



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

WEB COPY

W.P(MD)Nos.14971 of 2011 and 9392 of 2012

and

M.P. (MD)Nos.1 of 2011 and M.P. (MD)Nos.2 and 3 of 2012

W.P. (MD)No.14971 of 2011

Poompuhar Shipping Corporation Ltd.,
Marine Workshop,
Harbour Estate-Thoothukudi-628 004,
Thoothukudi District,
through its Joint Manager.

... Petitioner

Vs.

1.The Inspector of Factories,
Thoothukudi, Thoothukudi District.

2.N.Raja ranjith Vedamanickam

3.S.Anandharaj

4.R.Saravanan

5.M.Karuppasamy

6.R.Chandrasekar

7.M/sR.Paramasivan & Sons,
Maintenance Civil Labour Supply Contractors,
Sundar Illam-Muthiahpuram,
Tuticorin-5

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records in relating to the common order passed by the first respondent in Na.Ka.E/71/2011, dated 11.11.2011 and to quash the same.

For Petitioner : Mr.P.Chandra Bose

For Respondents : Ms.D.Geetha
for R.4

: Mr.L.Shajichellan
for R.2, R.3, R.5 and R.6



W.P. (MD) No.9392 of 2012

1.N.Raja ranjith Vedamanickam
2.S.Anandharaj
3.R.Saravanan
4.M.Karuppasamy
5.R.Chandrasekar

... Petitioners

Vs.

1. Poompuhar Shipping Corporation Ltd.,
represented by the Deputy General Manager (Works),
Marine Workshop,
Harbour Estate-Thoothukudi-628 004,

2.M/sR.Paramasivan & Sons,
Maintenance Civil Labour Supply Contractors,
Kanthar Illam-Muthiahpuram,
Tuticorin-5.

3.The Inspector of Factories,
Thoothukudi-8.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus to direct the first respondent to implement the order passed by the third respondent in Na.Ka.No.E/71/2011, dated 11.11.2011 under Section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act, 1981 and consequently to direct the first respondent to pay the wages of permanent workmen with all service benefits w.e.f, 01.05.2011.

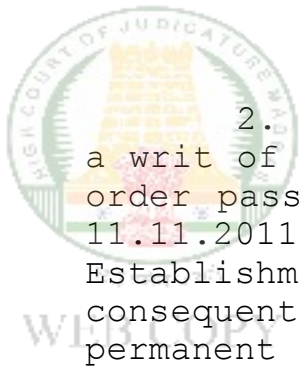
For Petitioners : Ms.D.Geetha
for P.3
: Mr.L.Shajichellan
for P.1, P.2, P.4 and P.5

For Respondents : Mr.P.Chandra Bose
for R.1

* * * * *

COMMON ORDER

W.P.(MD)No.14971 of 2011 is filed seeking for issuance of a writ of Certiorari to call for the records in relating to the common order passed by the first respondent in Na.Ka.E/71/2011, dated 11.11.2011 and to quash the same.



2. W.P.(MD)No.9392 of 2012 is filed seeking for issuance of a writ of Mandamus to direct the first respondent to implement the order passed by the third respondent in Na.Ka.No.E/71/2011, dated 11.11.2011 under Section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act, 1981 and consequently to direct the first respondent to pay the wages of permanent workmen with all service benefits w.e.f, 01.05.2011.

3. The petitioner in W.P.(MD)No.14971 of 2011 is the Management and filed this writ petition challenging the common order passed by the first respondent - Inspector of Factories granting conferment on permanent status in favour of the private respondents.

4. The petitioners in W.P.(MD)No.9392 of 2012 are the employers and filed this writ petition seeking to implement the order passed by the third respondent - Inspector of factories.

5. Since the issues arises in both petitions are one and the same, both the writ petitions are disposed of by this common order.

6. The case of the petitioner Corporation is that the petitioner Corporation viz., the Poompuhar Shipping Corporation has entered into a contract with Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO), the erstwhile electricity board for transportation of coal from various parts in India. The petitioner Corporation brings the coal from various parts through their own ships and chartered ships to Tuticorin Port and from the Tuticorin Port, the coal is transported through conveyor belt to the Tuticorin Thermal Power Station. The nature of the work of the petitioner corporation is depending upon the contract awarded by the TANGEDCO.

