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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 23.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.38193 of 2005

and

W.M.P.No.40833 of 2005

(Through Video Conference)

M/s. The Puthutotam Estates (1943) Limited,
Kurangumudi Estate,
Rep. by its Assistant Manager,
Mr.Balaji Parthasarathy,
Kurangumudi Estate,
Valparai 642 147

...Petitioner

Vs

- 1) Mr.T.Senthil Kumar
- 2) The Inspector of Plantations,
Valparai 642 127
Coimbatore District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in respect of the order bearing No.B/312/2004 dated 27.06.2005 passed by the second respondent and quash the same.

For Petitioner : Mr.P.Rakesh for Mr.L.Rajasekar

For R-1 : Ms.Rita for
Mr.P.V.Bakthavatchalam

O R D E R

Seeking to call for the records in respect of the order bearing No.B/312/2004, dated 27.06.2005 passed by the second respondent and quash the same, the petitioner has approached this Court by way of filing this Writ Petition.



2. The petitioner has come forward with the present Writ Petition, challenging the Order of the Authority, dated 27.06.2005 conferring permanent status to the first respondent from December 2000. It is not in dispute that the Authority is empowered to pass an order under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act 1981, [hereinafter referred to as the 'Act'] and the proceedings contemplated under the said Act is only a summary. He can enter into the premises, verify the records and thereafter, pass an order even without an application by an Employee, based on the records maintained by the Employer. The Employee should have filed the permanent status request before his termination, dated 03.09.2003. He, being a temporary employee, having raised an Industrial Dispute under section 2 (A) of the Act, should have pursued the dispute and in case, the non-employment is not justified, the Labour Court, even though he is a temporary employee, is empowered to direct permanent employment under the Employer on the ground that the Employee had rendered more than 480 days of continuous service in a period of 24 calendar months, taking note of this fact that the employee will be deemed to be a permanent employee based on the Award, as normally no industrial dispute is concluded in two years.

3. The finding of the Authority, based on the records that, he has rendered 505 working days in a period of 24 calendar months, may be a corroborative evidence to establish his case and that the Employee had attained the permanent status in terms of Section 3 of the Act. If an Employee is dismissed / divested of his duties from service during the pendency of the permanent status case, the permanent status case can be proceeded with and a finding can be rendered de hors termination / non-employment. But, if the Employee is divested of his duties, the remedy for the Employee is to pursue a remedy under the Industrial Disputes Act, 1947 and not to claim permanent status under the 1981 Act, as he cannot file an application under the Permanent Status Act, as in view of non-employment, the employer-employee relationship no longer exists.

4. The Permanent Status issue will be an incidental issue to be decided by the appropriate Labour Court or Tribunal in a dispute raised under Section 2 A of the Act. Hence, after non-employment, no Employee can file a permanent status case, even though the Employee might have attained deemed permanent status. Even assuming for the sake of argument, that in the present case on hand, the Employee had attained a permanent status, since he has been divested of duty on 03.09.2003, he will be entitled to the benefit, only after the Award in industrial dispute.



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5. Heard Mr.P.Rakesh, learned counsel appearing for the petitioner and Ms.Rita, learned counsel appearing on behalf of the respondents and also perused the materials placed before this Court.

6. As the Employee was not in service when the permanent status case was filed, I find much force in the contention of the Employer and the Writ Petition stands Allowed, thereby quashing the order bearing No.B/312/2004 dated 27.06.2005 passed by the second respondent and the same is set aside. It is needless to mention that it is open to the Employee to pursue the Industrial Dispute raised by him, if not already disposed of.

However, there shall be no order as to costs. Consequently, connected W.M.P.No.40833 of 2005 is closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To:

The Inspector of Plantations,
Valparai 642 127
Coimbatore District.

+2ccs to Mr.J.Saravanel, Advocate, S.R.No.34916, 35369

+1cc to M/s.L.Rajasekar, Advocate, S.R.No.35784

Order made in
W.P.No.38193 of 2005

SR-II (CO)
SU(06/10/2021)