IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
09.07.2021	090921

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.24363 of 2019

R.Bharanidaran ... Petitioner

-vs-

1. The Managing Director,
   Tamil Nadu State Transport Corporation,
   No.3/137, Salai Md., Vazhuthareddy Post,
   Villupuram – 602 605.

2. The General Manager,
   Tamil Nadu State Transport Corporation,
   Vellore.

3. The General Manager,
   Tamil Nadu State Transport Corporation,
   Vainggal, T.V.Malai. ... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned Award passed by the Presiding Officer, Principal Labour Court, Vellore in I.D.No.65 of 2016 dated 18.05.2017 and quash the same and consequently, direct the respondents to reinstate the petitioner in service as Conductor with effect from 13.09.2007 with all consequential monetary benefits.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.C.S.K.Sathish

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O R D E R

The Writ Petition has been filed, challenging the the impugned Award passed by the Presiding Officer, Principal Labour Court, Vellore in I.D.No.65 of 2016 dated 18.05.2017, by which, the claim of the petitioner/Workman to reinstate him in service was negatived. The petitioner also sought for a direction to the respondents to reinstate him in service as Conductor with effect from 13.09.2007, with all consequential monetary benefits.

Facts leading to filing of this Writ Petition are as follows:

2. It was the case of the petitioner that he belongs to Most Backward Community and completed his 10th and 12th standard, graduation in B.Sc. (Physics) and typewriting, with an additional qualification of computer course. Due to non-employment, he was constrained to obtain a Conductor license and he registered his license in the District Employment Exchange on 20.02.2004.

2.1. It was further case of the petitioner that the 2nd Respondent appointed several persons as Drivers and Conductors on 15.02.2005 on daily wage basis at Polur Depot in the 3rd Respondent Division. The Petitioner was also appointed as daily rated employee and was paid Rs.75/- per day as daily wage. It was stated that since he worked for more than 16 hours a day from 15.02.2005 to 14.02.2006 for 126 days,

his work was treated as double duty for 252 days in a 12 calendar month and was paid Rs.150/- per day, thus, his employment was continuous and perennial in nature.

2.2. It was also the case of the Petitioner that in continuation thereof, he worked for 135 days from 15.02.2006 to 14.07.2007 (double duty for 270 days) and for 117 days from 15.02.2007 to 12.09.2007 (double duty for 234 days). Thus, it was the submission of the petitioner that he is entitled for absorption and permanency on completion of 480 days of service in a 24 calendar month, as his employment with the Respondents is not in dispute.

2.3. It was stated by the Petitioner that he and other temporary employees were, all of a sudden, terminated from service on 13.02.2007 without any notice and written order, which resulted in raising an Industrial Dispute through Union in C1/14352/2007 for permanency along with other demands and the mandatory provisions of Section 33(1)(a) of the Industrial Disputes Act, 1947 (in short 'the I.D.Act, 1947) were also not complied. Since the Union did not press permanency of retrenched employees, on the basis of conciliation failure report dated 09.09.2013, the petitioner raised a dispute under Section 2(A) of the I.D. Act, 1947.

2.4. It was the grievance of the Petitioner that the Respondents, without

engaging the retrenched employees as per Section 25-H of the I.D.Act, 1947, issued notifications, inviting a list of candidates from the Employment Exchange to fill up vacancies, which is against the dictum laid by a Division Bench of this Court in ***M.Sekaran vs. General Manager, Tamil Nadu State Transport Corporation,*** reported in ***2006 (1) MLJ 295*** and is also contrary to the Government Order issued in G.O.Ms.No.41, Transport (C-1) Department dated 13.07.2006, as a preference must be given to the retrenched employees.

2.5. It was submitted that the petitioner also received a Call Letter dated 01.12.2014 for personal interview for the post of Conductor held on 11.12.2014. Though he was in possession of requisite qualification and attended the interview successfully, he was not considered for appointment on account of his overage, as the age limit of 35 years was fixed for MBC, whereas he had completed 36 years of age at that time. Age restriction could not be applicable for temporary employees like the petitioner and therefore, he made a representation to the Respondents 2 to 4 for giving priority in the matter of appointment as per Section 25-H of the I.D.Act, 1947. Since there was no response on the representation, he earlier filed a Writ Petition in W.P.No.694 of 2005 for a direction to give priority / re-employment to the petitioner, which was directed to be considered by an order dated 09.01.2015 in the light of the provisions of Section 25-H of the I.D.Act, 1947.

