



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.03.2017

Coram:

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

W.P. (MD) Nos. 5663 to 5666 of 2011
and
M.P. (MD) Nos. 1, 1, 1 and 1 of 2011

Madurai District Co-operative
Milk Producers Society Ltd.,
Milk Cold Storage Station,
Theni, Theni District.
Through its General Manager

.. Petitioner in all WPs

Vs.

1. The Inspector of Factories,
Theni Theni District.

.. 1st Respondent in all WPs

2. K. Arjunan

3. S. Murugan

.. Respondents 2 & 3 in
WP (MD) No. 5663 of 2011

4. A. Gurusamy

5. N. Selvam

6. E. Manickam

7. E. Subramani

8. K. Sivalingam

.. Respondents 2 to 6 in
WP (MD) No. 5664 of 2011

9. S. Balasubramani

.. 2nd Respondent in
WP (MD) No. 5665 of 2011

10. M. Chandran

11. P. Mahendran

12. C. Radhakrishnan

13. K. Ramesh

14. P. Periyasamy

15. N. Gopalakrishnan

16. M. Bhaskaran

17. S. Santhanmuthu

18. R. Kalayarasan

19. P. Maharasan

20. N. Sankara Raj

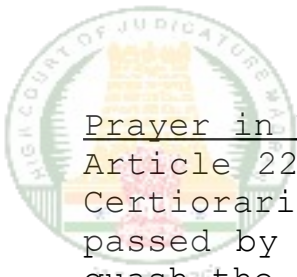
21. K. Ramkumar

22. S. Murugan

23. R. Chinnaraj

24. A. Govindhasamy

.. Respondents 2 to 16 in
W.P. No. 5666 of 2011



Prayer in WP(MD)No.5663 of 2011:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of writ of Certiorari, to call for the records relating to the common order passed by the 1st respondent in No.A/1616/07, dated 22.10.2008 and quash the same.

Prayer in WP(MD)No.5664 of 2011:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of writ of Certiorari, to call for the records relating to the common order passed by the 1st respondent in No.A/61/2009, dated 23.06.2009 and quash the same.

Prayer in WP(MD)No.5665 of 2011:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of writ of Certiorari, to call for the records relating to the common order passed by the 1st respondent in No.A/1241/09, dated 29.12.2009 and quash the same.

Prayer in WP(MD)No.5666 of 2011:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of writ of Certiorari, to call for the records relating to the common order passed by the 1st respondent in No.A/1182/08, dated 24.12.2008 and quash the same.

For Petitioner : Mr.S.Balamurugan
(In all WPs)

For Respondents : Mr.K.Guru (for R1 in all WPs)
Additional Government Pleader

Mr.K.Appadurai
(for R2 & R3 in WP(MD)No.5663/2011)
(for R2 to R6 in WP(MD)No.5664/2011)
(for R2 in WP(MD)No.5665/2011)
(for R2 to R16 in WP(MD)No.5666/2011)

COMMON ORDER

In all these writ petitions, the petitioner, which is a society engaged in milk production and cold milk storage, is challenging the orders passed by the 1st respondent/Inspector of Factories, Theni, in and by which the petitioner/Society was directed to regularize the services of respondents 2 and 3 in W.P.No.5663 of 2011, respondents 2 to 6 in W.P.No.5664 of 2011, 2nd respondent in W.P.No.5665 of 2011, and respondents 2 to 16 in W.P.No.5666 of 2011. (These respondents are collectively referred to as "respondent/employees" hereinafter for convenience and clarity).



According to the petitioner/society, it is registered under the Tamil Nadu Co-operative Societies Act, 1983 and the Rules framed thereunder. The petitioner/Society engaged the respondent/employees on temporary basis and they were offered work subject to availability and exigency, as has been specified even in their appointment orders and they are not paid any scale of pay.

3.It is the case of the petitioner/Society that, as per Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988, they had submitted a proposal to the Commissioner, Milk Production and Dairy Development Department, Chennai, to regularize 138 casual employees. The said proposal even though included the names of the respondent/employees, it is alleged by the petitioner/Society that the respondent/employees did not work continuously for a period of more than 480 days in a period of twenty four calendar months as on the date of submission of the said proposal.

4.The Commissioner, Milk Production and Dairy Development Department, Chennai, by proceedings dated 29.07.2008, placing reliance in G.O.251/C.F. & C.P. Department, dated 07.08.2007 and G.O.2(D)No.139/A.H.D&F (M.P.11) Department, dated 28.09.2007, approved the proposal forwarded by the petitioner/Society in respect of 131 employees, which, admittedly, includes the respondent/employees. However, the petitioner/Society did not regularize the services of the respondent/employees on the ground that they did not work continuously for a period of more than 480 days in a period of twenty four calendar months.

