



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.01.2018

CORAM :

WEB COPY

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD)No.19712 of 2017

and

WMP(MD)No.15990 of 2017

The Executive Officer,  
Eriyodu Town Panchayat,  
Eriyodu Post, Vedasanthur Taluk,  
Dindigul District.

... Petitioner

Vs.

1.The Inspector of Labour,  
Authority under the  
Tamil Nadu Industrial Establishment  
(Conferment of Permanent Status to Workmen)  
Act, 1981,  
Dindigul.

2.Savadamuthu

... Respondents

**Prayer** : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent vide ப.நீ.எ.எண்.08/2013 ந.க.எண்./2416/2013 dated 07.09.2017 and quash the same.

For Petitioner : Mr.S.Chandrasekar

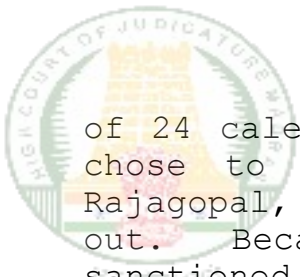
For Respondent : Mrs.S.Srimathy,  
Special Government Pleader for R1

Mr.S.Arunkumar for R2

**ORDER**

The order passed by the authority constituted under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, in favour of the second respondent herein has questioned by the Executive Officer, Eriyodu Town Panchayat, Vedasanthur Taluk in this writ petition.

2.The case of the second respondent is that he has been operating the Over Head Tank since 01.09.1996 on daily wages basis. He had completed the 480 days of continuous service within a period



of 24 calendar months in the town panchayat. The town panchayat chose to regularize the services of three individuals, namely, Rajagopal, Periyasamy, Ramraj. But the writ petitioner was left out. Because, in the said town panchayat there were only four sanctioned post of Over Head Tank operator.

WEB COPY

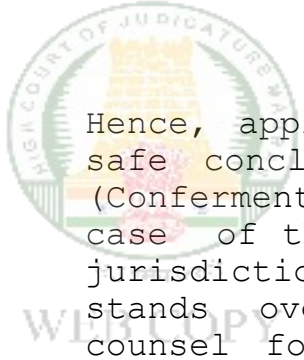
3. Citing lack of availability of sanctioned posts, the second respondent herein was not regularized. He therefore moved the first respondent by filing a petition in the year 2013. The writ petitioner herein filed a counter affidavit opposing the request made by the second respondent for conferment of such permanency status. The first respondent herein after a consideration of evidenciary materials on record, allowed the petition and declared that the writ petitioner had completed 480 days of continuous service in 24 consecutive calendar months on 22.08.2001 and that he will be entitled to the attendant benefits with effect from 23.01.2001. The Town Panchayat was directed to confer the second respondent herein with a permanent status with effect from the said date and disburse all the benefits.

4. The order dated 07.09.2017 is challenged by the Executive Officer of the Town Panchayat principally on three grounds. Firstly, when there is no sanctioned post, the second respondent herein cannot be made permanent or regularized. Secondly, the Act does not apply in the case of the second respondent. Thirdly, the second respondent did not work from the year 1996 as claimed by him and that he was a contractor manning the Over Head Tanks in question.

5. Heard the learned counsel appearing for the second respondent/workman.

6. The objection as to applicability of the Tamil Nadu Industrial Establishment (Conferment of permanent status to Workmen) Act, 1981 can be dealt with in the first instance. As per Section 3(1) of the said Act every workman who is in continuous service for a period of 480 days within a period of 24 calendar months in an industrial establishment shall be made permanent. Section 2(3) of the said Act defines an Industrial Establishment. As per Section 3 (a), a factory as defined in Section 2(m) of the Factories Act would fall within the expression of "Industrial Establishment". According to Section 2(m) of the Factories Act, 1948, "factory" means any premises where ten or more workers are working in which or where a manufacturing process is being carried on with the aid of power or where 20 or more workers are working in which or where manufacturing process is being carried on without the aid of power. The definition of manufacturing process is set out in Section 2(k) of the Factories Act, 1948. It also means pumping oil, water, sewage or any other substance.

7. Admittedly, the petitioner panchayat is employing more than 10 persons. With the aid of power water is also being pumped.



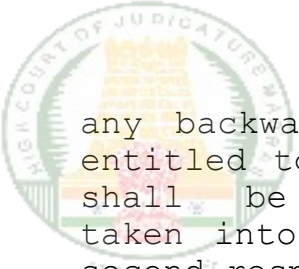
Hence, applying the aforesaid parameters, one can come to the safe conclusion that the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 applies in the case of the panchayat in question. Hence, the objection as to jurisdiction raised by the learned counsel for the writ petitioner stands overruled. The other contention of the learned learned counsel for the petitioner that there is no sanctioned post available also cannot hold water in view of the decision of the Hon'ble Supreme Court reported in 2015-II-LLJ-403 (SC) (Umralla Gram Panchayat v. Secretary, Municipal Employees Union and others). The Hon'ble Supreme Court has held that employing workman on temporary basis and continuing them as such for years with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under item 6 of Schedule IV of the Industrial Disputes Act, 1947. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to the erring employer. The Hon'ble Supreme Court also proceeded to distinguish the decision reported in (2006) 4 SCC 1 (State of Karnataka vs. Uma Devi).

8.It is admitted that there are 15 Wards in the panchayat and that totally 21 Over Head Tanks are functioning. With the strength of 4 permanent workmen, all these 21 Over Head Tanks cannot be operated. The work is obviously perennial in nature. Therefore, the writ petitioner cannot decline to regularize the services of the second respondent on the ground that there are only four sanctioned posts. It is the duty of the writ petitioner to get more sanctioned posts depending on the requirement.

9.The learned counsel appearing for the petitioner would also contend that there is no relationship of employer and employee between the petitioner and the second respondent workman herein. The petitioner would claim that they floated tenders and that the second respondent workman had taken part in the tender process and that he was awarded the work for maintaining the water tank.

10.As rightly pointed by the learned counsel for the second respondent that this stand of the petitioner has been taken only to defeat the legitimate claim of the second respondent herein. This Court cannot go into the disputed question of facts. The first respondent as the Statutory Authority constituted under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 had given his findings in favour of the second respondent. The said finding cannot be described as perverse. They are founded on relevant evidentiary material. This Court cannot interfere with such findings of fact.

11.Looked at from any angle, there is no merit in this writ petition. The learned counsel for the second respondent workman on instructions fairly states that the second respondent will not claim



any backwages. However, the second respondent workman shall be entitled to continuity of service and also notional benefits which shall be calculated with effect from 23.08.2001. This will be taken into account for computing all the service benefits of the second respondent. This submission is placed on record.

12.The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-  
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The Inspector of Labour,  
Authority under the Tamil Nadu Industrial Establishment,  
(Conferment of Permanent Status to Workmen)  
Act, 1981,  
Dindigul.

+1CC to Mr.S.Chandrasekar Advocate in SR.No.42388.  
+1CC to Mr.S.Arunachalam Advocate in SR.No.42589.  
+1CC Special Government Pleader in SR.No.42963.

SKM  
DS/SV/SAR-3 :06.07.2018: 4P/5C

W.P (MD) No.19712 of 2017  
and  
WMP (MD) No.15990 of 2017  
17.01.2018