



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2021

CORAM

THE HON'BLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 2924 of 2012

and

W.P. (MD) No. 2283 of 2016

and

M.P. (MD) No. 2 of 2012

and

W.M.P. (MD) No. 2007 of 2016

WEB COPY

The Management,
Madurai District Co-operative Milk Producers' Union Ltd.,
Sathamangalam,
Madurai - 625 020.

... Petitioner in both W.P.s

-vs-

1.The Presiding Officer,
Labour Court,
District Court Buildings,
Melur Road,
Madurai - 625 020.

2.R.Venkatachalam

... Respondents in both W.P.s

Prayer in W.P. No. 2924 of 2012:-

Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Certiorari, to call for the records of the First Respondent relating to Claim Petition No. 18 of 2002, quash the order passed therein dated 07.04.2010.

Prayer in W.P. No. 2283 of 2016:-

Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Certiorari, to call for the records of the First Respondent relating to Claim Petition No. 140 of 2013, quash the order passed therein dated 18.06.2015.

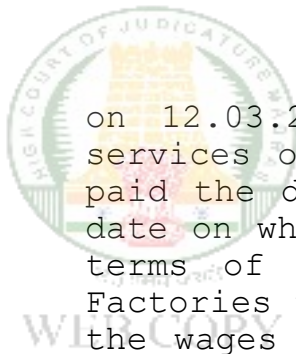
For Petitioner	: Mr.S.Seenivasagam (in both W.P.s)
For Respondents	: Mr. S.M.Mohan Gandhi,
	(for R2 in W.P. No. 2924 of 2012)
	Mr. Mr. C.K.Chandrasekhar
	for Mr. A.Rahul
	(for R2 in W.P. No. 2283 of 2016)
	R1 - Court (in both W.P.s)



(through video conference)

Heard Mr. S.Seenivasagam, Learned Counsel for the Petitioner, Mr. S.M.Mohan Gandhi, Learned Counsel for the Second Respondent in W.P.No. 2294 of 2012 and Mr. C.K.Chandrasekhar, Learned Counsel for the Second Respondent in W.P. No. 2283 of 2016 and perused the materials placed on record, apart from the pleadings of the parties.

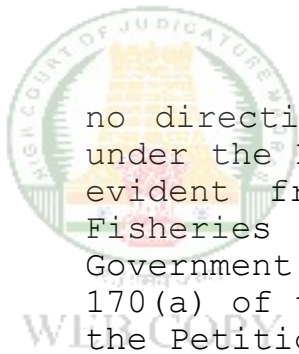
2.The Second Respondent, who was recruited through employment exchange, had been employed as casual labour on daily wages basis by the Petitioner from 11.01.1993 onwards. After completion of 480 days of continuous service within a period of 24 months, the Second Respondent along with certain other employees had sought for conferment of permanent status under Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter referred to as 'the Permanent Status Act' for short) before the Inspector of Factories, Circle-2, Madurai (hereinafter referred to as the 'Inspector of Factories' for short). The Inspector of Factories by Order No. C/2348/96 dated 13.12.1996 directed the Petitioner to make the Second Respondent permanent from 07.05.1994, which was challenged by the Petitioner along with certain other orders in respect of persons similarly placed to the Second Respondent in W.P. Nos. 32916 and 35143 of 2003 before this Court. Thamizhaga Kootturavu Sanga Oozhiyar Sangam, which is a Trade Union, in which the Second Respondent and other similarly placed persons were members, had filed another Writ Petition in W.P. No. 5962 of 1997 for directing the Petitioner to implement the orders passed by the Inspector of Factories conferring permanent status on those persons. After hearing both parties, this Court by an elaborate order dated 01.10.2007 dismissed the Writ Petitions in W.P. Nos. 32916 and 35143 of 2003 filed by the Petitioner and allowed the Writ Petition in W.P. No. 5962 of 1997 filed by that Trade Union by directing the Petitioner to confer permanent status to the employees mentioned in the various orders including the order dated 13.12.1996 passed by the Inspector of Factories and give consequential benefits including arrears of salary and other allowances. The appeal in W.A. No. 1427 of 2007 filed by the Petitioner against the order dated 01.10.2007 in W.P.No. 5962 of 2007 passed by this Court, was dismissed by order dated 10.03.2008 by the Division Bench of this Court and the Hon'ble Supreme Court of India by order dated 04.08.2008 in Petitioner for Special Leave to Appeal (Civil) No. 17656 of 2008 dismissed the Special Leave Petition filed against the same. Thereafter, the Government of Tamil Nadu by G.O. (D) No. 169, Animal Husbandry, Dairying and Fisheries (MP.2) Department dated 22.06.2010 in the exercise of powers conferred by Section 170(a) of the Tamil Nadu Co-operative Societies Act, 1983, exempted the Petitioner from the provisions of Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988, to the extent of relaxation for age in respect of the Second Respondent to regularize his service as casual labour in the entry level post as



