

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
24.10.2019	05.11.2019

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and**

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) Nos.567 & 568 of 2018

against W.P(MD)Nos.13054 & 1410 of 2014

and

C.M.P. (MD) Nos.3185, 3186 & 3187 of 2018

1.The Executive Engineer
Tamilnadu Water Supply and Drainage Board
Rural Water Supply Division
N.R.T.Nagar, Theni

2.The Assistant Executive Engineer
Tamilnadu Water Supply and Drainage Board
Maintenance Sub Division
N.R.T.Nagar, Theni

3.The Assistant Executive Engineer
Tamilnadu Water Supply and Drainage Board
Maintenance Sub Division
Lower Camp, Theni District

... Appellants

-vs-

1.The Inspector of Labour,
Theni

... 1st Respondent in
W.A. (MD) No.568 of 2018

2.S.Marudapandi

3.K.Muniyandi

4.S.Sakkappan

5.P.Pandian

6.A.Raja

7.A.Velsamy

8.P.Ochathevan alias Ochu

9.R.Ramar



10.V.Murugan

11.A.Marirasu

12.M.Raja

13.M.Ramamoorthy (Died)

14.V.Kathiresan

15.S.Rajangam

16.M.Illayaraja

17.C.Pandian

18.P.Rameshkumar

19.K.Chellapandi

20.K.Marimuthu

21.M.Sivakumar

22.R.Karuppasamy

23.K.Senrayal

24.D.Gurusamy

25.M.Salik Maideen

26.Kalpanadevi

27.Minor.Manish Bala

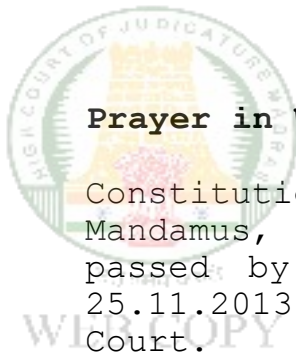
28.Minor.Venu Dhakshana

29.Alagammal

[R26 to R29 are brought on record
as L.Rs.of the deceased M.Ramamoorthy
vide Court Order dated 24.10.2019
made in C.M.P.(MD) Nos.9842 & 9846/2018]

... Respondents 1 to 28 in
W.A.(MD)No.567 of 2018 &
Respondents 2 to 29 in
W.A.(MD)No.568 of 2018

Writ Appeals filed under Clause 15 of Letters Patent to set
aside the common order, dated 07.02.2018, passed in W.P.(MD)
Nos.13054 & 1410 of 2014, on the file of this Court.



Prayer in WP(MD). 13054/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the first respondent to implement the order passed by the Inspector of Labour in Pro. No. 475/2012 dated 25.11.2013 within the time frame as may be fixed by this Honourable Court.

Prayer in WP(MD). 1410/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records pertaining to the Impugned Order bearing Na.Ka. No.475/12 dated 25.11.2013 in C.P. No.1 to 29 except 12, 18, 25, 27, 28 passed by the 1st respondent and quash the same.

For Appellants : Mrs.Porkodi Karnan
(in both appeals)

For Respondents 1 to 24 : Mr.J.Ashok
(in W.A.(MD) No.567/2018) &
For Respondents 2 to 25
23(in W.A.(MD) No.568/2018)

C O M M O N J U D G M E N T

T.S.SIVAGNANAM, J.,

These writ appeals have been filed by the Executive Engineer, Tamil Nadu Water Supply and Drainage Board and two others (hereinafter, referred to as "the Management") challenging the common order, dated 07.02.2018, passed in W.P.(MD) Nos.13054 and 1410 of 2014.

2. The respondents / workmen filed W.P.(MD) No.13054 of 2014 praying for a direction to the appellant / Management to implement the order, dated 25.11.2013, passed by the Inspector of Labour, Theni, in Pro.No.475/2012.

