

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2017

CORAM

THE HON'BLE Mr. JUSTICE M. DHANDAPANI

W.P.No.36049 of 2003

The Executive Officer,
Udankudi Selection Grade,
Town Panchayat,
Udankudi,
Thoothukudi District.

... Petitioner

v.

1. The Inspector of Labour,
Thoothukudi.
2. P.Selvaraj

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorari, to call for the records of the first respondent in his order passed on Na.Ka.No.E5614/2003 dated 11/11/2003 and quash the same.

For Petitioner : Mr.P.S.Jeyakumar

For Respondents : Mr.A.Zakhir Hussain
Government Advocate (for R1)
: Mr.P.Manoj Kumar (for R2)

O R D E R

The Executive Officer, Udankudi Selection Grade, Town Panchayat, Udankudi, Thoothukudi District is a petitioner before this Court. He filed this writ petition challenging the Labour Inspector order dated 11.11.2003 passed under the The Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, wherein the first respondent/ Labour Inspector confirmed the permanent status of the second respondent with all mandatory benefits.

2.Mr.P.S.Jeyakumar learned counsel appearing for the petitioner would submit that the petitioner was appointed as electrician under the new water supply scheme on daily wages on 31.05.1989. After four years, the petitioner and other eight

persons who are similarity placed, as that of the petitioner, made a representation to the authorities for the regularisation. However, the authorities rejected the request on the ground that there was a ban vide G.O.M.S.No.198, Municipal Administration and Water Supply Department dated 26.10.1998, wherein it is clearly mentioned that "Relating to regularization of service of water supply workers may be kept in abeyance in view of the financial crunch experienced by many of the Town Panchayat and that it will be reviewed as soon as the financial position of the Town Panchayats are improved". Immediately, after the ban, the second respondent raised a dispute before the first respondent under Section 3 of The Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

3. The first respondent/ Labour Inspector conducted a detailed adjudication and arrived at a conclusion that the second respondent uninterruptedly continued the services from the date of his initial appointment till 1989 and after perusing the entire records had arrived at a conclusion that the second respondent satisfied 480 days continuous work in 24 month and accordingly, granted permanent status to the second respondent. The learned counsel for the petitioner further contended that the Labour officer not considering ban order imposed by the Government and awarding the permanent status against the second respondent is not sustainable.

4. Per contra Mr.P.Manoj Kumar learned counsel appearing for the second respondent would submit that the Labour officer after conducting detailed adjudication had arrived at a conclusion, based on the materials placed before him. He would further contend that the second respondent continuously worked as electrician under various capacity with the petitioner establishment and after perusal of the entire records the Labour officer granted permanent status to the second respondent. Hence, the order of Labour officer is perfectly valid and no interference is called for.

5. The learned counsel appearing for the second respondent would submit that this Court had granted relief to the daily wage employees worked in the different municipalities, vide order in Rev.Aplc.(MD)No.87 of 2014 in W.A. (MD) No.729 of 2013 batch etc., dated 30.05.2017. The relevant portion is extracted as under:

"Para-27) Another contention by the learned Additional Advocate General was that by virtue of G.O.Ms.No.166 dated 31.12.2014, the regularization can be given effect only from 23.02.2006. We do not agree with the said contention as we have already held that the sanitary workers are entitled to be regularized as

per the terms of G.O.Ms.No.71 dated 05.05.1998 from the date of their initial appointment. Paragraph-29 of the decision of the Supreme Court reported in (2015) 1 SCC 1 (CIT Vs. Vatika Township (P) Ltd.) is relevant and the same is extracted hereunder:

"The obvious basis of the principle against retrospectively is the principle of "fairness", which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates V. Yamashita-Shinnihon Steamship Co.Ltd, reported in (1994) 2 WLR 39. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgements containing this dicta, a little later".

"Para-28) In the present case, by virtue of G.O.Ms.No101 dated 30.04.1997 and G.O.Ms.No.71 dated 05.05.1998, the right to be considered for regularization on completion of the mandatory period had already accrued to the petitioners on the date of their appointment. The only

condition is to be satisfied is the required number of days, of course without blemish. Therefore, any subsequent Government Order cannot take away the fundamental right of the petitioners to be considered for appointment.

"Para-29) In the result, Rev.Appl.No.87 of 2014 is dismissed and Rev.Appl.Nos.223 and 254 of 2015 are allowed on the following terms:

a) Persons employed as sanitary workers and covered by G.O.Ms.No.101 dated 30.04.1997 and G.O.Ms.No.71 dated 05.05.1998 are entitled to be regularized after the completion of the respective period under consolidated

pay as specified in the Government Orders from the date of their initial appointment.

b) Any orders passed by any Municipality regularizing the service based on G.O.Ms.No.21 dated 23.02.2006, Full Bench Judgment dated 29.11.2013 and G.O.Ms.No.166 dated 31.12.2014 shall be recalled and appropriate orders shall be passed as held above.

"Para-30) Consequently, the connected miscellaneous petitions are closed. No costs".

6. Considering the above facts and circumstances and also in the light of the order stated supra, this Court is of the view that the order of the Labour officer did not call for the any interference .

7. Accordingly, writ petition is dismissed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

sjj/arr

To

The Inspector of Labour,
Thoothukudi.

+1cc to M/S.P.S.Jayakumar, Advocate Sr. 58608
+2cc to the Government Pleader, Sr. 59922

W.P.No.36049 of 2003

GP(CO)
VR(03/10/2017)