on 12.03.2001 and monetary benefits from 28.09.2007. Though the services of the Second Respondent had been regularized, he was not paid the differential amount of wages that had fallen due from the date on which he had acquired the permanent status on 07.05.1994 in terms of the order dated 13.12.1996 passed by the Inspector of Factories till the actual date of his regularization after deducting the wages which were already paid to him for that period. At this juncture, it also requires to be noticed that a contempt petition in Contempt Petition No. 278 of 2009 for not complying with the order dated 01.10.2007 passed in W.P. No. 5962 of 2007, had been filed by the Tamizhaga Kootturavu Sanga Oozhiyar Sangam and this Court had closed that contempt petition leaving it open to the employees concerned to work out their remedy for the implementation of the order of the Inspector of Factories.

3.This had necessitated the Second Respondent to approach the Labour Court, Madurai (hereinafter referred to as 'the Labour Court' for short) in Claim Petitions in C.P. No. 18 of 2002 and C.P. No. 140 of 2013 under Section 33-C(2) of the Industrial Disputes Act, 1947, to compute the monetary benefits for the period from 07.05.1994 to 30.11.2001 and for the period from 01.04.2001 to 31.12.2013 respectively. The Labour Court by order dated 07.04.2010 in C.P. No. 18 of 2002 computed the monetary benefits due by the Petitioner to the Second Respondent for the period from 07.05.1994 to 30.11.2001 as Rs. 1,72,132.85, which is assailed by the Petitioner in the Writ Petition in W.P. No. 2924 of 2012. The Labour Court by order dated 18.06.2015 in C.P. No. 140 of 2013 computed the monetary benefits due by the Petitioner to the Second Respondent for the period from 01.04.2001 to 31.12.2013 as Rs. 5,13,087/-, which is assailed by the Petitioner in the Writ Petition in W.P. No. 2283 of 2016.

4.The primordial contention of the Learned Counsel for the Petitioner in these Writ Petitions challenging the impugned orders is that the Government of Tamil Nadu in G.O. (D) No. 169, Animal Husbandry, Dairying and Fisheries (MP.2) Department dated 22.06.2010 had expressly regularized the services of the Second Respondent in the entry level post as on 12.03.2001 and granted monetary benefits from 28.09.2007 and in the absence of any challenge thereto, the Second Respondent was not entitled to monetary benefits for any date prior to 28.09.2007. Though the said submissions made on behalf of the Petitioner appear to be attractive, in view of the factual matrix borne out of the record, it is not possible to accept the same. It would assume significance that the Division Bench of this Court in ***R.Lakshmi -vs- Chief Engineer (Personnel), Tamil Nadu Electricity Board*** [(2012) 6 MLJ 480] has highlighted the legal position that a workman, who had completed 480 days of continuous service in a period of 24 calendar months, would become automatically a permanent employee under the employer, even if the employer had not conferred him with the permanent status, or even if



