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W.P.MD).No.5317 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.MD).No.5317 of 2015

and

M.P. (MD)Nos.1 to 3 of 2015

and

W.P.MD).No.15037 of 2015

and

M.P. (MD)No.1 of 2015

W.P.MD).No.5317 of 2015

The Executive Officer
Arulmigu Muppandal,
Esakkiamman Temple (East),
Araivaimozhi Post,
Kanyakumari District.

.. Petitioner

Vs.

1.The Inspector of Labour,
Nagercoil,
Kanyakumari District.
2.N. Arumugam,
3.The Assistant Commissioner
HR & CE Department,
Kottar, Nagercoil,
Kanyakumari District.

.. Respondents

Prayer: 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 from the first respondent Labour Inspector, Nagercoil, relating to the Impugned award passed by him in his Proceedings in Na.Ka. No. 1216/2013 dated 04.07.2014 and quash the same.

For Petitioner	: Mr.K.Sathiya Singh
For R1	: Mr.M.Jeyakumar Additional Government Pleader
For R2	: Mr.N.Sivakumar
For R3	: Mr.D.Muruganandam Additional Government Pleader

W.P. (MD)No.15037 of 2015

The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Nagercoil, Office at Vadiweewaram,
Nagercoil- 2, Kanniyakumari District.

.. Petitioner



Vs.

1.The Inspector of Labour
Nagercoil, Kanyakumari District.

2.N. Arumugam,

3.The Executive Officer

Arulmigu Muppandal Essakiamman Temple (East),
Aralavaimozhi Post, Kanyakumari District.

.. Respondents

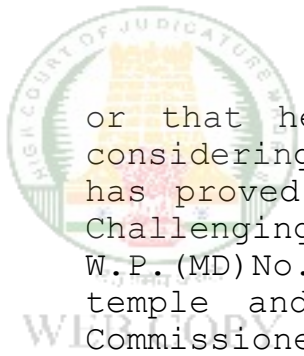
Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records from the first respondent Inspector of Labour, Nagercoil relating to the impugned award passed by him in his proceeding in Na.Ka. No.1216/2013 dated 04.07.2014 and quash the same and to grant such further or other orders as this Honble Court.

For Petitioner	: Mr.D.Muruganandam Additional Government Pleader
For R1	: Mr.M.Jeyakumar Additional Government Pleader
For R2	: Mr.N.Sivakumar
For R3	: Mr.K.Sathiya Singh

COMMON ORDER

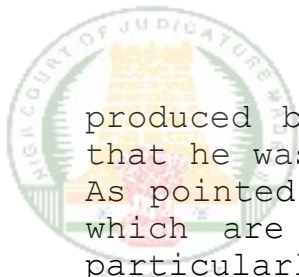
These Writ petitions are filed to issue a Writ of Certiorari, to quash the impugned award passed by the first respondent/ the Labour Inspector, Nagercoil, in Na.Ka. No. 1216/2013 dated 04.07.2014.

2. The petitioner, in W.P.(MD)No.5317 of 2015, is the Executive Officer of a public temple, which is listed under Section 46 (3) of the Tamil Nadu Hindu Religious & Charitable Endowments Act. The second respondent filed a petition before the Inspector of Labour, Nagercoil, seeking conferment of permanent status in the petitioner temple, stating that the second respondent was working as an Assistant in the temple from 1992 to 2007. The said petition was allowed after holding that the petitioner was engaged in the temple from 2001 to 2007 by giving daily wages at Rs.25/- per day. The Inspector of Labour, considering the fact that the petitioner was appointed in the temple in the year 2001 to help the 'Melsanthi' and other temple activities, held that the second respondent is entitled to conferment of permanent status under Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, [herein after referred to as 'the Act'] as the petitioner has proved that he has worked in the temple for more than 480 days continuously within a period of two years. It is contended by the petitioners that the second respondent was engaged by Maleshanthi (person performing pooja) to assist him and that he was never employed by the temple. The temple has not produced any records to show that the second respondent was not given attendance



or that he was not in the pay roll. The Inspector of Labour considering the facts made an inference that the second respondent has proved that he worked for 480 days in a period of two years. Challenging the order of Inspector of Labour, the writ petition in W.P.(MD)No.5317 of 2015 is filed by the Executive Officer of the temple and W.P.(MD)No.15037 of 2015 is filed by the Assistant Commissioner of HR & CE Department.

