

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.5032 OF 1996

Sam Daniel,
S/o. V. Joshuva .. Petitioner

-Vs-

Nesamony Transport Corporation,
rep. by the Managing Director
Ranithotam, Nagercoil,
Kanyakumari District. .. Respondent

Petition filed under Article 226 of the Constitution of India for
issuance of a Writ of Mandamus as stated therein.

For Petitioner : Mr.N.G.R. Prasad for
Mr.P. Anandan

For Respondent : Mr.John for
M/s. Ramasubramaniam & Associates

:J U D G M E N T

Petitioner has prayed for issuing a writ of mandamus directing the
respondent to regularise the service of the petitioner.

2. The case of the petitioner is as follows:-

The petitioner has registered his name in Nagercoil Employment
Exchange on 17.9.1982 having Registration No.7307/82. By communication dated
28.5.1993, the petitioner was directed to appear before the Deputy Manager
(Personnel) on 31.5.1993. The petitioner was directed to serve as a conductor
and accordingly he served for two days and thereafter he was asked to wait for
further orders. Again the petitioner was asked by a telegraphic message to
appear before the General Manager on 3.11.1993. Thereafter he appeared before
the General Manager and he was told orally to join duty as conductor, however
no written order was given. he was given duty on day-to-day basis and wages
were paid at daily rate. He continued so till 6.5.1995. It is stated that he
had completed 260 days of service and on 8.5.1995 he was denied duty orally.
Thereafter the matter was taken to the Assistant Labour Commissioner,
Nagercoil by the petitioner by filing a petition on 24 .7.1995. The
respondent filed a reply stating that the petitioner was not appointed on

regular basis against any permanent basis, but was permitted to serve as a conductor on temporary basis to meet the emergency of strike. It is claimed that the respondent did not issue any notice of retrenchment and no compensation was paid. It is further stated that the petitioner has completed the age of 35 by July 1993. It is prayed that the appointment of the petitioner should be regularised.

3. A counter affidavit has been filed, wherein it is indicated that initially the petitioner was engaged for only two days. Subsequently, to meet the emergency situation due to strike, the petitioner was also engaged. The allegation that the petitioner had worked for 260 days was however denied. The further allegation that the petitioner had worked from 3.11.1993 till 8.5.1995, when he was refused employment, was also denied.

4. As admitted by the petitioner himself, the question had been raised before the Assistant Labour Commissioner, Nagercoil. The petitioner neither pursued the matter for making a reference nor any industrial dispute has been raised. The question as to whether the petitioner has worked for more than 240 days is also disputed. Therefore, it is not possible to give a direction that the services of the petitioner should be regularised. However, the fact remains that during strike, to meet the emergency situation, the petitioner has worked as conductor, may be on daily rate basis. Even though the period for which the petitioner worked is disputed, it is admitted by the respondent that the petitioner has worked. Since the petitioner had helped the respondent to tide over its difficulty, the respondent may consider the question of engaging the petitioner in future if and when any vacancy arises and the question of relaxing the age of the petitioner should also be sympathetically considered by the respondent.

5. The writ petition is disposed of subject to the aforesaid observations. No costs.

Index : Yes

Internet : Yes

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