



W.P(MD)No.9320 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Orders reserved on
01.09.2022

Orders pronounced on
02.09.2022

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

W.P(MD)No.9320 of 2014

and

M.P(MD)No.1 of 2014

The Management,
Cotton Research Station,
Tamil Nadu Agricultural University,
Srivilliputhur,
Virudhunagar District.

... Petitioner

Vs.

1.The Inspector of Labour,
(Authority under Tamil Nadu
Conferment of Permanent Status
Act 1981), Labour Department,
Virudhunagar.

2.G.Paramasivam

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the proceeding of the first respondent passed in Na.Ka.No. 27/2012-4, dated 31.01.2014.

For Petitioner

: Mr.S.Kadarkarai

For R - 1

: Mr.D.Gandhiraj
Special Government Pleader

For R - 2

: Mr.S.M.Mohan Gandhi



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ORDER

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the proceeding of the first respondent in Na.Ka.No.27/2012-4, dated 31.01.2014.

2. Learned counsel appearing for the petitioner submitted that the petitioner Institution is a Cotton Research Station engaged in developing cotton seeds for the invention of new hybrid crop varieties and new agricultural technologies. It is a constituent unit of the Tamil Nadu Agricultural University, Coimbatore. The petitioner regularly appointed employees for attending regular farming operations. The second respondent was engaged as an agricultural casual labourer off and on, as and when contingencies and exigencies arose in the seasonal agricultural operations in research field. The second respondent was originally engaged as a daily wager in the year 1984. He has not been engaged for a continuous period of 280 days for 4 years till 1985. He approached the Labour Court, Madurai in I.D.No.87 of 1996 seeking continuous employment and backwages. The Labour Court, Madurai, passed an award, dated 13.07.2009 and directed the petitioner to take back



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the second respondent as a casual labourer without any backwages.

As per the said direction of the Labour Court, the petitioner engaged the second respondent as daily wager from 10.02.2010. The second respondent and six others filed applications before the first respondent seeking the relief of conferment of permanent status in the petitioner institution on the plea that they have continuously worked for more than 480 days. The University has selection policy to select suitable candidates but agricultural casual labourers are not recruited and appointed against sanctioned posts. The petitioner is an Institute and the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, is not applicable to the petitioner. The petitioner resisted the application filed by the second respondent, however, the first respondent allowed the petition by an order, dated 31.01.2014 without any legal evidence. Therefore, this Writ Petition is filed.

3. Learned counsel appearing for the petitioner relied on the order reported in **1998 (1) LLN 717 [Agricultural Research Station, Tamil Nadu Agricultural University, Velayuthapuram, Kovilpatti Vs. Commissioner of Labour, Madras and another]** for the proposition that research station of the University is an



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exempted establishment under the Tamil Nadu Shops and Establishments Act, 1947. When the Tamil Nadu Shops and Establishments Act, 1947, is not applicable to the University, it goes without saying that it cannot also be considered as an establishment under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, and therefore, conferment of the permanent status of the workman under the said Act is not maintainable. He also relied on the order passed in ***W.P.No.22016 of 2011, dated 27.09.2011 [J.Devadass and others Vs. Inspector of Labour, Kancheepuram]*** for the same proposition.

4. The order in ***W.P.Nos.14983 & 16964 to 16968 of 2010, dated 09.09.2019 [K.M.Palanisamy Vs. The Presiding Officer, Labour Court, Salem and another]*** is relied on for the proposition that mere employment as a seasonal Mazoodor in the Agricultural Farm in the Tamil Nadu Agricultural Research Station cannot be a ground to claim regularization or permanent absorption.

5. The Judgment reported in ***(2008) 5 SCC 75 [Sita Ram and others Vs. Motilal Nehru Farmers Training Institute]*** is



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relied on for the proposition that the burden of proof is on the workman to show that he has completed 240 days in a year.

6. The Judgment reported in **2021 SCC Online SC 899** **[Union of India and others Vs. Ilmo Devi and another]** is relied on for stating the powers of the Court and scope for regularizing part time employees.