3. The appellant / Management filed W.P.(MD) No.1410 of 2014 seeking to quash the order, dated 25.11.2013, bearing Na.Ka.No.475/2012, passed by the Inspector of Labour, Theni, in C.P.Nos.1 to 29, except C.P.Nos.12, 18, 25, 27 and 28.

4. By the common order, dated 07.02.2018, the writ petition in W.P.(MD) No.1410 of 2014 filed by the appellant / Management was dismissed and the writ petition in W.P.(MD) No.13054 of 2014 filed by the respondents / workmen was allowed.

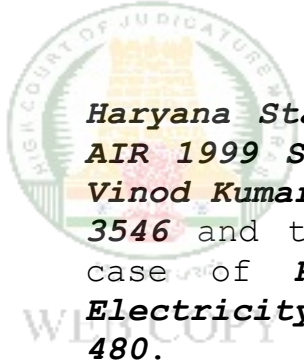


5. Mrs.Porkodi Karnan, learned Standing Counsel appearing for the appellant / Management, elaborately referred to the factual position, which led to the filing of the petitions before the Inspector of Labour, Theni and how the claims of the respondents / workmen were wholly unsustainable. It is submitted that the learned Writ Court erroneously concluded that there was evidence to establish that the respondents / workmen had completed 480 days of continuous service in 24 calender months. It is further submitted that the learned Writ Court erred in concluding that the respondents / workmen are the direct employees of the appellant / Management, when such fact was not proved by the respondents / workmen. It is further submitted that all the respondents / workmen were contract labourers and they can never be termed as direct employees of the appellant / Management in the absence of any proof to show that wages / salary was paid to them by the appellant / Management. Further, it is submitted that sofar as the appellant / Management is concerned, the State Government has not issued any notification prohibiting the engagement of contract labourers for implementing water supply scheme and in the absence of any notification under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, the respondents / workmen cannot claim absorption as permanent employees of the appellant / Management. Further, it is submitted that there are several decisions of the Honourable Supreme Court, wherein, it has been held that the contract labourers, who are engaged in a scheme work, cannot claim regularization of services.

6. The learned Standing Counsel appearing for the appellant / Management had elaborately referred to the findings recorded by the Inspector of Labour with a view to demonstrate that the order passed by him is erroneous and the learned Writ Court ought to have interfered with the order passed by the Inspector of Labour, and set aside the same.

7. Mr.J.Ashok, learned counsel appearing for the respondents / workmen, submitted that the Inspector of Labour conducted an elaborate exercise and arrived at a factual finding that the respondents / workmen have been engaged for a continuous period of 480 days in 24 calender months and thereby, entitled for being absorbed as regular employees. Further, the Inspector of Labour assessed the nature of the work and recorded a factual finding that the work assigned to the respondents / workmen is perennial in nature. Further, various decisions of the Division Bench of this Court have been referred to by the Inspector of Labour in his order and the reasons assigned by him are cogent and the learned Writ Court has rightly dismissed the writ petition filed by the appellant / Management challenging the order of the Inspector of Labour.

8. The learned counsel appearing for the respondents / workmen, in support of his contentions, placed reliance on the decisions of the Honourable Supreme Court in the case of **Secretary,**



Haryana State Electricity Board vs. Suresh and others, reported in **AIR 1999 SCC 1160** and **Bhilwara Dugdh Utpadak Sahakari S. Ltd. vs. Vinod Kumar Sharma dead by L.Rs. and others**, reported in **AIR 2011 SC 3546** and the decision of the Division Bench of this Court in the case of **R.Lakshmi vs. Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai and another**, reported in **(2012) 6 MLJ 480**.

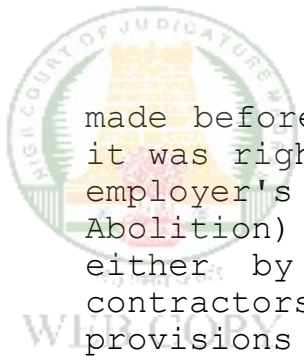
9. It is further submitted by the learned counsel appearing for the respondents / workmen that during the pendency of the writ appeals, one of the respondents / workmen, namely, M.Ramamoorthy passed away and his legal heirs have been brought on record. With the above submissions, the learned counsel for the respondents / workmen prayed for sustaining the order passed by the learned Writ Court.

