



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2018

CORAM:

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

W.A.(MD)Nos.968 of 2015, 1128 and 1087 of 2016 and
W.P.(MD).No.2126 of 2015 and
M.P.(MD)No.2 of 2015 and
C.M.P.(MD)Nos.6954 of 2016, 6558 of 2016 and 8422 of 2017

W.A(MD)No.968 of 2015:

1. The Chairman and Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk,
Chennai-10.

2. The General Manager and Secretary,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk,
Chennai-10.

... Appellants

Vs.

1. R.Antony pichai

2. K.Kannan

3. The Regional Manager,
Tamil Nadu Civil Supplies Corporation Ltd.,
Theni Region, 314, Cumbum Main Road,
Jawahar Nagar,
Theni-625 531.

... Respondents

Prayer: The writ appeal filed under Clause 15 of Letter Patent Act, to set aside the order of this Hon'ble Court passed in W.P.(MD) No.3025 of 2011, dated 22.01.2014.

Prayer in WP(MD)No.3025/2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the first respondent vide Na.Ka.NO. ALLB4/81577/2010 dated 27/10/2010, quash the same and consequently direct the first respondent to regularize the service of the petitioners as Casual



Labourers with effect from 22/06/2000 with all monetary and service benefits on the basis of the recommendation made by the third respondent vide Roc.B1/5540/2001 dated 18.10.2010.

For Appellants : Mr.R.Vijayakumar
For Respondent No.1 : Mr.K.Appadurai
For Respondent No.2 : Mr.S.Bala Karthick
For Respondent No.3 : Mr.P.Seetharaman

W.A(MD)No.1128 of 2016:

1. The General Manager, (Administration)
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk,
Chennai-10.

2. The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Dindigul Region,
Dindigul.

... Appellants

Vs.

D.Ganesan

... Respondent

Prayer: The writ appeal filed under Clause 15 of Letter Patent Act, to set aside the order of this Hon'ble Court passed in W.P.(MD) No.4038 of 2016, dated 15.03.2016.

Prayer in WP(MD)No.4038/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the 2nd respondent passed in his proceedings Na.Ka.No.ALB1/68345/2015 dated 18.02.2016 and quash the same as illegal and consequently, direct the respondents to regularize the petitioner's service with effect from the year 2006 onwards with all monetary benefits.

For Appellants : Mr.K.Chella Pandian, AAG., assisted by
Mr.A.K.Baskara Pandian,
Special Government Pleader
For Respondent : Mr.T.Lenin Kumar

W.P. (MD)No.2126 of 2015:

<https://hcservices.ecourts.gov.in/hcservices/>

A.Sakthivel

... Petitioner

**Vs.**

1. The Managing Director,
Tamilnadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk, Chennai-10.

2. The Regional Manager,
Tamilnadu Civil Supplies Corporation,
kanniyakumari Region,
Nagercoil-2.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the second respondent in his proceedings Na.Ka.No.ALB4/79486/2014 dated 06.01.2015 and quash the same as illegal, consequently directing the respondents to regularize the petitioner's service to give permanent status with all service benefits.

For Petitioner : Mr.T.Lenin Kumar
For Respondent No.1 : Mr.R.VijayaKumar
For Respondent No.2 : Mr.P.Seetharaman

W.A(MD)No.1087 of 2016:

1. The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk, Chennai-10.

2. The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Kanyakumari Region,
Nagercoil-2.

... Appellants

Vs.

T.Manikandan

... Respondent

Prayer: The writ appeal filed under Clause 15 of Letter Patent Act, to set aside the order of this Hon'ble Court passed in W.P.(MD) No.2115 of 2015, dated 15.03.2016.

Prayer in WP(MD)No.2115/2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 2nd respondent in his proceedings Na.Ka.NO.ALB4/79487/2014 dated 06.01.2015 and quash the same as illegal and consequently direct the respondents to regularize the



petitioner's service to give permanent status with all service benefits.

For Appellants

: Mr.K.Chella Pandian, AAG.,
for Mr.P.Seetharaman

For Respondent

: Mr.C.R.Nimal

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COMMON JUDGMENT

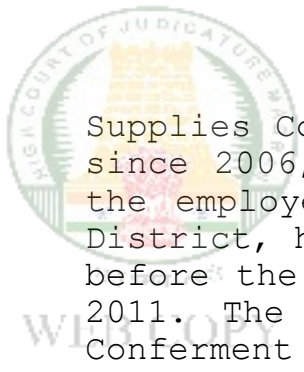
(Judgment of the Court was delivered by T.S. SIVAGNANAM,J.)

