
(2005) 12 MAD CK 0033

In the Madras High Court

Case No : Writ Appeal No. 2985 of 2003 and Writ Appeal Nos., 2986, 3923 to 3927 of 2003, 118 to 122, 291 to 295, 1059 to 1064, 1065 to 1069 of 2004, W.A.SR No. 40538 of 2005, and Writ Petition No's. 31148, 31378 to 31383, 31430 to 31433, 31450, 31461, 31499 to 315

M. Sekaran

APPELLANT

Vs

The General Manager, Tamil Nadu State Transport Corporation

RESPONDENT

Date of Decision : 08-12-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3), 2, 25F, 25H, 25J
Tamil Nadu Industrial Disputes Rules, 1958 — Rule 62, 63, 63(2)

Citation : (2006) 2 LLJ 258 : (2006) 1 MLJ 295

Hon'ble Judges : S.K. Krishnan, J;P. Sathasivam, J

Bench : Division Bench

Advocate : D. Hariparanthaman, in W.P. Nos. 31378, 31383, 31499 to 31504, 31534 to 31539, 31430 to 31433, 33616, 33617, 33674 to 33679, 33680, 33681, 33685 to 33687, 33739 to 33745, 33840 to 33845, 33846, 33870 to 33876, 35006 to 35016, 35039 to 35045, 31148 and 37840 to 37844/2005, R. Ganesan, in W.P. Nos. 33592 to 33601/2005, N.G.R. Prasad, for D. Nagasaila, in W.P. Nos. 31450, 31461/2005, C. Selvaraju, for S. Mani, in W.P.No. 34575/2005, for the Appellant; N.G.R. Prasad Advocate for D. Nagasaila in W.A.M.P. No. 3810/2005, N.R. Chandran, assisted by L.G. Sahadevan, for the Respondent

Judgement

P. Sathasivam,J.

1. Since the issue raised in the Writ Appeals and the Writ Petitions relates to employment/re-employment of persons retrenched in the Transport

Corporations, these matters are being disposed of by the following common judgement.

Writ Appeals:-

2. The Writ Appeals are filed by the appellants against Order of K.P.

Sivasubramaniam, J., in Writ Petition Nos. 11785 of 2003 etc., batch dated 13-05-2003.

3. According to the appellants, the respondent-Transport Corporation recruited about 75 Drivers through Employment Exchange during March, 2001. Those drivers underwent the selection process and got selected. On selection, they were sent for training at Chithode Training School. On completion of training, they were issued orders dated 18-04-2001 appointing them on consolidated wages for two years describing them as trainee drivers and posting them in various depots. They discharged the duties of regular drivers as they were sent on line duty and they were relievers to regular drivers.

4. It is their further case that as per Section 12(3) settlement which came into force from 1-9-92, the drivers recruited through employment exchange should be made as daily rated workmen and not on as consolidated pay. As per the settlement, on completion of 240 duties by these daily rated drivers, they should be made permanent and should be brought to scale of pay. The Transport Corporation paid Rs.2,500/- as consolidated pay per month while monthly salary would be Rs.4,160/- if it was paid based on daily rated wage of Rs.160/- per day. By putting them on consolidated pay, permanency would not be conferred.

5. The Transport Corporation issued orders during February/March, 2002 making all the 75 drivers as daily rated workmen. In the same order, it is specifically stated that on being made daily rated workmen, they were directed to pay Rs.4550/- towards the shares of Medical and Engineering colleges run by I.R.T. As directed, they paid the required amount. As per the settlement, the drivers should have been appointed on daily rated workmen from 18-4-2001 itself, instead of appointing them initially as trainee drivers on consolidated salary. However, they were brought on daily rated workmen during February/March, 2002. On completion of 240 duties, the drivers were issued orders dated 30-01-2003/29-3-2003 making them permanent and bringing them to scale of pay. However, the Transport Corporation cancelled the said orders dated 30-01-2003/29-3-2003 and also the orders making them daily rated in February/March, 2002 by issuing orders dated 3-4-2003 to all the 75 drivers. Based on the said order dated 3-4-2003, on completion of 2 years service, the drivers

were sought to be relieved. The said order dated 3-4-2003 was challenged by the 75 drivers by individually filing writ petitions. The prayer in the writ petition was to quash the order dated 3-4-2003 of the General Manager, Tamil Nadu State Transport Corporation, Coimbatore Division-II, Erode and for a direction to make them permanent on completion of 240 days from the date of initial appointment as per the 12 (3) settlement. Those, who were not relieved, had the benefit of interim order and continued in service and those, who were relieved did not have the benefit of interim order. It is the grievance of the appellants that the seniors who had completed their tenure of 2 years earlier, did not have the benefit of interim order. All the writ petitions were finally disposed of on 13-5-2003 by a common order. The learned Single Judge passed the following order:

14. However, in view of the stand taken by the Corporation as mentioned above and bearing in mind the right of the workers to seek compliance of the terms of settlement u/s 12(3) of the Industrial Disputes Act, I am inclined to pass the following order:-

i) The services of the petitioners shall not be terminated, other than the 31 employees who have already been relieved. ii) They will be retained in service on the same terms and conditions and salary as they were entitled to before the order of confirmation were issued on 30-1-2003. iii) Their services will not be terminated merely on the basis that their appointments are temporary and that their period of training has been completed. They will continue to be employed in the same capacity and in the same terms as before 30-1-2003 till they are regularised in service as and when vacancies in the permanent cadre arise or the permanent cadre strength is increased. It is not disputed that their services are being utilised and are required as on date.

iv) It is open to the Corporation to take action against any individual employee for any misconduct either in the context of the allegation of fraud or collusion as stated above or any misconduct which may arise in future and this order will not stand in the way of such action. As regards the rights of the employees arising out of the alleged agreement u/s 12(3) of the Industrial Disputes Act or their claims under the Tamil Nadu Conferment of Permanency Act, 1981, the petitioners are free to approach the appropriate

authority/Labour Court as the case may be, for any relief to which they are entitled to, inclusive of the 31 employees who have already been relieved. The writ petitions are disposed of subject to the above observations....

