

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2016

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 4015 of 2015

Chief Executive,
Formerly Jawaharlal Nehru Sugar Mills,
Perambalur Sugar Mills Ltd.,
Eraiyr, Veppanthattai Taluk,
Perambalur District.

..Petitioner

Vs.

1. The Joint Director of Industries,
Safety and Health,
Tiruchirappalli - 620 020.

2. Thiru N. Varadarajan

3. General Secretary,
Nehru Sugar Mills,
National General Workers' Union,
Eraiyr, Veppanthattai Taluk,
Perambalur District.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India
praying for issue of a Writ of Certiorari to call for the records
of the 1st respondent made in and connected with E/286/13 dated
10.11.2014 and quash the same.

For Petitioner :: Mr.R. Parthiban

For Respondents:: Mr.V. Jayaprakash Narayanan,
Special Govt. Pleader for R1
Mr.V. Sanjeevi for R2

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O R D E R

Aggrieved over the conferment of permanent status on the 2nd respondent by the 1st respondent, the petitioner Sugar Mill is before this Court challenging the award passed by the 1st respondent.

2. The 2nd respondent was engaged as a Driver on casual basis in the petitioner Mill. According to the 2nd respondent, he was employed by the petitioner from 1996 onwards on daily

basis and he has worked for more than 240 days and therefore, he is entitled to be regularised as a permanent employee. Since he was not conferred permanent status, the 2nd respondent moved the 1st respondent by way of claim petition on 20.01.2013. Counter was filed by the petitioner Management. On contest, the 1st respondent, by order dated 10.11.2014, held that the 2nd respondent is entitled to permanent status. The said order is challenged before this Court in this writ petition.

3. Mr.R.Parthiban, learned counsel for the petitioner would firstly submit that the 2nd respondent is not a permanent employee and he was engaged as a seasonal driver whenever necessity arose. Secondly, the learned counsel would submit that the Sugar Mill is a seasonal industry and therefore, the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 will not be applicable to the petitioner Mill. The learned counsel, in particular, referred to Section 1(3) of the Act and also referred to some of the provisions of Payment of Gratuity Act, 1972, to contend that the Sugar Mill is a seasonal industry. He further relied upon the circular issued by the Commissioner of Sugar dated 31.07.1991 and another communication dated 05.08.1998 issued by Secretary to Government, Industries (MIC 2) Department, Fort St. George, Secretariat, Chennai - 9, a copy of which has been marked to Commissioner of Sugar, to substantiate his contention that Sugar Mill is a seasonal industry. The learned counsel for the petitioner also placed reliance on the following judgments in support of the said contention:

(i) Judgment of the Honourable Supreme Court in Morinda Co-operative Sugar Mills Ltd V. Ram Kishan and Others etc. (1996 AIR 332)

(ii) Judgment of the Honourable Supreme Court in Ganga Kisan Sahkari Chini Mills Ltd. V. Jaivir Singh (Appeal (Civil) No. 1827 of 2005, judgment dated 24.09.2007)

(iii) Order of a learned Single Judge of this Court in W.P. No. 45431 of 2006, dated 28.02.2011 in Ponni Sugars (Erode) Ltd V. The Joint Director, Sub Regional Office, Employees' State Insurance Corporation, Salem.

(iv) Order dated 03.11.2015 in W.P. No. 7152 of 2005 Order by a learned Single Judge of this Court in The Management of MRK Co-operative Sugar Mills rep. by its Administrator V. Deputy Commissioner/Chief Inspector of Factories, Authority of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, Vellore.

In a nut-shell, the contention of the learned counsel for the petitioner are four-fold:

(i) the 2nd respondent was not a permanent employee and he was only engaged seasonally;

(ii) the petitioner Sugar Mill is a seasonal industry;

(iii) Since the petitioner Sugar Mill is a seasonal industry, the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, Act will not be applicable to the petitioner Mill; and

(iv) the 2nd respondent has not proved before the authorities, based on documents, that he had worked for more than 480 days.

4. On the other hand, Mr.R. Sanjeevi, learned counsel for the 2nd respondent would oppose the contentions put forth by the learned counsel for the petitioner and submit that the order passed by the 1st respondent has to be confirmed.

