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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.1460/2013 and M.P.No.1/2013

The Special Officer,
S-672, Attur Agricultural Producers
Co-op. Marketing Society Limited,
Pudupettai Post,
Attur, Salem District.

... Appellant/Petitioner

-vs-

1. The Labour Inspector,
Authority under Tamil Nadu
Industrial Establishment
(Conferment of Permanent
Status) Act of 1981,
Office of Labour Inspector,
Salem-7.
2. K.Raja
3. P.Alagesan
4. D.Madhavan
5. S.Lakshmanan
6. K.Rajamanickam
7. N.Periyasamy
8. Jayaran
9. Chinnaiyan
10. Bharathi Raja
11. Raghupathy



12. G.Selvakumar

13. K.Dhamodharan

14. R.Velmurugan

15. P.Velanan

16. R.Prakash

17. R.Velmurugan

18. M.C.Raman

19. T.Periasamy

20. P.Ponvelavan

21. K.Bhoopathy

22. J.Chinraj

23. A.Manickam

24. K.Thangavel

25. J.Kannan

26. M.Periyasami

27. K.Veerasami

28. S.Chinnasamy

29. K.Perumal

30. C.Mahalingam

31. M.Lakshmanan

32. M.Annamalai

33. R.Gopal

34. K.Kumar

35. K.Rangan

36. M.M.Murugesan



37. C.Chandran

38. K.Govindaraj

39. G.Paramasivam

40. G.Sivakumar

...Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 27.11.2012 made in W.P.No.17355/2005 by a learned Single Judge of this Court.

Prayer in W.P.No.17355 of 2005: Call for the records on the file of the Labour Inspector, Authority under Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act of 1981, in Na.Ka.No.6737 of 2001 and quash the order dated 05.05.2004.

For Appellant : Mr.M.R.Raghavan

For 1st Respondent : Mr.T.Arunkumar,
Government Advocate

For respondents : Mr.K.V.Shanmuganathan
2 to 10, 12 to 14,
17 to 20, 22, 26,
30, 32, 33 and 40

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA.J)

This Writ Appeal has been directed against the order dated 27.11.2012 made in W.P.No.17355/2005 by a learned Single Judge of this Court.

2. Mr.M.R.Raghavan, learned Counsel appearing for the appellant would submit that the 39 private respondents, are not entitled for any relief as against the appellant herein as there was no any contract of employment existed between them. This vital aspect has been overlooked by both the Labour Inspector, an Authority under Tamil Nadu Industrial Establishment



(Conferment of Permanent Status) Act of 1981 and also the learned Single Judge of this Court. When the private respondents wanted conferment of permanent status on completion of 240 days within 12 calendar months, they should have established the direct employment and proved the same on the basis of the oral and documentary evidence which they have not discharged. Therefore, the impugned order passed by the learned Single Judge is erroneous. Hence, the same is also liable to be interfered with, he pleaded.

3. Learned Counsel for the appellant would further submit that the ratio laid down by the Apex Court reported in 1974 S.C.C. (L & S) 331 in Silver Jubilee Tailoring House and Others v. Chief Inspector of Shops and Establishments and another may not be applicable to the facts of the present case. Further, the ratio laid down by the Hon'ble Apex Court in the case of Dharangadhra Chemical Works Limited v. State of Saurashtra and others, reported in A.I.R. 1957 Supreme Court 264(1) also cannot be made applicable to the present case for the reason that the private respondents are employed to do the works of the members of the society. Hence the relief granted by the authorities below are liable to be set aside. More over, the 39 private respondents have not even demonstrated before the authority concerned or the learned Single Judge that they have satisfied the definition of 'workmen' as contemplated under Section 2(4) of the Permanency Act. As they were not employed in the Industrial Establishment and the appellant being a Society, they cannot be brought under the definition of 'workmen'. Therefore, when the 39 private respondents have not even established with sufficient evidence that they were all employed by the appellant continuously for 240 days within 12 calendar months and that they have not even substantiated that they have satisfied the definition of 'workmen' as contemplated under Section 2(4) of the Permanency Act, the impugned order passed by the learned Single Judge is liable to be set aside, he pleaded.

4. Heard Mr.T.Arunkumar, learned Government Advocate appearing for the 1st respondent and Mr.K.V.Shanmuganathan, learned Counsel for the respondents 2 to 10, 12 to 14, 17 to 20, 22, 26, 30, 32, 33 and 40.

5. At the outset, it is pertinent to mention that the appellant is a Society constituted in accordance with the provisions of the Tamil Nadu Co-operative Societies Act. Since the 39 private respondents, namely, respondents 2 to 40, have been issued with Identity Cards by the appellant Society, it appears that they were also accommodated to carry out the work



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of the appellant society. The 1st respondent, considering the fact that the appellant society is a marketing society and the nature of the work executed by the private respondents are loading and unloading, came to the conclusion that without the services of the private respondents, the appellant society cannot function even for a single date. Again, the 1st respondent Labour Inspector, the Authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act of 1981 came to a vital aspect that the wages were also paid on piece rate basis by the appellant society to the private respondents for which the supervisory functions were also carried out by the appellant society. Therefore, whenever wage revision took place, the same was also applied to the private respondents. On this score, finding that there was a contract and payment of salary made to all the 39 private workers accepting that all the 39 private respondents have been working continuously and they were also issued with Identity Cards by the appellant Society, the Labour Court, the 1st respondent herein has rightly come to the conclusion that there was a relationship of employer and employee or master and servant between the appellant and the private respondents herein. When the findings given by the 1st respondent speaks voluminous evidence that the 39 private respondents were continuously working, managed and paid by the appellant society, the appellant had at no point of time either before the 1st respondent, namely, the authority under the conferment of Permanent Status Act, 1981 or the learned Single Judge pleaded that they did not work for 240 days continuously within a period of 12 calendar months. Therefore, the learned Single Judge has also rightly come to the conclusion that the findings given by the 1st respondent on the basis of the oral and documentary evidence that the 39 private respondents are employees of the appellant society cannot be triggered with.

6. We are also not able to find any infirmity or illegality in the impugned order of the learned Single Judge of this Court, confirming the order of the Labour Court, an Authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act of 1981 holding that all the 39 private respondents were issued with Identity Cards by the appellant to extract the loading and unloading work of the appellant society. Moreover, as there was no any contention placed before the authority or the learned Single Judge that the 39 private respondents have not rendering 240 days of continuous service, we are unable to find any justification to interfere with the impugned order.

7. In the result, the Writ Appeal fails and the same is



accordingly dismissed. No costs. Consequently, connected
Miscellaneous Petition is also closed.

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Sd/-
Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

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To

The Labour Inspector,
Authority under Tamil Nadu
Industrial Establishment
(Conferment of Permanent
Status) Act of 1981,
Office of Labour Inspector,
Salem.

+1cc to M/s. K.V.Shanmuganathan, Advocate, S.R.No.35796
+1cc to Mr.M.R.Raghavan, Advocate, S.R.No.35440
+1cc to the Government Pleader, High Court, Madras, S.R.No.35968

W.A.No.1460/2013

SJ (CO)
SU (16/08/2021)