2.6. It was also submitted that pursuant to the said order, the Respondents

passed an order on 24.01.2015, rejecting the claim for appointment and the petitioner raised an Industrial Dispute in I.D.No.65 of 2016 before the Labour Officer, Vellore after the failure report dated 27.08.2015 and subsequently, he was examined as W.W.1 and Ex.W1 to W6 were marked. The Labour Court, after examination of both oral and documentary evidence, dismissed the dispute without proper appraisal of the facts and circumstances of the case and aggrieved by the same, the Petitioner is before this Court.

3. Mr.C.S.K.Sathish, learned Standing Counsel for the Respondents contended that there was a ban for recruitment at the relevant point of time and in order to meet out the emergent situation, the Respondents decided to engage trained Conductors on contract basis. Subsequently, there was bifurcation of Transport Corporation and Tiruvannamalai Corporation started functioning with effect from 22.01.2007. He further contended that the Government, vide G.O.Ms.No.87 dated 14.08.2007, which was marked as Ex.M7, issued a direction to all the Transport Corporations to fill up the vacancies by selecting the eligible candidates, based on which, a paper publication has been effected. Though the petitioner was allowed to the participate in the interview, he failed to secure the minimum marks, thereby he was found to be ineligible to the post of Conductor. The Labour Court considered all the material factors and passed an Award, rejecting the claim of the petitioner,

which does not warrant any interference by this Court and the Writ Petition is to be dismissed *in limine*.

4. Learned counsel for the Petitioner, in support of his submission that once a Casual Employee is retrenched or ousted from service, he should be given preference in the light of the provisions of Section 25-H of the I.D.Act, 1947, relied heavily on the judgment of the Division Bench of this Court in the case of ***M.Sekaran vs. General Manager, Tamil Nadu State Transport Corporation,*** reported in ***2006 (1) MLJ 295***, wherein it was held as follows:

> "30. We are satisfied that Section 25-H of the Industrial Disputes Act requires the management to give preference to retrenched workmen over others, where any workmen 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 25-J 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 25-H 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 fill up the vacancy. In terms of Section 25-H, 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 re-employment, 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 25-H, the retrenched workmen can raise the grievance.
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> 31. We are of the firm view that the word preference in the context of Section 25-H 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 v.

STATE OF PUNJAB [1998 (5) SCC 207], 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."

5. The main plea taken by the learned counsel for the Petitioner is that the petitioner was engaged on daily wage basis from 15.02.2005 to 12.09.2007 and he was verbally denied employment only on 13.07.2007. The dismissal of the claim of the petitioner by the Labour Court on the ground that he had not completed 240 days in every calendar year was highly untenable. Moreover, the duty of the Petitioner was treated as double duty for 252 days in a 12 calendar months and was paid Rs.150/- per day, as his employment was a continuous one.

6. To repudiate the above submissions, learned counsel for the Respondents drew the attention of this Court to a judgment of this Court in the case of ***Tamil Nadu State Transport Corporation vs. N.John Henri Raj and Others***, reported in ***MANU/TN/0973/2008***, to contend that merely because the petitioner performed the second day duty on the same day, it will not confer any right to be counted as two days in a single day and it can at the most be construed as a duty on overtime,

entitling him to get Overtime Allowance. For the sake of brevity the relevant portion of the judgment is extracted hereunder:

> "7. In the present case, the Labour Court came to the conclusion that the total number of 258 days includes double duties performed by the workman for which there is no statutory sanction available under the I.D. Act. For the second duty performed on the same day, at the maximum the workman was eligible for Overtime Allowance only and it cannot be construed as two working days so as to come within the purview of Chapter V-A of the I.D. Act. Once it is held that the workman had not completed 240 days within a period of 12 months, then it is axiomatic that the labour Court cannot grant any relief to the workman."

