

WP(MD)No.12070 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16 .05.2025

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

WP(MD) No. 12070 of 2019

S.Selvaganapathy

...Petitioner(s)

Vs

1.The Secretary To Government
Transport Department,
Government of Tamil Nadu,
Fort St. George,
Chennai- 600 009.

2.The Administrator,
Tamil Nadu State Transport Corporation
Employees' Pension Fund Trust,
Thiruvalluvar Illam, Annasalai, Chennai – 2.

3.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Ltd,
By-pass Road, Madurai – 625 010.

4.Raja Sundar

5.Govindan

6.Veerapathiran

7.Karuppan

...Respondent(s)



WP(MD)No.12070 of 2019

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondents 1 to 3 to take appropriate action against the respondents 4 and 7 on or before their superannuation on the basis of the petitioner's representation and consider the petitioner's representation dated 11.05.2019, within a stipulated time frame.

For Petitioner : Mr.A.Mu.Sharavanan
For Respondent : Mr.K.Bala Subramani
No.1 Special Government Pleader
For Respondent : Mr.Herold Singh.S.C.
Nos.2 and 3
For Respondent : Mr.Masilamani
No.6
For Respondent : No appearance
Nos.4, 5 & 7

ORDER

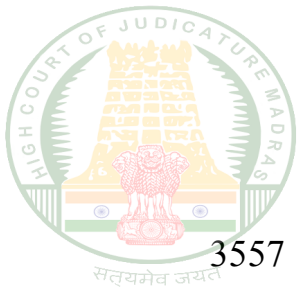
The petitioner Driver of the respondent transport corporation has approached this court seeking a direction to take action against the respondents 4 and 7 that they have harassed him.

2.The petitioner is a Driver of the respondent Transport Corporation. He was initially appointed as a reserve crew driver on 05.04.2013. He was allowed to work continuously for a period of 480



WP(MD)No.12070 of 2019

days. Therefore, the petitioner claimed regularisation as per Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981[in short 'the Act']. According to the petitioner, he is entitled for regularisation of his services as per the Act on 18.12.2014. The petitioner has also relied on the settlement arrived at between the petitioner and the respondent transport corporation under Section 12(3) of the Industrial Disputes Act [in short 'ID Act']. Since the respondent Corporation had not regularised his services as on that date the petitioner filed a petition before the Inspector of Labour, under Section 3(1) of the Act and vide order dated 19.08.2015, the Inspector of Labour directed the respondent to give permanent status to the petitioner from 19.12.2014. However it was not complied with. Therefore, the petitioner had earlier filed WP(MD)No.21155 of 2015 seeking a writ of mandamus to comply with the orders of the Inspector of Labour, dated 19.08.2015 and the same was allowed by this Court by order dated 27.11.2015 directing the respondent management to implement the order of the Inspector of Labour, Madurai, dated 19.08.2015. Thereafter the management filed a writ petition challenging the order of the Inspector of Labour, dated 19.08.2015 in WP(MD)No.



WP(MD)No.12070 of 2019

3557 of 2016, which was dismissed on 20.02.2018. However the management filed a writ appeal in WA(MD)No.1456 of 2018 and it was dismissed on 24.10.2018. Thereafter the management filed a review application in Rev.Aplc(MD)No.82 of 2019, which was also dismissed on 27.06.2019. The petitioner appears to have filed contempt petitions in Cont P(MD)Nos.1407 and 1408 of 2019. However in order to deny the claim of the petitioner, the management filed CMP(MD)Nos.758 and 759 of 2019 before this Court to reopen the review application, which was dismissed on 27.06.2019. It appears that though the management has filed a special leave petition before the Hon'ble Supreme Court, it has not prosecuted the special leave petition.

