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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 03.07.2018	Delivered on 24.07.2018
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CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

AND

THE HONOURABLE MR.**JUSTICE R.SUBRAMANIAN**

W.A.No.758 of 2016
and CMP No.9738 of 2016

The Management
Tamilnadu Khadi and Village Industries Board,
Guindy Unit, No.11, Industrial Estate,
Guindy, Chennai 32.
Now at Veeraraghavapuram,
Near Kaduvetti, Chennai,
Thiruvallur District.

... Appellant

versus

1. The Workmen
Rep. By the Secretary
Industrial Estate General Workers Union,
No.11, Lawyers Jaganathan Street,
Guindy, Chennai 600 032.

2. The Presiding Officer,
Principal Labour Court,
Chennai 600 104.

... Respondents

Appeal filed against the order passed by this Court dated 04.01.2016
passed in W.P.No.1160 of 2009.



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For appellant : Mrs.Narmadha Sampath,
Additional Advocate General
for M/s. S.K.Bose

For 1st Respondent : Mr.Balan Haridass

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this intra Court Appeal is to the order of the learned Single Judge dated 04.01.2016 made in WP No.1160 of 2009, in and by which, the learned Single Judge dismissed the Writ Petition filed by the appellant seeking to quash the order of the Principal Labour Court, Chennai, made in ID No.489 of 2004 directing conferment of permanent status on the workmen, who are employed as carpenters in the Carpentry Division of the appellant.

2. The respondent Union had raised an Industrial Dispute seeking conferment of permanent status for 20 workmen under the *Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) 1981 Act*, (hereinafter referred to as “the 1981 Act”), who were employed as carpenters and polishers by the appellant Board, claiming that they had worked for 480 days in two calendar years continuously. Since the attempted Conciliation failed, the matter was referred to the Labour Court and the same was taken on file, as Industrial Dispute No. 489 of 2004.

Before the Labour Court, the Union had contended that the workmen had



been working in the Carpentry Division of the Appellant Board for more than 15 years for the purposes of manufacturing and repairing furniture of the Government and Semi Government Organisations. These workmen were paid wages on piece rate basis. Though they were continuously employed for more than 15 years, the Management did not regularise their services and rejected their claim for regularisation and other benefits, on the sole ground that they are only working on piece rate basis and not as contract labourers. It is also the complaint of the workmen that when the workmen demanded regularisation and other service benefits, the Management denied work to them and adopted unfair labour practice. However, after repeated representations, the Management had given the benefits of the Employees Provident Fund and Employees State Insurance Act to these workmen. Claiming that the action of the Management in not regularizing/conferring permanent status on these workmen amounted to unfair labour practice, the Union sought for permanent status for all these employees.

3. The appellant Management resisted the claim contending that the workmen were engaged only under works contract to do a particular job. The works were entrusted to the contractors, namely experienced carpenters, who inturn engaged the workmen under their supervision on piece rate basis. Therefore, according to the Management, there was no



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Master and Servant relationship between the appellant Management and the 19 workmen, whose cause is sought to be espoused by the union. It is also claimed that the conferment of permanent status has to be decided by the statutory Authority constituted under the *1981 Act*, and hence the Labour Court do not have jurisdiction.

4. The Principal Labour Court, Chennai which heard the Industrial Dispute concluded that all the workmen had worked for 480 days in two calendar years and the claim of the Management that the activity, viz. the Carpentry Unit of the appellant Board is a seasonal industry was rejected by the Labour Court. The Labour Court also referred to the evidence of the Management witnesses were examined as MW1 and MW2, to conclude that all the 19 workmen are entitled to the benefits of the *1981 Act*, which mandates conferment of permanent status on the workmen, who worked for 480 days continuously in two calendar years. The Labour Court also took note of the grant of benefits, under the Employees State Insurance Act and the Employees Provident Fund scheme to these workmen to conclude that they were not contract workers as suggested by the appellant Management.

5. On the above conclusions, the learned Principal Labour Court held that these employees are entitled to the regularization, as per the



provisions of the 1981 Act. On the above findings, the learned Principal Judge, Labour Court, Chennai, allowed the application and directed conferment of permanent status to all the workers, except one worker by name T.Dhandapani, who had withdrawn from the proceedings. Aggrieved, the Management had come forward with the above Writ Petition challenging the award of the Labour Court directing the conferment of permanent status.

