



W.P(MD)No.24295 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED :18.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.24295 of 2024 and
WMP(MD) No.20557 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.T.Mohan ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a 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.1621/2017, dated 31.05.2023 and to quash the same as illegal.



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W.P(MD)No.24295 of 2024

For Petitioner : Mr.S.C.Herold Singh
For R1 : Mr.A.Baskaran
Additional Government Pleader

ORDER

The Management of the Transport Corporation has filed this writ petition as against the order of the Assistant Commissioner of Labour (Enforcement), Thanjavur in Na.Ka.No.A.1621/2017, dated 31.05.2023. The said proceedings was initiated by the second respondent before the Inspector of Labour, for conferment of permanent status with effect from the date of completion of 480 days of his service. The Labour Inspector has referred this matter to the Assistant Commissioner of Labour, Thanjavur. The Assistant Commissioner of Labour conducted an enquiry and passed an order that the second respondent has joined duty as a driver on temporary basis in the Management on 13.07.2000 and therefore he is entitled for conferment of permanent status as per Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. Aggrieved over the said order, the



W.P(MD)No.24295 of 2024

WEB COPY

Management of the Transport Corporation has filed this writ petition.

2.Since no adverse order is going to be passed as against the second respondent, notice to the second respondent is dispensed with.

3.The learned standing counsel appearing for the petitioner/Management claims that the second respondent was appointed as a driver in the Tamil Nadu State Transport Corporation (Kumbakonam) Ltd only on temporary basis and he was also not regular in his service. In order to meet out certain exigencies, they have availed the services of temporary drivers and these temporary drivers would be engaged on emergency and on leave vacancies and therefore, these are not permanent posts. As such, the second respondent herein was engaged as a temporary driver on 26.02.2001. Even in his appointment order, it was clearly mentioned that the post of driver is only temporary and he would be liable to be terminated



W.P(MD)No.24295 of 2024

WEB COPY

at any point of time. While so, the Government has issued a Government Order in G.O.Ms.No.212 (Personnel & Administrative Reforms (P) Department, dated 29.11.2001, banning creation and filling up of posts in Government Departments. This order of banning was applicable to the Government Departments including the Transport Corporation, as per G.O.(Ms) No.27, Finance (BPE) Department, dated 21.01.2002. Therefore, there cannot be any appointment from 29.11.2001 and also from 21.01.2002. Moreover, the second respondent was frequently absenting from duty, for which, departmental proceedings was initiated as against him and he was dismissed from service on 17.03.2003. Challenging the order of dismissal, the second respondent has raised an Industrial Dispute before the Labour Court in ID No.299 of 2007. In the said ID, settlement was arrived between the workman and the Management, under Section 18(1) of Industrial Disputes Act. Accordingly, he was re-instated into service with continuity of service, without back wages. Therefore, based on the above settlement, the second respondent was re-instated into service on 03.12.2011, by fixing his



W.P(MD)No.24295 of 2024

WEB COPY

wages as regularized workman. As against the settlement under Section 18(1) of Industrial Disputes Act, the second respondent has filed an application before the Labour Inspector and also before the Assistant Commissioner of Labour, seeking permanent status with effect from 2001 and the same was allowed by the Assistant Commissioner of Labour, without appreciating the ban orders, which were in existence at that relevant point of time. The settlement arrived between the parties under Section 18(1) of Industrial Disputes Act was not considered by the Assistant Commissioner of Labour.

4. The second respondent was appointed only as a driver on temporary basis and he is not regular in his service and therefore, the conferment of permanent status would not be applicable to the second respondent. More over, the claim of permanent status was made with a delay of 10 years and therefore, it has to be rejected on laches.



W.P(MD)No.24295 of 2024

WEB COPY

5.This Court considered the submissions of the learned counsel for the Management and also perused the impugned order passed by the Assistant Commissioner of Labour.

6.The second respondent, the driver of the Transport Corporation has filed the above application under Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 that he has been appointed as a driver in the transport Corporation on 13.07.2000 and he has continuously served for more than 480 days since his initial appointment and therefore, he can be deemed to be regularized with effect from 05.11.2001. The above claim made by the second respondent was accepted by the Assistant Commissioner of Labour.

7.The main contentions of the petitioner Management are that:

- i. The second respondent was appointed only as casual labour/temporary driver and therefore, he is not entitled for



W.P(MD)No.24295 of 2024

WEB COPY

permanent status.

- ii. The claim of permanent status has been made belatedly after a period of 10 years.
- iii. There was a ban by the Government during the relevant period on creation and filling up of posts in Government Departments including the Transport Corporation and therefore the appointment of the second respondent itself is wrong. Therefore, he is not entitled for permanent status, when there is specific ban, on creation and filling up of posts in Government Departments by the Government vide G.O.Ms.No.212 (Personnel & Administrative Reforms (P) Department, dated 29.11.2001 and G.O.(Ms) No.27, Finance (BPE) Department, dated 21.01.2002.
- iv. The second respondent was already dismissed from service on 17.03.2003 due to his unauthorized absence and later he was re-instated into service, pursuant to the settlement arrived between the second respondent and the Management, under Section 18(1) of Industrial Disputes Act, before the Labour



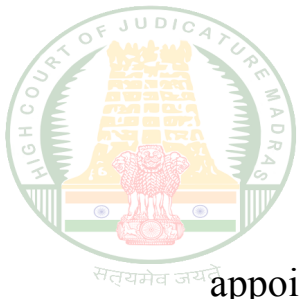
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W.P(MD)No.24295 of 2024

Court. Therefore, he is bound by the settlement before the Labour Court and therefore he cannot claim for conferment of permanent status as well as back wages, as against the above settlement.

