

(2012) 11 MAD CK 0225

In the Madras High Court

Case No : Writ Petition No's. 29871 to 29875 of 2012 and M.P. No's. 1 and 2 of 2012

C. Velusamy, Ex. Driver and Others

APPELLANT

Vs

The Managing Director, Tamil Nadu State Transport Corporation, Kovai (Divin), No. 37, Mettupalayam Road, Coimbatore District

RESPONDENT

Date of Decision : 26-11-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 2(oo), 25H

Citation : (2012) 11 MAD CK 0225

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R.Y. George Williams, for the Appellant; S. Sairaman, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru

1. The petitioners in these writ petitions, claiming to be the ex-drivers and conductors in the respondent State owned Transport Corporation, having head quarters at Coimbatore, have filed these writ petitions for the identical relief, namely, they must be given employment pursuant to the interview letter sent to them and if they are selected duty must be provided to them, and if not selected, the respondent must be directed to give first preference to them and select and provide duty to the petitioners, within a time frame. In the body of the affidavit, the petitioners have made serious allegations against the respondent Corporation and they have stated that the General Manager and the Selection Committee demanded Rs. 2,00,000/- as bribe for giving employment to them. It is also stated by them that the names of the persons, who gave bribe for getting their employment could not be revealed. It is also stated in general terms that now-a-days, in order to get more money, it is necessary for them to appoint persons not

on the basis of the qualifications but on the basis of the financial capacity to pay amount to the selecting authorities. Hence, the petitioners have also sought for a direction of this Court to monitor the recruitment of 16, 661 new persons recruited as conductors and drivers in the respondent Transport Corporation.

2. These writ petitions are yet to be admitted. However, when the matter came up for admission on 2.11.2012, this Court passed the following order:

2. The petitioners have earlier filed writ petitions seeking directions for appointment without getting bribe. When this Court stated that such relief cannot be granted, the learned counsel for the petitioners made an endorsement withdrawing all the writ petitions, however with liberty to file the writ petitions confining their relief only for appointment. Accordingly, he has filed these writ petitions.

3. But there are certain allegations in the affidavit, wherein the petitioners have stated that bribe was taken for appointment. The learned counsel for the respondents wants to file counter in respect of the said serious allegations. However, when this was pointed out, the learned counsel for the petitioners submitted that the petitioners are prepared even to withdraw those allegations as they are particular only in getting employment. The said statement is recorded.

3. On notice, the respondents have filed a counter affidavit dated 23.11.2012. The petitioners have filed a common additional affidavit in respect of all the petitioners, dated 5.11.2012. Along with the common additional affidavit, the petitioners have filed an additional typed set containing certain news items appeared in Tamil daily newspapers, namely, "Dhinakaran". "Dhinathanthi", and "Dhinamalar" respectively. The thrust of the news relates to certain persons in the Transport Corporation getting arrested for receiving bribes and also the filing of the earlier writ petitions by some employees stating that there was a demand of bribe of Rs. 2,00,000/-and the filing of the case against the officer of the Corporation.

4. The additional affidavit and the additional typed set cannot be pressed into service by the petitioners in the light of the statement made by them before this Court on 2.11.2012, wherein there is unconditional withdrawal of complaints made against the respondent Corporation and only then this Court ordered notice to the respondent. Hence, pursuant to the interview held, whether the petitioners are entitled to be selected and given employment and even if they are not given employment whether they are entitled for any further priority recruitment in future is the issue to be considered.

5. In the counter affidavit it is stated that the writ petition filed by the union in W.P. No. 18274 of 2012 seeking a similar request for monitoring the appointment by the Court in respect of recruitment by the Corporation was rejected by the order dated 24.7.2012. In so far as the selection process is concerned, it is stated that the Government in G.O. Ms. No. 57 Transport Department dated

21.7.2005 provides for a constitutional selection committee in terms of the common service Rule No. 16 and the selection Committee also has been formed. The selection committee will have to conduct road test, verify the physical capacity, vision report and to conduct the tolerance test.

6. In respect of petitioner in W.P. No. 29873 of 2012, it is stated that he did not attend the interview. It is also stated that in the subsequent interview also none other petitioners have been selected. Therefore, the first payer of the petitioners that they should be selected pursuant to the interview dated 26.8.2012 cannot be countenanced by this Court.

7. In respect of the second interview, heavy reliance is placed upon the G.O. Ms. No. 41 Transport Department, wherein the authorities of the Department were given the right to consider candidates who have put in a limited service to be eligible for reemployment u/s 25-H of the I.D. Act.

