

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.28397 of 2003

The Management of
Sri Venkateswara Paper & Board Ltd
Swaminathapuram
Palani 642 113.
rep.by its Managing Director.

...Petitioner

vs.

1. The Deputy Chief Inspector of Factories
Madurai.
- 2.K.Karuppusamy
- 3.N.Chinasamy
- 4.K.Kulanthaivel
- 5.S.Ramesh
- 6.S.Karuppuswamy
- 7.R.Prakash
- 8.K.Sethuraman
- 9.K.Kalimuthu
- 10.K.Swaminathan
- 11.K.Ponnuswamy
- 12.M.Marimuthu
- 13.T.Palanisamy
- 14.R.Kumarasamy
- 15.N.Karuppusamy
- 16.K.Sakthivel
- 17.P.Ramesh
- 18.V.Mariappan
- 19.A.Kamaraj
- 20.N.Senthil Murugan
- 21.M.Selvaraj
- 22.M.Venkatachalam
- 23.P.Thirumalaisamy
- 24.C.Selvaraj
- 25.K.Thangaraj
- 26.M.Karuppusamy
- 27.M.Nagaraj
- 28.C.Manoharan
- 29.V.Subramaniam
- 30.N.Senthil Kumar
- 31.P.Manickaraj

32.M.Dhandapani
33.K.K.Murugesan
34.A.Mohan
35.V.Kannimuthu
36.S.Ravi
37.R.Ramesh
38.E.Saravanan
39.R.Palanisamy
40.S.Marimuthu
41.K.Ranganathan
42.T.Balakrishnan
43.M.Abimanyu
44.D.Sathiskumar
45.R.Sivaraj
46.G.Damodaran
47.K.Karuppusamy
48.K.Balasubramaniam
49.V.Maruthamuthu
50.R.Ramesh
51.K.Nachimuthu
52.R.Ponnusamy
53.V.Kandasamy
54.K.Palanisamy
55.S.Sengottuvelu
56.M.Ravi
57.Chellamuthu
58.E.Muthusamy
59.K.Kanagaraj

Respondents 2 to 59
rep.by General Secretary,
Bharathiya Dindigul District
General Workers' Union,
2/252 Near Mayavan koil
Vayalur, Pushpathur Po,
Palani 624 618.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Prohibition,
prohibiting the 1st respondent from proceeding case No.E.6661/02.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan

For Respondents : Mr.J.Ramesh
Additional Government Pleader
for R1.
M/s.Vanathi Srinivasan
for RR2 to 59.

O R D E R

The petitioner has filed this writ petition to prohibit the first respondent from proceeding with the case No.E.6661/02.

2. The writ petitioner is the management of Sri Venkateswara Paper & Board Limited. The respondents/workmen were engaged as labourers through contractors.

3. The learned counsel for the writ petitioner states that the respondents /workmen were terminated from service on 24.12.2001 and those workmen raised an industrial dispute in I.D.No.137 of 2004 before the Labour Court. It is brought to the notice of this Court that the Industrial Dispute filed challenging the order of termination was dismissed by the Labour Court, Thiruchirappalli on 21.10.2016.

4. When the Industrial dispute was raised by the workmen challenging the order of termination, the very same workmen filed a petition simultaneously to grant permanent status under the provision of the Conferment of Permanent Status Act.

5. The learned counsel for the petitioner contended that the competent authority under the Permanent Status Act has no jurisdiction to entertain the application, when the Industrial Dispute challenging the order of termination was pending. During the pendency of the Industrial Dispute, the workmen were not employed in the writ petitioner company and they were not at all in service. When the employees are not in service, the question of granting permanent status under the Permanent Status Act would not arise at all. Thus, the competent authority had committed an error in entertaining the application under the Conferment of Permanent Status Act, when the workmen were not at all in service and further raised a dispute in I.D.No.537 of 2004.

6. In respect of the said contentions, the learned counsel for the petitioner cited the judgment in the case of Tamil Nadu Civil Supplies Corporation Workers' Union vs. Tamil Nadu Civil Supplies Corporation Limited and others reported in 2001 4SCC 469, the relevant paragraph NO.10 is extracted hereunder:

"10. In any event, as stated above, the services of the workmen have been terminated. Therefore, even if the said Act squarely applied and the establishment of the 1st respondent was not of a seasonal character and the work was not intermittent, the remedy would now be to file the appropriate proceedings against the order of termination. In this view of the matter no purpose would be served by dealing with the correctness of the finding given by the Division Bench."

7. The Division Bench of this Court in the case of S.Sivakumar and others vs. Deputy Inspector of Factories, Chennai and others reported in 2007(1)L.L.N.302 held as follows:

"14. In view of the above discussion, we are of the considered view that for claiming the permanent status under Section 3 of the Act, there must be subsistence of the relationship of master-servant or employer-employee between the parties and if this requirement is not satisfied even though the petitioners have completed four hundred and eighty days in a period of twenty-four calendar months in the respondent industrial establishment, in the absence of master-servant or employer-employee relationship between the petitioners and the respondent-management as on the date of making of the application under Section 3 of the Act, they cannot maintain the application under Section 3 of the Act seeking permanent status. Unless and until the order terminating their services are set aside by the competent authority, they cannot approach the competent authority under the Act seeking conferment of permanent status as per Section 3(2) of the Act."

8. Citing these two judgments, it is contended that the first respondent has no jurisdiction to entertain the application under the conferment of Permanent Status Act, in view of the fact that at the time of filing of the application under the Permanent Status Act, the workmen were not at all in service and Industrial Dispute raised challenging the order of termination was pending before the Labour Court in I.D.No.537 of 2004.

9. This being the factum of the case, this Court has no hesitation in coming to a conclusion that the actions of the first respondent in entertaining the application under the Conferment of Permanent Status Act is unsustainable and without any jurisdiction. Consequently, the first respondent is prohibited from proceeding with the case No.E.6661/02.

10. In the result, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

ssb

To

The Deputy Chief Inspector of Factories
Madurai.

+1 cc to M/s.T.S.Gopalan & Co., Advocate, S.R.No.81268

+1 cc to the Government Pleader, S.R.No.81581

W.P.No.28397 of 2003

BR(CO)
SSM(04/11/2019)



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