6. The grievance of Mr. D. Hariparanthaman, learned counsel appearing for the writ appellants, is that the learned Judge having arrived at a

categorical conclusion that the persons concerned were relieved without a minimum opportunity of show-cause notice, granted relief in favour of

the persons who have not been relieved, and rejected the same relief in respect of the 31 candidates who had already been relieved on 18-4-2003

and 19-4-2003. It is his further grievance that the learned Judge, while granting limited relief by holding that the drivers would be retained in service

on the same terms and conditions and salary as they were entitled to before 30-01-2003, ought to have granted the same in favour of all the 75

selected candidates. In other words, the restricted prayer of the appellants as seen during the argument of the learned counsel for the appellants is

that the limited relief given in the writ petitions has also to be given/ extended to the appellants as well because they are similarly situated with

others who were granted limited relief. The only reason for denying the limited relief is that the appellants did not have the benefits of interim order.

Mr. D. Hariparanthaman also contended that the relief given at the time of final disposal cannot be based on the interim order since the writ

petitions were finally disposed of. It is also pointed out that for granting interim order, whether the drivers were relieved or not can be a relevant

one, but by granting final relief, that cannot be a relevant criteria. On the other hand, Mr. N.R. Chandran, learned Senior Counsel appearing for the

Transport Corporation, would contend that these appellants were trainees and trainees have no right to employment. As rightly pointed out by Mr.

D. Hariparanthaman, such argument cannot stand since even according to the learned Judge that the drivers would continue in the capacity as

before 30 -01-2003 and they became daily rated workmen after February/March, 20 02 and therefore, they were daily rated workmen before

30-01-2003 and thus they were not trainees. Further, the Corporation did not challenge the common Order of the learned Judge dated 13-05-

2003 and the said finding/decision became final.

7. Now let us analyse the order of the learned Single Judge. Before the learned Judge, it was the contention of the writ petitioners that they had been appointed by following proper method of recruitment by calling for names from the employment exchange. It is also their claim that they have not entered into service by any back door method. Therefore, according to them, on completion of prescribed period of training, their services were bound to be made permanent and also in terms of the settlement u/s 12(3) of the Industrial Disputes Act. It was further contended before the learned Judge that having issued orders of regularisation, the same could not have been cancelled without notice to the aggrieved persons. On the other hand, it was the contention of the Transport Corporation before the learned Judge that the order confirming the services of the writ petitioners have been issued even before the completion of 2 year period for confirmation and without any regard to the vacancy position. It was their further contention that the vigilance enquiry revealed large scale fraud on the Corporation and prima facie materials are available disclosing that the order of confirmation had been issued by collusion between the parties and some of the officers of the Corporation. It was also contended that even before the order of status-quo was passed by the learned Single Judge, 31 of the petitioners had been relieved and, therefore, they could not claim to continue in service. With reference to the above contentions, the learned Judge at the foremost accepted the claim of all the petitions that they cannot be relieved even without minimum opportunity namely, show cause notice. In para 11, the learned Judge has observed that ""In the course of arguments, I had pointed out to the learned counsel representing the respondents that whatever be the reason for passing the impugned order, the minimum requirement of show cause notice should have been complied with...."" Again in para 13, the learned Judge has observed thatBut the minimum requirement before the impugned order could have been issued against the petitioners is to have called upon the employee to show cause against the withdrawal of the earlier order confirming the services of the petitioners. The said minimum requirement cannot be dispensed with. It is also true that the period of confirmation had been fixed as two years by order dated 18-4-2001. In terms of said order, confirmation order could have been issued on or after 18 -4-2004. But orders of confirmation had been issued on 30-1-2003 itself. But that

circumstance alone will not amount to proof of fraud or collusion against each employee. It is certainly open to any employer to confirm the services even earlier, provided that such orders are not issued for any extraneous consideration and without any discrimination. Therefore, the need to issue a show cause notice cannot be dispensed with". In the light of the categorical conclusion that show-cause notice is a must to all before relieving them, we are of the view that the learned Judge ought to have allowed all the writ petitions on the ground of violation of principles of natural justice. As rightly pointed out, merely because some of them had been relieved and they could not secure orders of status-quo at the time of entertaining the writ petitions, on that ground they cannot be allowed to deprive of the main relief particularly, when a finding was given that they were not provided with show-cause notice before the impugned order was passed, relieving them from the post. It is not in dispute that all the petitioners/writ appellants had been appointed by following proper procedure and method of recruitment by calling for list, which contained their names, from the employment exchange concerned. It is also not in dispute that after selection, all of them were sent for training. Therefore, on completion of prescribed period of training, their services have to be made permanent subject to availability of vacancy and also in terms of settlement u/s 12(3) of the Industrial Disputes Act. It is also relevant to note that orders of regularisation having been issued, as pointed out, the same could not have been cancelled without notice to the aggrieved persons. It is also not in dispute that the status of those persons as daily rated workmen is in consonance with the 12 (3) settlement which has also been relied on by the learned judge.

