



W.P.(MD).Nos.14206 and 14207 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.11.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).Nos.14206 and 14207 of 2016
and
W.M.P.(MD).Nos.10542 and 10543 of 2016**

W.P.(MD).No.14206 of 2016:

- 1.The Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin District – 628 004.
- 2.Superintending Engineer ,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin District – 628 004.
- 3.The Chief Engineer,
Personnel,
TANGEDCO,
Chennai – 600 002.

... Petitioners

Vs.

- 1.The Joint Director,
Industrial Safety and Health,
Tuticorin.

2.P.Chandramohan

... Respondents



W.P.(MD).Nos.14206 and 14207 of 2016

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 of the first respondent in proceedings E/394/2014 and quash its order dated 02.07.2015.

W.P.(MD).No.14207 of 2016:

1.The Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin District – 628 004.

2.Superintending Engineer ,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin District – 628 004.

3.The Chief Engineer,
Personnel,
TANGEDCO,
Chennai – 600 002.

... Petitioners

Vs.

1.The Joint Director,
Industrial Safety and Health,
Tuticorin.

2.M.Raja

... Respondents

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 of the first respondent in proceedings E/2363/2013 and quash its order dated 10.08.2015.



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(In Both Writ Petitions):

For Petitioners : Mr.Anand Gopalan,
For M/s.T.S.Gopalan and Co

For R-1 : Mr.P.Thambidurai,
Government Advocate.

For R-2 : Mr.P.Muthumalai Raja

COMMON ORDER

The Writ Petitions have been filed challenging the orders passed by the first respondent dated 10.08.2015 and 02.07.2015.

2. The claim of the second respondent in both the Writ Petitions are that they are engaged by the petitioners as contract labours for the period from 1995 to 1998. Since they have not granted any permanency, the second respondents had submitted an application before the Labour Officer to grant permanency and the same was granted through the impugned order. Aggrieved over the impugned order, the present Writ Petition is filed.



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3. The contention of the petitioner establishment is that the second respondent in W.P.(MD)No.14206 of 2016 Mr. P. Chandramohan was not in service from 03.01.1998 and the second respondent in W.P.(MD)No.14207 of 2016 M. Raja was not in service from 27.10.1999. Both Mr. P. Chandramohan and M. Raja had preferred petition before the first respondent on 14.02.2014 and 30.09.2013 respectively, after a lapse of more than fourteen years. Admittedly as on the date of filing of the petition before the Labour Officer, the second respondents were not in service at all. Even according to the second respondents, they are engaged from the year 1995 to 1998 but the petition was filed on 2013/2014. As on the date of filing of the petition both of them were not in employment and there is no subsisting master and servant relationship and hence they cannot claim permanency. The petitioners relied on the judgment rendered in the case of ***S.Sivakumar and others Vs Deputy Inspector of Factories Chennai and another*** reported in (2006) 3 LLJ 888. The relevant portion of the order is extracted hereunder:

“14. In view of the above discussion, we are of the considered view that for claiming the permanent status under S. 3 of the Act, there must be subsistence of the relationship of master-servant or employer-employee between the parties and if this requirement is not satisfied even though the petitioners have completed four hundred and eighty days in a period of twenty four calendar months



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in the respondent industrial establishment, in the absence of master-servant or employer-employee relationship between the petitioners and the respondent-management as on the date of making of the application under S. 3 of the Act, they cannot maintain the application under S. 3 of the Act seeking permanent status. Unless and until the order terminating their services are set aside by the competent authority, they cannot approach the competent authority under the Act seeking conferment of permanent status as per S. 3(2) of the Act”.

The Learned Counsel relied on the judgment rendered in W.A. No. 2252 of 2021 the Hon’ble Division Bench vide order dated 22.02.2022 has held as under:

“9. In view of the above, while setting aside the order passed by the learned Single Judge and allowing the writ appeals, the respondent Corporation is directed to implement the order passed by the Labour Inspector, within six months from the date of receipt of a copy of this order. However, the benefit of conferment status would be admissible to the appellants/writ petitioners only for the period they have served in the respondent Corporation and not for the period during which they were not serving the respondent Corporation. To make it clear, if any of the appellants/writ petitioners was either discontinued from the contract or terminated, the benefit arising out of the order of the Labour Inspector would be only for the period of service and not after their discontinuance or termination, for which, the appellants/writ petitioners would be at liberty to take recourse as available to them, if they are so interested.”