5.On the strength of the approval granted by the Commissioner, Milk Production and Dairy Development Department, Chennai, vide proceedings dated 29.07.2008, the respondent/ employees approached the 1st respondent/Inspector of Factories under Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and the 1st respondent, vide the proceedings impugned in these writ petitions, directed regularization of services of the respondent/ employees. Assailing the said proceedings of the 1st respondent, the petitioner/Society has filed these writ petitions for the relief stated supra.

6.The learned counsel appearing for the petitioner/Society contended that since the petitioner is a Society governed by the provisions of the Tamil Nadu Co-operative Societies Act, 1983, the 1st respondent/Inspector of Factories cannot decide the question of permanency of temporary employees.

7.He further pleaded that the respondent/employees were



came to the conclusion that the respondent/employees completed continuous service of 480 days in two calendar years and therefore, they are entitled to absorption and such finding needs no interference.

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14.I heard Mr.S.Balamurugan, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the 1st respondent in all the writ petitions and Mr.K.Appadurai, learned counsel for the respondents 2 and 3 in WP.No.5663/2011, respondents 2 to 6 in WP.No.5664/2011, 2nd respondent in WP.No.5665 of 2011 and respondents 2 to 16 in WP.No.5666 of 2011 and perused the documents and decisions filed in support of these writ petitions.

15.At the outset, it is to be noted that pursuant to the order dated 29.07.2008 of the Commissioner, Milk Production and Dairy Development Department, Chennai, granting approval for regularization of 131 employees, but for the respondent/employees, all other temporary casual employees had been regularized by the petitioner/Society.

16.In the case on hand, as the petitioner/Society did not regularize the services of the respondent/employees, they approached the 1st respondent/Inspector of Factories under Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. Before advertng to the merits of the case, it is apposite to refer to Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, which is as under:

"Section 3.Conferment of permanent status to workmen.-

(1)Notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty four calendar months in an industrial establishment shall be made permanent."

17.On such representation made by the respondent/ employees, the 1st respondent/Inspector of Factories directed the petitioner/Society to regularize the services of the respondent/employees.

18.Now, let us analyze whether the said orders passed by the 1st respondent/Inspector of Factories is sustainable in the eye of law?



19. The power conferred on the Inspector of Factories under Rule 6(4) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Rules, 1981, reads as under:

"Rule 6(4): Any employee who finds his name not entered in the list referred to in 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 had not attested the entries in the register of workmen in Form 1 may make a representation to the Inspector concerned. The Inspector after examining the representation or after making enquiries may issue suitable directions to the employer for the rectification of the register in Form I or for the issue of orders conferring permanent status to the workman concerned."

20. This Court in *Tamil Nadu Handicrafts Development Corporation Limited, represented by its Secretary, Madras and Anr. v. The Inspector of Factories, Range No. II, Madurai and Anr.* reported in 2000 (1) MLJ 251, referring to the power of the Inspector under Rule 6(4) held as under:

"11. ...I have already stated that before passing the order, the 1st respondent inspected the premises, verified the records, heard the grievances of the workers through their Union Secretary and representative of the petitioner Management. In such a circumstances, there is no hesitation to come to a conclusion that the 1st respondent Officer has complied with the mandate of the Hon'ble Supreme Court enunciated in the *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

12. ...when the Inspector has to determine whether the workman is entitled to the benefit of Section 3 and when the employer contests this right, he has to make the necessary enquiries and these enquiries must culminate in a speaking order disposing of the contentions of the employer, and the workman...

...I have already mentioned the statutory obligation on the part of every employer to maintain Register of workmen in Form I. The Inspector is authorised to verify the Registers and take appropriate decision...."

21. In the case on hand, on receipt of petitions under Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, the Inspector of Factories by virtue of the power conferred under Rule 6(4) of the Rules inspected the records of the petitioner/Society and directed regularization of the respondent/employees. If the petitioner/



Society wanted to resist the claims, it could have produced proper registers to prove their stand that the respondent/employees had absented themselves from duty or that they had stayed away from work, thereby violating the terms of contract. On consideration of rival plea, the authority constituted under the Act is entitled to take a view on the basis of the materials placed before him. This Court while exercising the power of judicial review under Article 226 of the Constitution will not interfere with the findings recorded by the officer unless it is perverse. In my considered opinion, the 1st respondent/Inspector of Factories is, therefore, empowered to pass such order directing regularization of the respondent/employees.