Heard Mr.R.Vijayakumar and Mr.A.K.Baskara Pandian and Mr.P.Seetharaman, learned counsels for the appellants and Mr.K.Appadurai, Mr.T.Leninkumar, learned counsel for the respondents.

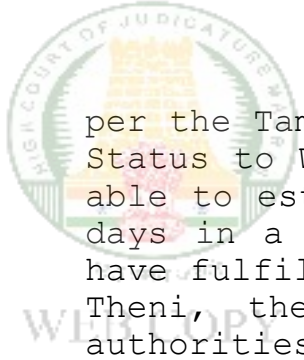
2.In these batch of cases, there are three writ appeals and one writ petition. Since the issue involved in all these cases are identical, they were heard together and disposed of by this common order. W.A.(MD)No.968 of 2015 is taken as the lead case, as the order passed in that writ petition has been followed in other two writ petitions which are subject matters of W.A.(MD)Nos.1087 of 2016 and 1128 of 2016.

3.The writ petitioners had filed W.P.(MD)No.4791 of 2010, praying for issuance of writ of mandamus directing the appellants/Civil supplies Corporation to regularise their service as Casual Labourers with effect from 22.06.2000 with all monetary benefits based on the recommendation made by the Regional Manager TNCSC, Theni. The said writ petition was disposed of, by an order dated 16.08.2010, directing the appellants to consider the representation of the writ petitioners dated 06.10.2007.

4.In the light of the recommendation of the Regional Manager, TNCSC, Theni, and in pursuant to the direction issued, the appellants issued a proceedings dated 27.10.2010, by which the request for regularization was negatived. However, the reason for not regularizing the service of writ petitioners was on the ground that they were not recruited through employment exchange and no proposal was received from their respective Zonal Officer, as regards the period of employment, etc., and apart from that, the Government issued a G.O.Ms.No.49 Personnel and Administrative Reforms (F) Department, dated 14.05.2002, specifically directing such casual labourers/employees should not be engaged and the work of sweeping and maintenance of godown should be out sourced. Thus, the appellants took a stand that the question of granting regularisation to the writ petitioners does not arise. However, in the same order dated 27.10.2010, the appellants has stated that the Government has called for details, as to how many persons like the writ petitioners are employed in various District centres and Civil



Supplies Corporation and list of 550 persons, who have been working since 2006, has been forwarded to Government and in the said list, the employees like writ petitioners, who are working in the Theni District, have also been forwarded. This was sought to be challenged before the Writ Court by the writ petitioner in W.A.(MD)No.3025 of 2011. The Writ Court, took into consideration the provisions of Conferment of Permanent Status to Workman Act, 1981 and also taking note of letter given by the Regional Manager, came to the conclusion that the petitioners have completed 480 days of continuous employment and they are entitled to be regularised in service by granting them permanent status and further as to the embargo that they have not been recruited through employment exchange, the Court interpreted the term "employee" under the provision of Employment Exchange (Compulsory Notification of Vacancies) Act 1959 and held that the writ petitioners are working for class IV employment and the sponsorship is not required under the provision of the Act. Further the Court has observed that the provisions of the Employment Exchange Act is only directory in nature and not mandatory; whereas the provisions of Tamil Nadu of Industrial Establishment Act (Conferment of Permanent Status Workmen) Act 1981 and the provisions of Industrial Disputes Act, 1947 are mandatory in nature. Though we may not differ with the opinion rendered by the Writ Court, we are of the considered view that in a writ proceedings, the Court, without examining the factual issue as to whether the temporary employee completed 480 days of continuous service in two calendar years so as to confer upon the permanent status by applying the principle under Tamil Nadu Industrial Establishment (conferment of permanent Status to Workmen) Act 1981, should not have rendered a finding. The Act stipulates the procedure, which in our considered opinion is a very fair procedure, wherein the authority could call for documents to be placed by the workman and assess, as to whether he satisfies the requirement for Conferment of permanent Status to Workmen Act. Admittedly, the Civil Supplies Corporation would fall within the ambit of the said provisions and Tamil Nadu Industrial Establishment (conferment of permanent Status to Workmen) Act 1981 would apply to the appellant Corporation Therefore, to that extent, we do not concur with the nature of relief granted to the writ petitioner under Article 226 of the Constitution of India. However, we make it clear that we have not expressed any opinion on the merits of the petitioner's claim that they have completed 480 days of continuous service in period of 24 calendar months. The contents of the communication of the Regional Manager, Theni, was sought to be disputed by the appellant. However, the veracity of the information furnished by the Regional Manager can very well be placed before the competent authority under the Act, which is special statute and Code by itself. We may, at this juncture, point out that Section 3(1) of Tamil Nadu Industrial Establishment (conferment of permanent Status to Workmen) Act 1981, contains a non obstante clause and states that notwithstanding anything contained in any law for the time being in force, every workman in continuous service for the period of 480 days in a period of 24 calendar months in an Industrial establishment shall be granted permanent Status as