7. The petitioner's workshop is covered under the Factories Act and Rules framed thereunder. Since the repairing work and maintenance work are seasonal and temporary nature, the petitioner Corporation used to engage certain categories of employees at Marine workshop on temporary basis. Hence, the Head Office called for tenders by open advertisement for supply of Labour on annual contract to carry out ship repairs, front end loader repair and maintenance work. The petitioner Corporation have entered into contract agreement with independent contractors. The independent contractors alone are responsible for the supply of labour of certain categories. Further, there is no privity of contract between the respondents 2 to 6 and the petitioner Corporation. There is no post or any vacancy or any statutory rule to appoint a person to the post. Further, in between the petitioner Corporation and the respondents 2 to 6, there was no



master and employee relationship. Admittedly the supervision and control of the respondents 2 to 6 was vested with the contractor or their supervisor. If the contract labourers' claim is accepted, the candidates who have been registered in the Employment Exchange would be affected and this would lead to violation of Clause 4, Sub Section 1 of the Employment Exchange (compulsory notification of Vacancies) Act, 1959.

8. As per the tender agreement, the contractors should maintain separate attendance register and wage register for its workmen. The payment to the workers should be disbursed by the contractor before 7th of every month. Further the petitioner Corporation requested the contractors to maintain certain mandatory registers under the Contract Labour (Regulation and Abolition) Act 1970 and Rules. Further, the contractors should fulfil the conditions laid under the Contract Labour (Regulation and Abolition) Act, 1970 and take license under Clause 12 of the said Act. Further the payment of ESI and EPF are done independently in the code of the contractor. Further the work is not in a permanent nature. The petitioner Corporation was registered under the Contract Labour (Regulation and Abolition) Act, 1970 and its registration Number is 6/1993 and the recruitment process for the petitioner Corporation is covered by the service rules of the Corporation and the recruitment is only through employment exchange and if a person appointed as per the service rules and regulations of the petitioner Corporation, he will be treated as petitioner's employee. In such circumstances, the respondents 2 to 6, who were engaged by the contractors, cannot claim the status of employee defined under Section 2(4) of the Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. The names of the respondents 2 to 6, who seek permanency of employment do not figure in the muster rolls of the petitioner Corporation and Form No.1 maintained under the Permanent Conferment Rules.

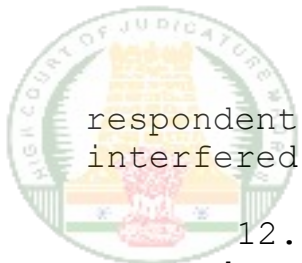
9. The petitioner engaged contractors as per the Contract Labour (Regulation and Abolition) Act for the period from 01.11.2001 to 30.04.2003 M/s Saravanan Enterprises, from 01.05.2003 to 30.04.2004 M/s Ayyavoo and Company, Tuticorin, from 01.05.2004 to 31.08.2005 M/s Prabhu Engineering Contractors, Tuticorin, from 01.02.2006 to 02.11.2008 M/s Rajan & Company, Palayamkottai, from 03.11.2008 to 12.08.2010 M/s Clean Care Service Centre, Madurai. Since the Clean Care Service Centre has not complied with the tender conditions, during the subsisting period, they were terminated from 12.08.2010 onwards. From 13.08.2010 to till the date of disposal of the claim made by the respondents 2 to 6, the seventh respondent - M/s R.Paramasivan & Sons are contractors of the petitioner Corporation as per the said Act. Thereafter, the contractor M/s Ayyavoo & Company, Prabhu



Engineering Contractors took over the contract and applied for renewal of contractor license and they have not engaged 20 employees.

10. In the above circumstances, the respondents 2 to 6 filed a separate petition before the Deputy Chief Inspector of Factories under Section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 and in turn he forwarded to the first respondent on 10.01.2011. During the enquiry before the first respondent, on behalf of the petitioner Corporation, the Deputy General Manager and the Joint Manager were examined as witnesses and on behalf of the private respondents, the CITU office bearers were examined. After adjudication, the first respondent appellate authority arrived at a conclusion that the private respondents continuously employed 480 days during the two calendar years and granted permanent status to them. Challenge the said order and for seeking implementation of the said, the present writ petitions have been filed.

11. Learned Counsel appearing for the petitioner Corporation would submit that admittedly the seventh respondent was a contractor from 13.08.2010 to till the date of disposal of the claim made by the respondents 2 to 6 and they have completed 480 days of work. Further, the first respondent referred the notice issued to the Clean Care Service Centre, however, he has not passed any order against that Company. Further, the seventh respondent has not maintained the records and without any authority, the said Clean Care Service Centre stated that the attendance register was filed by the seventh respondent and believing the said attendance register, the first respondent has come to the conclusion that the respondents 2 to 6 worked continuously for 480 days from 13.08.2010 to till the date of disposal of the claim made by the respondents 2 to 6, which is unsustainable one. Further, the first respondent had not discussed about the deposition of the petitioner Corporation witnesses and the documents filed by the petitioner Corporation and the answer given by the petitioner Corporation during the course of cross-examination. Merely because of the petitioner in non-registering his contractual details before the Authority under the Factories Act, it does not mean that the private respondents are continuously employed with the petitioner Corporation, which is legally unsustainable one. Further, the petitioner Corporation had separate recruitment rules and in violation of the said recruitment rules, the petitioner Corporation cannot engage the contract labourers independently and the contract labourers were engaged by the particular contractor and it is for the contractor, to maintain the register and the salary was disbursed only through the said contractor. Hence, the order passed by the first



