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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

W.P.No.7753 of 2015

and

M.P.No.1 of 2015

The Management
K1570, Amaravathi Co-operative Sugar Mills Ltd.,
Krishnapuram,
Udumalaipet Taluk,
Tiruppur District.

... Petitioner

-vs-

1. A. Joseph Selvaraj
2. The Joint Director of Industrial Safety & Health II
(Authority under the Tamil Nadu Industrial Establishments
Conferment of Permanent Status) Act, 1981,
Tiruppur 641 602.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the impugned order dated 09.01.2015 passed by the 2nd respondent in No.Aa/105/2013, Old No.Aa/1208/2013 and quash the same.

For Petitioner : Mr.R.Bala Ramesh

For Respondents: M/s.P.Saravanan for R1
Mr.VPR.Elamparithi
Government Advocate for R2

O R D E R

The Petitioner / Management, has come forward with the present Writ Petition, challenging the order dated 09.01.2015 passed by the 2nd Respondent in Case No.A/105/2013, Old No.Aa/1208/2013, by which, the Workman / 1st Respondent herein was conferred permanent status.

2. The main plea taken by the Petitioner / Management is that the Management, being a seasonal establishment, the Act is



not applicable in terms of Section 1 (3) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workman) Act, 1981 (in short 'the Act, 1981'). It was urged by the Management that the Workman had already secured a job in the Tamil Nadu Electricity Board and hence, he will not be entitled to any relief, as he is not interested in pursuing job with the Management. It was further urged that the Authority has not gone into any of the documents, while rendering a finding and therefore, the order needs interference by this Court. The Management relied upon the relevant provisions of the Act, 1981, namely, Sections 1(3) & 7, in support of their submissions, which read as under:

"1 (3) It applies to every industrial establishment (not being an establishment of seasonal character or in which work is performed only intermittently) in which not less than fifty workmen were employed on any day of the preceding twelve months. If any question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently the decision of the Government thereon shall be final : Provided that the Government may, by notification, apply the provisions of this Act to any industrial establishment employing such number or workmen less than fifty as may be specified in the notification.

7. Act not to apply to workmen employed in certain industrial establishment. - Nothing contained in this Act shall apply to workmen employed in an industrial establishment engaged in the construction of buildings, bridges, roads, canals, dams or other construction work whether structural, mechanical or electrical."

3. A reading of Section 1(3) mentioned supra makes it very clear that the Act is applicable to all the Industrial Establishments (not being an establishment of seasonal character or in which work is performed only intermittently). It also stipulates that the number of Workmen employed should not be less than 50, the Government, by notification vide G.O.MS.No.2043 Labour and employment dated 24.09.1982, reduced from 50 to 20 and the said Government Order is extracted hereunder.

"[G.O.Ms.No.2043, Labour and Employment, 24th September, 1982 (Puratasi 8, Thunthubi, Tiruvalluvar Aandu 2013) *No. II (2)/LE/5527/82 ---- In exercise of the powers conferred by the proviso to sub-section (3) of section 1 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (Tamil Nadu Act 46 of 1981), the Governor of Tamil Nadu hereby applies the provisions of



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the said Act to all industrial establishments (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than twenty workers were employed on any day of the preceding twelve months."

4. It is mandatory duty on the part of the Management to establish that their establishment is of seasonal character or in which the work is performed only intermittently. Merely because it is a Co-operative Sugar Mills Ltd., and the word 'Sugar Mill' is mentioned, it does not mean that their Sugar Mill should always be treated as a seasonal one. Moreover, there is no evidence adduced on the side of the Management to show that the work is being performed intermittently, and that the Workman, being an Electrician, has produced as many as 19 documents, including Attendance particulars and the number of days worked, which has been considered by the Authority concerned. Based on the materials produced, the Authority came to the conclusion that the Workman has rendered 481 days of continuous service in a period of 24 Calendar Months i.e., from February 2003 to January 2005. The Authority has further observed that there is no iota of evidence produced by the Management to show that the appointment itself is illegal and contrary to the by-laws or provisions of any Enactment. The Management has also not complied with mandatory requirement of Rule 6 of the Tamil Nadu Industrial Establishment Conferment of Permanent Status Rules 1981, to the effect that it is mandatory that the Management will have to forward the records periodically to the Authority concerned. For the sake of convenience Rule 6 is also extracted below..

