



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.03.2018
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A(MD)No.353 to 357 of 2014
and
M.P(MD)Nos.1, 1, 1, 1 and 1 of 2014

1.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Sachindanadha Moopnar Road,
Thanjavur Region,
Thanjavur.

.. Appellant in
W.A(MD)Nos.353 to 356 of 2014

2.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Thiruvarur.

.. Appellant in
W.A(MD)No.357 of 2014

Vs.

1.The Joint Commissioner of Labour,
Trichy.

2.The Assistant Commissioner of Labour,
Trichy.

.. Respondents 1 and 2 in all W.As.

3.K.Swaminathan .. Third Respondent in W.A(MD)No.353/2014

4.K.Venkatanarasisingam .. Third Respondent in W.A(MD)No.354/2014

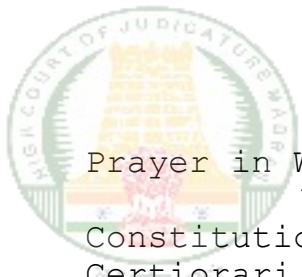
5.K.Ramalingam .. Third Respondent in W.A(MD)No.355/2014

6.R.Vijayarani .. Third Respondent in W.A(MD)No.356/2014

7.R.Balasubramanian .. Third Respondent in W.A(MD)No.357/2014

[Writ appeal against the third
respondent in W.A(MD)No.357/2014
is dismissed, vide order, dated
30.11.2016]

COMMON PRAYER: Writ Appeals are filed under Clause 15 of the Letters
<https://hcservices.ecourts.gov.in/hcservices/>
Patent against the common order, dated 30.09.2013, made in W.P(MD)
No.16007 to 16011 of 2013.



Prayer in WP(MD). 16007/ 2013 :

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 pertaining the Impugned Order passed by the 1st Respondent in P.G.A. No.29 of 2012 dated 28.03.2013 confirming the order passed by the 2nd respondent in P.G.No.58 of 2010 dated 18.04.2012 and quash the same.

Prayer in WP(MD). 16008/ 2013 :

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 pertaining the Impugned Order passed by the 1st Respondent in P.G.A. No.28 of 2012 dated 28.03.2013 confirming the order passed by the 2nd respondent in P.G.No.53 of 2010 dated 18.04.2012 and quash the same.

Prayer in WP(MD). 16009/ 2013 :

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 pertaining the Impugned Order passed by the 1st Respondent in P.G.A. No.26 of 2012 dated 28.03.2013 confirming the order passed by the 2nd respondent in P.G.No.118 of 2011 dated 18.04.2012 and quash the same.

Prayer in WP(MD). 16010/ 2013 :

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 pertaining the Impugned Order passed by the 1st Respondent in P.G.A. No.27 of 2012 dated 28.03.2013 confirming the order passed by the 2nd respondent in P.G.No.34 of 2010 dated 18.04.2012 and quash the same.

Prayer in WP(MD). 16011/ 2013 :

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 pertaining the Impugned Order passed by the 1st Respondent in P.G.A. No.25 of 2012 dated 28.03.2013 confirming the order passed by the 2nd respondent in P.G.No.57 of 2010 dated 15.02.2012 and quash the same.

For Appellant
in all W.As.

: Mr.R.Vijayakumar

For Respondents 1 and 2
in all W.As.

: Mr.D.Muruganandam,
Additional Government Pleader.

For Respondent No.3 in
W.A(MD) Nos.353 to 356 of 2014

: Mr.S.Arunachalam

C O M M O N J U D G M E N T

[Common Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.R.Vijayakumar, learned counsel appearing for the appellant in all writ appeals, Mr.D.Muruganandam, learned Additional Government Pleader, appearing for the respondents 1 and 2 in all writ appeals and Mr.S.Arunachalam, learned counsel appearing for the third respondent in W.A(MD)Nos.353 to 356 of 2014.

2.These writ appeals are directed against the common order dated 30.09.2013, made in W.P(MD)Nos.16007 to 16011 of 2013. The said writ petitions were filed challenging the orders passed by the Payment of Gratuity Authority, computing the gratuity payable to the workmen.

3.The legal issue involved in these writ petitions is squarely covered by the decision of this Court in W.P.No.4371 of 1998, dated 30.07.2008, which was confirmed by the Hon'ble Division Bench in W.A.No.1282 of 2008, dated 19.07.2010. The operative portion of the order, dated 30.07.2008, passed in W.P.No.4371 of 1998, reads as follows:

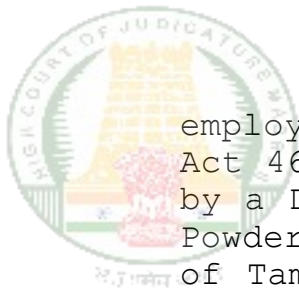
"15.But in the present case, all the workers covered by the impugned order were all Assistant Quality Inspectors, Watchmen, Packer, Helper, Bill Clerk, etc. The procurement, storage and distribution are all on going process and if they are really seasonal, there is no question of the workmen being covered by the settlement or the Award as referred to by the Management. On the contrary, in the present case, even as per the admission of the learned counsel for the Management, who has given a tabular statement showing that the number of the workmen taken against the regular vacancy was 70.

