 30.10.1998. Thereafter, without conferment of status, the appellant corporation called for the interview to make appointment. Therefore, the respondent filed a petition under Industrial Dispute Act, in I.D.No.11 of 2001 on the file of the Labour Court, Tirunelveli. The learned Judge, Labour Court, Tirunelveli, has allowed the I.D.No.11 of 2001 by order dated 24.01.2008 with the following direction:



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*14. In the result Respondent is directed to re-instate the petitioner in service with continuity of employment and also pay full backwages for the period during which petitioner was not given employment and accordingly this I.D., is allowed and award is passed on the lines as indicated above.*

3. Challenging the same, the appellant corporation filed W.P. (MD).No.5744 of 2012 before this Court to set aside the order passed in I.D.No.11 of 2001. The respondent also filed a petition in W.P.(MD).No. 8127 of 2012 to implement the said order passed in I.D.No.11 of 2001. Both the writ petitions were taken together and by the impugned order dated 13.02.2015, the writ Court dismissed the writ petition filed by the appellant corporation and allowed the writ petition filed by the respondent. Aggrieved over the same, the present writ appeals have been filed before this Court.

4. On 23.01.2024, without getting satisfied by the submission of the appellant corporation, passed the following orders:



“ .....

4. After hearing the learned counsel for the appellant, this Court finds that there is no merit in the appeals, however, to give effect to the award passed by the Labour Court, namely, reinstatement of the first respondent as a Driver, who has now crossed 52 years, it is necessary to ascertain whether he is fit to drive a passenger bus and if not, what other alternative remedy can be given to the first respondent. Therefore, before arriving at a conclusion, this Court is of the view that the first respondent shall subject himself for a driving test before the Regional Transport Officer, Tirunelveli and obtain a certificate that he is fit to drive passenger vehicle and produce the same before this Court within a period of two (2) weeks from the date of receipt of a copy of this order.

5. Post the matter on 13.02.2024”.

5. As per the direction of this Court, the Regional Transport Officer conducted the test and filed the report before this Court. The said report is as follows:



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வட்டாரப் போக்குவரத்து அலுவலர், திருநெல்வேலி அவர்களுக்கு பணிநின்று

அவையு.

பொருள் : சென்னை உயர்நீதிமன்ற மதுரை கிளை WA(MD)No. 147 & 148 of 2016 நாள். 22.01.2024 உத்தரவின்படி - ஒட்டுநா உரிமை பெற்ற பண்பாளர்களுக்கு தகுதி தேர்வு நடத்தப்பட்டது - அங்கீகரிக்கப்பட்டது - தொழில்நுட்ப அலுவலர்.

பார்வை : வட்டாரப் போக்குவரத்து அலுவலர், திருநெல்வேலி அவர்களின் த.க. எண் 06216/3/2024 நாள். 06/02.2024

மேற்படி பார்வையின் பொருள்படி சென்னை உயர்நீதிமன்ற மதுரை கிளை WA(MD)No. 147 & 148 of 2016 நாள். 22.01.2024 உத்தரவின்படி திரு. வி. சகாய கார்மல் ராஜன் த.பெ. விவரம், 5/92 மாதா தக், கஸ்தூரிசி, தக்கலை தாலுகா, கன்னியாகுமரி மாவட்டம் (DL No. TN74 19880002697) அவர்களை ஒட்டுநா தகுதி திறன்நிலை தேர்வு 02.02.2024 அன்று திருநெல்வேலி வட்டாரப் போக்குவரத்து அலுவலகத்தில் வைத்து நடத்தப்பட்டது. அதன் விபரம்

| வ.எண் | தேர்வு நடத்திய விபரம்                     | மதிப்பெண் | மதிப்பெண் எடுத்தது | மொத்தம் |
|-------|-------------------------------------------|-----------|--------------------|---------|
| 1.    | வாகனம் ஒட்டும் முறை                       | 20        | 19                 |         |
| 2.    | வாகன அறிவியல்                             | 20        | 19                 |         |
| 3.    | வாகன பராமரிப்பு மற்றும் மேக்கானிக்        | 20        | 18                 |         |
| 4.    | சாலை பாதுகாப்பு விதிகளை சாலை குறியீடுகள்  | 20        | 19                 |         |
| 5.    | சாலை பாதுகாப்பு மற்றும் கொதி போக்குவரத்து | 20        | 18                 | 92      |

திரு. வி. சகாய கார்மல் ராஜன் அவர்கள் 100 க்கு 92 மதிப்பெண்கள் பெற்று தேர்ச்சி பெற்றுள்ளார் என பணிவுடன் தெரிவித்து கொள்கிறேன்.

மேட்டார் வாகன அலுவலர் நிலை 1  
வட்டாரப் போக்குவரத்து அலுவலகம்,  
திருநெல்வேலி



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6. The learned counsel for the transport corporation submitted that the respondent was not working in the appellant corporation for 248 days continuously in a period of twelve months. Therefore, he is not entitled for the permanent status with continuity of service and back wages. The same was not properly considered by both the learned Judge, Labour Court and the writ Court. He also further submitted that in the event of the non-acceptance of the said plea, he requested to set aside the award in respect of the direction to pay the back wages alone on the principle of “no work, no pay”.

7. The learned counsel for the respondent submitted that the labour Court considered records produced by the respondent to prove that he was in continuous duty for 240 days in a period of twelve months and also taken into account that the appellant had not produced any contra evidence and directed to reinstate the petitioner with the continuity of service and back wages and the same was affirmed by the writ Court. Therefore, he seeks for confirmation of both the orders passed by Labour Court and Writ Court.



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8. This Court has considered the rival submissions made by the learned counsel on either side and perused the records and also the impugned judgment passed by the learned single Judge.

9. From the finding of the Labour Court and the Writ Court, the respondent has established that he was working in the appellant corporation for 248 days continuously in a period of twelve months. He also was called through the employment exchange and proper interview was conducted. Thereafter appointment was given on 04.04.1994 and continuously worked up to 30.10.1998. Therefore, his request to reinstate with continuity of service and back wages was accepted by the Labour Court and confirmed by the Writ Court. This Court finds no reason to differ with the findings of both the Courts that the respondent was working for a continuous period of 248 days and he is entitled for the reinstatement with continuity of service. Now, the Regional Transport Officer also conducted the test to test the suitability of the respondent as per the direction of this Court and affirmed his suitability to work as a driver-cum-conductor. Therefore, this Court affirms the entitlement of the respondent to get reinstatement with continuity of service. Considering the fact that the respondent was out of



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service and the Hon'ble Supreme Court reiterated the principle that “no work, no pay”, this Court is inclined to set aside the direction of the labour Court to pay the back wages.

10. Accordingly, these writ appeals are partly allowed with the following directions:

(i) the direction of the Labour Court to pay the back wages to the respondent in I.D.No.11 of 2001 is hereby set aside.

(ii) the appellant is hereby directed to reinstate the respondent within a period of one month from the date of receipt of a copy of this order with continuity of service.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**[V.B.S.J] [K.K.R.K.J.]**  
**20.02.2024**

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

*sbm*



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**To**

1. The Presiding Officer,  
Labour Court, Tirunelveli.
2. The Secretary to Government,  
State of Tamil Nadu,  
Transport Department,  
Secretariat, Chennai-600 009.
3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court, Madurai.



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**V.BHAVANI SUBBAROYAN, J.  
AND  
K.K.RAMAKRISHNAN, J.**

*sbn*

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Dated:20.02.2024