



Writ Appeal No.2298 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Writ Appeal No.2298 of 2023
and CMP.No.19712 of 2023

The Management,
Rep. by its Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Formerly Vellore Region now Thirupathur Region. .. Appellant

Vs.

1. The Inspector of Labour,
Thiruvannamalai,
Authority Constituted as under
Tamil Nadu Industrial Establishments
(Conferment of Permanent Status to workmen) Act, 1981
2. R.Ranganathan
3. T.Karunakaran

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 31.01.2023 in WP.No.37367 of 2016 passed by the Single Judge of this Court.

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For Appellant : Mr.R.Neelakandan,
Additional Advocate General,
assisted by Mr.C.Selvaraj
For Respondents : Mr.P.Ganesan, G.A., for R1

JUDGMENT

(The Judgment of the Court was delivered by S.VAIDYANATHAN, J)

The two employees/respondents 2 and 3 herein approached the authority under the Tamil Nadu Industrial Establishment (conferment of Permanent Status Workmen) Act, 1981, seeking for permanent status on the ground that they have been engaged as Bunk Operators in the Kerosene Bunk at Tirupattur, which has been run by the appellant Management and they have completed 480 days of continuous service in 24 calendar months.

2. The employees though have not produced any document before the authority, filed an affidavit and pleaded that they have completed 480 days of continuous service in 24 calendar months and they are entitled to permanent status. The authority vide order, dated 31.01.2023, which is impugned in the Writ Petition, passed an order confirming the permanent status of the workmen in terms of Section 3 (1) of 1981 Act with effect from 23.07.2010.



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3. The learned Single Judge has confirmed the order of the authority on the ground that the authority has rendered a finding on fact that the employees had not worked intermittently.

4. It is the contention of the learned Additional Advocate General appearing for the appellant that the Apex Court in a decision in ***Manager, R.B.I., Bangalore vs. S.Mani and others*** reported in 2005 5 SCC 100 has categorically held that the initial burden is on the employee to prove that he has worked for the required number of days to claim benefits.

5. The learned Additional Advocate General also relied upon the order of the learned Single Judge in the case of ***The Managing Director, Tamil Nadu Civil Supplies Corporation Ltd., vs. R.Kangadurga and others***, (WP.No.10445 of 2017, dated 16.09.2019) and submitted that based on the judgment of the Supreme Court in ***Secretary, State of Karnataka and others vs. Umadevi and others***, the order of the authority was set aside and the Writ Petition was allowed.

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6. Firstly, on facts, the Management has not disputed the averments of the employees that they have completed 480 days of continuous service in a period of 24 calendar months. That apart, paragraphs 3 to 5 of the counter, which are extracted below, the employer has categorically admitted about the employment of the workmen and not denied that the employees have not completed 480 days of continuous service in 24 calendar month.

"3. This respondent submits that it is false and baseless to state that the petitioner was already employed as a pump operator and in the kerosene Bunk run by this respondent at Tirupattur from April 2009 and the petitioner is put to strict proof of each and every one of them. This respondent submits that the petitioner was working a coolly worker on daily wages basis without any future benefits and job confirmation and he has not been paid any monthly salary as alleged in the petition. This respondent further submits that this petitioner had not submitted any application requesting the department for his appointment or for making him as permanent employee. Hence the allegations contra are false and baseless one and the petitioner is put to strict proof of each and every one of them.

4. This respondent further submits that some other Casual Labourers worked in the Diesel Bunk at Tirupattur



were ordered to be taken as Casual Labourers against the post of Carway Boys by the Tamil Nadu Civil Supplies Corporation, Chennai and to pay daily wages to them as per the rates fixed by the District Collector, Vellore for the year 2008-2009.

4. This respondent further submits that as per the orders of the Head Office in Rc.No.ALB4/56702/07, dated 11.2.2009, this respondent had appointed one P.Jeyapal, R.Ramesh and D.Sekar as Casual Labourers against the post of Carway Boys and further instructed the Junior Assistant who is working at Tirupattur Diesel Bunk to engage them as directed and further in the order itself it was clearly stated that the same is purely temporary and is liable to be terminated at any time without assigning any reason therefor and also specifically stated that the petitioners are not entitled to any other benefits. Hence this respondent submits that either the petitioner or the others who were engaged as temporary coolly workers under daily wages scheme are not entitled to any service benefits and they are not liable to be made permanent. Hence the petition filed by the petitioner is liable to be dismissed in limini.

5. This respondent further submits that as already submitted the appointment of the petitioner was purely on temporary basis without any future benefits, the petitioner is not entitled to claim any benefits under the above order and hence the petition is liable to be dismissed."



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7. According to the Management, the employees in the case on hand are casual labourers in the daily rated scheme and they are liable to be terminated at any point of time, without assigning any reason. But, it is seen that the employees had discharged the burden by marking an affidavit, which was not refuted but partially admitted in the counter. Hence, we are of the view that the finding on fact rendered by the authority, as affirmed by the learned Single Judge, need not be interfered with.

8. The decision quoted by the appellant in WP.No.10445 of 2017, dated 16.09.2019 is not applicable to the case on hand as the learned Single Judge has proceeded on the basis of *Umadevi Case* (referred to supra), which is a distinguishable one on facts. That apart, the judgment of the Apex Court in *Umadevi Case* (referred to supra) is not applicable to the facts of this case. In the said case, the Supreme Court has held that back-door entry is impermissible and employees cannot seek for absorption, regularisation etc. Further, in that case, the issue relating to permanent status of the employees under the 1981 Act has not been considered.



9. It would be relevant to point out that the Supreme Court in the case of ***Padmasundara Rao (Dead) & others vs. State of Tamil Nadu and others***, reported in (2002) 3 SCC 533 has held as under:

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington vs. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

10. Though, it is the stand taken by the Management that the initial burden is on the employee, and when the same is discharged in the present case, the burden shifted on the employer.

11. In the present case on hand, the employees have approached the Authority, in a summary proceedings and the authority has rendered a finding of fact granting relief to the employee. More so, in the counter



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statement filed before the authority, which is extracted supra, it is very clear that there is an admission of employment and the number of days served by the employees in the appellant Management is not disputed. Since Section 3 of the 1981 Act is a deeming provision, the employees are deemed to have attained permanent status on completion of 480 days of service in a period of 24 calendar months and the Authority has rightly granted the relief, which has been rightly confirmed by the learned Single Judge.

12. In view of the above, we find no merit in the above appeal and hence, the same is dismissed. The employer is directed to comply with the order of the authority within a period of four months from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

(S.V.N.J.) (K.R.S.J.)
25.08.2023

Speaking Order: Yes / No
pvs



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To

The Inspector of Labour,

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Authority Constituted as under

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