7. Per contra, learned counsel appearing for the second respondent submitted that the petitioner had been working under the second respondent for long years. The claim of the petitioner is that the second respondent was engaged by the petitioner as a seasonal worker for doing agricultural operation is not correct. The second respondent was regularly engaged by the petitioner for its purpose and he was working without any break. Even if there was any break, it was only an artificial break in services created by the petitioner itself. The second respondent produced the necessary evidence available with him to prove his case of continued service under the petitioner for more than 480 days in 24 calendar months. However, the petitioner is in possession of all the records relating to the second respondent's employment, attendance and payment of



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wages etc. However, the petitioner has not produced the relevant documents before the authority to disprove the claim of the second respondent, when the second respondent had discharged his initial burden of proving that he was working under the petitioner for more than 480 days. It is seen from the details of casual workers working under the Cotton Research Station, Srivilliputhur in No.CRS/SVPR/Details of casual labourers details/2013, dated 28.03.2013, addressed to the Registrar, Tamil Nadu Agricultural University, Coimbatore, by Dr.P.Amala Balu, Professor and Head of Cotton Research Station, Srivilliputtur that the second respondent G.Paramasivam completed 28 years and 15 days as on 15.03.2013 excluding the break period and other persons. Some persons served for a period of 25 years to 35 years, of course, with a break in service artificially created by the petitioner. The petitioner had extracted good amount of work from the second respondent for all these years, despite that it has not chosen to confer permanency. An Industrial Dispute was also raised before the Labour Court, Madurai in I.D.No.87 of 1996 for reinstatement, continuity of service and backwages. That petition was partly allowed granting the prayer of reinstatement and continuity of service. It was held in the award that the petitioner served for more than 240 days. This order was not challenged and it became final. Thus, that order also



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confirms that the second respondent had worked for more than 480 days continuously.

8. Learned counsel appearing for the second respondent further submitted that in ***W.P(MD)No.10691 of 2007, dated 19.07.2011 [The Management, Agricultural College and Research Institute, Tuticorin District Vs. The Inspector of Labour, Tuticorin and others]***, this Court in a similar matter arose from Agricultural College and Research Institute, Tamil Nadu Agricultural University distinguished the order in ***1998 (1) LLN 717 [Agricultural Research Station, Tamil Nadu Agricultural University, Velayuthapuram, Kovilpatti Vs. Commissioner of Labour, Madras and another]***, and discussed the Judgment of the Honourable Supreme Court reported in ***2001 (1) LLJ 187 [Ruth Soren Vs. Managing Committee, East I.S.S.D.A and others]*** and the Judgment reported in ***2004 (7) SCC 112 [A.Umarani Vs. Registrar, Co-operative Societies]*** and concluded that in view of the specific Act available to the State of Tamil Nadu ie., the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, this Act prevails and in terms of this Act, permanent status has to be



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conferred. The relevant portion of the order in **W.P(MD)No.10691 of 2007, dated 19.07.2011 [The Management, Agricultural College and Research Institute, Tuticorin District Vs. The Inspector of Labour, Tuticorin and others]** reads as follows:-

"9.The learned counsel for the petitioner also placed reliance on the judgment of this court, in the case of Management-Agricultural Research Station, Tamil Nadu Agricultural University, Velayuthapuram, Kovilpatti. vs. Commissioner of Labour (Authority under Section 51 of the Tamil Nadu Shops and [Establishments Act](#) 1947), Labour Welfare Board Buildings, D.M.S, Compound, Madras and another, in W.P.No.7193 of 1988, dated 19.12.1997, wherein this Court held that the Tamil Nadu Shops and [Establishment Act](#), 1941 were not applicable to the petitioner's University.

10.On merit, the learned counsel for the petitioner challenged the award, by contending, that it was not open to the learned Labour Court, to order permanent status to the respondent Nos.2 to 19, as the respondents were not regularly appointed, therefore, could not be regularized or conferred permanent status.