7. Learned counsel for the Respondents further pointed out that an employee cannot be asked to work for hours together in excess of the hours, as such an act may be contrary to the provisions of the Motor Transport Workers Act. The employee at no point of time made an issue of it, while in service. The plea was raised only in Industrial Dispute. To substantiate his contention, learned counsel found support from the judgment of the Madhya Pradesh High Court in the case of ***Gurusharansingh Brijbhusansing vs. Manager, Rewa Transport Services and others***, reported in ***1967 SCC Online MP 22***, wherein it was observed as under:

> "6. It is not disputed that the only duty of the conductor is to Issue tickets to the passengers during the journey and to look after the passengers. As soon as the journey ends and the passengers quit the stage carriage, the conductor has no other duty to perform. But the petitioner claimed before the Payment of Wages Authority that there was no arrangement at the terminal for handing over the cash collected by him and that he remained in charge of the cash till he returned to Rewa and this Is why he claimed that he remained on duty from the time he left Rewa till he returned back. At the evidence stage, the petitioner tried to introduce a new claim, namely, that he was required to be in charge of the stage carriage at the terminals along with the driver. This claim should not have been allowed to be introduced at the evidence stage, and we are not inclined to consider it. Apart from the mere work of the petitioner, no foundation has been laid for basing his claim on that ground.

From his evidence it is not clear as to whether for all the time both the driver and the conductor remained in charge of the stage carriage or whether there was any division of work. It is impossible to believe that the petitioner remained in charge for all the hours the stage carriage halted at the terminals. No claim can, therefore, be sustained on the vague allegation of the petitioner that he was required to be in charge of the stage carriage and on the vague basis that he has made out. We shall, therefore confine our enquiry to the original claim made by the petitioner, namely, that he remained in charge of the cash. The question to be determined, therefore is can this be called 'subsidiary work'?

7. It is not a work in connection with the transport vehicle, its passengers or its load which is done outside the running time of the transport vehicle The work of keeping the cash thus does not come within the main part of Clause (2) of the Explanation under Section 2(f) of the Motor Transport Workers Act. Mere keeping of the cash with oneself cannot also be said to be work done in connection with accounts, the paying in of cash, the signing of registers, the handing in of service sheets, the checking of tickets and other similar work. The petitioner's case is that there was no arrangement at the terminals to hand over charge. It is thus clear that he was not required to do any work at the terminals with respect to any of the matters enumerated above. Thus, Sub-clause (i) of Clause (2) of the Explanation is not attracted. Sub-clauses (ii) and (iii) are also not attracted, as there was no question of taking over and garaging the transport vehicle and travelling from the place where one reports to duty to the place where the vehicle is stationed. In any case this will not account for more than 15 minutes at the terminals or at the headquarters at Rewa. The petitioner's case is also not covered by the other sub-clauses under Clause (2) underneath the Explanation. It is thus clear that it cannot be said that the petitioner has put in any 'hours of work' in excess of the number prescribed by Section 13 of the Motor Transport Workers Act. The essence of the definition is that the worker must be at the disposal of the employer or of any other person to claim his services during certain hours. The definition also emphasises the fact that the hours spent on duty have relation to the running time of the transport vehicle. From the mere fact that at the terminal the petitioner remained in charge of the cash of his master, it cannot be inferred that the petitioner remained at the disposal of the employer and was not free to utilize the time during which the stage carriage halted at the terminal in any manner he liked. This is the reason why the petitioner tried to introduce at the evidence stage a further ground that he was also required to guard the stage carriage during the halt. For the abovesaid reasons, we are of the view that the petitioner failed to establish that he had worked in excess of the 'hours of work' fixed under the Motor Transport Workers Act and the petition is liable to be dismissed.

8. It may also be mentioned that there, is a complete prohibition under Section 13 of the Motor Transport Workers Act from employing any worker for hours in excess of the hours prescribed under Section 13. Any overtime work done in excess of the hours prescribed under S 13 shall be work done in violation of the Act, and a claim based on such a violation cannot be sustained under the Minimum Wages Act or the Payment of Wages Act."

8. Heard the learned counsel on either side and perused the material documents available on record.

9. In the present case on hand, the very interesting issue involved is as to what is a 'day'? There are several definitions to the word 'day' and according to Wikipedia, a day is approximately the period during which the Earth completes one rotation around its axis, which takes about 24 hours. We all in a colloquial and general observation define the word as a period of 24 hours beginning at midnight. This case cannot be decided merely on the basis of the general definition to the word 'day', as various provisions have to be referred to for the purpose of arriving at a definite finding, on the reasoning that the Labour Court disapproved the claim of the petitioner on the sole ground that the petitioner had not established with evidence that he actually worked for 240 days in a 12 calendar months preceeding the date of termination.