5. It is an admitted fact that the 2nd respondent was engaged as a Driver in the petitioner Mill and the only contentious issue is that whether he was engaged seasonally or as a regular employee. From the document issued by the petitioner Mill, regarding the number of days on which the 2nd respondent had worked as a Driver, on casual basis, would falsify the contention of the petitioner. In 2008, the 2nd respondent had worked for 241.5 days; in 2009, he had worked continuously for 307.5 days, in 2010, he had worked for 309.5 days, in 2011, for 292.5 days, in 2012, for 304 days and in 2013, for 306 days. The tabular column which gives the above details is extracted hereunder:

PERAMBALUR SUGAR MILLS LTD., ERAIYUR
NO. OF DAYS FOR N. VARADHARAJAN CASUAL DRIVER FROM
31.10.2007 TO 31.12.2013
DOJ: 31.10.2007

Year	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Total
2007	-	-	-	-	-	-	-	-	-	1	22.5	26	49.5
2008	19	16.5	26	26	26	26	4	-	22	26	24	26	241.5

Year	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Total
2009	26	24	26	26	26	25.5	26	26	26	24	26	26	307.5
2010	26	25	25	25	25	25	25	25	25	24.5	26	26	309.5
2011	26	24	24	24	24	23	15.5	25	23	26	26	26	292.5
2012	26	26	26	20	26	26	26	24	26	26	26	26	304
2013	26	26	24	26	24	25	26	26	26	25	26	26	306

The above particulars regarding the number of days worked by the 2nd respondent would show that he was a regular employee and not a seasonal worker. Even if the petitioner Sugar Mill is a seasonal industry, it would not mean that the industry cannot engage an employee on regular basis. A perusal of the above details would clearly show that he was regularly engaged during all the months, every year and therefore, the 2nd respondent was, in fact, a regular employee of the petitioner establishment. It is also evident that the 2nd respondent was engaged for more than 480 days in 2 years and that he was not seasonally engaged, but, engaged regularly every month. Therefore, the contentions of the petitioner that the 2nd respondent was engaged as a casual employee and the petitioner Sugar Mill is also a seasonal industry have to be rejected. Even as per the order dated 31.07.1991 passed by the Commissioner of Sugar, wherein it is stated that there are two categories of employees, namely, 'regular' and 'seasonal', the 2nd respondent has to be termed as a regular employee as he has been engaged regularly.

6. Section 1(3) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, on which the learned counsel for the petitioner relied on to contend that the petitioner Mill is a seasonal industry, reads as follows:

"1.

(3). It applies to every industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than fifty workmen were employed on any day of the preceding twelve months. If any question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the Government thereon shall be final:..."

A perusal of the said provision would make it clear that an establishment is seasonal in which work is performed only intermittently whereas in this case, the 2nd respondent had been regularly employed and therefore, the contention that the Act will not apply to the petitioner Mill is not sustainable.

7. The Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, is a beneficial legislation to benefit the workmen. The said Act is intended to confer permanent status to the workmen, who are regularly engaged by employer, who will keep the workmen at their mercy, without any confirmation. Such is the laudable object of the above said Act and the said Act cannot be said to be not applicable to the petitioner terming the petitioner industry as a seasonal one. If such technical interpretation is given, it would frustrate the very object of the Act. The appropriate and pragmatic interpretation would be based on the fact as to how the workman was engaged. If the workman had been engaged regularly, with artificial breaks, the benefit under the said Act would accrue to the workman, even if the industry is a seasonal industry. The material factor is whether the workman was engaged seasonally or regularly, dehors the nature of the industry. In this case, as stated above, the petitioner was engaged regularly and not seasonally. Hence, the above said Act is applicable and the benefit under the said Act would accrue to the 2nd respondent/workman. Hence, the impugned order is sustainable.

8. Though the learned counsel for the petitioner contended that under Rule 6(4) of The Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Rules, 1981, any employee, who finds his name not entered in the list referred to sub-rule (2) or finds that the entries have not been made correctly or finds that though entries regarding his service have been made correctly, but, he has not attested the entries in the register of workmen in Form 1, may make a representation to the Inspector concerned and therefore, the 2nd respondent ought to have entered his details in the register concerned, Rule 6(1) of the said Rules speaks about the maintenance of registers by employers wherein it is stated that every employer of an industrial establishment shall maintain a register of workmen in Form No.I and shall produce the Register whenever it is required by the Inspector having jurisdiction over the industrial establishment. When a Rule mandates that the petitioner/employer has to maintain a register, it is the obligation of the petitioner to do so and they cannot shirk their responsibility saying that it is the duty of the workman to do so.

9. Further, there is no quarrel with regard to the judgments relied on by the learned counsel for the petitioner. Almost, all the judgments, relied on by the learned counsel for

the petitioner, would state about the seasonal character of the industry and the workmen, who are engaged in those cases are all seasonal employees. However, merely because the industry is a seasonal industry, it will not prevent the 2nd respondent from getting the benefit under the said Act as he was regularly employed and he had crossed 480 days. Therefore, the 1st respondent rightly concluded that the 2nd respondent worked for more than 480 days in 24 calendar months from 31.10.2007 onwards and hence, he is entitled to be conferred with permanent status under the said Act. This Court finds no perversity in the order passed by the 1st respondent. The writ petition fails and the same is accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nv
To

The Joint Director of Industries,
Safety and Health,
Tiruchirappalli - 620 020.

+lcc to Mr.V.Sanjeevi, Advocate Sr.38848
+lcc to Mr.R.Parthiban, Advocate sr.38906
+lcc to the Government Pleader Sr.38981

W.P. No. 4015 of 2015

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