3.The contention of the petitioner is that after the orders of the Division Bench in WA(MD)No.1455 of 1456 of 2018, one Raja Sundar, then General Manager of the Transport Corporation, Madurai transferred this petitioner on 01.06.2019 and the petitioner challenged the transfer order in WP(MD)No.13236 of 2019, wherein the respondents took a stand that the transfer order dated 01.06.2019 was not given effect and was not served on the petitioner and recording the same the said writ



WP(MD)No.12070 of 2019

petition was dismissed. The petitioner further contends that the stand taken by the respondent before this Court in WP(MD)No.13236 of 2019 is false and the transfer order was served on the petitioner through registered post in the month of June 2019.

4. According to the petitioner the respondent Nos.4 and 7, the General Manager and the Checking Inspector, for their personal vengeance adopted unfair labour practice as against this petitioner, even though he is eligible for conferment of permanent status with effect from the year 2014 as per the Act and also as per the settlement arrived at under Section 12(3) of the ID Act. The management adopted all sorts of tactics to prevent this petitioner from getting conferment of permanent status. Therefore the petitioner has filed this writ petition in the year 2019 seeking a mandamus to the management to take action as against the respondent Nos.4 and 7, who were about to retire in the months of July 2019 and December 2019.

5. When this writ petition was taken up for hearing the learned standing counsel for the respondent Corporation submitted that the



WP(MD)No.12070 of 2019

respondent Nos.4 and 7 have already retired from service and nothing survives in this writ petition.

6.This Court was not satisfied with the reply. Since the respondents have not answered to any allegation made by the petitioner, have not provided conferment of permanent status to the petitioner even after the orders of the Inspector of Labour dated 19.08.2015, directed the respondents to file the counter.

7.The respondent management has filed a counter affidavit that the petitioner was engaged by the respondent corporation in the reserve crew along with other employees on 05.04.2013. Subject to the vacancies, these reserve crew drivers would be regularised based on the seniority on completion of 240 days. However settlement was entered into by the transport corporation with regard to the regularisation of employees who are so engaged on completion of 480 days in two calendar years. However in violation of the agreement the petitioner has approached the Inspector of Labour for regularisation services and it was ordered to regularise his services from 05.04.2013. The management has challenged



WP(MD)No.12070 of 2019

the order, it was dismissed, writ appeal was filed, it was dismissed, review was filed and it was also dismissed. Subsequently SLP was filed before the Hon'ble Supreme Court in SLP Diary No.27409 of 2019 and it is pending. In the mean time in order to comply with the order, the petitioner was regularised on 18.04.2018 and the arrears of Rs.5,5230/- was already settled on 12.04.2019. The petitioner has approached the Assistant Commissioner of Labour to initiate action as against the officers under Sections 25(T) and 25(U) of the ID Act and it was dismissed. Again he has sent a representation dated 11.05.2019 for taking action against the officers and reply was given to the petitioner.

8.It is further stated in the counter affidavit that the petitioner services were confirmed on 18.04.2018 and the arrears were also settled. The petitioner was imposed with several punishments and fines for his negligence, causing loss to the management, disobedience and misbehaviour etc. The 4th respondent retired from service on 31.07.2019, 5th respondent died on 01.05.2021 and the 7th respondent retired from service on 31.05.2019.



WP(MD)No.12070 of 2019

9.The 6th respondent has filed a counter affidavit that he is not a necessary party to this writ petition, since the action is sought to be taken against respondents 4 and 7, he is in no way connected with the claim of the petitioner and it is between the petitioner and the respondent management.

10.This Court has considered the rival submissions and perused the materials placed on record.

11. The petitioner was appointed as a crew driver in the respondent corporation on 05.08.2013. However his services were not regularised even after completion of the 480 days as per the Act. The petitioner approached the Inspector of Labour, filed a writ petition, contempt petition and only thereafter the respondent Corporation filed a writ petition, challenging the orders of the Inspector of Labour, dated 19.08.2015 in WP(MD)Nos.3439 and 3557 of 2016 and the same were also dismissed on 20.02.2018. As against the same writ appeal was filed, which was also dismissed on 24.10.2018. Considering the number of litigations and the manner in which the applications were filed by the



WP(MD)No.12070 of 2019

management before the Court, this Court is of the view that the respondents have adopted unfair labour practice as against this petitioner.