22. Moreover, in the counter affidavit filed on behalf of the 1st respondent, it is categorically stated that the Madurai District Co-operative Milk Producers' Union Limited, Milk Chilling Centre, Theni, has been registered under Section 2(m)(i) of the Factories Act, 1948, and, therefore, the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 is applicable. The said fact is neither disputed by the petitioner/ Society by way of a rejoinder nor was an argument advanced by the petitioner/Society refuting the said stand of the 1st respondent.

23. When Madurai District Co-operative Milk Producer's Union Limited, Madurai challenged a similar order directing regularization of temporary employees, this Court in *The General Manager, Madurai District Co-operative Milk Producer's Union Limited, Madurai v. The Secretary to Government and others*, [Order dated 11.11.2011 made in W.P. (MD) No. 3280 of 2006], held as under:

"18. Once again the issue came to be considered by this Court in *Hindustan Petroleum Corporation Ltd., v. The Presiding Officer, Central Government Labour Court cum Industrial Tribunal* reported in 2008 (4) CTC 819. This Court held that since the Constitutional validity of the Tamil Nadu Act 46 of 1981 was upheld by the Supreme Court in the judgment relating to *State of Tamil Nadu v. Nellai Cotton Mills Ltd.*, reported in 1990 (2) SCC 518 and also that once there is a valid State enactment providing for relief to such of those workmen deemed to be made permanent if they had completed 480 days of service within 24 calendar months, then such workmen getting permanent status cannot be questioned by any management. Such conferment cannot be labelled as violation of Articles 14 and 16 of the Constitution of India. The effect of a local enactment conferring permanent status to workmen was never considered by any Court so far. In this context it is necessary to refer paragraphs 37 and 38:



'37.Further, it must also be that the constitutional validity of the Tamil Nadu Act 46 of 1981 was upheld by the Supreme Court vide its judgment in *State of Tamil Nadu v. Nellai Cotton Mills Ltd. And others*, 1990 (2) SCC 518.

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38.Once there is a valid State enactment providing for relief to such of those workmen deemed permanency to those who had completed 480 days of service within a period of two calendar years then, such workmen getting permanent status cannot be questioned by any Management. Such conferment of permanent status to be workmen cannot be labelled as violation of Articles 14 and 16 of the Constitution. The effect of a local enactment conferring permanent status to workmen was never considered by any Court so far.'

19.If these legal precedents are taken into account, then the petitioner even if it was a co-operative society cannot wriggle out of its legal obligations under the Tamil Nadu Act 46 of 1981.

20.The other contention that the workmen were not engaged throughout the year is irrelevant. For the purpose of calculating 480 days', the Act only talks of 480 days' within 24 calendar months. The contract need not spread over to full two calendar years. It will be suffice if the workman completes 480 actual days' within 24 calendars, even if it was discontinuance. The Explanation-1 appended to Section 3(1) of the Act 46 of 1981 makes the position very clear."

24.In view of the decision, referred supra, the petitioner even if it is a co-operative Society cannot wriggle out of its legal obligations under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, more so when the 1st respondent/Inspector of Factories, on thorough enquiry and verification of records, has categorically held that the respondent/employees had worked for 480 days within 24 calendar months.

25.At this juncture, it is appropriate to refer to the decision of this Court in *S.Balasubramanian v. The Commissioner, Dairy Milk Production and Development Department, Chennai and others*, [Order dated 27.01.2014 made in *W.P.(MD)No.2741 of 2011*], which relates to the petitioner/Society itself. In the said decision, an employee sought implementation of the order of Inspector of Factories granting regularization with all benefits. In the said decision, a learned Single Judge held as under:



"5. ... 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 (Mamudiraj N. and others v. Bharat Heavy Electricals Ltd. 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 provision..... 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 calendar 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."

26.The ratio laid down in the above said decision squarely applies to the facts of the present case.

27.In the light of the law enunciated in the decisions referred supra, I find no infirmity or illegality in the orders passed by the 1st respondent/Inspector of Factories and the same are sustainable in the eye of law.

28.In the result:

(a) all the writ petitions are dismissed, by confirming the orders passed by the 1st respondent/Inspector of Factories;

(b) the petitioner/Society is directed to implement the order of the 1st respondent/Inspector of Factories and regularize the services of the respondent/employees;

(c) the said exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True copy/



To

The Inspector of Factories,
Theni, Theni District.

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+4cc to Mr.K.APPADURAI, Advocate, SR.11810,11811,11812,11813,
+1cc to Mr.K.BALASUBRAMANIAN, Advocate, SR. 12338

W.P. (MD) Nos.5663 to 5666 of 2011
and
M.P. (MD) Nos.1,1,1 and 1 of 2011
01.03.2017

VSA

KK/SV MMS/SAR 2/10.10.2017/ 10P- 7C/