3. The learned counsel for the petitioner submitted that the Inspector of Labour considered the irrelevant facts and came to the conclusion that the petitioner is entitled to permanent status. It is further submitted that there was no relationship between the petitioner and the second respondent as "employer and employee", as the second respondent was engaged and to help the 'Melsanthi' of the temple, who was to perform pooja and other religious rites in the temple. It is further submitted that there is no record submitted by the petitioner to prove that he rendered any service for more than 480 days in two years. The learned counsel for the petitioner raised a legal issue as to the applicability conferment of permanent status in the petitioner temple, which is a religious institution. Since the employment or engagement of service of the temple are covered by the specific Rule framed under the Hindu Religious & Charitable Endowments Act, it is stated that the Act is not applicable to the petitioner temple in general. As against the submission of the learned counsel for the petitioner, the learned counsel for the second respondent filed his typed set and submitted that the inter communications between the Executive Officer of the temple and the joint commissioner and other records would show that the second respondent was employed in the temple and received salary from the temple. Though a resolution is stated to have been passed by the Thakkar and recommendation of officials of the Hindu Religious & Charitable Endowments Department to engage the second respondent on a daily wages to the temple from 2001, are found there is no order of appointment. The particulars regarding payment of salary to the second respondent or expenses incurred by the temple for the particular employee for paying daily wages are not produced. The documents produced by the second respondent would show that the petitioner was employed in the temple sometime from 2001 and hence, this Court is able to see that the findings of the Inspector of Labour is based on material. First of all, the stand taken by the petitioner before the Inspector of Labour is that the second respondent was never employed by the temple at any point of time. This stand has been contradicted by stating that the contention of the second respondent that he had worked for more than 480 days in more than 2 years is incorrect. The petitioner is such a situation should produce relevant documents or at least the salary register for disbursing salary for employees on daily wages. The petitioner has taken a definite stand before the Inspector of Labour. But no such records were produced before this Court. When the petitioner's counsel is confronted with certain documents, the learned counsel for the petitioner has stated that no records were



produced by the second respondent before the Inspector of Labour that he was engaged for more than 480 days in a period of two years. As pointed out earlier, it is for the petitioner to produce records which are maintained in the course of administration of temple, particularly, the disbursement of salary to the second respondent and other employees. The second respondent produced the judgment in the criminal case when in the second respondent is stated to be an employee of temple. When the petitioner has failed to produce such relevant records which would establish the facts with more accuracy adverse inference can be drawn against the petitioner. Regarding maintainability of the petition by the second respondent before the first respondent / Inspector of Labour and the applicability of conferment of permanent status Act to the petitioner temple, it is stated that the second respondent was engaged as an Assistant and therefore, he is not a workman. No specific provision either in the Rules framed under the Hindu Religious & Charitable Endowments Act or in the Hindu Religious & Charitable Endowments Act is pointed out before this Court to show that the Act would not be applicable to temple. However, it is acceptable that the religious institution can also be an establishment and that the workman employed therein would come under the definition of Workmen Act under Industrial Disputes Act and hence the second respondent can maintain a petition under the Act. Hence, the submission of the learned counsel for the petitioner has no substance. However, a stand was taken by the petitioner that there was some charges against the second respondent and that the second respondent left the temple and he did not continue after 2007. In such circumstances, the question as to whether the second respondent was in service in the temple on permanent basis or not is not decided by the first respondent. Similarly, it is also admitted that a case was registered under Section 420 I.P.C. against the second respondent and others. Though the criminal case was ended in acquittal, it is stated that the acquittal was not honourable. However, it is stated that the second respondent was orally permitted to join, but he was not re-instated thereafter. It is only due to non employment. It is seen that the second respondent had approached the Inspector of Labour for getting permanent status under the 'Act'. The fact that the second respondent was engaged on daily wages at the rate of Rs.25/- per day is admitted. In such circumstances, this Court is inclined to pass the following order:

"These writ petitions stand dismissed and the orders of first respondent impugned in the writ petitions are confirmed. However, by getting permanent status, it cannot be deemed that the second respondent should be regularised in the service with effect from the date of non employment. The official respondent shall reinstate the petitioner and pay salary treating him as daily wager. Thus, the second respondent is entitled to get benefits of the conferment of permanent status from the date of the order of the first respondent/Assistant Commissioner of Labour."



No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

Ls

To

1.The Inspector of Labour,
Nagercoil, Kanyakumari District.

2.The Assistant Commissioner
HR & CE Department,
Kottar, Nagercoil,
Kanyakumari District.

3.The Executive Officer
Arulmigu Muppandal Essakiamman Temple (East),
Aralavaimozhi Post, Kanyakumari District.

+1 CC to M/s.N.SIVAKUMAR, Advocate (SR-98483[F] dated 15/11/2019)
+1CC TO Mr.K.Sathiya Singh, Advocate, Sr.No.98508
+1 cc to Special Government Pleader, Sr.No.98402

W.P.MD).Nos.5317 and 15037 of 2015
13.11.2019

SMA/16/12/19/5P/7C