6. The learned Single Judge, who heard the Writ Petition, by the order impugned in this Appeal, rejected the contentions of the Management and dismissed the Writ Petition. Pending the Writ Petition, it appears that the interim order was passed, directing the Management to engage these workers in some other Unit, since the said order was not complied with an order was made under Section 17(B) of the Industrial Disputes Act, directing the payment of last drawn wages to the workmen. An application seeking review of the said order was filed by the appellant Board, the Review Application as well as the Writ Petition were clubbed together and disposed of by a common order. Since the Writ Petition itself came to be dismissed, the Review Application was also rejected.

7. We have heard Mrs.Narmadha Sampath, learned Additional Advocate General appearing for Mr.S.K.Bose for the appellants and



Mr. Balan Haridas, learned counsel appearing for the respondent/Union.

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8. Mrs. Narmadha Sampath, learned Additional Advocate General appearing for the appellants would contend that the Labour Court was not right in directing conferment of permanent status on the workmen who were working only on contract basis and where admittedly paid wages on piece rate basis. It is also her further contention that the Labour Court could not have invoked the provisions of the *1981 Act*, to grant the benefits to the workmen. Contending that the workmen were employed by the carpenters on a contract basis and that there was total absence of Master and Servant relationship between the workmen and the appellant, the learned Additional Advocate General would submit that the Labour Court erred in granting permanent status to the workmen and the learned Single Judge was also not right in confirming the award of the Labour Court.

9. Per contra, Mr. Balan Haridas, learned Counsel appearing for the 1st respondent Union would contend that despite the fact that the workers had approached the Authority under the *1981 Act*, they had not prosecuted the said proceeding but had chosen to raise an Industrial Dispute, on the ground that the Management adopted unfair Labour Practice in retaining these workers as contract labourers and paying them on piece rate basis,



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though, the employment is not a seasonal one. He would also invite our attention to the judgment of the learned Single Judge of this Court (Hon'ble Mr. Justice P. Sathasivam, as he then was) in ***A. Palanivel v. Tamil Nadu Khadi and Village Industries Board***, reported in **1997 (3) LLN 509**, wherein this Court had held that though the onus of proving continuous employment as required under the *1981 Act*, has been held to be on the employees, a mere denial of such service by the employer in the counter affidavit without any material in the form of records and documents is no ground to reject the claim of the employees to be made permanent. It was also pointed out that the Social Welfare Legislation like the *1981 Act*, has to be fully implemented by the Central and State Government as well as their organizations or undertakings. Of course, this hope expressed by the learned Judge, as he then was, remains a only hope even today after the lapse of nearly 20 years. We are flooded with cases where the Government and its limbs engage workers on purely temporary basis, at very low salaries and deny them permanent status. We have no hesitation to point out that if at all unfair labour practices still exist the champion of such causes are the Governments and their organizations and undertakings.

10. Mr. Balan Haridas would also rely upon the judgment of another Single Judge of this Court (Hon'ble Mr. Justice F.M. Ibrahim Kallifullah, as



he then was) in ***Superintending Engineer, Vellore Electricity Distribution Circle, Vellore and others v. Inspector of Labour, Perambalur and others*** reported in **2004 (3) LLN 598**, wherein, the learned Single Judge, as he then was, has pointed out that the jurisdiction of the Labour Court to go into the question of unfair Labour practice has not been denuded by the Constitution of an Authority, under the *1981 Act*. The learned counsel would also invite our attention to the judgment of the Hon'ble Supreme Court in ***Maharashtra State Road Transport Corporation and Another v. Casteribe Rajya Parivahan Karmchari Sanghatana***, reported in **2009 (8) SCC 556**, wherein the Hon'ble Supreme Court has pointed out that the power of the Labour Court to invoke the provisions of Section 30(1)(b) of the *Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971*, to regularise or direct conferment of permanent status to workmen is not affected by the judgments of the Hon'ble Supreme Court in ***Umadevi's*** case or other cases, which relate to the powers of the Hon'ble Supreme Court under Article 32 or the High Courts under Article 226 of the Constitution of India, to issue direction for regularization in matters of public employment.

