



W.P(MD)Nos.3011 of 2016 & 2178 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2024

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P(MD)Nos.3011 of 2016 & 2178 of 2019

and

W.M.P.(MD)No.2633 of 2016

For W.P(MD)No.3011 of 2016

The Management,
Tamil Nadu State Transport Corporation (Madurai) Limited,
Madurai,
Represented by Managing Director. ... Petitioner

Vs

1. The Presiding Officer,
Labour Court, Madurai.

2. R. Vijayakumar ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of certiorari calling for the records on the file of the 1st Respondent pertaining to the proceedings in 29.01.2015 in I.D.No.16 of 2014 and quash the same.

For Petitioner : Mr.J.Senthilkumariah

For R2 : Mr.S.Arunachalam



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For W.P(MD)No.2178 of 2019

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R. Vijayakumar

... Petitioner

Vs

The Management,
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Represented by Managing Director.
Bye-Pass Road,
Madurai.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records from the Labour Court, Madurai relating to the impugned award dated 29.01.2015 in I.D.No.16/2014 in so far as denying continuity of service, back-wages, permanent status and other attendant benefits to the petitioner, quash the same and consequently to direct the respondent to reinstate him in service with permanent status, back wages and continuity of service and all other attendant benefits and award cost.

For Petitioner : Mr.S.Arunachalam

For Respondent : Mr.J.Senthilkumariah



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COMMON ORDER

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The Management of Transport Corporation has filed the writ petition in W.P(MD)No.3011 of 2016 as against the portion of the order passed by the Labour Court in I.D.No.16 of 2014 directing them to reinstate the workman.

2.The workman/R.VijayaKumar has filed the writ petition in W.P(MD)No.2178 of 2019 as against the portion of the order passed by the Labour Court in I.D.No.16 of 2014 denying back wages to him.

3.Since both the writ petitions are arising out of the award passed by the Labour Court in I.D.No.16 of 2014, both the petitions are taken up together and disposed by this common order.

4.The brief facts of the case is that the father of the workman/R.Vijayakumar, namely, Ramu was in service in the petitioner Transport Corporation and was medically invalidated in the year 1998. Therefore, the petitioner workman/R.Vijayakumar, S/o. Ramu was inducted on compassionate appointment in the year 1999. He was also



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permitted to work in the petitioner Transport Corporation till 2005 and he was retrenched in the year 2005. The petitioner workman/Vijayakumar has raised an industrial dispute before the Labour Court, Madurai, in I.D.No.16 of 2014. The Labour Court has passed the award as under

"21.In the result, award is passed directing the respondent to reinstate the petitioner as casual worker on daily wage basis on the same conditions existed before within 3 months from the date of receipt of this order with continuity of service, but without back-wages and other attendant benefits. It is clarified that continuity of service would mean the maintenance of seniority of the petitioner amongst other casual workers and the respondent is further directed to give preference to the petitioner at the time of appointment of regular workers subject to the petitioner possessing necessary qualifications. Parties are directed to bear their own costs."

Aggrieved over the same, both the Management and the workman have preferred these writ petitions.

5.The learned Standing Counsel appearing for the Management submits that though the workman was retrenched in the year 2005, the industrial dispute was raised only in the year 2014 with a delay of eight years. Therefore, the industrial dispute ought not to have been entertained. He also submits that in the year 2017, the petitioner has



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been reinstated and he is now working in the Management as a daily wage from the year 2017. Now, the Management is ready to regularize the workman's service w.e.f the year 2017.

6.The learned Counsel appearing for the workman submits that the workman's father/Ramu worked as a Tradesman in the Management for more than twenty five years and he was relieved on medical invalidation in the year 1998 just twenty days prior to the introduction of the Pension Scheme. The workman's father, without any guidance and due to his health condition, was not in a position to agitate the same at that relevant point of time. The petitioner Management has also offered compassionate appointment to the petitioner workman and therefore, they have not agitated the medical invalidation at that relevant point of time. However, without any valid reasons, the petitioner workman was not permitted to work from the year 2005. Thereafter, the petitioner workman had approached the Management regularly and he was assured that he will be provided employment. But no such employment was provided and therefore, as a last resort, the workman has approached the Labour Court and raised the industrial dispute in the year 2014. If the petitioner's father was provided an alternate employment considering his



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medical ailments, then, he would be eligible for pension, which was introduced just twenty days after his retirement. In order to prevent the workman's father from agitating this issue, the petitioner workman was provided employment on compassionate appointment in the year 1999 and that was also denied from the year 2005. The petitioner, a poor employee was not in a position to agitate the Management and therefore, he was requesting the Management to consider him for his appointment and therefore, there is a delay in raising the industrial dispute.

7.This Court has considered the rival submissions made.

8.It is an admitted fact that the workman's father was an employee in the Transport Corporation and was medically invalidated in the year 19698 just twenty days prior to the introduction of the Pension Scheme. The nature of invalidation was not made available before this Court. If a person is having certain ailments, then, he/she can be provided with an alternate employment. If the Management has provided an alternate employment then, the workman's father would be eligible for the pension scheme, which was introduced after twenty days from his retirement. It appears that without referring to any seniority, the workman was



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inducted in the compassionate appointment in the year 1999. Though this Court has directed the Management to produce the date on which, the petitioner workman was inducted, the Management is not having the details. However, they admit that the petitioner workman was inducted on compassionate appointment in the year 1999 and he was retrenched in the year 2005. The date on which, the petitioner workman was retrenched is also not made available and the reasons, for which, he was retrenched is not available with the Management. The petitioner workman, who was admitted for an appointment on compassionate ground was also allowed to work till 2005. Admittedly, he has continuously worked for more than 480 days. Therefore, he is entitled for conferment of permanent status as per Section 3 of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 and the same is extracted as under:

"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.

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



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sickness or authorised leave or an accident or a strike, which is not illegal, or a lock-out [xxx][Omitted by Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Amendment Act, 2000 (Tamil Nadu Act 48 of 2000).], or a cessation of work which is not due to any fault on the part of the workman.

Explanation [I][Explanation was renumbered as Explanation I by Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Amendment Act, 1985 (Tamil Nadu Act 44 of 1985).] - [For the purposes of computing the continuous service referred to in sub-sections (1) and (2), a workman shall be deemed to be in continuous service during the days on which][Substituted by Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Amendment Act, 1985 (Tamil Nadu Act 44 of 1985).]-

(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 course of this employment; and

(iii)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."

9.It is also settled position that the Transport Corporation is an industry, which comes under the definition of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. Therefore, this Court is inclined to partly allow the petition filed by the



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workman with a direction to the Management to regularise the petitioner workman w.e.f the date of completion of 480 days. The Management shall also provide continuity of service w.e.f the date of regularization. Since the petitioner was provided salary till 2005 and he was not on employment from the year 2005, the petitioner workman is not entitled for any back wages. However, the petitioner workman shall be provided notional promotion and all other attendant benefits as per Section 3 of the Act. Accordingly, the writ petition in W.P(MD)No.2178 of 2019 is partly allowed. No costs.

10.In view of the order passed in W.P(MD)No.2178 of 2019, the writ petition filed by the Management in W.P(MD)No.3011 of 2016 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2024

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

LR



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To
The Managing Director.
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Bye-Pass Road,
Madurai.



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B.PUGALENDHI, J.

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