11.In support of this contention, the learned counsel for the petitioner, placed reliance on the judgment of the Hon'ble Supreme Court in the case



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of *State of U.P. vs. Neerajawasthi and others* [(2006)1 SCC 667]

12. On consideration I find no force in the contention raised by the learned counsel for the petitioner.

13. The judgment of the Hon'ble Supreme Court, in the case of *Ruth Soren vs. Managing Committee, East I.S.S.D.A and others* [2001-I-L-L-J, 187] (supra), cannot advance the case of the petitioner, as in this judgment, it has been held, that the learned Labour Court, has jurisdiction to adjudicate the dispute, as the University is an industry and therefore, amenable to the jurisdiction of the Labour Court.

14. The contention of the learned counsel for the petitioner that the Tamil Nadu Shops and *Establishments Act*, is not applicable to the respondents 2 to 19, therefore, the order passed by the learned Labour Court, is bad in law, also cannot be sustained, as definition of 'industrial establishment' under the *Establishment Act*, is mere comprehensive than the definition under the Tamil Nadu Shops and *Establishment Act*, 1947.

15. The definition of 'Industrial Establishment' under the Act, would cover the petitioner's University, once it is held to be an industry.

16. The first contention of the learned counsel for the petitioner, therefore, cannot be accepted.

17. The second contention of the learned counsel for the petitioner also deserves to be noticed to be



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rejected for the reason that in the case of *State of U.P. vs. Neera Awasthi and others* reported in (2006)1 SCC 667, the question for determination was whether the person appointed by back door matter could be regularized.

18.The Hon'ble Supreme Court, by placing reliance in *A.Umarani Vs. Registrar, Coop. Societies* [(2004)7 SCC 112: 2004 SCC (L&S) 918], held that the employees are not entitled to regularization of service.

19.This judgment will not be applicable to the facts of the present case, as the respondents 2 to 19 are seeking enforcement of statutory right, under statute i.e., *Establishment Act*, referred to above.

20.In view of the specific Act, applicable to the State of Tamil Nadu, the judgment of the Hon'ble Supreme Court referred by the petitioner, will have no application."

9. With regard to the application of Uma Devi's case in the Industrial Dispute, learned counsel appearing for the second respondent relied on the Judgment of the Honourable Supreme Court in ***Civil Appeal No.10856 of 2014, dated 09.12.2014 [Durgapur Casual Workers Union and others Vs. Food Corporation of India and others]***. It is observed as follows:-



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"35. *Umadevi (3) is an authoritative pronouncement for the proposition that the Supreme Court ([Article 32](#)) and the High Courts ([Article 226](#)) should not issue directions of absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.*

36. Umadevi (3) does not denude the Industrial and Labour Courts of their statutory power under [Section 30](#) read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi (3) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."

"47. It was strenuously urged by the learned Senior Counsel for the Corporation that the Industrial Court having found that the Corporation indulged in unfair labour practice in employing the complainants as casuals on piece-rate basis, the only direction that could have been given to the Corporation was to cease and desist from indulging in such unfair labour practice and no direction of according



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permanency to these employees could have been given. We are afraid, the argument ignores and overlooks the specific power given to the Industrial/Labour Court under [Section 30\(1\)\(b\)](#) to take affirmative action against the erring employer which as noticed above is of wide amplitude and comprehends within its fold a direction to the employer to accord permanency to the employees affected by such unfair labour practice."

10. In support of the claim that Educational Institutions are covered by the Industrial Disputes Act, the order in **W.P.No.3359 of 2009, dated 28.02.2011 [Tamil Nadu Agricultural University, Yercaud]** is relied on. It is observed as follows:-

"11.The term 'Industry' is defined under Section 2(j) of the Industrial Disputes Act, 1947. A larger Bench of the Supreme Court had an occasion to consider the definition 'Industry' found under Section 2(3) of the Industrial Disputes act in the case of [Bangalore Water Supply and Sewerage Board Vs. A.Rajappa and others] reported in 1978 (1) LLJ 349. In that case the Supreme Court has held that even Educational Institutions are covered by the Industrial Disputes Act. Hence, the second contention raised by the Management cannot be countenanced by this Court and it was rightly rejected by both the authorities ie., the first and second respondents.



