



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2016

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

W.P. (MD) No.24372 of 2016

R.Vijayan

... Petitioner

-vs-

1. The Commissioner,
Diary Milk Production & Development Department,
Mathavaram, Chennai-600 051.
 2. The General Manager
AAVIN,
Madurai District Cooperative Milk Producers Society Ltd.,
Milk Cold Storage Station,
Madurai-625 020.
 3. The Assistant General Manager,
AAVIN
Madurai District Cooperative Milk Producers Society Ltd.,
Milk Storage Station,
Industrial Estate, Theni.
- ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents herein to regularize the petitioner herein as per the proceedings of the Inspector of Factories, Theni in A/164/2011 dated 15.04.2011 in the light of order dated 11.11.2011 in WP(MD) No 3280/2006 and W.P. (MD) No.2741 of 2011 dated 27.1.2014 issued by this Hon'ble Court followed by representations of the petitioner dated 9.12.2013, 04.08.2014, 08.06.2015 and 17.11.2016.

For Petitioner	: Mr.K.Appudurai
For R1	: Mr.A.K.Baskara Pandian Spl.Govt.Pleader
For R2 & R3	: Mr.R.Murugan Govt.Advocate

O R D E R

This petition has been filed, seeking to direct the respondents herein to regularize the petitioner herein as per the proceedings of the Inspector of Factories, Theni in A/164/2011 dated 15.04.2011 in the light of the orders of this Court made in W.P.(MD) Nos.3280 of 2006 and 2741 of 2011 dated 11.11.2011 and 27.01.2014 respectively, by considering the representations of the petitioner dated 9.12.2013, 04.08.2014, 08.06.2015 and 17.11.2016.



2. The case of the petitioner is that he has been working in the 3rd respondent Society from 28.10.1995 on daily wage basis; that the Government has issued G.O.2(D) No.139 dated 28.09.2007 for regularization of daily wage employees on completion of 480 days in two years period; that based on the said order, his juniors were regularized ignoring seniority of the petitioner; that the petitioner, aggrieved by the same, gave a petition to the Inspector of Factories, Theni, who, after perusing the records and objections of the petitioner, passed an order dated 15.04.2011 to the effect that he has completed 480 days of service in 24 calendar month from 01.05.2008 to 21.04.2010 and also recommended for his permanent status as per Section 3 of the Industrial Establishments (Conferment of Permanent Status to Workmen) Act; that even thereafter the respondents did not regularize the services of the petitioner, which made him to send several representations, the last one of which was on 17.11.2016 and the same did not evoke any response so far and therefore, the petitioner is before this Court with the relief stated supra.

3. Heard the learned counsel on either side.

4. It is not in dispute that the petitioner has got the favourable order from the Inspector of Factories, Theni even as early as on 15.04.1011. The petitioner has also annexed in the typeset of papers two decisions of this Court (one of which was rendered by me) in support of his claim for regularization. When similar issue arose for consideration in W.P.(MD) No.2741 of 2011 dated 27.01.2014, I have elaborately dealt with the same and passed the following order in the light of the judgments of this Court as well as the Apex Court :

"5. For any statutory violation as per para 21(iv) mentioned supra the writ petition is maintainable. In this case, it is mandatory to the third and fourth respondents to implement the orders of the second respondent/Inspector of Factories. That apart, Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 is a mandatory one and the respondents ought to have conferred the permanent status. In spite of the orders, the third and fourth respondents have not confer the permanent status. The petitioner in support of his contention, relied on a decision of the Madras High Court reported in 1999(1) LLJ 622 (Mamundiraj N. and others and Bharat Heavy Electricals Ltd., Trichy and another). The petitioner is also entitled to invoke Section-6 r/w Rule -5 of the 1981 Act for prosecuting the persons concerned for non-implementation of the order of the authority



and this case as cause of action is the continuous one, there is no delay for the petitioner to invoke the Penal Provisions and he has also relied upon a judgment of the Hon'ble Supreme Court reported in AIR 1984 Supreme Court 1688 (Bhagirath Kanoria v. State of M.P). The Supreme Court has upheld the decision of the Madras High Court wherein, the Management was directed to implement the order of the Labour Court reported in (2001)9 Supreme Court Cases 99 (T.N.State Transport Corpn. v. Neethivilangan, Kumbakonam). Now, there is a specific declaration by the second respondent and that the procedure to be followed by the second respondent is only a summary procedure and based on the Government Order, permanent status to be granted to the petitioner, the third and fourth respondents are directed to confer permanent status and grant all the benefits from the day he has completed 480 days of continuous service for a period of 24 calender months in terms of order dated 29.12.2008 of the second respondent. The first respondent should ensure that the third and fourth respondents comply with the order of the second respondent within a period of twelve weeks from the date of receipt of a copy of this order."

5.In view of the above, this Writ Petition is disposed of with direction to the respondents to consider the representation of the petitioner dated 17.11.2016, submitted for regularization of his services and dispose of the same within a period of eight weeks from the date of receipt of a copy of this order based on the proceedings of the Inspector of Factories, Theni dated 15.04.2011 on merits and in accordance with law. No costs.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To:

The Inspector of Factories,
Theni.

+1cc to Mr.K.Appudurai, Advocate in SR No.82519

+1cc to the Spl.Govt.Pleader in SR No.82288

W.P. (MD) No.24372 of 2016 and

20.12.2016