10. We have heard the learned counsel for the parties.

11. Before we venture to consider the correctness of the order passed in the writ petitions, we need to take note of the legal position as to the scope of interference by the Writ Court exercising jurisdiction under Article 226 of the Constitution of India, while testing the correctness of the order passed by the Inspector of Labour, who is the competent authority constituted under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

12. The legal position is well settled so to state that unless there is perversity in the approach of the Tribunal, the Writ Court should not normally interfere with the factual findings recorded by the Tribunal on appreciation of the evidence placed before it. If the Tribunal had ignored the relevant documents and rendered a finding, which no reasonable person can arrive at, in such cases, it has been held that the Writ Court can step in and interfere with the orders passed by the Tribunal. Bearing this legal principle in mind, we need to test the correctness of the order passed by the Inspector of Labour.

13. As rightly pointed out by the learned counsel for the respondents / workmen, the Inspector of Labour has passed a well reasoned order. The appellant / Management has not been able to point out any perversity in the approach of the Authority. The sheet anchor of the arguments of Mrs.Porkodi Karnan, learned Standing Counsel appearing for the appellant / Management, is that no notification was issued by the Tamil Nadu Government prohibiting engagement of contract labourers by the appellant / Management. Thus, it is contended that in the absence of any prohibition by way of notification under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, the appellant / Management is not prohibited from engaging contract labourers. This submission was



made before the learned Writ Court and the same was considered and it was rightly held that the appellant / Management had not obtained employer's license under the Contract Labour (Regulation and Abolition) Act, 1970. In the absence of any such licenses obtained either by the appellant / Management or by their individual contractors, the appellant / Management cannot fall back on the provisions of the said Act to contend that there is no prohibition notified by the State Government under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970.

14. The learned Writ Court took note of the Judgment of the Division Bench of this Court, dated 24.08.2012, in W.A.No.1644 of 2012, wherein a similar contention was rejected. The finding rendered by the learned Writ Court stating that the Board cannot take advantage of its own wrong is well founded. The evidence placed before the Inspector of Labour was considered and it has been found that the respondents / workmen have worked continuously for a period of 480 days in 24 calender months, which would entitle them to be regularized in service.

15. The Inspector of Labour rightly took note of the decision of the Honourable Supreme Court in the case of **Suresh** (supra), wherein it has been held that if the contractor was not a licensed contractor under the relevant Act, the inevitable conclusion that had to be reached was to the effect that the so-called contract system was a mere camouflage, smoke and a screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the Board, on the one hand, and the employees, on the other hand, could be clearly visualised.

16. Further, the Division Bench of this Court in the case of **R.Lakshmi** (supra) has held that Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 unerringly points out that it is the duty of an employer to confer permanent status on a workman / employee who had completed 480 days of work in a period of 24 calender months. At this juncture, it would be relevant to refer to the decision of the Division Bench of this Court in the case of **Mamundiraj N. and others vs. Bharat Heavy Electricals Ltd., Trichy and another**, reported in **1999-I-LLJ-622**, wherein it has been held that for conferment of permanent status on a workman, he is required to work in an industrial establishment for a period of 480 days in the preceding 24 calender months. Interrupted period of service for no fault of workman cannot be unaccounted for the purpose of calculating 480 days of continuous service. Further, it has been held that the Management cannot be permitted to dwell in unfair labour practices, which are camouflaging the workmen as casual labourers or contract employees.

