BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2021

CORAM :

The Hon'ble Mr.JUSTICE T.S.SIVAGNANAM

AND

The Hon'ble Mrs.JUSTICE S.ANANTHI

W.A.(MD) No.253 of 2020

The Executive Officer,
Arulmigu Muppandal
Esakkiamman Temple (East),
Araivaimozhi Post,
Kanyakumari District. ... Appellant/Petitioner

Vs

1. The Inspector of Labour,
   Nagercoil, Kanyakumari District.

2. N.Arumugam

3. The Assistant Commissioner,
   Hindu Religious and Charitable Endowments
   Departments,
   Kottar, Nagercoil,
   Kanyakumari District. ... Respondents/Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent, against the order dated 13.11.2019, passed in W.P.(MD) No.5317 of 2015.

Prayer in WP(MD). 5317 of 2015 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records from the 1st respondent Labour Inspector, Nagercoil, relating to the Impugned award passed by him in his Proceedings in Na.Ka. No. 1216/2013 dated 04.07.2014 and quash the same.

For Appellant : Mr.H.Arumugam

For Respondents : Mr.K.P.Narayanakumar,
Spl.Govt.Pleader for R1
Mr.N.Sivakumar for R2

JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM,J.**]

Heard Mr.H.Arumugam, learned Counsel appearing for the appellant, Mr.K.P.Narayana Kumar, learned Special Government Pleader appearing for the first respondent and Mr.N.Sivakumar, learned Counsel appearing for the second respondent.

2. This appeal filed by the Executive Officer, Arulmigu Muppandal Esakkiamman Temple (East), Kanyakumari District, is directed against the order in W.P(MD).No.5317 of 2015 dated 13.11.2019.

3. The said writ petition was filed by the Temple challenging the order passed by the Inspector of Labour, Nagercoil, exercising powers under the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

4. Before the authority, the Temple raised the contention that the second respondent is not entitled to maintain the petition before the authority on the ground that he has to exhaust the remedy available under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Further it was contended that seeking prayer for regularisation, the second respondent had filed W.P(MD).No.9617 of 2013, which was pending at the relevant point of time. Further, it was submitted that the Temple is not an organization which would be covered by the provisions of the Act. The authority namely, Inspector of Labour, examined the same and after taking out of the undisputed fact that the second respondent had worked for more than 480 days directed conferment of permanent status. The correctness of the order was tested by the Writ Court, before which, the contentions raised by Mr.H.Arumugam, learned Counsel for the appellant were canvassed and the learned Writ Court had elaborately consider the matter and found as a matter of fact, that the second respondent had worked as a daily wage earner for more than the statutory period, therefore, entitled to the relief. Accordingly, the Writ Petition was dismissed. Aggrieved by the same, the Temple is before us.

5. The learned Counsel would submit that the issue as to whether the Temple is an industrial establishment as defined under Section 2(3) of the Act is yet to attain finality and the matter is now pending before the Hon'ble Supreme Court. Furthermore, it is submitted that the sanctioned strength of the Temple is only four posts namely, Ticket Collector, Maleshanthi, Assistant Record Clerk and Assistant Writer. Therefore, the provisions of the Act are not applicable. This contention was never advanced before the

authority and the appellant cannot be permitted to raise the contention for the first time in this appeal. Though, we agree with the learned Counsel for the appellant that the larger issue whether a Temple is a industrial establishment or not, is still pending before the Hon'ble Supreme Court. We do not express any opinion on the said issue, but would confirm the order of the learned Single Bench only on facts.

6. One another argument which advanced before us was by contending that the second respondent arrayed as an accused in a forgery case for swindling funds of the Temple and the acquittal by the criminal Court was on benefit of doubt and not a normal acquittal. To be noted, that we are not examining the case of a person seeking public employment, but a case where the second respondent seeks for conferment of permanent status which has to be tested on the parameters laid down under the relevant Act.

7. The learned Counsel for the second respondent submitted that the then Executive Officer of the Temple was the person, who had involved in misappropriation and the second respondent is the low paid employee only an Assistant to the Maleshanthi.

8. Therefore, we are of the clear view that the learned Single Bench was right in not interfering with the order passed by the Inspector of Labour. Accordingly, the Writ Appeal fails and dismissed. However, the questions of law which were canvassed before us as to whether the Temple is an industrial establishment and would fall within Section 2(3) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and the issue whether the Act can be applied to the appellant Temple on account of large number of sanctioned posts etc., are all left open. It is made clear that the decision shall not be treated as a precedent. No costs.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pkn

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 Inspector of Labour,
   Nagercoil, Kanyakumari District.

2. The Assistant Commissioner,
   Hindu Religious and Charitable Endowments
   Departments,
   Kottar, Nagercoil,
   Kanyakumari District.

+1 CC to M/s.SPL GP (SR-15601[F] dated 09/04/2021)

W.A.(MD) No.253 of 2020
08.04.2021

na(CO)
TR(17.05.2021) 4P 4C