

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.09.2019

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10445 of 2017

and

W.M.P.No.11319 of 2017

1. The Managing Director,
Tamil Nadu Civil Supplies Corporation Ltd.,
No.12, Thambusamy Salai,
Kilpauk, Chennai - 600 010
 2. The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation Ltd.,
Chennai (North) Region,
Chennai - 600 010
- ..Petitioners

vs

1. R.Kanagadurga
 2. E.M.Mary
 3. M.Malarkodi
 4. K.Chandra
 5. S.Kaliammal
- Rep.by M.pechimuthu
State General Secretary,
Tamil Nadu Civil Supplies Corporation
Employees Union
Regn.No.325 CPD
No.12, Thambusamy Salai,
Kilpauk, Chennai - 600 010
6. The Authorized Inspector
under the Tamil Nadu Industrial Establishment
(Conferment of permanent status to the employees)
Act, 1981 / Inspector of Labour,
3rd Circle, Chennai - 600 035.
- ..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order made in Case No.486/2010 dated 20.10.2014 on the file of the 6th Respondent / Inspector of Labour, Chennai herein and quash the same.

For Petitioners : Mr.R.Arun Dattan

For Respondents : No appearance for R1 to R5

Mr.J.Ramesh
Additional Government Pleader
for R6

O R D E R

The writ petition is filed to quash the order dated 20.10.2014 passed in Case No.486 of 2010.

2. The writ petitioners are the Tamil Nadu Civil Supplies Corporation. In the present writ petition, the claim of the respondents 1 to 5 for regularization was considered by the 6th respondent Authorized Inspector and the impugned order was passed on 20.10.2014.

3. The learned counsel for the writ petitioners state that the benefit of regularization or permanent absorption cannot be granted in violation of the Recruitment rules in force. In view of the fact that the decision of the Inspector of Labour was in violation of the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in the case of Secretary, State of Karnataka and others Vs. Umadevi and others, reported in (2006) 4 SCC 1 as well as in violation of recruitment rules as applicable to the employees of the Tamil Nadu Civil Supplies Corporation, they have earlier filed writ petition in respect of other employees in W.P.(MD).No.983 of 2006 and the writ petition ended in favour of the labourers / employees, against which, the Tamil Nadu Civil Supplies Corporation filed Writ Appeal in W.A.(MD).No.1387 of 2014 and the Hon'ble Division Bench of the Madurai Bench of Madras High Court allowed the Writ Appeal on 20.02.2018 and the relevant paragraphs are extracted hereunder:

"6.Before the learned single Judge, the appellant Corporation contended that the first respondent herein was engaged to clean the office premises and to fetch drinking water to the staff at the Regional Office, Tuticorin and that the working hours were hardly few hours. She was paid under the head "office expenditure as fixed by the District Collector". Even though the first respondent had been working for more than 13

years, in view of the part time nature of her job, she cannot claim any benefit. Since she was not sponsored by the employment exchange or appointed through a regular mode, the question of issuing a termination order or complying with the other provisions of I.D.Act did not arise. This stand of the appellant Corporation was negated by the learned Judge by holding that the consistent view of this Court is that even part time employees paid from contingent basis are to be regularised if they had put in long years of service. The learned Judge also went to the extent of holding that the first respondent would be entitled to conferment of permanent status. The said reasoning was arrived at after referring to a very large number of reported and unreported decisions of this Court passed both by the Single Judges as well as the Division Benches.

7. We are constrained to express our disagreement. The order dismissing the writ petition filed by the appellant was passed on 10.09.2012. Thereafter, the Hon'ble Apex Court has made two significant pronouncements in *State of Tamil Nadu Vs. R. Govindasamy* reported in (2014) 4 SCC 769 and *State of Tamil Nadu Vs. A. Singamuthu* reported in (2017) 4 SCC 113. On account of these two decisions of the Hon'ble Supreme Court, the entire basis underlying the order dated 10.09.2012 in W.P.(MD) No.983 of 2006 stands totally undermined. The Hon'ble Supreme Court has held that temporarily appointed part time or casual labour will not be entitled to regularisation even if they had put in long periods of service. In fact, the orders passed by this Court were reversed.

8. In this view of the matter, this Court has to necessarily set aside the impugned order dated 10.09.2012 and allow this appeal. This is because the first respondent was employed on temporary basis to do only part time jobs. Such a person can never be regularised in the absence of a definite scheme of regularisation. In this case, no such scheme is in existence.

9. Accordingly, this writ appeal stands allowed. The order dated 10.09.2012 made in W.P.(MD) No.983 of 2006 passed by this Court is set aside. No costs. Consequently, connected miscellaneous petition is closed."

4. In view of the orders passed by the Hon'ble Division Bench cited supra, the present writ petition deserves to be considered. Accordingly, the impugned order dated 20.10.2014 made in Case No.486 of 2010 is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

The Authorized Inspector
under the Tamil Nadu Industrial Establishment
(Conferment of permanent status to the employees)
Act, 1981 / Inspector of Labour,
3rd Circle, Chennai - 600 035.

+1 cc to Mr.C.Munusamy, Advocate, S.R.No.79952

+1 cc to the Government Pleader, S.R.No.80207

W.P.No.10445 of 2017

PVS (CO)
SSM(16/10/2019)

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