



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2020

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

**W.P. (MD)No.18955 of 2014
and
M.P(MD) .Nos.1 and 2 of 2014**

The Managements
Rep by The Executive Officer,
Uppidamangalam Town Panchayat,
Uppidamangalam Post,
Puliyur C.F.Via,
Karur District.

... Petitioner

Vs.

1. The Inspector of Labour,
Karur.

2.R.Arumugam

3.G.Rathinam

4.R.Ramasamy

S/o.Govindasamy

Rep by the General Secretary,

Karur District Rural Development & Panchayat Raj

Department, Workers Association,

Registration No.42, Karur Jount(CITU),

5, Tollgate,

Karur-3.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of impugned order passed by the 1st respondent in No.A/927/2009 dated 04.09.2014 dated and quash the same as illegal, arbitrary and without jurisdiction.

For Petitioner : Mr.D.Muruganandham
Additional Government Pleader

For R2 to R4 : Mr.R.Subramanian

For R1 : No appearance



ORDER

The impugned order passed by the Inspector of Labour, dated 04.09.2014, is under challenge in the present writ petition.

2.The writ petitioner is the Executive Officer, Uppidamangalam Town Panchayat. The contention of the writ petitioner is that the Town Panchayat is a Government Body and does not fall within the definition of "Industrial Establishment" and therefore, the impugned order passed by the Inspector of Labour under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981[hereinafter referred to as 'the Act'], is not sustainable. By filing a petition before the first respondent, the fourth respondent Sangam filed another writ petition to regularize the services of the respondents 2 to 4, who are all the members of the said Sangam.

3.The writ petitioner Town Panchayat states that four issues were framed by the Inspector of Labour as under:

"a. Whether the TN Industrial Establishments (Conferment of Permanent Status to Workmen) Act will apply to the town panchayat?

b. Whether the respondents No.2 to 4 come within the explanation of the term 'workmen' under the Act?

c. Whether the respondents No.2 to 4 have continuously worked for 480 days in 24 calendar months?

d. Whether the respondents No.2 to 4 qualify to be permanent workmen? If so, from which date?"

4.The impugned order dated 04.09.2014 deals with the first two issues with reference to the maintainability and applicability of the Act to the petitioner Town Panchayat and the first respondent has answered the first issue that the petitioner had not denied the applicability of the Act to it and therefore, the petitioner Town Panchayat comes under Section 2(3)(g) of the Act. As far as the second issue, the first respondent had answered that the petitioner Town Panchayat failed to prove that the respondents 2 to 4 did not work in the Town Panchayat with relevant documents and therefore, the petitioner Town Panchayat had accepted the payment of salary to the respondents 2 to 4.

5.The learned Additional Government Pleader states that unless the Town Panchayat falls under the definition of Section 2(3) of the Act, the first respondent cannot assume jurisdiction to exercise the power for passing of an award granting the benefit of permanent status. Therefore, the finding of the first respondent that the petitioner Town Panchayat comes under Section 2(3)(g) of the Act as the Industrial Establishment, is unsustainable and is to be set aside. Therefore, the contention that the respondents 2 to 4 come under Section 2(4) of the Act, is also untenable.



6. At the outset, the first respondent has no jurisdiction to entertain the application for grant of regularization of the services of the employees working in Town Panchayat, in view of the fact that already the Statute viz., the Tamil Nadu District Municipalities Act and Service Regulations are also available for the purpose of regularizing the services of the employees working in various Town Panchayats across the State of Tamil Nadu.

7. This Court is of the considered opinion that the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, is a General Law. The Tamil Nadu District Municipalities Act as well as the Service Regulations to be constituted under the said Act are the Special laws. Thus, the Special Laws will prevail over the General law and accordingly, the employees of the Town Panchayats across the State of Tamil Nadu are governed under the Special Law viz., Tamil Nadu District Municipalities Act and all other consequential Service Regulations as well as the Government Orders passed by invoking the power under the said Act as well as the Regulations.

7. The Special Law will prevail over the General law. The first respondent, thus, erroneously entertained the petition filed under the provisions of the Act. The appointments, regularization and permanent absorption are governed by the Statute as well as the Service Regulations as applicable to the Town Panchayats across the State.

8. Thus, the first respondent has committed an error in exercising the jurisdiction by entertaining the application under the provisions of the Act. This Court has considered the principles in similar circumstances in W.P.Nos.9265 of 2013, etc batch, dated 23.11.2020, and the relevant paragraphs are extracted hereunder:

"33. The learned Senior Advocate for the respondents workmen is of the opinion that the conferment of permanent status Act is a Special Act, as far as the petitioner establishment is concerned. The TWAD Board Act is the General Law and therefore, the Special Act viz., the Permanent Status Act must be applied as far as the present case is concerned. The said proposition is disputed by the learned Senior Counsel appearing on behalf of the petitioners TWAD Board.

34. This Court is of the considered opinion that when the TWAD Board is an instrumentality of the State within the meaning of Article 12 of the Constitution of India and the Service Regulation of the year 1972 is applicable regarding appointments, regularization or



permanent absorption is concerned, then, the said Law governing the service conditions of the employees of the W.p(MD).Nos.9265 of 2013 TWAD Board are to be construed as Special Law and the conferment of permanent status, which would be applicable to all the Industrial Establishments across the Country is to be considered as General Law. Thus, it is unambiguous that the Service Regulations 1972 framed by the TWAD Board under the powers conferred under the TWAD Board Act would be the Special Law for the purpose of recruitment, grant of permanent absorption or otherwise.

37.The legal principles as well as the ratio decidendi laid down by the Constitution Bench of the Hon'ble Supreme Court of India in Umadevi's case had not been considered either by the Inspector of Labour or in the judgment cited by the learned Senior Advocate for the Workmen. In view of the fact that the applicability of the Conferment of Permanent Status Act to the TWAD Board employees as well as the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India are not considered, this Court is bound to follow the binding precedent of the Constitution Bench of the Hon'ble Supreme Court of India, as the same became the law of the Land under Article 141 of the Constitution of India."

9.In view of the principles laid down though the Special Act will prevail over, in the present case, the Tamil Nadu District Municipalities Act as well as the Service Regulations framed to regularise the service condition of the employees working in the Town Panchayat would be applicable and therefore, the General Law viz., the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, cannot be made applicable so as to grant the benefits of regularization or permanent absorption to the temporary employees working under Town Panchayat. Thus, the impugned order is perverse and is not in consonance with the settled principles of law. Consequently, the impugned order passed by the first respondent in proceedings No.A/927/2009 dated 04.09.2014, is quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

The Managements
Rep by The Executive Officer,
Uppidamangalam Town Panchayat,
Uppidamangalam Post,
Puliyur C.F.Via,
Karur District.

+1cc to Mr.R.Subramanian, Advocate in SR.No.26350
+1cc to The Special Government Pkader in SR.No.26836

W.P. (MD) No.18955 of 2014
18.12.2020
2/2

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