8. The said G.O. came to be questioned before this Court and was considered in K. Kumaran and S. Michael Thason Vs. The State of Tamil Nadu, The Management of Tamil Nadu State Transport Corporation and The General Manager, The State Transport Corporation (Madurai) Ltd., , and this Court, while directing re-employment held that re-employment can be permitted in respect of persons who have completed 240 days of service and covered by Court orders. In respect of others it is held that it is too dangerous to give power to the officers of the Corporation, as they are likely to abuse the said power. In such cases it was held that the concerned workman will have to establish the number of days worked before the appropriate Labour Court and only when his rights are adjudicated by the Labour Court, the relief can be granted in terms of G.O. Ms. No. 47. In effect the portion relating to the delegation of power to the Corporation has been set aside by this Court. Hence, it is necessary to refer to the following passage found in paragraph Nos. 34 to 38, which are as follows:

34. If one looks at paragraph 4 of G.O. Ms. No. 41, in the light of the above binding precedents of the Supreme Court, it is clear that the respondent-State cannot give preference on the ground that case of similarly placed persons, who have approached the Court, which is still under consideration as found in paragraph 4(ii) and also preference to those persons, whose services were terminated and was similarly placed like persons mentioned in paragraphs 4(i) and (ii) and who have not approached the Court but approached the Managing Directors seeking similar appointment. These two sub-paragraphs are not only contrary to the provisions of the I.D. Act but will be unconstitutional and violative of Articles 14 and 16 of the Constitution of India and will also become a source of corruption because there is no definite guideline given in terms of the law of the land. In fact, with a view to take advantage of these two sub-paragraphs only, spate of writ petitions have been pouring in into this Court.

35. If persons, as found in the order impugned, who had only worked for 11 days and 20 days occasionally and whose so-called non-employment did not come

within the term retrenchment u/s 2(oo) of the I.D. Act read with exception found in sub-section (bb) of the I.D. Act, certainly, by an Administrative Order, the Government cannot create any preference for these persons and place them on higher pedestal than people who have registered their names in the Employment Exchanges and waiting for their cases to be considered through direct recruitment after a proper selection by a competent body. It is one thing to say that certain persons whose cases have been concluded by orders of this Court against which no further appeals have been made, are to be given employment. But it is another thing to say that the respondent-Corporation by itself will determine the cases of similarly placed persons and whose cases are pending before this Court, without waiting for the final outcome if the same as well as even persons, who did not come to Court, but who are deemed to be similarly placed that too, by the whims and fancies of the Managing Directors for granting similar appointments.

36. These two sub-paragraphs found in paragraphs 4(ii) and 4(iii) are completely contrary to the preferential right carved out u/s 25-H of the I.D. Act as interpreted by the Apex Court and, therefore, these two paragraphs, viz., 4(ii) and 4(iii) of G.O. Ms. No. 41, Transport Department, dated 13.7.2006, which are sought to be enforced by the petitioners in these writ petitions and several other writ petitions, had to be rejected for the following reasons:

(i) Right of re-employment u/s 25-H of the I.D. Act will have to be determined only if an employee's retrenchment comes within the definition of the term "retrenchment" found in Section 2(oo) of the I.D. Act and that it is not hit by the exception found in sub-section (bb) introduced by Central Act 49 of 1984 with effect from 18.8.1984.

(ii) Further, the claims of workmen will have to be determined in terms of paragraph 139(3)(b) of the order passed by the learned Judge in the batch of cases, disposed on 14.12.2006, wherein the learned Judge clearly states that only persons who are qualified u/s 25-H of the I.D. Act, are eligible for re-employment but it will not apply to persons, who have not actually worked under the Corporation but made a bogus claim.

(iii) The workmen, who have approached this Court including the petitioners, though made a false claim about the length of their service, and by the impugned order, the respondent-Corporation had taken a definite stand that they had worked less than 20 days and 11 days that too, they had worked in vacancies due to unforeseen circumstances like strike, festivals and large scale absenteeism, are not eligible for any preferential treatment.

37. In view of the dispute over their claim, the said employees will have to approach the appropriate Labour Court to establish the total number of days worked by them and that their subsequent non-employment and their claim preference for re-employment was guaranteed u/s 25-H of the I.D. Act. It is for them to prove to the satisfaction of the Labour Court that they were actually

retrenched in terms of the main definition u/s 2(oo) of the I.D. Act and not covered by the exception found under sub-section (bb) of Section 2(oo) of the I.D. Act.

38. As can be seen from the various decisions of the Supreme Court referred to above, viz., Jaipur Development Authority v. Ram Sahai (Supra), State of Rajasthan v. Sarjeet Singh (Supra) and Gangadhar Pillai v. Siemens Ltd.(supra), even in pre-1984 cases, the Labour Court has discretion to award compensation and not reinstatement since the entry into employment was not proper and it was made as a stop-gap arrangement. Though the object of the first respondent in issuing G.O. Ms. No. 41, Transport Department, dated 13.7.2006 to accommodate persons covered by paragraph 4(i) may be inevitable, but with reference to paragraphs 4(ii) and 4(iii) of the G.O., the said exercise cannot be undertaken by the second respondent-Corporation either until further orders are passed by this Court in cases which are pending consideration, or in other cases, the workmen get declaration from the appropriate Labour Court after establishing that they were actually retrenched in terms of Section 2(oo) of the I.D. Act and their cases do not fall under sub-Section (bb) of Section 2(oo) of the I.D. Act.

9. The said judgment came to be confirmed by a Division Bench of this Court. In the light of the clear pronouncement by this Court on the G.O. Ms. 41, over which a reliance was placed upon, the petitioners' second relief also cannot be countenanced by this Court. In the result, the writ petitions are dismissed. Consequently, connected miscellaneous petitions are dismissed.