11. This judgment of the Hon'ble Supreme Court answers the



contention of the learned Additional Advocate General that the workmen involved were not recruited by following any recruitment procedure and therefore, they are not entitled to conferment of permanent status. As pointed out by Hon'ble Mr. Justice P. Sathasivam, as he then was, in **A. Palanivel's** case, the 1981 Act, which is Social Welfare Legislation and the power of the Authorities constituted under the Act and the power of Labour Courts, under the Act, cannot be whittled down by comparing it with the power of the Hon'ble Supreme Court under Article 32 of the Constitution of India or that of the High Courts under Article 226 of the Constitution of India.

12. Mr. Balan Haridass, learned counsel appearing for the 1st respondent would also draw our attention to the judgment of the Hon'ble Supreme Court in **Devinder Singh v. Municipal Council, Sanaur**, reported in **2011 (6) SCC 584**, wherein, the Hon'ble Supreme Court has pointed out the nature and scope of the power of the High Court exercising jurisdiction. Under Article 226 of the Constitution of India to interfere with the awards passed by the Labour Court. The Hon'ble Supreme Court had pointed out that the High Court in exercise of its powers, under Article 226 of the Constitution of India, may not interfere with the factual findings of the Labour Court unless it is shown that the award of the Labour Court suffers



from any jurisdictional error or there is an error apparent on the face of the record. Mr. Balan Haridass, would also rely upon the judgment of the Division Bench of this Court in ***Oil and Natural Gas Corporation Ltd., v. The Petroleum Coal Labour Union***, made in ***WA No.1006 of 2011 dated 11.08.2011***, to buttress his contention that the workmen, who had worked 480 days in two calendar years will have to be regularized in terms of provisions of the *1981 Act*.

13. We have considered the rival submissions. The *1981 Act*, is a welfare legislation aimed at eradicating the unfair labour practice of engaging temporary employees and denying them the benefits of their service by the Industrial Establishments. It is not the case of the appellant that it is not the Industrial Establishment under Section 2(3) of the said Act. The term “workmen” has been defined under Section 2(4) of the Act and it reads as follows:

“2. (4)“workmen” means any person employed in any industrial establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the term of employment be express or implied, but does not include any such person,--
(a) who is employed in the police service or as an officer or, other employee of a prison ; or



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(b) who is employed mainly in a managerial or administrative capacity ; or

(c) who, being employed in a supervisory capacity, draw wages exceeding one thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

14. A cursory reading of the above definition of the term “workmen” under the 1981 Act, would show that the definition is couched in a very wide language and would take with in its sweep all kinds of casual/contract employees. Section 3 of the said Act makes it mandatory for the Industrial Establishment to accord permanent status to workmen, who had worked for 480 days in 24 calendar months. The Act also further provides for penal consequences in the event of violations.

15. The other contention of the learned Additional Advocate General is that all these workmen were not direct employees of the appellant Board and they were employed by the contractors and paid on piece rate basis. The said contention has to fail since the Labour Court has on facts found that the workmen were employed in the Carpentry Division of the appellant Board and were paid wages on piece rate basis. Merely because the



wages were paid on piece rate basis, it cannot be presumed that the workmen were not employed by the appellant Board. The Labour Court has held that there is Master and Servant relationship between the appellant Board and the Workmen after referring to the evidence on the side of the workmen particularly exhibits W.32 and W.33 series, wherein, the workmen were issued identity cards under the Employees State Insurance Scheme as well as the Employees Provident Fund Scheme. The Labour Court on an analysis of the evidence that was placed before it had come to a factual conclusion that the workmen were actually employed by the appellant Board and they had also worked for 480 days continuously over a period of 24 months. The learned Single Judge had also agreed with the said findings of the Labour Court. No material has been placed before us, to enable us to take a different view. It has not been shown that the said factual conclusion of the Labour Court is either perverse or is based on no material.

16. In the light of the said categorical finding of fact and the dictum of the Hon'ble Supreme Court in ***Maharashtra State Road Transport Corporation's case, cited supra***, wherein, the Hon'ble Supreme Court has pointed out that the scope of interference with the findings of the Labour Court in a proceeding under Article 226 is very limited, we are unable to accept the contention of the learned Additional Advocate General that the



Labour Court and the learned Single Judge were in error in concluding that these 19 workmen would answer the description of the workmen as found in the 1981 Act.

