



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.08.2017
Pronounced on : 20.02.2018
CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A. (MD) No.1387 of 2014
and
M.P. (MD) No.1 of 2014

Tamil Nadu Civil Supplies Corporation Ltd.,
represented by its Regional Manager,
V.O.C.District Region, C/42-44,
SIPCOT Complex, Tuticorin - 8. ... Appellant

vs.

1.Rani Ammal
2.The Presiding Officer,
Labour Court, Tirunelveli. ... Respondents

Prayer : Writ Appeal filed under clause 15 of the Letters Patent,
to set aside the order dated 10.09.2012 made in W.P.(MD) No.983 of
2006 on the file of this Court.

Prayer in WP(MD). 983/ 2006 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a Writ of
Certiorari, by calling for the records of the second respondent
relating to the award passed by the second respondent in I.D.No.72
of 1997 dated 24.8.2005 and quash the same.

For Appellant : Mr.G.Mohankumar
for Mr.R.Vijayakumar

For Respondents : Mr.S.Ramu for R1

JUDGMENT

(Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.**)

This intra Court appeal is directed against the order dated
10.09.2012 dismissing W.P.(MD) No.983 of 2006 filed by the
appellant Corporation.



2.The first respondent herein filed I.D.No.72 of 1997 on the file of the Labour Court, Tirunelveli. As per the averments in the petition filed by the first respondent herein, she was appointed as a Sweeper in the office of the appellant Corporation at Tuticorin in the year 1982. She had been permitted to serve in the said capacity till 10.04.1996. Thereafter, her services were discontinued. She was not given any prior notice. No reason was assigned for her disengagement. Therefore, seeking the relief of reemployment, the first respondent herein raised an industrial dispute. Since the conciliation proceedings failed, she filed I.D.No.72 of 1997.

3.The claim made by the first respondent herein was opposed by filing a counter. The appellant took the stand that the first respondent was not engaged through employment exchange or through TNPSC. She was working only as a coolie worker on daily wage basis. She was engaged in cleaning works and doing some odd jobs. For carrying out such works, the first respondent was paid out of the sundry office expenses account. Since one person by name Sankaravadivu was appointed on compassionate grounds vide order dated 10.04.1996, the first respondent could not continue to be engaged as a Sweeper. Since the first respondent was never granted formal employment, the question of issuing termination order did not arise. The disengagement of the first respondent was not arbitrary.

4.Before the Labour Court, the first respondent examined herself as a witness. On the side of the appellant Corporation, an official was examined as M.W.1. Documents were marked on either side. The Labour Court took the view that the first respondent will be entitled to conferment of permanent status as she had worked for more than 480 days in 24 consecutive calendar months and that therefore, the non employment of the first respondent was illegal. In this view of the matter, the petition filed by the first respondent was allowed and an award dated 24.08.2005 was passed in her favour. The appellant Corporation was directed to reinstate the first respondent with backwages. The same was challenged by the appellant Corporation by filing W.P.(MD) No.983 of 2006. The same was however dismissed by order dated 10.09.2012. Hence, this intra Court appeal.

5.Heard the learned counsel on either side.

6.Before the learned single Judge, the appellant Corporation contended that the first respondent herein was engaged to clean the office premises and to fetch drinking water to the staff at the Regional Office, Tuticorin and that the working hours were <https://hservices.courts.gov.in/hservices>. She was paid under the head "office expenditure as fixed by the District Collector". Even though the first



respondent had been working for more than 13 years, in view of the part time nature of her job, she cannot claim any benefit. Since she was not sponsored by the employment exchange or appointed through a regular mode, the question of issuing a termination order or complying with the other provisions of I.D.Act did not arise. This stand of the appellant Corporation was negated by the learned Judge by holding that the consistent view of this Court is that even part time employees paid from contingent basis are to be regularised if they had put in long years of service. The learned Judge also went to the extent of holding that the first respondent would be entitled to conferment of permanent status. The said reasoning was arrived at after referring to a very large number of reported and unreported decisions of this Court passed both by the Single Judges as well as the Division Benches.

7.We are constrained to express our disagreement. The order dismissing the writ petition filed by the appellant was passed on 10.09.2012. Thereafter, the Hon'ble Apex Court has made two significant pronouncement in State of Tamil Nadu Vs. R.Govindasamy reported in (2014) 4 SCC 769 and State of Tamil Nadu Vs. A.Singamuthu reported in (2017) 4 SCC 113. On account of these two decisions of the Hon'ble Supreme Court, the entire basis underlying the order dated 10.09.2012 in W.P.(MD) No.983 of 2006 stands totally undermined. The Hon'ble Supreme Court has held that temporarily appointed part time or casual labour will not be entitled to regularisation even if they had put in long periods of service. In fact, the orders passed by this Court were reversed.

8.In this view of the matter, this Court has to necessarily set aside the impugned order dated 10.09.2012 and allow this appeal. This is because the first respondent was employed on temporary basis to do only part time jobs. Such a person can never be regularised in the absence of a definite scheme of regularisation. In this case, no such scheme is in existence.

9.Accordingly, this writ appeal stands allowed. The order dated 10.09.2012 made in W.P.(MD) No.983 of 2006 passed by this Court is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant Registrar



To

The Presiding Officer,
Labour Court,
Tirunelveli.

- +1. C.C. to M/S.R.VIJAYAKUMAR, Advocate SR.No.50107.
- +1. C.C. to M/S.S.RAMU, Advocate SR.No.50450.
- +1. C.C. to Special Government Pleader SR.No.50545.

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SDS/PN/SAR-1/30.05.2018/4P/5C