10. The Petitioner assailed the Award of the Labour Court primarily on the ground that the Labour Court lost sight of the fact that the Management extracted

work from the petitioner for more than 16 hours a day from 15.02.2005 to 14.02.2006 for 126 days, by treating it to be double duty for 252 days and paid Rs.150/- for the double duty of 16 hours. Hours of work permissible in an Industry have been duly contemplated in various provisions of the Act, which read as follows:

i) Tamil Nadu Shops and Establishments Act, 1947

"**9. Daily and weekly hours of work in shops** - (1) Subject to the provisions of this Act, no person employed in any shop shall be required or allowed to work therein for more than eight hours in any day and forty eight hours in any week:

Provided that any such person may be allowed to work in such shop for any period in excess of the limit fixed under this sub section subject to payment of overtime wages, if the period of work including overtime work, does not exceed ten hours in any day and in the aggregate fifty-four hours in any week:

(2) No person employed in any shop shall be required or allowed to work therein for more than four hours in any day unless he has had an interval for rest of at least one hour.

ii) The Factories Act, 1948

"51. Weekly hours.—No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.

54. Daily hours.—Subject to the provisions of section 51, not adult worker shall be required or allowed to work in a factory for more than nine hours in any day:

Provided that, subject to the previous approval of the Chief Inspector, the daily maximum specified in this section may be exceeded in order to facilitate the change of shifts.

55. Intervals for rest — The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

iii) Tamil Nadu Factories Rules, 1950

"77. Compensatory holidays – (1) Except in the case of workers engaged in any work which for technical reasons must be carried on continuously throughout the day, the compensatory holidays to be allowed under sub-section (1) of Section 52 of the Act shall be so spaced that not more than two holidays are given in one week."

iv) The Motor Transport Workers Act, 1961

"13. Hours of work for adult motor transport workers - No adult motor transport worker shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week: Provided that where any such motor transport worker is engaged in the running of any motor transport service on such long distance routes, or on such festive and other occasions as may be notified in the prescribed manner by the prescribed authority, the employer may, with the approval of such authority, require or allow such motor transport worker to work for more than eight hours in any day or forty-eight hours in any week but in no case for more than ten hours in a day and fifty-four in hours in a week, as the case may be:

Provided further that in the case of a breakdown or dislocation of a motor transport service or interruption of traffic or act of God, the employer may, subject to such conditions and limitations as may be prescribed, require or allow any such motor transport worker to work for more than eight hours in any day or more than forty-eight hours in any week.

14. Hours of work for adolescents employed as motor transport workers - No adolescent shall be employed or required to work as a motor transport worker in any motor transport undertaking -

(a) for more than six hours a day including rest interval of half-an-hour;

(b) between the hours of 10 P.M. and 6 A.M."

11. The Labour Court held that there was no averments or documents on the side of the Workmen to substantiate as to how the provisions of Section 25-F of the I.D.Act, 1947 would inure to the benefit of the Petitioner. A reading of the Award of

the Labour Court unearths that the documents, viz., receipts for the period between 16.02.2005 and 08.09.2007, in proof of remittance of ticket collecting money, have not been referred to by the Labour Court. The Supreme Court in the case reported in ***AIR 1964 SC 477 (Syed Yakoob vs. K.S.Radhakrishnan)***, followed by Kerala High Court in ***Instrumentation Employee's Union vs. Labour Court, Kozhikode***, reported in ***1993 (I) LLN 75***, held that a finding of fact rendered by the Labour Court cannot be interfered with, unless or otherwise there is perversity. When a document has been considered by the Labour Court and a different interpretation has been given to the said document, certainly, this Court cannot give another interpretation, as laid down by Apex Court in the case of ***W.M.Agnani vs. Badri Das*** reported in ***(1963) 1 LLJ 684***, wherein, it was held that it cannot be said to introduce an error apparent on the face of the record in the order of the Industrial Tribunal and if it can be said that the view taken by the Tribunal is not even reasonably possible, perhaps an argument can be urged that the error is apparent on the face of the record. In the said case, the High Court exceeded in its writ jurisdiction in interfering with the finding of the Industrial Tribunal based on the construction put by it upon the resolution of the Management. For better appreciation, relevant portion of the judgment rendered in **Agnani's** case (cited supra) is extracted hereunder:

