

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 27.03.2018
Pronounced on : 05.06.2018
CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**W.P(MD)No.1886 of 2015**

V.Prakash

... Petitioner

Vs.

1. The Joint Director of Industrial Safety
and Health,
(Deputy Chief Inspector of Factories),
Tuticorin.
2. Tamilnadu Generation and Distribution
Corporation Ltd.,
Rep.by its Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin- 628 004.
3. The Superintendent Engineer,
Purchase and Administration,
Tamil Nadu Generation and Distribution
Corporation Ltd,
Tuticorin Thermal Power Station,
Tuticorin - 628 004.
4. The Chief Engineer (Personal),
Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the first respondent in No.E/3950/2012, dated 05.03.2014, quash the same and direct the second respondent to absorb the petitioner as Helper and to give permanent status on completion of 480 days and disburse all attendant monetary benefits.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.Anand Gopalan

**ORDER**

Heard the learned counsel on either side.

2. The petitioner contends that he was employed as a contract labour in Tamil Nadu Electricity Board from 15.05.1997 to 13.02.1999. He was thereafter illegally terminated from service without notice. He therefore filed an application under Section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 for conferment of permanent status. According to the petitioner, he had completed 480 days of service within a period of 24 consecutive calendar months. However, the first respondent by the impugned order dated 05.03.2014 dismissed his petition. The ground of dismissal was that there was no material to show that he worked from 15.05.1997 to October 1999. Questioning the impugned order, this writ petition has been filed.

3. This Court is of the view that the writ petition will have to be dismissed for more reasons than one. The cause of action relates to the period 1997 to 1999. Even according to the petitioner, he was ousted in 1999 itself. Almost 20 years have gone by. The application under Section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, was filed only in December 2012. Even by then, more than twelve years had elapsed. It is no doubt true that there is no limitation prescribed in the statute. But then, in the very nature of things, the application under Section 3 of the Act will have to be filed within a reasonable period.

4. Secondly, the petitioner seeks absorption as Helper. In the affidavit filed in support of this writ petition, the petitioner has not claimed that he is possessing the minimum educational qualifications required for being appointed as Helper. In the typed set of papers also, no such information is available. It is relevant to mention here that the Hon'ble Supreme Court in the decision reported in **2004 (7) SCC 112 (A. Umarani Vs. Registrar, Cooperative Societies and Others)** held that appointments made in contravention of statutes are illegal and that therefore in such cases, the provisions of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 cannot be invoked. A Full Bench of this Court in the decision reported in **2007 (5) CTC 369 (R. Rathakrishnan vs The Deputy Registrar of Co-operative Societies)** cited the observations of the Division Bench reported in **2002 (4) CTC 385 (L. Justine v. The Registrar of Coop. Societies, Chennai)**, which were to the effect that appointments made in violation of the cadre strength or the prescriptions of the educational qualifications, cannot stand and are held to be null and void. The Tamil Nadu Industrial Establishment (Conferment of Permanent



Status to Workmen) Act, 1981 or Industrial Disputes Act, 1947, cannot be pressed into service. Non-obstante clause in the above enactments have to be read down to be in consonance with the legal principles enunciated by the Supreme Court in Ashwin Kumar's case.

5. Therefore, the issue on hand will have to be approached through the prism of the of decisions of the Hon'ble Division Bench in L. Justine's case and the Hon'ble Supreme Court in **A. Umarani's** case and the Full Bench decision in R. Rathakrishnan's case. No doubt, in more than one decision, the Division Bench of this Court held that the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 is applicable to Tamil Nadu Electricity Board also. That legal position still holds the field. But then, the manner of applicability will have to be seen. After referring to the decision of the Hon'ble Supreme Court, a Division Bench of this Court while disposing WA.No.1302 of 2003 etc., batch by order dated 24.10.2008 held as follows :

"The decision of the Supreme Court which was an immediate sequel to Justice Khalid Commission ought to be understood as applicable only to cases of contract labours as helpers, whose minimum qualifications had been set forth in the Regulations but not generally to persons who had directly employed by the Electricity board itself on temporary basis but who continued in employment for more than 480 days, and who belonged to the class of persons below the rank of helpers for whom alone the Regulations prescribed a minimum educational qualification of National Trade Certificate (NTC)/National Apprenticeship Certificate (NAC) courses."

6. In this regard, it is pertinent to refer to the definition of the term "workman" as set out in Section 2 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, which is as follows :

"workman" 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 terms of employment be express or implied [and includes a badli workman].

It would be useful to compare this definition of workman with what is contained in The Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

In Employees' Provident Funds and Miscellaneous Provisions Act, the term "employee" is defined as follows :

"employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and



who gets his wages directly or indirectly from the employer, and includes any person,- and includes any person,-

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment;

7.If the definitions set out in the two enactments are compared, one can easily come to the conclusion that the contract labour is not included within the definitional sweep of Section 2 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. This Court is conscious of the fact in the decision reported in **2004 (3) LLN 598 (Superintending Engineer, Vellore Electricity Board Distribution Circle v. Inspector of Labour)**, relief was granted in favour of the persons who were shown as contract labour. The said decision was approvingly cited by the Hon'ble Division Bench in the decision reported in **2017-I-LLJ-540 (Mad) (Chairman, Tamil Nadu Electricity Board vs. Inspector of Labour, Karur)**. But then, the finding given in those cases was that the claimants were contract labour only in name and that were only employed directly by Tamil Nadu Electricity Board. The defence of contract labour was more a smoke-screen.

8.In the case on hand, even according to the petitioner, he was only a contract labour. This Court therefore holds that the writ petition deserves to be dismissed for the following reasons.

(i) the cause of action is stale.

(ii) the petitioner on his own showing was a contract labour and hence, does not come within the said expression "workman" set out in Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981.

(iii) the petitioner seeks absorption as Helper for which the minimum educational qualification have been prescribed. The petitioner has not claimed that he is possessing the such qualifications.

9.For all these reasons, the order impugned in the writ petition is sustained and the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar



To

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and Health,
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+ 1 cc TO Mr.R.Subramanian , Advocate in SR No. 66858

+ 1 cc TO Mrs.P.Malini , Advocate in SR No. 66738

skm

AE/SV MMS/SAR4/19.06.2018/5P/7C

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