

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.5659 of 2021

Tamil Nadu Fisheries Development Corporation Ltd.,
represented by its Manager,
TNFDC Ltd., Aliyar Unit,
Coimbatore District.

...Petitioner

Vs.

1. The Inspector of Labour,
Coimbatore.
2. M.Indrani
3. Duraisamy
4. Masilamani
5. T.Ramamurthy
6. C.Senthilraj
7. S.Deivanai
8. P.Dhanalakshmi
9. K.Murugan
10. V.Tirupathi Venkatachalapathy

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records of the order passed by the 1st Respondent in Na.Ka.No.E2877/2015, dated 24.05.2017 and to quash the same.

For Petitioner : Mr.P.Paramasiva Doss
For Respondents 2 to 10 : Mr.V.Ajoy Khose

O R D E R

Petitioner/Management has come up with this Writ Petition challenging the order dated 24.05.2017 passed by the 1st Respondent/Inspector of Labour, Coimbatore, under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, hereinafter referred to as '1981 Act'.

2. According to the Petitioner/Management, Respondents 2 to 10 herein have been working under them. However, they have not been recruited through Employment Exchange and they have not produced any evidence to the effect that they have rendered 480

days of continuous service in a period of 24 calendar months to get an order under the 1981 Act. Even though the applicability of the 1981 Act and employment of the employees has been admitted, no evidence has been produced by the employees to the effect that, they have rendered 480 days of continuous service in 24 calendar months and moreover, they have not been sponsored by the Employment Exchange. Hence, the order of the 1st Respondent needs to be interfered with.

3. Learned counsel appearing for Respondents 2 to 10 submitted that, the Petitioner/Management has admitted the applicability of the 1981 Act and that, there were more than 150 employees working under them similar to the workmen involved in the case on hand, and they have been paid consolidated wages, as admitted in the counter Affidavit. Learned counsel, drawing reference to the evidence, submitted that, the workmen herein have been working for almost all the working days and for a particular question, the Management witness has stated that, out of 31 days in a month, workmen herein used to work for 30 days. However, whether documents in support of the said statement are available with the Management or not, could not be ascertained. But, the Management witness has stated before the Authority concerned that, the dates specified by the workmen in the Application, are correct.

4. It is also stated by the Management witness that, employees used to come to work regularly and women employees used to come at 8.00 a.m. and work till 7.00 p.m. everyday. The total number of Establishments in Coimbatore and Tiruppur is mentioned as 20 by the Management witness. The nature of work of the workmen involved in the case on hand, wages paid to them, their date of entry into service and the number of days worked by them are admitted by the Management witness. The Management witness has also admitted in the evidence, as extracted in page number 9 of the impugned order that, the workmen herein have completed 480 days of continuous service within a period of two calendar years and he has also stated that, the employees are entitled to get permanent status, as they have worked for more than 480 days in 24 calendar months.

5. After analyzing the evidence on record and taking note of the evidence of the Management witness that, employees have been working for 30 days out of 31 days in a month, which includes Saturdays and Sundays, the Authority has granted permanent status to the workmen, as they have worked for more than 480 days in 24 calendar months.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. It is no doubt true that, employees can complete 480 days in less than 24 months also. When a question was posed to Mr. Ajay Khose, learned counsel appearing for Respondents 2 to 10, it was found that, the Authority has arrived at 480 days within a period of 15 months in some cases, though, no evidence to that effect was submitted. But, it is not necessary that the employees should be actually on the rolls to complete 480 days of continuous service.

8. Though, I find much force in the contention of the learned counsel for Respondents 2 to 10, for an employee to complete 480 days of continuous service, he should be on rolls for 16 to 17 months. But, it is not possible for an employee to complete 480 days of continuous service within 15 months, which is less than 480 days, unless there is evidence tendered that, he has worked Overtime and Overtime has to be considered by way of actual number of hours for the purpose of counting service. That is not the case herein.

9. However, it is the case of the Petitioner that, conferment of permanent status to the workmen herein may be postponed on completion of two calendar years from their date of entry into service. In view of the above discussion and to give a quietus to the issue, this Court feels it appropriate to postpone the date of conferment of permanent status to the workmen herein on their completion of two calendar years from the date of entry into service, and not otherwise. It is made clear that, this cannot be treated as a precedent, as there is every possibility for an employee to complete 480 days of continuous service in a span of 18 months.

10. Except the above modification, I find no force in the contention of the Petitioner/Management. The Authority concerned is expected to implement the modified order within a period of four months from the date of receipt of a copy of this order and grant other benefits to the workmen herein. It is open to the workmen herein to approach the Authority concerned under the 1981 Act, in respect of their grievance including prosecution in the criminal court and the Government shall sanction the demand, if made.

11. The Department of Fisheries, Coimbatore is expected to implement the modified order passed by this Court.

The Writ Petition is disposed of accordingly. No costs.
Consequently, connected W.M.P.No.6272 of 2021 is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1.The Inspector of Labour,
Coimbatore.

2.Tamil Nadu Fisheries Development Corporation Ltd.,
represented by its Manager,
TNFDC Ltd., Aliyar Unit,
Coimbatore District.

+1cc to Mr.V.Ajay Khose, Advocate, SR.No.26312

W.P.No.5659 of 2021

RK(CO)
SRG/12/07/2021



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