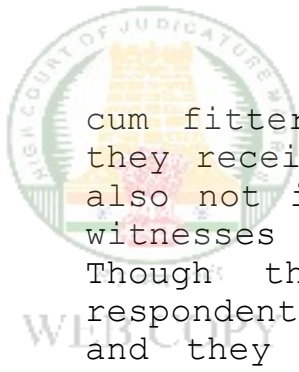
respondent is perverse and accordingly, it is liable to be interfered with.

12. Per contra, learned Counsel appearing for the private respondents would submit that the first respondent adjudicated the entire issue and on behalf of the private respondents, one Rajaranjith Vedamanickam was examined before the first respondent authority and he was cross-examined and in his examination, he would submit that the private respondents employed in marine workshop continuously as its employees and though they were appointed as contract labourers in the year 1996, the petitioner Corporation has directly disbursed the salary amount to them from August 2005 to January 2006. Further, the petitioner Corporation has not registered his contract before the competent authority. Further, the Joint Manager of the petitioner Corporation, in his cross-examination, accepted that the private respondents are employees in the petitioner Corporation. The seventh respondent entered into agreement only for deck cleaning and they have obtained contract for marine workshop. The private respondents clearly established that they were employees of the petitioner Corporation and the same was accepted by the above said witnesses of the petitioner Corporation. Hence, the first respondent has arrived at conclusion in favour of the private respondents, which cannot be interfered with by this Court.

13. Heard the learned Counsel appearing for the petitioner Corporation and the learned Counsel appearing for the private respondents and perused the materials placed on record.

14. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the award of the Labour Court. The Hon'ble Supreme Court in a catena of decisions has held that normally a writ court should not interfere with the award of the Labour Court, unless the award is perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award.

15. The facts in the present case are not in dispute. The private respondents claimed that they were continuously working in the petitioner Corporation right from the year 1996 as mechanic



cum fitter, welder cum fitter, sweeper and store assistant and they received daily wages from the petitioner Corporation. It is also not in dispute that the petitioner Corporation examined two witnesses viz, the Deputy General Manager and the Joint Manager. Though the petitioner Corporation claims that the private respondents are not direct employees in the petitioner Corporation and they were engaged by the independent contractors, in the deposition of the petitioner Corporation witnesses, they admitted that the contract between the petitioner Corporation and the Clean Care Service Centre was not registered and also admitted that since the Clean Care Service Centre has not complied the tender conditions during the subsisting period, they were terminated from 12.08.2010. Further, the case of the private respondents is that they were continuously employed between 01.05.2004 to 23.08.2011 and during that period, the petitioner Corporation has not marked any document to establish that the private respondents worked under the contractor and for the above said period, without marking any document, the claim of the petitioner Corporation that the private respondents are not direct employees under the petitioner Corporation is not sustainable one. Based on the records produced by the petitioner Corporation, the first respondent arrived at conclusion that the private respondents continuously worked for 480 days in the petitioner Corporation and hence, granted permanent status in favour of them.

16. Hence, in view of the above, this Court does not find any error or infirmity in the order passed by the first respondent. Hence, the writ petition filed by the petitioner Corporation in W.P.(MD)No.14971 of 2011 is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

17. Fore the reasons stated above, the writ petition filed by the private respondents in W.P.(MD)No.9392 of 2012 is allowed and a direction is issued as prayed for. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

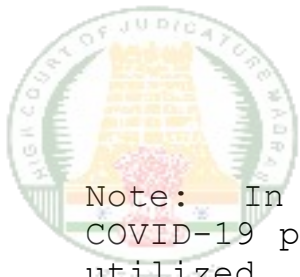
Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SSL



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Inspector of Factories,
Thoothukudi, Thoothukudi District.

+2 CC to M/s.L.SHAJI CHELLAN, Advocate (SR-11693 & 11692[F] dated 17/03/2021)

W.P (MD)Nos.14971 of 2011 and 9392 of 2012
16.03.2021

Na (CO)

TR(28.04.2021) 8P 4C