



W.P(MD)No.16630 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16630 of 2018

and

W.M.P.(MD)No.14714 of 2018

The Chief Executive,
Perambalur Sugar Mills Ltd.,
No.36, Eraiyur Post,
Perambalur District-621 133.

... Petitioner

Vs.

1.The Joint Director,
Industrial Safety and Health Directorate,
Authority under the Tamil Nadu Industrial
Establishment (Conferment of Permanent Status) Act, 1981,
2/3, Abdul Salam Street,
Khaja Nagar,
Mannarpuram,
Trichy-20.

2.A.Ganeshan

3.Karuppih

4.C.Kanagaraj

5.Manivel

6.Muthusamy



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7.Subramanian

8.Karuppiah

9.Karuppaiah

10.Murugesan

11.Sundarraaj

12.Annadurai

13.Stalin

14.Subramanian

15.Thangaraju

16.Duraisamy

17.Balusamy

18.Chinnasamy

19.Pitchaipillai

20.Subramanian

21.Chandrahasan

22.Azhagan

23.Azhaguraj

24.R.Perumal

25.Gunasekaran

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to order of the first respondent passed in petition No.A/1307/2017 dated 26/02/2018 and quash the same.

For Petitioner : Mr.R.Rajaram
For R1 : Mr.J.Ashok
Additional Government Pleader

For R2 to R12
R14 to R20,
R22 to R25 : Mr.S.Suresh

For R21 : no appearance

ORDER

Heard the learned counsel on either side.

2. The Management of Perambalur Sugar Mills Limited questions the impugned award passed by the competent authority under Tamil Nadu Act 46 of 1981 in favour of the private respondents herein.

3. The private respondents herein filed petition before the first respondent seeking conferment of permanent status. The writ petitioner filed counter opposing the claim. After holding enquiry on various dates and after perusing the documents, the impugned order came to be passed grating



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permanent status on completion of 480 days which was reckoned from the date of their joining duty in the first instance. A table had been annexed to the impugned order and the names of the claimants and the dates on which they joined service and the dates of completion of 480 days have been mentioned.

4. The learned counsel appearing for the petitioner took me through the averments filed in support of the writ petition and called upon this Court to quash the impugned award.

5. Per contra, the learned counsel appearing for the workman submitted that the finding of fact arrived out by the authority ought not to be interfered with in exercise of writ jurisdiction. He would also point out that the authority had himself referred to the circular as well as the order dated 28.03.1988 issued by the Government that the conferment of permanent status can be granted to workmen who had worked for 480 days in four consecutive crushing seasons. He would also point out that the Management had withheld certain documents such as attendance register and that therefore, the authority was justified in drawing adverse inference. He called upon this Court to dismiss the writ petition.



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6. I carefully considered the rival contentions and went through the materials on record.

7. The learned counsel appearing for the petitioner drew my attention to Section 1(3) of the Tamil Nadu Act 46 of 1981. The said provision reads as follows:-

“(3) It applies to every industrial establishment (not being an establishment of seasonal character or in which work is performed only intermittently) in which not less than fifty workmen were employed on any day of the proceeding twelve months. If any question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently the decision of the Government thereon shall be final.”

8. It is obvious from a bare reading of the above provision that an establishment of seasonal character would not fall within the purview of the Act. The question that arises for consideration is whether sugar industry is an establishment of seasonal character. The learned counsel appearing for the petitioner drew my attention to the order dated 03.11.2015 made in W.P.No. 7152 of 2005, in which, it was noted that the Government in their letter dated 20.07.1998 had issued a general direction to the effect that the sugar industry can never be declared as permanent industry since the crushing operation is not being carried out throughout the year. The petitioner had filed a counter before



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the first respondent that they are seasonal factory and that the claimants were given casual work only during crushing season and that therefore, the claims are not maintainable. The first respondent has not rendered any finding on the said plea. This defence was directly related to jurisdictional issue. If the establishment is of seasonal character, the first respondent will obviously not have jurisdiction to entertain the claim for conferment of permanent status. The statutory provision itself indicates that if any question arises in this regard, the matter has to be referred to the Government for decision. In this case, no such reference was made.

9. However, taking note of the order dated 03.11.2015 made in W.P.No. 7152 of 2005, I come to the conclusion that the sugar factory is an establishment of a seasonal character and therefore, the impugned order is liable to be set aside for want of jurisdiction. Even on merits, the impugned order is seriously vulnerable. The private respondents herein have approached the authority for specific claim that they had put in 480 days of work in 24 consecutive months. Therefore, they were obliged to establish the said claim. The burden lay entirely on them. The authority in the impugned order had made a bald statement that he could note that the petitioners have fulfilled the statutory requirements. This finding of the authority is not based on any



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material. The petitioner on the other hand in their counter have specifically contested the claim of the private respondents herein. I have no hesitation to come to the conclusion that the impugned order passed by the authority is based on zero evidence. It is true that the private respondents were engaged by the writ petitioner Management since 1993 onwards. But that is beside the point. The only proof adduced by the respondents before the authority was that they were engaged since 1993. The question is whether they were in continuous service for a period of 24 calendar months. This requirement has not been shown to have been fulfilled in this case. Even if I assume that it is enough to show that there was engagement for 480 days within four crushing seasons, there is no material in support of the assertion made by the claimants. Looked at from any angle, the impugned order cannot be sustained. It is set aside.

10. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
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G.R.SWAMINATHAN, J.

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To

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