8. Now let us consider the other argument that inasmuch as the appellants were directed to pursue their remedy in Labour Court/Industrial Tribunal, whether they are entitled to get the relief as prayed for.

9. In the typed-set of papers filed before the learned Single Judge, the appellants/petitioners therein enclosed copy of the order of appointment dated 18-4-2001 wherein they along with other workmen were appointed as trainee drivers on consolidated wages. They also enclosed subsequent order dated 25-2-2001 wherein they were appointed as driver on daily rated basis. In the former appointment order i.e., order dated

18-04-2001, it was stated by the Tamil Nadu Transport Corporation, Coimbatore Division, Erode-I, that in continuation of the various orders

referred to in the references stated therein, the workmen who have completed training in the drivers' training school were appointed as trainee

drivers for two years from 19-04-2001 in the branch noted against them. The order further shows that they will be paid a consolidated wage of

Rs.2,500/- for the first year and Rs.3,000/- for the second year. After cataloguing their names, employment registration number, branch training

number and the names of the branch to which they were appointed, the order further says that the workmen who completed satisfactorily first year

alone will be eligible to get the wages for the second year based on the orders of the headquarters and that thereafter based on the vacancy

position and assessing the services of the workmen, temporary driver staff No. (T.No.) will be given. Subject to those conditions, they were

directed to report duty on 19-04-2001 before the concerned Branch Manager/ Assistant Branch Manager. In the latter order i.e., order dated 25-

02-2002 wherein they were appointed on daily wage basis, the following conditions are found to be incorporated:

1. In continuation of the orders mentioned in the reference, you are appointed a temporary workman on daily wage basis at the rate of Rs.160/-

per day as your service was satisfactory during your service as trainee driver.

2. You are directed to report duty before the Selection Grade Assistant Manager (Personnel) of Tamil Nadu State Transport Corporation

(CBE.Div.2) Ltd., Erode-1 on or before 1-4-2002.

3. At the time of reporting duty, you should bring a crossed demand draft for Rs.4550 drawn in favour of Tamil Nadu State Transport

Corporation (CBE Div-II) Ltd., Erode-1 towards the share for Medical College/ Engineering College/Polytechnic run by IRT.

4. You are bound by the rules and regulations of the Corporations.

5. You will be subjected to transfer within the corporation according to administrative exigencies.

6. This order will not guarantee permanent appointment.

7. You may be removed from service during this temporary service without any notice and without assigning any reason.

8. You should produce fitness certificate and fitness of eye sight certificate from

the Government Civil Surgeon.

9. You should produce attested copies of all the certificates relating to educational qualification. Driver Licence, First Aid certificate, Community Certificate and 3 chest X-rays.

10. You will be removed from service without notice if any one of the certificates produced by you is a forged one of you were removed from service by this Corporation or other transport corporations"".

It is not in dispute that similar orders have been passed in the case of appellants and the counsel for appellants has enclosed one set of such orders

for reference. Among the several conditions, it is relevant to note that one condition is that on being made daily rated workmen, they were directed

to pay Rs.4,550/- towards the share of medical and engineering colleges run by IRT. It is the definite case of the appellants that all the persons

mentioned in those orders have paid the said amount. It is their further grievance that as per the settlement, the drivers should have been appointed

on daily rated workmen from 18-04-2001 itself, instead of appointing them initially as trainee drivers on consolidated salary. However, they were

brought on daily rated workmen during February/March, 2002. On completion of 240 duties, the drivers were issued orders dated 30-1-

2003/29-3-2003 making them permanent and bringing them to scale of pay. However, the Transport Corporation cancelled the said orders dated

30-1-2003/29-3-2003 as well as the orders making them daily rated workmen during February/March, 2002 by issuing orders dated 3-4-2003

to all the 75 drivers. Based on the said order dated 3-4-2003 which was impugned in the writ petitions before the learned Single Judge, on

completion of two years service the drivers were sought to be relieved. The learned Judge directed the appellants who were not in service and

claimed a right under the alleged agreement u/s 12(3) of the Industrial Disputes Act or under Tamil Nadu Conferment of Permanency Act, 1981 to

approach the Labour Court or the competent authority. It is the stand of the Transport Corporation that some of the appellants have also

approached the Labour Court and according to the appellants, this treatment of the learned Judge is discriminatory. It is also contended that the

claim of the appellants that the order of cancellation of confirmation is illegal and therefore they should be given the same benefit like other

employees who were not disturbed. Mr. N.R. Chandran, learned senior counsel appearing for the Transport Corporation, vehemently contended

that the apprehension of the appellants is not correct. According to him, the order of confirmation is invalid because the confirmation has been

made in a post which does not exist. By referring the decision of the Supreme Court in State of Punjab Vs. Jagdip Singh and Others, , he

submitted that such a confirmation is no confirmation at all and it does not give any right to the incumbent. Further, he pointed out that the

impugned order which was challenged before the learned Single Judge is not an order of termination and the appellants were reverted back as a

trainee and they continued as trainees till the period of training was current. He also contended that the dispensation of service after the training

period would not be a retrenchment and therefore it is not the termination. According to him, pursuant to a new settlement dated 1-9-2005, they

were appointed on daily wages and on completion of two years they would be regularised. He also contended that since the prayer refers to

violation of alleged settlement u/s 12(3) of the Industrial Disputes Act and since the order of confirmation sought to be enforced is not valid in law

and the appellants having invoked the remedy under the Industrial Disputes Act, the writ appeals are not maintainable and liable to be dismissed.