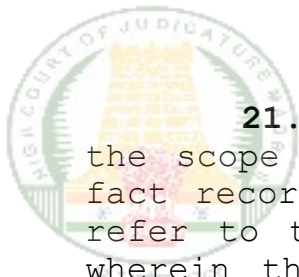


17. The contention advanced before us is similar to the contention advanced by the employer in the case of **Superintending Engineer, Vellore Electricity Distribution Circle, Vellore and others vs. Inspector of Labour, Perambalur and others**, reported in (2004) 3 LLN 598 and the same was rejected by holding that the fact about the engagement of the services of the concerned workmen was never disputed by the Board and the only stand was that since they were all contract workmen, they were not entitled for any benefit to be conferred under the provisions of the Act. It was held that even though such was the stand, except the *ipsi dixit* of the stand taken in the counter filed by the Management, nothing was placed before the Inspector of Labour.

18. Further, in the case of **R.Lakshmi** (supra), the Division Bench of this Court has noted that in the case of **S.Vijayalakshmi vs. Tamil Nadu Water Supply and Drainage Board**, reported in (2005) 3 MLJ 322, it was held that perusal of the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 make it clear that it casts an obligation on the employer to confer permanent status on an employee who has completed 480 days work in course of two years.

19. In the case of **Hindustan Petroleum Corporation Ltd., (represented by its Chairman-cum-Managing Director), Mumbai and another vs. Presiding Officer, Central Government Labour Court-cum-Industrial Tribunal, Chennai and another**, reported in (2009) 1 MLJ 115, it was held that once there is a valid State enactment providing for relief to such of those workmen deemed permanency to those who had completed 480 days of service within a period of two calendar years then, such workmen getting permanent status cannot be questioned by any management. Such conferment of permanent status to the workmen cannot be labelled as violation of Articles 14 and 16 of the Constitution. The effect of a local enactment conferring permanent status to workmen was never considered by any Court so far.

20. In the case of **R.Lakshmi** (supra), the Division Bench of this Court has pointed out that in terms of the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, even if no order of regularisation is passed, a person is deemed to have been regularised as per Section 3(1) of the said Act, after completing 480 days of work in a period of 24 calendar months. It was further held that even in a case, a person / employee has worked for more than 240 days in a year and if the Employer / Management fails to produce proper documentary evidence like voucher, record, etc., an adverse inference can be drawn to the effect that the plea projected by the said person is a trustworthy and a fruitful one.



21. In the preceding paragraphs, we have pointed out about the scope of interference by a Writ Court on the findings of the fact recorded by the Tribunal. In this regard, it is relevant to refer to the decision in the case of **Vinod Kumar Sharma** (supra), wherein the Honourable Supreme Court, on going through the order passed by the Labour Court, as affirmed by the High Court, held that the findings of fact recorded by the Labour Court that the employees therein are not the employees under the Contractors, cannot be interfered in a petition under Article 226 of the Constitution of India.

22. In the case of **Suresh** (supra), the Honourable Supreme Court pointed out that the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 ought to be read and interpreted so that social and economic justice may be achieved and the constitutional directive be given a full play. Further, interpreting the provisions of the said Act, the Honourable Supreme Court pointed out that in the event, the contract labour is employed in an establishment for seasonal workings, question of abolition would not arise but in the event of the same being of perennial in nature, that is to say, in the event of the engagement of labour force through intermediary which is otherwise in the ordinary course of events and involves continuity in the work, the legislature is candid enough to record its abolition since, involvement of contractor may have its social evil of labour exploitation and thus the contractor ought to go out of scene bringing together the principal employer and the contract labourers, rendering the employment as direct, and resultantly a direct employee.

23. Thus, for the above reasons, we find that there is no error in the order passed by the learned Writ Court.

24. In the result, both the writ appeals fail and the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

krk



To:

The Inspector of Labour,
Theni.

WEB COPY

+1 CC to M/s.PORKODI KARNAN, Advocate SR-95987.
+1 CC to M/s.J.ASHOK, Advocate SR-96005.

COMMON JUDGMENT
IN
W.A. (MD) Nos.567 & 568 of 2018
and
C.M.P. (MD) Nos.3185, 3186 & 3187 of 2018
05.11.2019

CS (20.11.2019) 9P 4C