8. Admittedly, the second respondent was inducted as a temporary driver through employment exchange in the year 2000. The second respondent has substantiated the same by marking the payment Receipts, dated 07.03.2001, 03.10.2000, 13.09.2000 and 17.11.2000, which were made by the petitioner for the training provided by the Management. The issue of non-entitlement of permanent status to the temporary employee has already been decided by this Court in *S. Sivakumar and Ors. vs The Deputy Inspector Of Factories [(2006) 4 MLJ 1794]*, wherein, it has been observed that what is required for claiming permanent status under Section 3 of the Act is “subsistence of the relationship of master-servant or employer-employee between the parties”. Here, in this case, it is an admitted fact that the second respondent has been



W.P(MD)No.24295 of 2024

WEB COPY

appointed as a temporary driver. Moreover, he was allowed to work continuously for more than 480 days and in order to substantiate the same, the second respondent has filed certain documents that he was in continuous employment from the year 2000.

9.Though the Management has taken a plea that the second respondent was not regular in his service, they have not placed any documents before the Assistant Commissioner of Labour to substantiate their contention. From the materials placed before the Assistant Commissioner of Labour, he has arrived at the conclusion that the second respondent was appointed on 13.07.2000 as a temporary driver through employment exchange and he was allowed to work for more than 480 days.

10.Insofar as the contention that there was a ban order, it is to be noted that even before this ban order, this petitioner was appointed on temporary basis and he was allowed to work for more than a year and therefore, the right of workman, which has been



W.P(MD)No.24295 of 2024

WEB COPY

conferred on him under Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 could not be taken away on the basis of the above mentioned Government Orders. This issue has already been dealt with by this Court in ***T.N.C.S. Corporation Employees Union Vs. T.N.C.S. Corporation Ltd.***, reported in ***2000-III-LLJ (Suppl)-845 (Mad)***, wherein, the Principal Seat of this Court has held as follows:

“11. Section 3(1), being a non-obstante provision, it prevails over any law for the time being in force which includes any service rules, Government orders or Government instructions. Therefore, want of sanctioned posts as required under General Service Rules cannot take away the rights conferred under Section 3(1) of the Act. Similarly, Government orders which require that the appointment should be made only through Employment Exchange also cannot be a ground to refuse the right provided under Section 3(1) of the Act of the petitioners (sic.) if they comply with the requirements prescribed under Section 3(1). Therefore, it is not open for the respondent to take shelter under any other law in force much less any Government Orders, Government



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W.P(MD)No.24295 of 2024

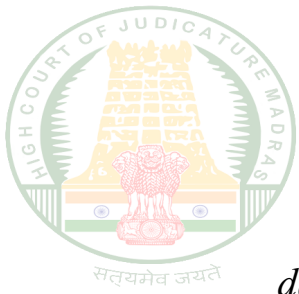
instructions to deny the benefits conferred under Section 3(1) of the Act, to the petitioners if they satisfy the conditions prescribed, therein, irrespective of the fact whether there are irrespective of the availability of sanctioned posts or sponsorship from Employment Exchange.”

11.The other contention of the Management is that there was a Settlement between the Management and the second respondent before the Labour Court under Section 18(1) of the Industrial Disputes Act. The aforesaid settlement referred by the petitioner Management is extracted as under:-

"1. The Management agrees to reinstate Thiru.T.Mohan, Badge No.57777, Ex-HO CL driver with continuity of service, but without any back wages till the date of joining duty on minimum time scale applicable to now drivers by virtue of this settlement".

2.The reinstatement order will be issued separately by the personnel section and he will abide by the same.

3.It is also agreed by the workman that he will not go for any litigation with the management regarding the claim of back wages from the date of Labour Court, award to the



W.P(MD)No.24295 of 2024

WEB COPY

date of joining duty subsequent to this settlement.

4.Both the parties agree to the above terms".

12.This ground has also been addressed by this Court in ***"the Managing Director, Tamil Nadu State Transport Corporation Ltd., Coimbatore Division vs. Shanmugam (W.A. Nos. 2871 and 2872 of 2018)***, wherein, it was held that statutory rights of the workmen, under Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, prevails over the settlement under the Industrial Disputes Act.

13.The contention of delay in filing the application seeking permanent status has already been decided by the Principal Seat of this Court in, **W.P. No. 15461 of 2017, the Managing Director, Tamil Nadu State Transport Corporation (Coimbatore) Limited vs. The Inspector of Labour and others** and the relevant portion is extracted as under:-

"5.The next submission of the Learned Counsel for the Petitioner is that there has been inordinate delay and



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W.P(MD)No.24295 of 2024

unexplained laches on the part of the Second Respondent in approaching the First Respondent for conferring the benefit under the Permanent Status Act, which factor disentitles the Second Respondent for any relief under the Permanent Status Act. In the first place, when no period of limitation has been prescribed under the Permanent Status Act for making an application for conferment of permanent status, there is no scope for entertaining such contention."

14.In view of the above decisions, this Court is not inclined to entertain this writ petition. Accordingly, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

18.10.2024

NCC :Yes/No

Index :Yes

Internet:Yes

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To

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

13/14



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W.P(MD)No.24295 of 2024

B.PUGALENDHI, J.

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W.P(MD)No.24295 of 2024 and
WMP(MD) No.20557 of 2024

18.10.2024