16.Further, in the letter dated 02.4.1991 sent by the Chairman cum Managing Director of the petitioner Management to the Joint Commissioner of Labour over which a reference was made in the impugned order. The Managing Director had written in page 3 as follows:-

"Regarding payment of retaining allowance to the D.P.C. staff, this cannot be compared to the seasonal industries like sugar industry. This is not a seasonal industry and the Government have not declared it so. We need not retain them when there is no procurement and as such no retaining allowance need be paid."

Even as per the provisions of Permanent Status Act, if the petitioner wants, they can move the Government to declare the DPC as seasonal and they have not done so.

17.The argument that the settlement and the Award is binding cannot be accepted because of the non-obstante clause found in Section 3(1) of the I.D. Act. Originally, it did not cover a Settlement or an Award. Therefore, if there was any settlement or Award between the



employer and the workmen, then the provisions of Tamil Nadu Act 46 of 1981 will have no application. This was noticed by a Division Bench of this Court in its judgment in Metal Powder Co. Ltd., Thirumangalam and another v. The State of Tamil Nadu and another [1985 (2) L.L.J. 376] and after referring to the similar provisions in other Labour enactments in paragraph 27, it was observed as follows:-

Para 27: ".... We are bound to take notice of the legislative practice that where the intention of the legislature is that a law is to have effect notwithstanding any award, agreement or contract of service, such an intention is expressed in clear and unambiguous words. Consequently, in the absence of reference to an award, an agreement or a contract of service in S.3(1) and restricting the operation of the non-obstante clause in S.3(1) only to "anything contained in any law for the time being in force", we must accept the contention of the learned counsel for the petitioner that S.3 will not supersede a settlement between the employer and the employees in so far as the subject matter of the settlement is conferment of permanent status to the workmen...."

Taking note of the above judgment, the State Legislature amended Section 3(1) of the Tamil Nadu Act 46 of 1981 and the words 'settlement' and 'Award' have been included in the Explanation to Section 3(1) of the Act.

18. In fact, when the amended provisions were challenged before the Supreme Court, the Act was held to be intravires of the Constitution by the Supreme Court in State of Tamil Nadu and others v. Nellai Cotton Mills Ltd. and others [1990 (2) SCC 518]. Therefore, the objections based on the Award and settlement by the learned counsel for the Management must necessarily fail.

19. Thereafter, Mr. Ajay Khose, learned counsel appearing for the workmen brought to the notice of this Court a judgment of this Court in Tamil Nadu Civil Supplies Corporation Modern Rice Mill Engineering Section employees Union v. The Tamil Nadu Civil Supplies Corporation, rep. by its Managing Director [1998 Writ L.R. 514] relating to the very same Corporation. In that case, the petitioner Corporation gave a circular regularising the casual workers working in the Modern Rice Mill and gave their own date of regularisation. P.D. Dinakaran, J., in paragraphs 11 and 15 of the said judgment, held as follows:-

Para 11: "Section 3(1), being a non-obstante provision, it prevails over any law for the time being in force which includes any service rules, Government Orders or government instructions. Therefore, want of sanctioned posts as required under General service rules cannot take away the rights conferred under Section 3(1) of the Act. Similarly, Government Orders which require that the appointments



should be made only through Employment Exchange also cannot be a ground to refuse the right provided under section 3(1) of the to the petitioners if they comply the requirements prescribed under Section 3(1). Therefore, it is not open for the respondent to take shelter under any other law in force much less any Government Orders, Government Instructions to deny the benefits conferred under Section 3(1) of the Act, to the petitioners, if they satisfy the conditions prescribed therein, irrespective of the availability of sanctioned posts or sponsorship from Employment Exchange."

Para 15: "Therefore, the respondents are directed to modify the proceedings dated 24.2.1989 to confer the permanent status to individual workmen from the day on which they satisfy the condition namely completing the continuous service for period of 480 days in a period of 24 Calendar months in the respondent establishment. The respondent shall pass appropriate orders as directed above within 6 weeks from the date of receipt of a copy of this order."

20. In the light of the above, the contentions raised by the petitioner Management will have to be necessarily rejected. In fact, the petitioner Management themselves have regularised the workmen on a posterior date. In the light of the above judgments of this Court and the Supreme Court, such action cannot be countenanced by this Court. The impugned order of the first respondent will have to be necessarily upheld. Accordingly, the writ petition will stand dismissed. However, there will be no order as to costs".

4. In the light of the above, the issue is squarely covered by the above referred decisions and therefore, the writ appeals fail and accordingly, the same are dismissed, confirming the common order, dated 30.09.2013, made in W.P(MD)Nos.16007 to 16011 of 2013. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Joint Commissioner of Labour,
Trichy.

<https://hcservices.ecourts.gov.in/hcservices/>
2. The Assistant Commissioner of Labour,
Trichy.



+1cc to M/S.S.Arunachalam, Advocate SR.No. 55206

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COMMON JUDGMENT MADE IN
W.A(MD)No.353 to 357 of 2014
and
M.P(MD)Nos.1, 1, 1, 1 and 1 of 2014
12.03.2018

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JM/KK/SAR 1/11.04.2018/6P/4C