We are unable to accept the said contentions for the following reasons.

10. We have already referred to the order dated 18-4-2001 appointing the appellants and other workmen as trainee drivers and the subsequent

order dated 25-2-2002 appointing them as drivers on daily rated basis. The impugned order dated 3-4-2003 which was the subject matter before

the learned Judge, specifically says that all the persons were sponsored by District Employment Exchange on the request of the Transport

Corporation for appointment to the post of trainee drivers. Pursuant to the list of names sponsored by the District Employment Exchange, these

persons were selected and appointed as trainee drivers on a consolidated pay for two years. Though the order dated 3-4-2003 did not contain a

clause for termination of the services of the drivers, but allowed them to continue as trainee drivers, in view of the fact that the said order was

passed without notice to the aggrieved persons or opportunity of being heard, the learned Single Judge has rightly arrived at a conclusion that the

said order could not stand on ground of violation of principles of natural justice. Having arrived at such a conclusion, as said earlier, merely

because some of them alone secured status-quo order and some could not, they cannot be deprived of the main relief namely, that the impugned

order is liable to be quashed on the ground of violation of principles of natural justice.

11. The argument advanced by the learned senior counsel for the Transport Corporation that these appellants were trainees and trainees have no

right to employment has no substance, since such argument is contrary to the conclusion of the learned Judge that the drivers would continue in the

same capacity as in the same terms as before 30-1-2003 and, therefore, they were daily rated workmen before 30-1 -2003, and thus they were

not trainees. Further, as stated earlier, admittedly, the respondent-Transport Corporation did not challenge the common order of the learned Judge

dated 13-5-2003; accordingly the said finding/decision became final. Apart from this, the status of daily rated workmen is in consonance with the

12 (3) settlement which has been heavily relied on by the learned Judge while granting limited relief (vide para 14).

12. With regard to the argument that the appellants are not entitled to the relief since they are pursuing their remedy in Labour Court/Industrial

Tribunal, as rightly pointed out, except a vague statement, the respondent-Corporation has not furnished details in this regard. Even assuming that

one or two appellants have approached the Labour Court to redress their grievance, which alone cannot be considered as a reason for denying

relief to other appellants. In any event, as rightly pointed out, merely because some persons approached the Labour Court, that would not

disentitle the others to get the relief, since the relief claimed is a limited one, and the prayer is to extend the relief to all the persons, who are

similarly situated.

13. In summoning up finally, it is clear that all the workmen including the appellants were selected and appointed after calling their names from the

District Employment Exchange. Though initially they were appointed as trainee drivers on a consolidated basis, subsequently they were appointed

on daily rated basis. When they were sought to be relieved (according to the appellants), reverted as trainees (according to the Transport

Corporation), it is not in dispute that they were not given notice or opportunity of being heard. When the learned Judge found that they were

entitled notice or opportunity of being heard, we are of the view that the same is applicable to all the drivers, including the appellants herein. In such

a circumstance, as rightly prayed, whatever the limited relief granted to others in para 14 of the order of the learned Judge is to be applied to the

appellants also. Merely because they did not secure an order of status-quo at the time of filing of the writ petitions, the limited main relief cannot be

denied to them and they cannot be discriminated. Accordingly, we hold that the directions issued in para 14 of the common order of the learned

Single Judge dated 13-5-2003 shall also apply to the appellants. Even during the course of argument as well as in the written submission, Mr. D.

Hariparanthaman, learned counsel appearing for the appellants, submitted that if the limited relief is given to the appellants in the Writ Appeals, no

orders are necessary in the writ petitions, namely, W.P.Nos. 31378 to 31383/2005, 31430 to 31433/2005, 31499 to 31504/2005, 31534 to

31539/2005 and 33870 to 33876/2005. In the light of our discussion, all the Writ Appeals are liable to be allowed and consequently, the Writ

Petitions are to be dismissed. Writ Petitions relating to Section 25H of the Industrial Disputes Act

14. The petitioners in the batch of writ petitions seek a writ of mandamus to implement the orders in W.A.Nos. 1017 and 1019/97 etc., batch

dated 8-12-97 by appointing them as drivers and taking on a preferential basis u/s 25H of the Industrial Disputes Act. In order to appreciate the

said claim, it will be useful to refer Section 25H of the Industrial Disputes Act:

25H. Re-employment of retrenched workmen.- Where any workmen are retrenched, and the employer proposes to take into his employ any

persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer

themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.

From the above provision, it is clear that the retrenched workmen should be given an opportunity to offer themselves for re-employment and once

they offer themselves for re-employment, they shall have preference over other persons. By drawing our attention to the prayer in the Writ Petition,

namely, to issue a writ of mandamus to appoint them by applying Section 25H of the Industrial Disputes Act, Mr. N.R. Chandran, learned senior

counsel appearing for the Transport Corporation, would submit that such prayer is not tenable. According to him, Section 25H only contemplates

a consideration of their offer and while considering the offer, preference should be shown to them over other persons.