The petitioner has also made a specific averment that this petitioner has been made as victim for having filed the writ petition and agitated the issue.

12.The Hon'ble Supreme Court **Bajaj Auto Limited vs Rajendra Kumar Jagannath Kathar & Ors (2013 (5) SCC 691)**, summarised the importance in adhering to fair labour practices, as follows:

“Unfair labour practice, in its very essence, is contrary to just and fair dealing by both the employer and the employee. Peace in industrial atmosphere requires the parties to behave and conduct in a just and fair manner. The grievance of the aggrieved workmen has to be adjudicated under the necessary enactments on the bedrock of fairness and just needs. It is to be borne in mind that the primary obligation and duty of an industrial forum is to see that peace is sustained between the management and the employees in an industry. An unfair action by the employer against an individual worker has its effect and impact.”



WP(MD)No.12070 of 2019

13.The Hon'ble Supreme Court in **State Of Rajasthan & Ors. v.**

Gopal Bijawat (Petition(s) for Special Leave to Appeal (C) No(s).

3398/2024) held that the labourer had been compelled to file repeated litigations to get the fruits of the award of the labour court and the petitioner had been denied benefits for over 22 years and imposed a cost of Rs. 10 Lakhs to be paid to the labourer for filing frivolous petitions repeatedly and the relevant portion reads as follows:

“The respondent was reinstated by the Labour Court in the year 2001 and the writ petition filed by the State of Rajasthan was dismissed. Thereafter, continuously the respondent has been compelled to file repeated litigation in order to get the fruits of the award of the Labour Court. The State of Rajasthan has now come up in Special Leave Petition against the orders passed by the learned Single Judge and the Division Bench directing for implementation of the said award.

2. It is unfortunate that the State of Rajasthan has been harassing the poor litigant, a part-time labourer, who was extended benefits by the Labour Court in the year 2001, i.e. for the last 22 years he has been litigating. This is totally a frivolous petition. It is, accordingly, dismissed with costs of Rs.10,00,000/- (Rupees ten lakhs only) to be paid to the respondent within four weeks from



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WP(MD)No.12070 of 2019

today and file proof of such payment before this Court within six weeks. Pending applications shall also stand disposed of.”

14. Since unnecessary litigations have been filed even after the orders of the Division Bench of this Court, this Court is of the view that the petitioner has been victimised. The petitioner has made certain allegations as against the respondents 4 and 7 before their retirement. In all fairness, the respondent management ought to have considered the same and further the respondent management has not taken proper action on the petitioner's representation and allowed them to retire.

15. The mighty respondent Corporation is capable of filing number of petitions including reopening petitions and at the same time, the petitioner has suffered due to the conduct of the respondent transport corporation, therefore, in the interest of justice and in view of the decision of the Hon'ble Supreme Court, this Court feels that the this writ petition deserves to be disposed of with a direction to the respondent transport corporation to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand) for dragging the petitioner into unnecessary litigations, even after the orders of the Division Bench of this Court.



WP(MD)No.12070 of 2019

16. Accordingly this writ petition is disposed of in the above terms and the respondent corporation is directed to pay the aforesaid amount to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

16.05.2025

DSK

To

1. The Secretary To Government
Transport Department,
Government Of Tamilnadu,
Fort St. George, Chennai- 600 009.

2. The Administrator,
Tamilnadu State Transport Corporation Employees,
Pension Fund Trust,
Thiruvallur Illam,
Annasalai, Chennai - 2.

3. The Managing Director
Tamilnadu State Transport Corporation (Madurai) Ltd,
Bye Pass Road,
Madurai-625 010.



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WP(MD)No.12070 of 2019

B.PUGALENDHI

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WP(MD) NO. 12070 of 2019

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