



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.NO.569 OF 2022

The Management,
K.1570, Amaravathi Co-operative
Sugar Mill Ltd.,
Krishnapuram,
Udumalaipettai Taluk,
Tiruppur District.

... Appellant

.Vs.

1. A.Josep Selvaraj
2. The Joint Director of Industrial Safety
and Health-II (Authority under Tamil Nadu
Industrial Establishment Conferment of
Permanent Status) Act, 1981,
Tiruppur - 641 602.

... Respondents

PRAYER:-

Appeal filed under Clause 15 of the Letters Patent against
the order dated 12.7.2021 in W.P.No.7753 of 2015.

PRAYER IN W.P.NO.7753 OF 2015:-

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 Appellant : Mr.R.Balaramesh



(Delivered by the Hon'ble Chief Justice)

5. In view of the above, we are required to deal with only the issue raised before us, i.e., the delay in making the claim for permanency. It is not the case of the appellant that any limitation is provided to make a claim of permanency, rather if we look into Section 3 read with Section 5 of the Act of 1981 and Rule 6 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to workmen) Rules, 1981 [for brevity, "the Rules of 1981"] it comes out that the conferment of permanent status is automatic on the employee rendering continuous service of 480 days in 24 calendar months. The obligation was on the management to confer the permanent status if the requirements under Section 3 of the Act of 1981 are meted out. Section 5 of the Act of 1981 otherwise talks about the powers and duties of Inspectors to issue directions for maintenance of record and to grant permanency. Rule 6 of the



Rules of 1981 mandates that the employer has to maintain registers. It is appropriate to refer to Sections 3 and 5 of the Act of 1981 and relevant portion of Rule 6 of the Rules of 1981, which read as under:

WEB COPY "Act of 1981:

3. Conferment of permanent status to workmen.—

(1) Notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty four calendar months in an industrial establishment shall be made permanent.

(2) A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike, which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.

Explanation I.-- For the purposes of computing the continuous service referred to in sub-sections (1) and (2), a workman shall be deemed to be continuous service during the days on which --- ;

(i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (Central Act XX of 1946) or under any other law applicable to the industrial establishment ;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment ; and

(iv) in the case of a female, she has been on maternity leave ; so, however, that the total period of such maternity leave does not exceed twelve weeks.

Explanation II. - For the purposes of this section, 'law' includes any award, agreement, settlement,



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instrument or contract of service whether made before or after the commencement of this Act."

"5. Power and duties of Inspectors. - Subject to any rules made by the Government in this behalf, the Inspector may, within the local limits for which he is appointed,--

(a) enter at all reasonable times and with such assistants, if any, who are persons in the service of the Government or of any local authority as he thinks fit to take with him, any industrial establishment;

(b) make such examination of the industrial establishment and of any registers, records and notices and take on the spot or elsewhere the evidence of such person as he may deem necessary, for carrying out the purposes of this Act: and

(c) exercise such other powers as may be necessary for carrying out the purpose of this Act."

Rules of 1981:

"6. Maintenance of registers by employers.--

(1) to (3)

(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."

6. A combined reading of the provisions quoted above shows that an employee is entitled to conferment of permanent status on rendering continuous service of 480 days in two calendar years. Section 3 of the Act of 1981 makes it clear that even if there is an interruption, which is not illegal, it is to be ignored as given under Section 3(2) of the Act of 1981.



7. The argument about non-production of records pertaining to the respondent employee of the period 2003-2005 cannot be otherwise accepted in reference to Rule 6 of the Rules of 1981.

8. That apart, this court held in The Superintending Engineer, Erode Electricity Distribution Circle v. The Inspector of Labour, Erode and others [Judgment dated 7.3.2022 in W.P.No.4061 of 2013 and batch cases] that the Labour Inspector can exercise jurisdiction only in the nature of summary enquiry, while a case involving complicated question of fact and law has to be left for its adjudication under the Act of 1947. In the instant case, we do not find any infirmity in the exercise of jurisdiction by the Labour Inspector.

9. In view of the above, we do not find any reason to cause interference in the order passed by the Labour Inspector, so as the judgment of the learned Single Judge, as no error therein could be indicated other than delay in making the claim and direction of production of records for the aforesaid purpose. The grounds aforesaid are not tenable and, accordingly, the appeal fails and the same is dismissed. There will be no order as to costs. Consequently, C.M.P.No.4114 of 2022 is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to the Government Pleader, S.R.No.18200

+1cc to Mr.R.Balaramesh, Advocate, S.R.No.18742 (28/03/2022)

W.A.NO.569 OF 2022

PA (CO)

PBS/23/03/2022