15. Now let us consider the factual details of the case of both parties. According to the writ petitioners, they were earlier employed by the

respondent-Transport Corporation as conductors or drivers. They were retrenched from service. They approached this Court earlier by filing writ

petitions challenging their termination as illegal. Those petitions were disposed of on various dates by this Court, following the judgement in a batch

of Writ Appeal Nos. 1294 to 1299 , 1017 to 1019 of 1997 etc., batch dated 8-12-97 of the Division Bench of this Court directing the Transport

Corporations to undertake an exercise to find out whether the workmen in those cases worked for more than 240 days or less than 240 days, and

if the workmen worked for more than 240 days, there was a direction to reinstate them with back-wages and if they worked for less than 240

days, there was a direction to offer job in the future vacancies. Since the petitioners heavily relied on the direction of the Division Bench in Writ

Appeal Nos. 1294/97 etc., batch dated 8-12-97, let us consider the said decision. The factual position shows the workers therein had been in

continuous employment for more than 240 days with the Transport Corporation, and their services had been terminated without complying with the

provisions of Section 25F of the Act. The other category of the petitioners were the employees who had not completed 240 days and their

services had been dispensed with without complying with Sections 25F and 25H of the Act. It was argued before the Division Bench on behalf of

the workmen that in the first category of persons the appellant Corporation could not dismiss them without complying with Section 25F of the Act

which was illegal and the Transport Corporation was liable to reinstate them. While accepting the said contention, the Division Bench has

concluded We find force in the contention of learned counsel for the respondent-workers. The appellant-Corporation is directed to undertake an

exercise of deciding each individual case where a worker has completed 240 days and Section 25F has not been complied with. The workers shall

be reinstated with all the backwages and with all consequential benefits which the workers are entitled to. This exercise may be completed within

two months from today. The Division Bench has further held that Since the workers were taken in service, it is immaterial whether one was taken

through the Employment Exchange or directly. Under the Industrial Law, which is a welfare legislation, a right has been conferred under the Act on

worker to have a preference for the employment in case of fresh recruitment over the ones who have not earlier served the employer.

Consequently, the appellant Corporation will offer the job to the retrenched employees complying with Section 25H of the Act, irrespective of the

fact whether the workers was employed through the Employment Exchange or directly, unless the Authority comes to the conclusion that the

employment of the worker was provided mala fide or some ulterior consideration. This exercise may be completed within three months from

today. They also held that No adverse orders will be passed against the worker without giving opportunity of hearing. It is clear from the above

direction it is the duty of the Transport Corporation to undertake an exercise to find out whether the workmen worked for more than 240 days or

less than 240 days and if the workmen worked for more than 240 days, there was direction to reinstate them with backwages and if the workmen

worked less than 240 days, there was a direction to offer job in the future vacancies. Based on the orders passed by this Court in the earlier writ

petitions, the Transport Corporations issued orders assuring re-employment in future vacancies as these workmen worked for less than 240 days.

It is true that after the termination of these workmen, there was no recruitment due to ban on recruitment imposed by the Tamil Nadu Government.

The ban was removed by G.O.No.57, Transport Department, dated 21-7-2005 and it is the claim of the workmen that 2000 drivers post and

700 conductors post were identified as vacancies and now the recruitment process is going on. It is the argument of Mr. D. Hariparanthaman and

Ms. D. Nagasaila appearing for workmen that before going for recruitment of new persons, the Transport Corporation ought to have re-employed

the workmen, who were retrenched earlier in view of Section 25H read with Section 25J of the Act coupled with the judgement of the Division

Bench dated 8-12-97 in Writ Appeal Nos.1294 of 97 etc., batch and other judgements/orders, which followed the earlier batch as well as the

assurance given by the Transport Corporations based on those judgements. Since the Transport Corporations failed to provide re-employment,

the workmen filed the present writ petitions praying for re-employment. Their claim for reemployment is based on the following three arguments:

i) Statutory right u/s 25H of Industrial Disputes Act and 25J of the said Act read with Rule 63 of Tamil Nadu Industrial Disputes Rules.

ii) The judgement of the Division Bench dated 8-12-97 in Writ Appeal Nos. 1294 to 1299/97 etc., batch and other judgements following the same.

iii) The assurance given by the respondents based on the earlier judgements.

16. The following legal issues arise for consideration:

i) What is the scope of the right guaranteed u/s 25H of the Industrial Disputes Act, 1947? Are the workers entitled to a mere consideration for

appointment along with fresh hands and a preference only when all other things being equal or do they have a preferential right of appointment?

What is the relief that can be given u/s 25H of the Act?

ii) What is the scope of Section 25J of the Industrial Disputes Act? Is the Memorandum of Understanding (MOU) in derogation of Chapter V-A

of the Industrial Disputes Act and if so, is it binding?

iii) Can the workers of Metropolitan Transport Corporation, Chennai (erstwhile Ambedkar Transport Corporation) be denied the benefit of the

ratio of the decision of the Division Bench order dated 8-12-97 and the benefits of Section 25H of the Industrial Disputes Act merely because they

have entered into an MOU that their jobs will be guaranteed as and when their names are sponsored by the Employment Exchange as per their

seniority of registration

17. The Industrial Disputes Act, 1947 as enacted in 1947, was a piece of legislation mainly concerned with providing machinery for investigation

and settlement of industrial disputes. The original enactment had no provisions for payment of compensation on lay off or retrenchment or provision

for re-employment of retrenched workers. There was large scale lay off and retrenchment of workers and closure of industry resulting in great

hardship to thousands of workers. It is in these circumstances that Chapter V-A of the Industrial Disputes Act, 1947 was introduced. We have

already reproduced Section 25H of the Act. Rule 63 of the Tamil Nadu Industrial Disputes Rules, 1958 (hereinafter referred to as the Rules)

prescribes the manner in which retrenched workers will be re-employed.