> "11....The Tribunal took the view that this resolution clearly showed that the enquiry had to be held about the incident which took place on November 16, 1959 and it thought that the reference to his previous conduct

> was incidental and may have been necessary for determining the question of sentence, but it was not intended to be the subject matter of the enquiry. The High Court has taken a different view. Apart from the correctness of one view or another, it seems to us plain that in a matter of this kind, if the Tribunal put one interpretation upon the resolution and the High Court thought it better to put another, that cannot be said to introduce an error apparent on the face of the record in the order of the Tribunal. If it can be said that the view taken by the Tribunal is not even reasonably possible, perhaps an argument may be urged that the error is apparent on the face of the record; but, in our opinion, it would not be possible to accept Mr.Setalvad's argument that the construction placed by the Tribunal is an impossible construction. On the other hand, while conceding that the view taken by the High Court may be reasonably possible, we are inclined to think that the construction put upon the resolution by the Tribunal is also reasonably possible; in fact, if we had to deal with the matter ourselves, we would have preferred the view of the Tribunal to the view of the High Court."

12. In the present case, those documents / receipts have not been referred to by the Labour Court and the Labour Court would have proceeded on the basis that (a) for the selection process, the Workman will have to complete 240 days and (b) once a person, who had participated in the interview, has no right to claim the statutory benefits. It is appropriate to state here that Section 25-F has got nothing to do with the selection process, as it deals only with regard to payment of compensation to retrenched workers. Even assuming for the sake of argument, it is said that the petitioner has participated in the interview and did not come out successful to be eligible for permanent employment, if there is a violation, the employee will have to be paid compensation under Section 25-F of the I.D.Act, 1947, provided that the employee worked for 240 days continuous service in a period of 12 calendar months. Though the petitioner had not actually worked for 240 days, the factum of his temporary employment from 15.02.2005 to 14.02.2006 for 126 days,

which was treated to be double duty for 252 days in a 12 calendar month, for which the employee was paid, is not in dispute. The only objection raised by the Management was that the interpretation given by the Workman that for the services rendered beyond eight hours should be taken as a separate day and calculated for the purpose of arriving at a required number of days (240 days) and above, cannot be accepted.

13. In this case, admittedly, the employee was dismissed in the year 2007 and recruitment took place in 2014 after seven years. When the employer recruits fresh candidates after a period of two years, there is no need for the employer to comply with the provisions of Section 25-H of the I.D.Act, 1947 r/w Rule 63 of The Tamil Nadu Industrial Dispute Rules, 1958 and to that extent, the contention of the Workman is rejected. But from the narration of events, the employee had completed the required number of days even prior to the recruitment. Merely because he failed in the interview at a later point will not take away the rights already accrued.

14. Insofar as Section 25-F of the I.D.Act, 1947 is concerned, if the employee had been in continuous service as contemplated under Section 25-F of the I.D.Act, 1947, and if there is a violation of the said Section, the employee is deemed to be in service. For better understanding, Section 25-B, F, G & H of the I.D.Act, 1947 is

extracted as follows:

> "25B. Definition of continuous service.— For the purposes of this Chapter,— (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer
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> (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than— (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case;
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> (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than— (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.
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> 25F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until— (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.
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> 25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

> 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 2 [to the retrenched workmen who are citizens of India to offer themselves for reemployment and such retrenched workman] who offer themselves for re-employment shall have preference over other persons."

15. Firstly, the petitioner had been working for 16 hours a day and he was given rest on the next day, which was not due to the fault of the employee and therefore, the rest day has also to be counted as a work day, i.e., the employee worked for 16 hours in a day and the next (rest) day was treated as "paid rest day". As the petitioner worked continuously for 16 hours, he was paid double wage of Rs.150/- per day, instead of paying overtime allowance. The question whether the employer paid the wage for 16 hours of work or for the rest day cannot be gone into in this Writ Petition. Even if the extra wage of Rs.75/- is taken to be paid for the rest day, it is not the fault of the employee for availing such rest day.