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12.The third submission is regarding the length of service put in by the third and fourth respondents. During the proceedings before the second respondent, the workman summoned for the records relating to the provident fund. It was resisted by the petitioner and all the records were not submitted. This was even as per their own admission made in paragraph 6 of the affidavit. Once the records concerned were not produced, it is always open to the authority to draw adverse inference and presume that the particulars given by the workmen is correct. Hence, there is no illegality in accepting their evidence."

11. Thus, the learned counsel appearing for the second respondent submitted that having extracted great amount of labour from the second respondent for several years, having omitted to confer permanent status, it is not right on the part of the petitioner to challenge the order passed by the first respondent in conferring permanent status to the workman/second respondent. The reality is that the second respondent retired from service and some other persons, who raised the conferment issue also either retired or died. At the most, they would be entitled only for pensionary and monetary benefits and therefore, he prayed for confirming the order of the first respondent and for the dismissal of the Writ Petition.



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12. Considered the rival submissions and perused the records.

13. In the light of the unimpeachable document emanated from the petitioner in the form of proceedings in No.CRS/SVPR/Details of casual labourers details/2013, dated 28.03.2013, to the Registrar, Tamil Nadu Agricultural University, Coimbatore, it is clearly established that the second respondent had worked under the petitioner for 28 years and 15 days as on 15.03.2013, of course, excluding the break period. It is also seen from the award passed in I.D.No.87 of 1996 that the second respondent was ordered to be reinstated with continuity of service, meaning thereby, his service has been reckoned without any break from the date of his termination. Therefore, this Court is of the considered view that the second respondent has *prima facie* established his claim that he worked under the second respondent for more than 480 days in a period of 24 calendar months.



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14. It is seen from the order impugned that the petitioner had not produced any contra evidence to disprove the claim of the second respondent. It was pointed out that the petitioner is in possession of attendance register and other documents and despite that those documents had not been produced before the authority. In the said circumstances, this Court finds that there is no illegality or irregularity in the finding of the fact recorded by the first respondent that the second respondent had completed 480 days of continuous service in 24 calendar months.

15. With regard to applicability of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, though the learned counsel appearing for the petitioner relied on the aforesaid Judgments in support of his case, it is found that the Judgment reported in **1998 (1) LLN 717 [Agricultural Research Station, Tamil Nadu Agricultural University, Velayuthapuram, Kovilpatti Vs. Commissioner of Labour, Madras and another]** was distinguished in the subsequent order of this Court in **W.P(MD)No.10691 of 2007, dated 19.07.2011 [The Management, Agricultural College and Research Institute, Tuticorin District Vs. The Inspector of Labour,**



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Tuticorin and others]. In an identical case, it was held that the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, applies to the Tamil Nadu Agricultural University.

16. Moreover, the main issue involved in the order reported in **1998 (1) LLN 717 [Agricultural Research Station, Tamil Nadu Agricultural University, Velayuthapuram, Kovilpatti Vs. Commissioner of Labour, Madras and another]** is that whether the University is an exempted establishment or not under the Tamil Nadu Shops and Establishments Act, 1947. It was held in **W.P(MD)No.10691 of 2007, dated 19.07.2011 [The Management, Agricultural College and Research Institute, Tuticorin District Vs. The Inspector of Labour, Tuticorin and others]** that the "definition of the "Industrial Establishment" under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, is more comprehensive than the definition under the Tamil Nadu Shops and Establishments Act, 1947. Since the respondents 2 to 19 therein sought enforcement of statutory right and in view of the specific act applicable to the State of Tamil Nadu, the Judgments relied in that case reported in **2001**



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(1) LLJ 187 [Ruth Soren Vs. Managing Committee, East I.S.S.D.A and others] and the Judgment reported in 2004 (7)

SCC 112 [A.Umarani Vs. Registrar, Co-operative Societies]

were not applicable to the facts of the case". In **W.P.No.22016 of 2011, dated 27.09.2011 [J.Devadass and others Vs. Inspector of Labour, Kancheepuram]**, the decision that the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 cannot be invoked by the petitioners therein was taken for the main reason that in the Judgment reported in **2001 (1) LLJ 187 [Ruth Soren Vs. Managing Committee, East I.S.S.D.A and others]** it was held that Shops and Establishments Act, 1947 is not applicable to the Educational Institution as it will not come under the definition of establishment within the meaning of the Act.