18. It is pertinent to point out that even before Section 25H was added to the Act industrial adjudication generally reocognized the principle that if

any employer retrenched the services of an employee on the ground that the employee in question had become surplus, it was necessary that

whenever the employer had occasion to employ another hand, the retrenched workmen should be given an opportunity to join service. This

principle was regarded as of general application in industrial application on the ground that it was based on considerations of fair play and justice. (

The Cawnpore Tannery Ltd., Kanpur Vs. S. Guha and Others,). In that case, the relief of reinstatement given was upheld by the Supreme Court.

19. In Workmen represented by Akhil Bhartiya Koyla Kamgar Union Vs. Employers in relation to the Management of Industry Colliery of M/s.

Bharat Coking Coal Ltd. and Others, , the Supreme Court held that there was a statutory obligation to re-employ the retrenched workman if the

employer proposes to take new employees.

20. In MULLER AND PHIPPS (INDIA) PVT. LTD., v. THEIR EMPLOYEES]1967 (2) LLJ 222 the Punjab and Haryana High Court held

that vacancy caused by retrenchment filled by promotion was held to be not valid as it defeats the provisions of Section 25H and the statute could

be easily circumvented by an employer who, for some ulterior motive, did not want to offer re-employment to a retrenched worker and the court

upheld the order of deemed re-employment ordered by the Industrial Court.

21. In RAM CHANDRA YADAV v. RAJASTHAN STATE ROAD TRANSPORT 1990 (2) LLJ 408 para 6 and 12] a Division Bench of the

Rajasthan High Court, when from among retrenched workers the juniors were reemployed overlooking the seniors the Court held that the seniors

were entitled to wages for the period during which the juniors were reemployed.

22. In GUJARAT STATE MACHINE TOOLS CORPORATION LTD. V. DEEPAK J DESAI, 1994 (3) LLJ (Supp) 848 (Guj DB) and in

ORIENTAL BANK OF COMMERCE v. UNION OF INDIA 1998 (2) LLJ 112 (All) (para 9] it was held that Section 25H and the Rules do

not create any distinction between temporary employment and permanent employment and the relief of reinstatement was given in both the cases.

23. The right u/s 25H is Substantial Right as held by the Apex Court in KRISHNA

DIST. C.M SOCIETY LTD., VIJAYAWADA v. N.V.P.

RAO AND OTHERS 1987 (2) LLJ 365. Section 25H does not admit any exception and will have overriding effect as held by the Kerala High

Court relying on varying Apex Court rulings in 1982 (1) LLJ 248 Section 25H uses shall that too at two places showing the mandatory character.

24. Rule 63 of Tamil Nadu Industrial Disputes Rules also uses the word shall and there is a mandate on the employer to offer re-employment to

retrenched workmen and the retrenched workmen should respond within 10 days as per rule 63 (2) and if he fails to do so, he shall lose his claim

for re-employment. Only thereafter, the employer can go for recruitment from outside after exhausting the retrenched workmen. Therefore, the

word preference in Section 25H has to be understood by reading it along with the Rule 63 (2) of Tamil Nadu Industrial Disputes Rules.

25. Mr. N.R. Chandran, learned senior counsel appearing for the Transport Corporation, would contend that Section 25H of the Act is clear that

the retrenched workmen should be given an opportunity to offer themselves for re-employment and once they offer themselves for re-employment,

they shall have preference over other persons. While elaborating the same, he contended that Section 25H only contemplates a consideration of

their offer and while considering the offer, preference should be shown to them over other persons. He further contended that the petitioners case

is based on the observation of the Division Bench in Writ Appeal Nos. 1294 to 1299 and 1017 and 1019 of 1997 etc., batch and the passage

relied on is:

Consequently, the appellant-Corporation will offer the job to the retrenched employees complying with Section 25H of the Act, irrespective of the

fact whether the worker was employed through the Employment Exchange or directly, unless the Authority comes to the conclusion that the

employment to the worker was provided mala fide or for some ulterior consideration. This exercise may be completed within three months from

today.

According to him, from the above observation, the Corporation is expected to comply with Section 25H of the Act and the said observation does

not clothe with any right to the employees to get an appointment automatically. According to the learned senior counsel, Section 25H contemplates

only a preference. He very much relied on the judgement of the Supreme Court in *The Secretary, Andhra Pradesh Public Service Commission Vs.*

Y.V.V.R. Srinivasulu and Others, wherein Their Lordships have explained the term preference. According to him, preference can be shown only

when other things being equal. Hence the writ petitioners cannot demand employment. It is also his claim that the prayer in the writ petition

demanding an employment is not valid. Further, Rule 62 of the Rules contemplates maintenance of seniority list of workmen retrenched and this

should be prepared taking into account the seniority of service of the said workmen in the category concerned. He also pointed out that the

Supreme Court has taken the view in *Central Bank of India Vs. S. Satyam and others*, that an employee who was put in more than 240 days

would have to be preferred over a workman who is put in less than 240 days and consideration of their claim u/s 25H depends upon the vacancies

available. Mr. N.R. Chandran also pointed out that if the petitioner insist that they should be appointed and seek to enforce their alleged claim u/s

25H, then the writ petition is not maintainable in view of the other alternative remedy. He also pointed out that some of the petitioners have

challenged the order of termination in the Labour Court under Industrial Disputes Act. At the same time, they have filed writ petitions claiming

preference u/s 25H. He relied on the judgement of the learned Single Judge in the case of *S.B. EMPLOYEES UNION v. S.B.I.*, reported in

2001-III-LLJ (Suppl) 639 wherein the learned judge has held that this would be impermissible and they cannot pursue their remedies in two

different forums.