It has been categorically held in the aforesaid judgment that if at all the employee is entitled to permanency, then it is only for the period of subsisting



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employment and not for the non-employment period. If so the second respondents were not in their employment at all and they were in employment with the contractors during that period and can seek permanency against the said contractor. The same view was upheld in another writ appeal in W.A.No. 1544 of 2022 in the case of R. Palani Vs. the Chairman TANGEDCO and others by the Hon'ble First Bench of this Court. From the aforesaid facts and judgments it would be evident that admittedly, as on the date of filing of the petition, the second respondents were not in service at all and the aforesaid judgments are squarely applicable to the present case. Therefore, this Court is of the considered opinion that the second respondents cannot maintain the petition under section 3 of the Act and the claim of the second respondents ought to be rejected.

4. The contention of the second respondents are that they were orally terminated and hence they should be granted permanency. The contention of the petitioners is that they have never ever terminated the second respondents, infact they were not their employees at all. They were engaged by the Contractors and if they were orally terminated then they should challenge the termination first, then only they can be considered for absorption. For this



proposition, the petitioners relied on the Hon'ble Supreme Court judgment rendered in the case of ***Tamil Nadu Civil Supplies Workers Union Vs. T.N. Civil Supplies Corporation*** reported in ***(2001) 4 SCC 469***, wherein the relevant portion of the order is extracted hereunder:

“10. In any event, as stated above, the services of the workmen have been terminated. Therefore, even if the said Act squarely applied and the establishment of the first respondent was not of a seasonal character and the work was not intermittent, the remedy would now be to file the appropriate proceedings against the order of termination. In this view of the matter, no purpose would be served by dealing with the correctness of the finding given by the Division Bench”.

In the present case, the second respondents claimed that he was orally terminated. However, such termination was not challenged before any forum. Hence, this proposition laid out by Hon'ble Supreme Court is squarely applicable to the present case. Therefore, this Court is of the considered opinion that the second respondent cannot maintain claim permanency and the claim of the second respondents ought to be rejected.

5. The next contention of the petitioner is that the Labour Officer cannot exercise his jurisdiction if complicated questions of facts or law is involved and



for the same the Learned Counsel for the petitioner relied on the judgment of Hon'ble Division Bench in Superintending Engineer, Erode Vs. Inspector of Labour reported in 2022 SCC OnLine Mad 1003 wherein it is held as under:

“22. In view of the above, while we are of the view that the Labour Inspector has the power to issue appropriate order to grant permanency to the workmen, it cannot be by adjudicating the complicated questions of fact and law. A perusal of the Act of 1981 does not provide power in Labour Inspector of the nature given to the Industrial Adjudicator, i.e., the Industrial Tribunal or Labour Court, as complete framework with procedure for it has been given under the Act of 1947. Certain provisions of the Civil Procedure Code have been made applicable therein for proper adjudication which does not exist under the Act of 1981.

23. If the facts of this case are taken into consideration, we find that the Labour Inspector has recorded his finding in reference to the Act of 1970 while adjudicating the issue. Such powers have not been conferred on him, rather he can pass appropriate order after summary enquiry. The view expressed by the Single Judge of this court in the case of ***Superintending Engineer, Vellore Electricity Distribution Circle, Vellore and others***, supra, is not in conflict with the view aforesaid, rather in paragraph 35 of the said judgment, the difference between the power of Labour Inspector and Labour Court or Industrial Tribunal under the Act of 1947 has been made. Paragraph (35) of judgment, referred supra, is extracted hereunder:

"35. Therefore, I am unable to accept the submission made on behalf of the Board that the exercise of the power by the Inspector of Labour in conferring permanent status after holding necessary enquiries contemplated under S. 5 read along with rule 6(4) should



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be construed as arrogating to himself the powers available to the other adjudicatory forums created under the provisions of the Industrial Disputes Act, 1947. It will have to be stated that while the exercise of powers vested with the Inspector under the provisions of the Act is summary in nature, the one under the provisions of the Industrial Disputes Act may be an elaborate one. Nevertheless the same does not mean that by exercising the power under the provisions of the Act the Inspector of Labour would be trespassing into the adjudication process contemplated under the provisions of the Industrial Disputes Act. In this context, if the judgment of the Supreme Court in Nirchiliya case [1990 (2) L.L.N. 4] (vide supra) is applied, it can be safely held that where there is no prohibition under the provisions of either the Industrial Disputes Act or the Act, exercise of the power in the manner in which it can be done by the Inspector of Labour under the Act cannot be found fault with. It will have to be stated that such an exercise would be well within the statutory limitations provided under the Act. In fact, in the above-referred to judgment of the Hon'ble Supreme Court, the question for consideration was whether the workmen who initially raised an industrial dispute under the Industrial Disputes Act and who did not pursue it till its logical end when chose to move the authority under the then Madras Shops and Commercial Establishment Act, the Hon'ble Supreme Court held that in the absence of any prohibition under either of the enactments, such a course adopted by the workmen cannot be faulted. Therefore, applying the said ratio to the case on hand, it can be safely held that the concerned workmen here were placed in a better footing when they chose to straightaway move the Inspector of Labour under the Act, inasmuch as according to the workmen, having regard to the facts prevailing as on date, they were entitled for the conferment of permanent status as provided under the Act. If such a claim of the workmen was not factually maintainable, it was for the Board to have resisted the said claim with all available materials and could have convinced the Inspector of Labour as the claim ought not to have been countenanced. The Board having miserably failed to perform its duties in the manner expected of it, it cannot be now allowed to contend or complain against the powers exercised by the Inspector of Labour which was within the provisions of the Act. In this context, if the judgment of the Division Bench of this Court in Metal Powder Company, Ltd. case [1985 (2) L.L.N. 738] (vide supra), is applied, then also it can be safely held that the Inspector of Labour was well within his jurisdiction in holding the proceedings in the manner it was held