16. On a careful reading of the provisions of Section 25-B of the I.D.Act, 1947, it is apparent that the employee is deemed to be in service for the required number of days, which is evident from reading of Paragraph No.3 of the affidavit, as beyond 8 hours, it should be treated as a second day for the purpose of Workman in an Industrial Establishment, depending upon the nature of work and wages paid. If an employee worked for 24 hours a day without any break, it would automatically mean that the employee had rendered 3 days of work. At the same time, it does not mean that it would amount to extension of English Calendar by 365 days x 3.

17. It is true that a day has been referred to as 24 hours, since it is a social welfare legislation, for the purpose of granting permanent status or to arrive at 240 days in a period of 12 calendar months, the rest day has to be taken into account as paid holiday. The Hon'ble Supreme Court in the case of ***Workmen of American Express International Banking Corporation vs Management of American Express International Banking Corporation***, reported in ***1985 II LLJ 539*** held as follows:

> "6.....The question there was not how the 240 days were to be reckoned ; the question was not whether Sundays and paid holidays were to be included in reckoning the number of days on which the workmen actually worked ; but the question was whether a workman could be said to have been actually employed for 240 days by the mere fact that he was in service for the whole year whether or not he actually worked for 240 days. On the language employed in Section 2(c) of the Payment of Gratuity Act, the court came to the conclusion that the expression 'actually employed' occurring in Explanation I meant the same thing as the expression 'actually worked' occurring in Explanation II and that as the workmen concerned had not actually worked for 240 days or more in the year they were not entitled to payment of gratuity for that year. They further question as to what was meant by the expression 'actually worked' was not considered as apparently it did not arise for consideration. Therefore, the question whether Sundays and other paid holidays should be taken into account for the purpose of reckoning the total number of days on which the workmen could be said to have actually worked was not considered in that case. The other cases cited before us do not appear to have any bearing on the question at issue before us.
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> 7. On our interpretation of Section 25-F read with Section 25-B, the workmen must succeed...."

18. The Supreme Court, in the aforesaid judgment, held that Sundays and paid holidays should be taken into account, as if the employee worked on those days, for the purpose of calculation of actual number of days and also granted the relief of reinstatement with full back wages. A reading of Section 25-B of the I.D.Act, 1947,

amply makes it clear that a workman shall be in continuous service, if he is in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike, which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. Thus, the word 'leave' sails with the connotation 'rest day', which is not due to the fault of the employee / workman.

19. The Hon'ble Supreme Court, in the case of ***Mohan Lal vs Bharat Electronics Ltd.***, reported in ***(1981) II LLJ 70 (SC)***, categorically held that termination of service of a workman for any reason other than those excepted in Section 2(oo) amounts to retrenchment and if prerequisite for a valid retrenchment have not been complied with, the termination of service would be void ab initio. Therefore, the workman would be entitled to a declaration that the workman continued to be in service with all consequential benefits. It was further added that the Workman cannot be retrenched without any notice or notice pay in view of provisions of Section 25F of Industrial Dispute Act. If the present case on hand is tested in the light of the judgment of the Supreme Court, in the considered opinion of this Court, there is utter violation of the provisions of Section 25-F of the I.D.Act, 1947 and therefore, the petitioner is deemed to be in service for the said violation.

20. The scope of Section 25-F of the I.D. Act, 1947, which is almost *pari*

materia to Section 41 of The Tamil Nadu Shops and Establishments Act, 1947, was elaborately dealt with by the Division Bench of this Court in the case of ***State Bank of India vs. Mylsami***, reported in ***1987 (2) LLN 301***, holding that the liability to pay wages subsequent to the date of termination subsists till a notice as contemplated by the Section or wages (in lieu of notice) is given. In other words, to put it in nutshell, the Division Bench held that even if the termination is justified, till such time the employer complies with the one month notice or one month pay in lieu thereof, the Workman is deemed to be in service in case of violation of the provisions of Section 41 of The Tamil Nadu Shops and Establishments Act, 1947, entitling him to receive all the backwages and other benefits, namely, continuity of service, including the one of attainment of permanent status in terms of Tamil Nadu Industrial Establishements (Conferment of Permanent Status to Workment) Act, 1981. If the case on hand is tested in the light of the aforesaid judgments, in my view, the Labour Court has not looked into the documents and evidence placed before it in a proper prospective and therefore, this Court has no other option, but to hold that there is perversity in the Award of the Labour Court and the Award is liable to be set aside. Though the Respondents contended that the Workman was paid an additional wage of Rs.75/- as overtime allowance, it cannot be said that it is an overtime allowance, as equal wage has been paid for the extra work he has done and not twice the wages for overtime done. Moreover, the Respondents not only