26. On going through the Division Bench decision dated 8-12-97, specific direction therein, the language used in Sections 25H, 25J of the Act

and Rule 63 of the Rules as well as various orders passed by the learned Single Judges of this Court, following the Division Bench decision dated

8-12-97, we are unable to accept the argument projected by the learned Senior Counsel for the Transport Corporation. Section 25J uses non-

obstanti clause placing the right of re-employment provided u/s 25H in Chapter V-A of the Act in higher pedestal. Further, Section 25H uses, any

workmen and workman is defined u/s 2(s) of the Act and the said definition is wide and includes all category of workmen, such as permanent,

temporary, casual, badli, etc. More over, Section 25H uses any person and that therefore irrespective of the category for which vacancy arose, the right of re-employment is protected u/s 25H.

27. We have already extracted the direction/ observation of the Division Bench dated 8-12-97 and in view of the same, we are of the view that the

respondents-Transport Corporations are bound to offer jobs to the petitioners. It is not in dispute that the Transport Corporations filed SLP

before the Supreme Court and the same was dismissed as withdrawn. It was also brought to our notice that later, they have filed Review and the

Review was also dismissed. Though an argument was advanced that the judgement in Writ Appeal Nos. 1294 to 1299/97 etc., dated 8-12-97

was based on the concession given by the counsel for the Transport Corporation, it is brought to our notice that this argument was rejected by

another Division Bench judgement in W.A.No. 2083/99 dated 26-10-99.

28. Mr. D. Hariparanthaman, learned counsel appearing for the workmen, has brought to our notice that the judgement of the Division Bench

dated 8-12-97 in W.A.Nos. 1294 to 1299/97 etc., batch was followed in all the subsequent decisions. By order dated 22-04-98 in W.P.Nos.

4013 to 4015/98 etc., batch (V.S.J. SHANMUGAM v. TAMIL NADU STATE EXPRESS BUS TRANSPORT CORPORATION LTD.,

MADRAS-2), learned Single Judge (K. Govindarajan, J.), following the Division Bench decision dated 8-12-97, issued similar directions as

provided therein. In W.P.Nos. 12497 to 12509/98 etc., batch dated 4-9-98 (A.S. BALU AND OTHERS v. STATE EXPRESS TRANSPORT

CORPORATION), K. Sampath, J., following the said Division Bench decision issued similar direction. The same learned judge in W.P.No.

18164/96 dated 18-12-98 (S. DEWVARAJU AND OTHERS v. TAMIL NADU STATE TRANSPORT CORPORATION, COIMBATORE

DIVISION-II, ERODE) also issued similar directions. In W.P.Nos. 683 and 6 87/99 dated 22-01-99 (R. MURUGESAN v. T.S.

THANGAVELU), S. Jagadeesan, J., following the Division Bench judgement, directed the Transport Corporation to consider their representation,

as directed by the Division Bench. In W.P.No. 20246/98 etc., batch dated 15-3-99 (S. UMA MAHESWARI v. STATE EXPRESS

TRANSPORT CORPORATION, TAMIL NADU DIVISION-2), P.D. Dinakaraj, J.,

following the Division Bench order dated 8-12-97 ,

disposed of all the writ petitions on the conditions and terms provided in the Division Bench order. The very same Judge in Writ Petition No. 19113/98 etc., batch dated 15-03-99 (R. LAWRENCE v. SECRETARY, TRANSPORT DEPT., GOVERNMENT OF TAMIL NADU),

following the Division Bench order, issued directions to the Transport Corporation. By subsequent order dated 29-04-99 in W.P.No. 7425 to 7431/99 (G. RAJENDRAN, v. T.N. STATE TRANSPORT CORPORATION), the very same learned Judge (P.D.D., J.,) disposed of all the writ petitions by following the above said Division Bench order. He also passed similar orders in W.P.Nos. 10162 to 10201/99 dated 17-6-99. In W.P.No. 1869/99 dated 11-2-2000 (G. MURUGESAN AND OTHERS v. MANAGING DIRECTOR, T.N.STATE TRANSPORT CORPORATION), E. Padmanabhan, J., following the Division Bench decision dated 8-12-97, directed the Transport Corporation to consider the claim of the petitioners therein in the light of the Division Bench pronouncement. In W.P.Nos. 11340/2000 etc., batch dated 07-07-2000 (ASHOK KUMAR and OTHERS v. T.N. STATE TRANSPORT CORPORATION, ERODE-2) one of us (P.Sathasivam, J.,), following the very same Division Bench order, directed the Transport Corporation to consider the representation made by the petitioners-workmen. In W.P.No.25233/2001 dated 21-12-20 01 (PERIYASAMY v. T.N.STATE TRANSPORT CORPORATION, ERODE-2), D. Murugesan, J., following the Division Bench order, directed the Transport Corporation to dispose of the representation as directed by the Division Bench. Finally, in a batch of Writ Petitions, namely, W.P.Nos. 16 526 to 16536/2000 etc., dated 6-03-2003, K. Govindarajan, J., following the very same Division Bench order dated 8-12-97, after issuing similar directions therein, disposed of all the writ petitions. All the above orders find place in Volume I of the typed-set of papers filed by the petitioners.