17. In **W.P.No.3359 of 2009, dated 28.02.2011 [Tamil Nadu Agricultural University, Yercaud]**, this Court relying on the Judgment of the Honourable Supreme Court reported in **1978 (1) LLJ 349 [Bangalore Water Supply and Sewerage Board Vs. A.Rajappa and others]**, held that "even Educational Institutions are covered by the Industrial Disputes Act. While



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explaining the term 'Industry' as defined under Section 2(j) of the Industrial Disputes Act, 1947, it was observed in 1978 (1) LLJ 349 [Bangalore Water Supply and Sewerage Board Vs. A.Rajappa and others] that "the consequences are (i) professions (ii) clubs (iii) educational institutions (iv) co-operatives (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfill the triple tests listed in I (supra), they cannot be exempted from the scope of Section 2(j)".

18. Therefore, there is no doubt that the petitioner University involved in research activities and in the process selling the excess proceeds produced, is also an Industry coming under the jurisdiction of the Industrial Disputes Act and the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

19. It is true that in the order passed in **W.P.Nos.14983 & 16964 to 16968 of 2010, dated 09.09.2019 [K.M.Palanisamy Vs. The Presiding Officer, Labour Court, Salem and another]**, this Court rejected the claim of regularization for seasonal Mazdoors in the Agricultural Research Station for regularization. This Court



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finds that the scope and applicability of Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, is not considered in this order. Therefore, this order cannot be taken as a precedent for deciding the issue involved in this case.

20. We have seen that the second respondent has served under the petitioner Management for a long period. Rather he was exploited by the University without conferring permanent status and other benefits. From the typedset of papers filed, it is seen that several daily wage workers had been made permanent. For instance, through proceedings in No.A6/0149/2014, dated 03.02.2014, casual labourers appointed on time scale of pay were brought into regular time scale of pay. Similar order has been passed in No.A6/0149(iii)/2014, dated 09.09.2014 for moving casual labourers appointed as Mazdoor on time scale of pay to regular time scale of pay. Even in the petitioner's typed set, G.O(Ms)No.352, Agriculture (AU) Department, dated 24.11.2008 was issued for moving the casual labourers on consolidated time scale of pay to regular time scale of pay from 01.04.2008. What is to be seen here is that they were all working for more than 20 years



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and numbering 1193. A similar G.O(Ms)No.244, Agriculture (AU) dated 05.11.2009 was issued for moving the casual labourers numbering 953 on consolidated time scale of pay to regular time scale of pay from 01.04.2008.

21. Thus, it is clear that the petitioner had been taking steps for regularizing the casual labourers to the time scale of pay and the casual labourers in time scale of pay to the regular service, when the second respondent worked for more than 480 days in 24 calendar months and it is clearly established, it is not known why the similar benefit is not extended to the second respondent. The first respondent rightly found that the second respondent is entitled for conferment of permanent status on completion of 480 days of service and this Court finds no reason to interfere with the order of the first respondent.

22. In this view of the matter, the order passed by the first respondent in Na.Ka.No.27/2012-4, dated 31.01.2014, is confirmed and this Writ Petition is dismissed.



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23. In the result,

This Writ Petition is dismissed confirming the order passed by the first respondent in Na.Ka.No.27/2012-1, dated 31.01.2014.

It is brought to the notice of this Court that the second respondent retired from service. Therefore, he is entitled for all the monetary and retirement benefits as per entitlement on the basis of regularization of his service on conferment of permanent status and subsequent revision of pay. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order."

There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

**02.09.2022
(5/7)**

Internet :Yes
Index :Yes / No
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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 Labour,
(Authority under Tamil Nadu
Conferment of Permanent Status
Act 1981), Labour Department,
Virudhunagar.



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G.CHANDRASEKHARAN, J.

ps

Order made in
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**02.09.2022
(5/7)**