"6. Maintenance of registers by employers -

(1) Every employer of an industrial establishment shall maintain a register of workmen in Form 1 and shall produce the register whenever it is required by the Inspector having jurisdiction over the industrial establishment.

(2) Every employer shall compile an up-to-date list in Form 1 except column (9) thereof at the end of each half-year ending on the thirtieth day of June and thirty-first day of December and exhibit the list prominently at any part of the industrial establishment for perusal of the list by the workmen during working hours on any day.

(3) Every employer shall send a copy of the up-to-date list so compiled under sub-rule (2) to the Inspector concerned within a fortnight from the expiry of the half-year ending with June and December of every year with a declaration that the list has been



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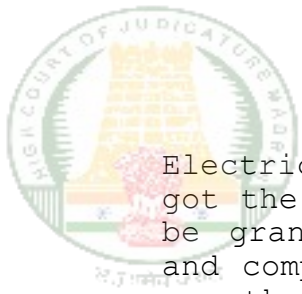
exhibited for the perusal of the workmen of the industrial establishment as required under sub-section (2). He shall also send particulars for each half-year in Form 2 along with the particulars in Form 1 as required under this sub-rule to the Inspector concerned. He shall obtain acknowledgment for furnishing the particulars in Form 1 and Form 2 to the Inspector under this sub-rule either by Registered Post or otherwise.

(4) Any employee who finds his name not entered in the list referred to in sub-rule (2) or finds that the entries have not been made correctly or finds that though entries regarding his service have been made correctly but he has not attested the entries in the register of workmen in Form 1 may make a representation to the Inspector concerned. The Inspector after examining the representation or after making enquiries may issue suitable directions to the employer for the rectification of the register in Form 1 or for the issue of orders conferring permanent status to the workman concerned."

5. The procedure contemplated under the Act and the Rules made thereunder is summary and that the Management has not produced any evidence to show that the Establishment is a seasonal character. Since the Workman was an Electrician, the Authority rightly held that the Workman is entitled for permanency in the employment. A glance at Section 7 of the Act, 1981 vividly makes it clear that the Act will not apply to 'workmen employed' in an Industrial Establishment engaged in construction of building, bridge, roads, irrespective of it being structural, mechanical or electrical and therefore, the employees working under their Establishment, except the aforesaid categories will not be excluded from the purview of the Act, if they have an office, but, at the same time, employees and Officers deployed in that office cannot be excluded from the provisions of the Act, 1981. A conjoint reading of Sections 1 (3) and 7 elaborates further that the nomenclature of an Establishment is not a matter, as it is incumbent on the Management to prove that the Establishment is of a seasonal character and the work is performed intermittently and the Workman falls under the exceptional category specified under Section 7 of the Act, 1981.

6. In view of what is stated herein-above, I am of the view that the order of the Authority is perfectly correct and I find no perversity to interfere with the same. Accordingly, the Writ Petition is dismissed.

7. It is represented that the Workman has joined the



Electricity Board and is working there. Since the Workman has got the benefit of the order of the Authority, the Workman shall be granted permanent status and the consequential benefits on and completion of 480 days in a period of 24 Calendar Months as per the order of the Authority and the benefits have got to be extended, till the Workman joined the services of the Electricity Board. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

dpq

To:

The Joint Director of Industrial Safety & Health II
(Authority under the Tamil Nadu
Industrial Establishments (Conferment of
Permanent Status) Act, 1981,
Tiruppur 641 602.

+1cc to M/s.P.Saravanan, Advocate, S.R.No.32642

+1cc to M/s.R.Balaramesh, Advocate, S.R.No.32774

+1cc to the Special Government Pleader, S.R.No.33273

W.P.No.7753 of 2015

RP (CO)
SU (26/11/2021)