29. Apart from the series of orders of this Court based on the earlier Division Bench order which became final, as rightly pointed out by the learned counsel for the petitioners, the Transport Corporations are bound by their own assurance given based on the Court orders, they are estopped from going back on their assurance.

30. We are satisfied that Section 25H of the Industrial Disputes Act requires the management to give preference to retrenched workmen over others, where any workman is retrenched and the management proposes to take into its employ any person again for work, where the retrenched workman offers himself for re-employment. This indeed is a substantial right. Section 25J of the Act which is very material for our purpose provides that provisions of Chapter V-A of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946. A bare reading of Section 25H makes it amply clear that it casts a statutory duty on the employer to give an opportunity to the retrenched workmen to offer themselves for re-employment whenever the employer intends to fillup the vacancy. In terms of Section 25H, the employer is bound to give an opportunity to the retrenched workmen to offer themselves for re-employment and if the retrenched workmen offer themselves for reemployment, the employer is bound to give preference to them over other persons. If this is not done and the appointments are given in violation of the provisions of Section 25H, the retrenched workmen can raise the grievance.

31. We are of the firm view that the word preference in the context of Section 25H very clearly means that the retrenched workers have a prior right of re-employment over other persons and hence are entitled to an order of re-employment. As rightly pointed out by Ms. D. Nagasaila, learned counsel appearing for some of the workmen, any other meaning would defeat the purpose of the provisions of Chapter V-A of the Act. Labha Ram and Sons and Others Vs. State of Punjab and Others, , was a case where the appellants were licensed dealers functioning from old market areas for over 50 years. Subsequently the Government created a new market complex and the dealers had to shift business there. All the dealers were anxious to get accommodation in the new market area but were told to stand in the queue along with the new comers and compete with them in the open auction. In this context the Supreme Court held that such an argument is specious. The Court held that the Government had an inherent obligation to provide all the licensed dealers sufficient accommodation for carrying on their trade and such an obligation does not stand

discharged by merely allowing them to compete with the outsiders in the open auction. The Government was directed to give preference to the erstwhile dealers.

32. In *T. PICHAI v. THE COLLECTOR OF TIRUNELVELI* 1986 (2) MLJ 1 it was held that the preference would be as against somebody. In

this case the Minor Mineral Concession Rules provided for preference for leases of quarries to be given repatriates from Sri Lanka and any

Labour Co-operate Society. At page 7 of the judgment it was conceded that the procedure of auctioning of lease to other applicants would arise

only if the allotment to the preferential category was not feasible. In this case, there was more than one applicant who was a Sri Lankan repatriate

and in this context the Court directed that the Collector should invite the applications by notice in the district gazette. The ratio of this case supports

the contention of the petitioner.

33. In *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, , the Supreme Court has held that in the minority

professional college the management can admit to the management quota a student of their own community/ language in preference to a student of

an another community even though that other student is more meritorious. This will clearly demonstrate that the word preference takes colour from

the context.

The above discussions of us and the materials placed, the factual details, the earlier Division Bench order dated 8-12-97 in Writ Appeal Nos.

1294/97 etc., batch, which became final, several orders of this Court following the said Division Bench decision and the statutory provisions

particularly, Sections 25H, 25J of the Act and Rule 63 of the Rules, we are in agreement with the stand taken by the petitioners. Further, even

according to the respondents, now the ban on recruitment has been lifted and they are at the process of recruiting more drivers and conductors. In

such a circumstance, there cannot be any difficulty for them to accommodate all the retrenched workers. There shall be a direction to the

respondents to provide re-employment to the petitioners subject to fulfilment of 240 duties in the respective Corporations and satisfying other

conditions, if any, in accordance with Section 25H of the Industrial Disputes Act, in preference to the new recruits.

34. We pass the following orders:

(i) Writ Appeals are allowed. The appellants are entitled similar orders/directions/observations as provided in para 14 of the order of the learned

Single Judge dated 13-05-2003 in Writ Petition Nos. 11785 of 2003 etc., batch;

(ii) In view of the allowing of the Writ Appeals, the Writ Petitions, namely, Writ Petition Nos. 31378 to 31383, 31430 to 31433, 31499 to

31504, 31534 to 31539, 33870 to 33876 of 2005 are dismissed, as agreed to by Mr. D. Hariparanthaman;

(iii)(a) In other Writ Petitions direction is issued to the respondents-Transport Corporations to provide re-employment to the writ petitioners who

completed 240 days in the respective Corporations and satisfied other conditions, if any, in accordance with Section 25H of the Industrial Disputes

Act in preference to new entrants.

(b) Those (writ petitioners) who worked less than 240 days shall also be given re-employment and their services will be regularised, only after

completion of 240 days and subject to fulfilling other conditions, if any. Writ Petitions are allowed on the above terms. No costs. Consequently,

connected miscellaneous petitions are closed.

(iv) In view of the relief granted in favour of workmen, Writ Appeal SR No. 40538 of 2005 is dismissed.