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and in passing the order by directing the petitioner/Board to confer permanent status on the workmen."

24. The Labour Inspector vested with the power under the Act of 1981 is said to be having a summary power of enquiry, while an elaborate adjudication of questions of fact and law can be only under the Act of 1947.

25. In view of the above, we can safely hold that the Labour Inspector can exercise jurisdiction only in the nature of summary enquiry, while a case involving complicated question of fact and law to be left for its adjudication under the Act of 1947. The Labour Inspector can exercise his power under the framework of the Act of 1981. He has no power to adjudicate the issue in reference to other statutes, which includes the Act of 1970.

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34. We have considered the submission aforesaid and find that the order passed by the Labour Inspector needs to be interfered with remand of the case. It is, however, to be made clear that the Labour Inspector would not cause enquiry beyond the powers given under the Act of 1981 and thereby would not be having jurisdiction to adjudicate the complicated questions of fact and law in reference to any other statute than the Act of 1981. The Labour Inspector may, for the purpose of conducting summary enquiry, allow the parties to produce documents and if any of the workmen has completed 480 days of continuous service in 24 calendar months, appropriate directions can be issued for granting permanency. However, even if such an order is issued, it should be with a clear finding about each workman and the number of working days by referring to the period of 24 calendar months. The benefit as to the consequences thereupon would be only for the period of employment and if any of the workman is discontinued or not in service, he would be entitled to the benefit only for the period of service and not beyond that and, that too, after the completion of continuous service of 480 days in 24 calendar months, and not for a prior period. The direction aforesaid is not driven by the settlement for the reason that the workmen herein are those who were not extended the benefit of settlement and, therefore, sought claims by maintaining claim separately. However, it would not preclude both the sides from entering into settlement, if they so choose, during the period of summary enquiry by the Labour Inspector. The issue as to whether the respondents fall within the definition of "workman" is however decided against the petitioner Corporation, as not only a



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settlement was entered, but adjudication about claim to seek permanency has been decided earlier in reference to similarly placed.

35. With the aforesaid directions, all the writ petitions are disposed of by causing interference with the order passed by the Labour Inspector. The orders passed by the Labour W.P.(MD)No.26223 of 2019 with batch cases Inspector are set aside with remand of the case to the Labour Inspector for passing orders afresh, after summary enquiry.

36. There will be no order as to costs. Consequently, all miscellaneous petitions are closed.”

6. This Court is of the considered opinion that in the present case, admittedly, complicated questions of facts and law is involved. When there is no subsisting employment, the applicability of the Act itself is questioned, in such complicated questions of facts and law, the first respondent is not having jurisdiction to entertain the petition. Hence, the impugned orders are liable to be quashed.

7. The petitioner was engaging contract labours, then a policy decision was taken to stop engaging contract labourers, consequently it was also decided to absorb the existing contract labourers. Hence, the petitioner formulated a scheme and issued B.P. Proceedings 17 dated 28.04.1999. The validity of the said B.P. 17 was challenged in a writ appeal and the same was upheld. As per the conditions in the said B.P. 17, the existing contract labourers should have



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been identified as contract labourers as on 05.01.1998 and from that date, the said contract labourer should serve as an employee of the petitioner's establishment for 480 days. Thereafter, the said employee would be absorbed in any permanent vacancy or in any supernumerary post. In the present case, the second respondents were not identified as on 05.01.1998, they have not completed 480 days in 24 calendar months from 05.01.1998 and hence, the second respondents are not entitled to the absorption. Therefore, for this reason also, the second respondents are not entitled to absorption or permanency. The impugned order has not taken all these factors into account and the impugned orders are liable to be quashed.

8. For the reasons stated above, the impugned orders are quashed and the Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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Tuticorin.



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