violated the provisions of Section 25-F ofthe I.D.Act, 1947, but also the provisions of The Motor Transport Workers Act, 1961, which stipulates that no employer shall permit a Workman to work for more than ten hours in a day and fifty-four in hours in a week in a Transport industry. The Act further stipulated that "No adolescent shall be employed or required to work as a motor transport worker in any motor transport undertaking for more than six hours a day including rest interval of half-an-hour".

21. The Respondents, having allowed the Workman to continue his work beyond eight hours without any interval and having extracted work beyond the permitted hours, cannot refuse granting permanency to him in the post, on the ground that he had not completed the requried number of days, which is in contravention to the ratio laid down by the Apex Court in ***Mohan Lal vs Bharat Electronics Ltd.,*** (supra).

22. As far as a prudent man is concerned, a day, in its simplest form, indicates 24 hours and the importance of hours can be felt only by persons, who missed opportunities due to lack / paucity of time. For example, if a student is late by an hour and is not permitted to write the examination, he has to wait for another six months to write the said examination to get himself qualified; Likewise, if a passenger misses a bus or train even by half an hour, he has to remain helpless till

he gets an alternate transportation. The respondents argued in a casual manner that the Workman continued his work consecutively for eight hours additionally, without realizing the fact that he had worked without any interval and proper sleep, as he, being a Conductor was responsible to look into the grievance of the passengers, besides ensuring that the Driver of the bus has not slept, while driving the bus, so as to ensure the safety of Passengers, Drivers and the self.

23. In the midst of argument, learned counsel for the Petitioner stated that the Petitioner is willing to give up the back wages and has filed an undertaking affidavit to that effect, the relevant portion of which reads as follows:

> "4... In the event, the Hon'ble Court held that award of the Labour Court is per-se illegal, by setting aside the award, and ordering re-instating me from service, with continuity of service, with all attendant benefits, I am agreeable to forego the backwages for non-employment period (ie) 13.09.2017."

24. For the foregoing discussions and observations, this Court holds that the Award of the Labour Court dated 18.05.2017 has no legs to stand and warrants interference by this Court. Accordingly, the ***Writ Petition is allowed and the Award passed by the Presiding Officer, Principal Labour Court, Vellore in I.D.No.65 of 2016 dated 18.05.2017 is hereby setaside***. The Respondent Transport Corporation is directed to permit the petitioner to report for work ***from 01.10.2021***. In view of the undertaking affidavit filed by the Petitioner before this Court dated 03.07.2021, he

is not entitled to any monetary benefits for the post till 30.09.2021. However, the entire period has got to be counted notionally for continuity, consequential and all other benefits, including pension, if eligible.

25. It is made clear that in case of non compliance of this order, the Petitioner is entitled to wages on par with his counter parts. It is further made clear that if the order is not complied with and a complaint is made to that effect, the Government is directed to sanction prosecution against the Officials, falling under Section 32 of the I.D.Act, 1947, in consonance with Section 34 of the I.D.Act, 1947 for a suitable decision by the Competent Court, as this order replaces the award of the Labour Court. Prosecution under Section 29 of the I.D.Act, 1947 is different from Contempt proceedings, as both are independent of each other and the same is maintainable for violation of the order now passed replacing the Award.

S.VAIDYANATHAN,J.

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Adverse remarks shall also be entered into the Service Register of the Officials, if the order is not implemented within the time stipulated supra. No costs.

09.09.2021

Index: Yes / No
Speaking Order: Yes / No
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Note: Issue order copy on 17.09.2021

To:

1. The Managing Director,
   Tamil Nadu State Transport Corporation,
   No.3/137, Salai Md., Vazhuthareddy Post,
   Villupuram – 602 605.

2. The General Manager,
   Tamil Nadu State Transport Corporation,
   Vellore.

3. The General Manager,
   Tamil Nadu State Transport Corporation,
   Vainggal, T.V.Malai.

PRE-DELIVERY ORDER IN
W.P.No.24363 of 2019