

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.357 of 2012
and M.P.No.1 of 2012

1.The Managing Director
Tamil Nadu Civil Supplies Corporation
12, Thambusamy salai
Kilpauk, Chennai-10.

2.Senior Regional Manager
Tamil Nadu Civil Supplies Corporation
No.7, Conron smith road
Gopalapuram, Chennai-86.

...Petitioners

Vs.

1.M.Pechimuthu
State General Secretary
Tamil Nadu Civil Supplies Corporation
Employees' Union on behalf of
M.Perumal
12, Thambusamy salai
Kilpauk, Chennai-10.

2.Inspector of Labour
II Circle, No.33
Venkat Narayana road
2nd floor, Nandanam
Chennai-35.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records of the 2nd respondent pertaining to the proceedings issued in Pa.Mu.No.E/4952/08, dated 31.05.2010 and quash the same.

For Petitioners	:	Mr.C.Selvaraj
For R1	:	No appearance
For R2	:	Mr.R.S.Selvam Government Advocate

O R D E R

Writ Petition is filed challenging the order of the 2nd respondent pertaining to the proceedings issued in Pa.Mu.No.E/4952/08, dated 31.05.2010 and quash the same.

2.The 1st respondent filed petition before the 2nd respondent on behalf of the worker viz., Perumal under Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, for an order of permanency to the worker Perumal and grant scale of pay from 18.08.2004. According to the 1st respondent, the worker Perumal was employed from 18.08.2004 as Sweeper in the office of the 2nd petitioner on consolidated pay of Rs.800/- per month. On 10.12.2005, he has completed service of 480 days and he is entitled to be made permanent. The work done by the said Perumal is perennial in nature and he was working from 8.00 a.m. to 8.00 p.m., sometimes even up to 11.00 p.m. and on average, he was working for 13.00 hours per day. The Sweepers working in 2nd petitioner management and other godowns were paid in the scale of pay of Rs.2550 - 55 - 2660 - 60 - 3200. They have been paid D.A., H.R.A., 20% bonus and were granted benefits like leave surrender, festival advance, uniform washing allowance, Provident Fund, loan for purchasing vehicle, promotion etc., and prayed for permanency of worker Perumal from 18.08.2004 the date on which he was employed.

3.The petitioners filed counter statement and denied that the said Perumal was employed as either permanent worker or loadman in the godown at Nandanam. There is no permanent Attendance Register for the worker. He was utilised only for fumigation work of spraying and air charging as per the capacity of godown and his wages were paid for the work done by him through the permanent loadmen working in the said godown. The worker Perumal is a temporary employee doing spraying medicines. The 1st respondent has not produced any document to show that the said Perumal worked in the petitioners' godown. The regularisation of temporary worker will be only after two years of service. The worker did not work as a Sweeper in the petitioners' management. The worker would not have worked for 480 days continuously from 18.08.2004 to 10.12.2005 when there are 52 Sundays, 9 National Holidays and Festival Holidays. The workers did not work even as temporary employees. His services were engaged by the supervisor of the godown at the time of spraying medicines.

4.The 2nd respondent considering the pleadings and documents filed before him held that the worker Perumal worked continuously for 480 days and that he is entitled to permanency

of service from 10.12.2005 in the scale of pay of Rs.2550 - 55 - 2660 - 60 - 3200 and all the rights and benefits granted to the permanent employees. Against the said order dated 31.05.2010, the petitioners have come out with the present writ petition.

5.The learned counsel appearing for the petitioners contended that the work of the Sweepers is not perennial in nature and they have to work only as and when receipts and issue of stocks are done in the godown. The petitioners filed detailed counter statement before the 2nd respondent that the nature of work performed by the worker Perumal in Nandanam godown, Chennai (South Region) was intermittent in nature and the Permanent Status Act is not applicable to the said Perumal. The application filed by the 1st respondent is not maintainable as the worker has not filed any application before the 2nd respondent and as per the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, only workmen can seek remedy. The 2nd respondent without properly appreciating the contention of the petitioners, erroneously ordered permanent status to the worker in the scale of pay as mentioned in the order. There is no sanctioned post of Sweepers in the petitioners' godown and the 2nd respondent failed to consider that the permanency can be accorded only against the sanctioned post and prayed for quashing the order of the 2nd respondent.

6.Though notice was served on the 1st respondent and his name is printed in the cause list, there is no representation either in person or through counsel.

7.Heard the learned counsel appearing for the petitioners as well as the learned Government Advocate appearing for the 2nd respondent and perused the materials available on record.

8.The contention of the learned counsel for the petitioners is that the worker Perumal was not engaged even on temporary basis in the petitioners' godown and he was engaged only for fumigation work of spraying and air charging as per the capacity of godown through the permanent loadmen working in the said godown. There is no sanctioned post of Sweeper in the godown. The worker Perumal could not have worked for 480 days continuously from 18.08.2004 to 10.12.2005. The 1st respondent has filed a letter dated 06.08.1999, wherein the 1st petitioner has fixed wages of Sweeper based on the capacity of the godown. In view of the same, the contentions of the petitioners that the work of Sweeper is not perennial in nature and they are engaged only at the time of receipt of issue of stocks and there is no sanctioned post of Sweeper, are not acceptable. The 1st respondent in his application has stated the nature of work done by the worker Perumal. The petitioners have not examined the godown Manager to disprove the said contention of the 1st respondent and they have not produced any material to show as to

how they calculated the number of days worked by the worker and arriving at the amounts payable by them, when no Attendance Register is maintained for the worker Perumal. The godown Manager of the petitioners has written a letter dated 10.07.2007 to the 2nd petitioner stating that the worker has worked continuously for 480 days. The petitioners have not disputed the genuineness of the said letter. Further, the 1st petitioner by the letter dated 12.01.2007 bearing Reference Na.Ka.No.ALD4/136307/2005 has written to the Government for regularisation of service of the worker Perumal. Considering the above materials, I hold that there is no error in the order of the 2nd respondent ordering permanency of the worker Perumal warranting interference by this Court.

9. In the result, the writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

kj
To
Inspector of Labour
II Circle, No.33
Venkat Narayana road
2nd floor, Nandanam
Chennai-35.

+1cc to The Government Pleader, SR. No. 47528
+1cc to Mr.C.Selvaraj, Advocate, SR. No. 47861

W.P.No.357 of 2012
and M.P.No.1 of 2012

PA (CO)
RMP (04/07/2019)

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