17. The next contention of the learned Additional Advocate General is that these workmen were not recruited by following a recruitment process and hence they will not be entitled to claim the benefits of the 1981 enactment. As already pointed out these workmen had been engaged as skilled workers in the Carpentry Division of the appellant Board for more than 15 years. M.W.1 and M.W.2 in their evidence before the Labour Court had categorically admitted the Carpentry Division of the appellant Board is not a seasonal business or a seasonal industry. It is only when the workmen started demanding certain rights including conferment of permanent status, the Management, in order to deny them the benefits, had taken the plea that they were not recruited by a process of recruitment and therefore they are not entitled to regularisation.

18. As rightly pointed out by Mr.Balan Haridass, insofar as the 1981 Act, is concerned, it does not contemplate a recruitment through a process, it only enables workmen who have employed in a industrial establishment for more than 480 days in 24 calendar months, to get the benefit of permanent status. In fact the Hon'ble Supreme court had in **Maharashtra**



State Road Transport Corporation's case, cited supra, pointed out that the power of the Labour court to take note of unfair Labour practice and direct regularization under the 1981 Act, is not affected by the restraints imposed by the Hon'ble Supreme Court in **State of Karnataka v. Umadevi (3)**, reported in **2006 (4) SCC 1**, which limits the powers of the Hon'ble Supreme Court and the High Courts under Article 32 and Article 226 of the Constitution of India to direct regularisation in matters of public employment.

19. The above dictum of the Hon'ble Supreme Court in **Maharashtra State Road Transport Corporation's case**, cited supra, has been followed by the Division Bench of this Court in **Oil and Natural Gas Corporation Ltd.'s**, cited supra, made in the Writ Appeal No.1006 of 2011. The Division Bench has in fact that approved the judgment of the learned Single Judge which directed conferment of permanent status to the workmen employed by the ONGC under the 1981 Act, after referring to the **Maharashtra State Road Transport Corporation's case**, cited supra, as well as the **Umadevi's case**, cited supra. Therefore, the contention of the learned Additional Advocate General regarding absence of a process of recruitment also fails.



20. In the case on hand, the learned Single Judge had elaborately examined the provisions of the 1981 Act and also referred to the judgment of this Court in ***Oil and Natural Gas Corporation Ltd.'s***, cited supra, wherein a Division Bench of this Court had referring to the case of ***Maharashtra State Road Transport Corporation's*** case, cited supra, directed conferment of permanent status on the workmen *de hors*, the fact that they were not appointed through a proper selection process.

21. In fact the Hon'ble Supreme Court in ***Hari Nandan Prasad & Another vs. Employer I/R to Management of F.C.I. and another*** reported in **2014 (2) SCALE 399** had again pointed out the distinction between the powers of the Constitutional Courts under Article 32 and Article 226 and the powers of the Labour Court under specific provisions of the Welfare Legislations. We therefore, see no reason to interfere with the conclusions of the learned Single Judge. Once the Labour Court had found that the employees had worked the workmen have in fact worked for 480 days in 24 calendar months, the conferment of permanent status is almost automatic, in view of the provisions of Section 3 of the *Tamil Nadu Industrial Establishments (Conferment of permanent Status to Workmen) 1981 Act*.



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22. For the foregoing reasons, the Writ Appeal has no merits and hence it is dismissed. However, there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(K.K.SASIDHARAN, J.) (R.SUBRAMANIAN, J.)
24.07.2018

Index: Yes/No
Internet: Yes/No
speaking order/Non Speaking order
jv

To

- 1 The Management
Tamilnadu Khadi and Village Industries Board,
Guindy Unit, No.11, Industrial Estate,
Guindy, Chennai 32.
Now at Veeraraghavapuram,
Near Kaduvetti, Chennai,
Thiruvallur District.
2. The Presiding Officer,
Principal Labour Court,
Chennai 600 104.



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K.K.SASIDHARAN, J.

and

R.SUBRAMANIAN, J.

(jv)

Pre Delivery Judgment in

W.A.No.758 of 2016
and CMP No.9738 of 2016

24.07.2018