IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.1.2009

Coram

The Honourable Mr.Justice K.CHANDRU

W.P.No. 19991 of 1999

The Management of
State Express Transport Corpn.
(Divn. I) Ltd
rep. By its Managing Director
Chennai 2 ...Petitioner

-vs-

1. The Presiding Officer
Labour Court
Trichy.

2. Poonguzhali ...Respondents

Petition under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the first respondent pertaining to the award made in I.D.No. 116 of 1997 dated 13.4.1999 and quash the same.

For Petitioner : Mr.S.Kamalanathan

For Respondents : Ms.Sudha Ramalingam for R2

ORDER

The petitioner is the State owned transport corporation. In the present writ petition, they are challenging the award passed by the first respondent Labour Court in I.D.No.116 of 1997 dated 13.4.1999.

2. By the aforesaid award, the Labour Court directed reinstatement of the second respondent with backwages and service continuity. The writ petition was admitted on 17.12.1999. Pending the writ petition, this Court granted interim stay on condition that the petitioner deposits 50% of the backwages and also to pay monthly wages in terms of Section 17.B of the I.D.Act with effect from 1.1.2000. Subsequently, when the matter came up on 6.10.2003, it was recorded that the deposit of backwages has already been done, therefore, the amount was directed to be invested in State Bank of India. The monthly wage of the second respondent is fixed

as Rs.1200/- and the arrears also directed to be paid on or before 30.11.2003.

3. Mr.Kamalanathan, learned counsel for the petitioner submitted that the amount awarded suffers from many infirmities. The second respondent was only a trained apprentice by the corporation and subsequently, there was an exigency of work, so her service was utilised for verifying the way bills submitted by the conductors of the corporation. The amounts were paid on the basis of piece rate basis and when there was no work, her service was not utilised.

4. Before the Labour Court, on behalf of the second respondent, 15 documents were filed and they were marked as Exs.W1 to W15. The second respondent also examined herself as WW1. On behalf of the petitioner management, four documents were filed and they were marked as Exs. M1 to M4. The petitioner corporation examined one R.Palani, MW1, who was the Assistant Manager of the corporation. They also examined one Manibharathy, MW2, who was subsequent Superintendent of the way bill section. The Labour Court on an analysis of the materials placed before it, came to the conclusion that the second respondent was workman within the meaning of Section 2(s) of the I.D. Act and subsequent to her apprenticeship, she was engaged on a regular basis. The Labour Court also rejected the submissions that under Section 22(1) of the Apprentice Act, 1961, there was no obligation to any apprentice to be engaged. The Labour Court held that the second respondent engagement was regular and continuous from 1990 to 1997. She had been regularly engaged, except for a period of three months in the year 1996, when she was on maternity leave and therefore, the Labour Court held that even in terms of Section 3 of the Tamil Nadu Act 46/81, since she had put in more than 480 days of service, she is eligible for confirmation. In that view of the matter, the Labour Court directed reinstatement of the second respondent with full backwages.

5. It is seen from the documents filed before the Labour Court that Ex.W1 was the Commercial Practice certificate in Diploma obtained by the second respondent. Ex.W9 is the certificate given by the Institute of Road Transport for having passed the Commercial Apprentice Examination conducted by the Transport Institute. Ex.W10 is the Apprenticeship Training Certificate issued by the Board of Apprenticeship Training (Southern Region). Ex.W11 is the certificate issued by the petitioner corporation for having undergone one year training. Ex.W12 is the certificate in lower grade typewriting in Tamil passed by the second respondent. Ex.W14 is the employment registration card of the petitioner. Ex.W13 is the Government order in G.O.Ms. No. 93, Personnel and Administrative Reforms (Personnel. R) Department dated 3.2.1987

providing for employment to the trained apprentice by all the Government and Public sector undertakings. Even in the oral evidence, the second respondent had denied the suggestion that she was engaged only on an exigency basis and there was no regularity in her employment. M.W.2 was only subsequent Superintendent of the Section. While M.W.1, merely stated that the appointment are to be made only through employment exchange and there is no other defence let in by the petitioner. Ex.M4 is the register showing the way bills passed by the second respondent. In the present context, there is no difficulty in accepting the contention of the second respondent that after her training period, she was engaged continuously from 1990 to 1997, except for three months maternity leave availed by her. It was also in evidence that she was allowed to utilise canteen facility of the corporation and that the work done by the second respondent was also done by the permanent employees. Therefore, necessity to have such a person engaged is also admitted. The fact that she has worked from 1990 to 1997 has been proved satisfactorily and once that position is accepted, the fact that the payment are made on piece rate basis is irrelevant in considering the case of the second respondent. It is an admitted case that before dispensing with her service, the petitioner have not complied with the mandatory conditions precedent as prescribed under Section 25 F of the Industrial Disputes Act and inasmuch as such pre-request has not been complied with, the termination is void ab initio. In such circumstances, the second respondent is entitled for the relief granted by the award passed by the Labour Court. Therefore, the impugned award passed in I.D.No. 116 of 1997 dated 13.4.1997 does not suffer from any legal infirmities.

6. However, the learned counsel for the petitioner corporation strenuously submitted that the employment in the corporation is based upon the service regulation framed by the corporation and the employee has to come only through the employment exchange. In this context, it is necessary to refer the decision of the Supreme Court reported in U.P.S.R.T.C. v. U.P. PARIVAHAN NIGAM SHISHUKHS BEROZGAR SANGH (1995) 2 SUPREME COURT CASES 1. The Supreme Court has given certain directions in para 12 of the judgement, which reads as follows:-

> In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training:
> (1) Other things being equal, a trained apprentice should be given preference over direct recruits.
> (2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this court in UNION

OF INDIA v. N. HARGOPAL would permit this.

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The training institute concerned would maintain a list of the persons trained yearwise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior. "

7. Subsequently, the Supreme Court had an occasion to clarify its order vide judgement in U.P. RAJYA VIDYUT PARISHAD APPRENTICE WELFARE ASSN. v. STATE OF U.P. (2000) 5 SUPREME COURT CASES 438. In the decision, in para 4, the Supreme Court has held as follows:-

"We are therefore, of the opinion that the view taken in MANOJ KUMAR MISHRA case as also the view taken by the Full Bench in ARVIND GAUTAM CASE is a correct one and that apprentices have to go through the procedure of examination/ interview and that they are however entitled to the benefits of entries (1) to (4) laid down in TRANSPORT CORPN. Case. "

8. Therefore, the requirement to come through the employment exchange has been dispensed with and hence, it is not proper to contend that the second respondent's entry was through backdoor. On the contrary, as found in Ex.W14, the petitioner had registered her name in the employment exchange.

9. The learned counsel also placed reliance upon the decision reported in KRISHNA BHAGYA JALA NIGAM LTD. v. MOHAMMED RAFI – 2007 (2) SLR 385. In that decision, the Supreme Court dealt with the question regarding the onus of proof in proving the number of days put in by the employee initially falls on the workman and that onus of proof cannot be shifted on the employer. In the present case, such question does not arise since the second respondent had got into the box and gave oral evidence in support of her contention. She has also produced the proof for having worked and was paid wages for the period in terms of Ex.M3 series.

10. . In the light of the same, the writ petition stand dismissed. There will be no order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

The Presiding Officer, Labour Court,
Trichy.

1 cc to Mr.D. Nagasaila, Sr. 4811

W.P.No. 19991 of 1999

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