no direction was issued by the competent authority in that regard under the Permanent Status Act or the Rules framed thereunder. It is evident from G.O. (D) No. 169, Animal Husbandry, Dairying and Fisheries (MP.2) Department dated 22.06.2010 issued by the Government of Tamil Nadu, it has exercised the powers under Section 170(a) of the Tamil Nadu Co-operative Societies Act, 1983, to exempt the Petitioner from the provisions of Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988, to the extent of relaxing the age in respect of the Second Respondent so as to regularize his service as casual labour in the entry level post. However, the restriction mentioned in that order that such regularization was as on 12.03.2001 and monetary benefits had been extended from 28.09.2007, is inconsequential as it militates against the spirit of the provisions of the Permanent Status Act as explicated in the aforesaid authoritative pronouncement of the Division Bench of this Court which holds the field.

5.The next ground of attack by the Petitioner on the impugned orders is that the regularization of the Second Respondent in service is contrary to the dictum laid down by the Division Bench of this Court in ***L.Justine -vs- Registrar of Co-operative Societies*** [(2002) 4 CTC 385] on the specious plea that the appointment had not been made against a sanctioned vacancy. It must, at once, be pointed out here that the same contention, which had been raised by the Petitioner in W.P. No. 5962 of 2007 while challenging the conferment of permanent status on the Second Respondent with effect from 07.05.1994 in terms of the order dated 13.12.1996 passed by the Inspector of Factories, has been expressly negated by observing from the Counter-Affidavit filed by the Petitioner in that Writ Petition that the employees required were more than 190 to 200 everyday and the relevant portion reads as follows:-

"6.This respondent respectfully submits that there are as many as 155 mazdoors and 75 casuals in the 1st respondent's production department i.e. main dairy. Out of these strength, 40 to 45 casuals alone are regularly attending duty in the production department i.e. main dairy. Rest of the casual workers are attending only for a few days ranging from 2 to 10 days in a month. Equally, in the case of mazdoors also, 15 of them are irregular in attending duty. Many of them are long absentees and are availing their leave on 'loss of pay'. Therefore, totally effective strength of mazdoors and casual workers comes approximately to 140 to 145. However, the manpower requirement in the main dairy alone comes to 190-200 leaving a gap of 50-60 manpower shortage every day."

The Division Bench of this Court while confirming it in the order
<https://hcservices.ecourts.gov.in/hcservices/>

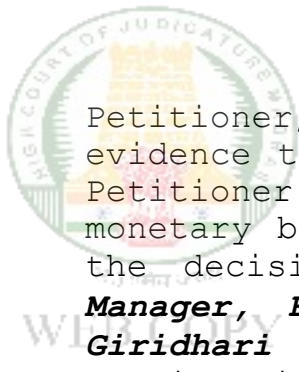


dated 10.03.2008 passed in W.A. No. 1427 of 2007, has commented as follows:-

"8. The appellant themselves pierced their eyes with their own nails. The said contention has been rejected by pointing out in paragraph 6 of the counter affidavit filed by the appellant that there were as many as 155 mazdoors and 75 casuals in the appellant's Production Department viz., main dairy. Out of this strength, 40 to 45 casuals alone were regularly attending duty in the production department i.e. in the main dairy. Rest of the casual workers are attending only for a few days ranging from 2 to 10 days in a month. Equally, in the case of mazdoors also, 15 of them are irregular in attending duty. Many of them were long absentees and were availing their leave on 'loss of pay'. The total effective strength of mazdoors and casual workers comes to approximately 140 to 145. The man power requirement in the main dairy alone comes to 190-200 leaving a gap of 50-60 man power shortage every day. Hence, the non-availability of cadre strength, which is also the point that could have been raised before the authorities, cannot be allowed to be raised and even on that ground, the appellant, we are of the view, would not succeed in this case."