per the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act 1981. Therefore, if the writ petitioners are able to establish that they have rendered continuous service of 480 days in a period of 24 calendar months, which they have stated to have fulfilled and rely upon the proceedings of the Regional Manager Theni, then they could agitate the issue before the concerned authorities under the said Act.

5. Thus, only for such reason, we are inclined to interfere with the order passed by the writ Court. In so far as the appeal in W.A.(MD)No.1087 of 2016 is concerned, the said order is passed by the writ Court following order passed in W.P.(MD)No.3025 of 2011. Therefore, that order also calls for interference. As far as W.P.(MD)No.2126 of 2015 is concerned, it has been filed by the individual challenging the proceedings of the Regional Manager, TNCSC Nagercoil dated 06.01.2015, by which the request for regularisation is negatived on certain grounds notwithstanding the fact that there is an order passed by the Regional Manager, dated 06.01.2015. The writ petitioners therein are also entitled to approach the authority under the provisions of Tamil Nadu Industrial Establishment (conferment of permanent Status to Workmen) Act 1981 by way of an application and obtain necessary orders.

6. Thus, for the above reasons, the writ appeals are allowed and the impugned orders are set aside. The writ petitioners are directed to file an application before the competent authority under the Tamil Nadu Industrial Establishment (conferment of permanent Status to Workmen) Act 1981, in the respective District and if such an application is filed before the authority concerned, who will be an Officer in the cadre of Inspector of Labour, the application shall be entertained, without reference to limitation and endeavour shall be made by the Inspector of Labour to conclude the proceedings within a period of three months from the date on which the applications are taken on file. The appellant Corporation is directed to cooperate with the disposal of the application before the said authority.

7. It is pointed out by the learned counsel by the writ petitioners that the management, though have alleged that there is no such communication emanating from the Regional Manager, dated 18.10.2010, there is no specific reply or objection raised with regard to the communication of the Regional Manager, dated 19.11.2001. This issue can be canvassed before the Inspector of Labour in the application which has been directed to be filed by this Court. In so far as the writ petitioners are concerned, if they are still continuing the service, the respondent Corporation shall continue to engage their service on temporary basis and shall not disengage them. The writ petitioners are at liberty to pursue the matter before the authority concerned.

8. With the above observation and direction, W.A.(MD)Nos.968 of 2015, 1128 and 1087 of 2016 and W.P.(MD).No.2126 of 2015 are



allowed. No Costs. Consequently, MP(MD)No.2 of 2015, C.M.P. (MD) Nos.6954 of 2016 and 8422 of 2017 and 6558 of 2016 are closed.

Sd/-

Assistant Registrar (CO)

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/True Copy/

Sub Assistant Registrar

To

1. The Managing Director,
Tamilnadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk, Chennai-10.
2. The Regional Manager,
Tamilnadu Civil Supplies Corporation,
kanniyakumari Region,
Nagercoil-2.
3. The General Manager, (Administration)
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk, Chennai-10.
4. The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Dindigul Region, Dindigul.
5. The Chairman and Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk, Chennai-10.
6. The General Manager and Secretary,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk, Chennai-10.

- + 2 CC TO Mr.T.LENIN KUMAR, ADVOCATE IN SR No. 51455
- + 1 CC TO Mr.P.SEETHARAMAN, ADVOCATE IN SR No. 52214
- + 1 CC TO Mr.K.APPADURAI, ADVOCATE IN SR No. 51523
- + 1 CC TO Mr.R.VIJAYAKUMAR, ADVOCATE IN SR No. 51792

RMK/MRN

TE/RSK/SAR-4 : 21/03/2018 : 7P/12C

W.A. (MD) Nos.968 of 2015, 1128 and 1087 of 2016 and

W.P. (MD) .No.2126 of 2015 and

M.P. (MD) No.2 of 2015 and