Apart from the fact that the said issue has attained finality, the only deficiency in the appointment of the Second Respondent even according to the Petitioner was in respect of age and in that regard, the Government of Tamil Nadu by G.O. (D) No. 169, Animal Husbandry, Dairying and Fisheries (MP.2) Department dated 22.06.2010 in the exercise of powers conferred by Section 170(a) of the Tamil Nadu Co-operative Societies Act, 1983, exempted the Petitioner from the provisions of Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988, to the extent of relaxation for age in respect of the Second Respondent to regularize his service as casual labour in the entry level post as on 12.03.2001 curing such irregularity in that appointment made. In such circumstances, there is absolutely no scope for entertaining any plea of infraction of the ruling of this Court in **L. Justine -vs- Registrar of Co-operative Societies** [(2002) 4 CTC 385] which has been confirmed by the Hon'ble Supreme Court of India in **A. Umarani -vs- Registrar, Cooperative Societies** [(2004) 7 SCC 112].

6. Learned Counsel for the Petitioner finally made a faint attempt to portray as if there is no evidence to prove that the scale of pay adopted by the Second Respondent was based on the scale of pay applicable to the post held by him. It is evident from the impugned orders in both cases passed by the Labour Court that the computation of the monetary benefits has been substantiated by relevant documents, more particularly those issued by the



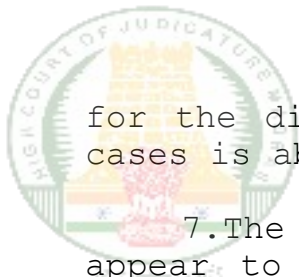
Petitioner, but no effort has been taken by the Petitioner to adduce evidence to contradict the same. Even in these Writ Petitions, the Petitioner has not shown any error in the computation of the monetary benefits made. In this context, reference must be made to the decision of the Hon'ble Supreme Court of India in **General Manager, Electrical Rengali Hydro Electric Project, Orissa -vs- Giridhari Sahu** [(2019) 10 SCC 695] where the scope of Writ of Certiorari to interfere on an error of law apparent on the face of record has been described in the following words:-

"28.As far as the finding of fact which is one within the jurisdiction of the court, it is ordinarily a matter "off bounds" for the writ court. This is for the reason that a body which has jurisdiction to decide the matter has the jurisdiction to decide it correctly or wrongly. It would become a mere error and that too an error of fact. However, gross it may amount to, it does not amount to an error of law...."

It is hastened to add here that it is beyond cavil that the payment of wages of the amount equivalent to that of a regular employee is a natural consequence that flows from the conferment of permanent status by operation of the Permanent Status Act and it is not the case of the Petitioner that the Second Respondent had not worked during the relevant period. In other words, the claim of the Second Respondent in the impugned proceedings was only for differential wages and it would be useful to refer to the decision of the Hon'ble Supreme Court of India in **State of Punjab -vs- Jagjit Singh** [(2017) 1 SCC 148] where it has been observed as follows:-

"58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a Welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."

<https://hcservices.com/sdch/hcservices/> Services mean that the claim of the Second Respondent



for the differential wages for the relevant period in the instant cases is absolutely justified.

7. The result of the foregoing discussion is that there does not appear to be any infirmity in the impugned orders passed by the Labour Court, Madurai warranting interference by this Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution of India. The Petitioner shall forthwith make payment of the entire amount due to the Second Respondent, failing which the Second Respondent is entitled to seek execution of the impugned orders before the proper forum in the manner recognized by law.

In the result, the Writ Petitions are dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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

1. The Presiding Officer,
Labour Court,
District Court Buildings,
Melur Road,
Madurai - 625 020.

+2 CC to M/s.S.SEENIVASAGAM, Advocate (SR-24843[F] dated 30/07/2021)

+1 CC to M/s.A.RAHUL, Advocate (SR-24578)

**W.P. (MD) No. 2924 of 2012
and
W.P. (MD) No. 2283 of 2016
29.07.2021**

RS (15.09.2021) 7P 5C