



W.P.No.33538 of 2005 & W.P.(MD)No. 6366 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.12.2022

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.No.33538 of 2005 & W.P.(MD)No. 6366 of 2015
and
W.P.M.P.No.36476 of 2005 and
M.P.(MD)No.1 of 2015

W.P.No.33538 of 2005

1. The Works Manager,
TANSI Foundry and Engineering Works,
Pettai, Tirunelveli – 627 010.

2. The Managing Director,
TANSI,
Guindy, Chennai – 32.

... Petitioners

Vs.

1. The Inspector of Factories,
Office of the Inspector of Factories,
18th Cross Street, Maharaja Nagar,
Tirunelveli – 11.

2. V.Murugesan

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the



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records of the 1st respondent passed in Proceedings No.Vu/ 5492/2001,
dated 15.5.2002 and quash the same.

W.P.(MD)No.6366 of 2015

TANSI Foundry and Engg Works,
represented by its Works Manager (i/c),
K.Kandasamy,
Pettai,
Tirunelveli – 10.

... Petitioners

Vs.

1. The Presiding Officer,
Labour Court,
Tirunelveli – 11.

2. V.Murugesan

... 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 entire records pertaining to the order passed by the 1st respondent viz., Presiding Officer, Labour Court, Tirunelveli in E.P. No. 11 of 2014 in C.P. No. 38 of 2005, dated 30.03.2015 and quash the same as illegal.
(In both cases)

For Petitioner	: Mr.A.Thiyagarajan for Mr.S.Karunakar
For R1	: Labour Court
For R2	: Mr.D.Sivaraman



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COMMON ORDER

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The writ petition in W.P.No.33538 of 2005 is filed by TANSI challenging an order passed by Inspector of Factories, dated 15.05.2002 granting permanency.

2. The writ petition is W.P.(MD)No.6366 of 2015 is filed by TANSI challenging the order passed in C.P.No.38 of 2005 dated 30.03.2015.

3. The brief facts are that the second respondent was appointed as Part-Time Daily Rated Watch & Ward in the first petitioner Unit. He had been paid the daily wages as per the rates fixed by the District Collector periodically. The petitioners are running the Unit in continuous loss and many of the units were closed and the staff and workers have been sent on voluntary retirement scheme or by way of retrenchment and in such circumstances, regularizing the service of the second respondent is not possible. The second respondent has filed W.P.No.4577 of 1994



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for a Mandamus directing the Managing Director to regularize the service by considering the representation dated 11.08.1992 and this Court, vide order, dated 26.09.2000 directed the petitioners to consider and pass orders expeditiously. TANSI has passed an order, dated 01.02.2001 stating that many of the units have already been closed and are becoming unviable, incurring continuous loss and declined to regularize. The second respondent without challenging the order filed an application before the first respondent under Section 3 of the Tamilnadu (Conferment of Permanent Status to Workmen) Act, 1981, seeking permanency. The second petitioner has filed a detailed reply stating that the provisions of the said Act is not applicable to the first petitioner, since the workers employed is less than 20. Further, the G.O.Ms.No.68, Small Industries Department, dated 24.08.1996 specifically prohibits fresh recruitment and therefore, giving permanent status is not possible. However, the first respondent without granting opportunity to the second petitioner to let in evidence passed the above order, which is against law. Hence TANSI has filed the present writ petition challenging the order dated 15.05.2002.



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4. The writ petition in W.P.(MD)No.6366/2015 is filed challenging the order passed in C.P.No.38 of 2005, wherein the worker has claimed Rs.5,02,485/- and the Labour Court has passed an order dated 30.03.2015 directing the respondents to pay the amount before the Court on or before 23.04.2015, failing which attachment would be ordered on 30.04.2015. Subsequently, there were other litigations pending between the parties. Based on the orders passed by this Court, the second respondent was reinstated into service and he has served until his superannuation and he was paid for his service.

5. These two writ petitions are posted before this Court for final hearing. When the writ petitions were listed on 18.11.2022, this Court has directed the Learned Senior Counsel appearing for the petitioner to produce the calculation memo indicating the details of payment made to the second respondent.

6. The second respondent submitted that he was sponsored by the District Employment Officer, Tirunelveli, for the post of Watch Man



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in the petitioner's Company and he was appointed on daily rated basis and service register was also opened by the petitioners. The Management agreed to make permanent/regularize the watchmen those who completed 2 years of service and entered into 12(3) Settlement, whereby the terms and conditions of employment was defined. Further the wages of the watchman were also agreed to be fixed as Rs.250-5-330-10-400 in the time scale of pay. However, even after the completion of five years, the petitioner did not take any steps to make the second respondent permanent and hence the second respondent submitted a representation dated 11.08.1992 praying to confer permanency and consequently to revise the wages from 1990 to 2000 as per time scale of pay. However, the Management replied that since new appointments have been banned in TANSI, the second respondent could not be made permanent. The contention of the second respondent is that to confer permanent status is a statutory right under the provision of Tamil Nadu Industrial Establishments (Confirmation of permanent status to the workmen) Act, 1981. Further under 12(3) settlement, the Management agreed to make all the workmen permanent who have completed two years of service.



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Moreover, the ban is only for fresh recruitment and not for making the existing employees permanent. Since the management failed to grant the relief, the second respondent has filed W.P.No.4577 of 1994 and the same was disposed of directing to consider and grant permanent status. Thereafter, the second respondent submitted a claim petition before the first respondent. The Management had filed counter before the first respondent stating that the second respondent was only a part time employee, the factory is running with less than 20 employees and various other false and misleading facts. The first respondent inspected the factory premises, thereafter conducting enquiry on various days, wherein it was found that all the objections raised by the Management are false. The first respondent found that 20 workers were employed in the factory in TANSI, at Pettai Unit and the second respondent had completed more than 15 years of continuous service. The management had not produced any evidence denying these facts. Hence the first respondent passed a detailed order directing the management to confer permanency. Though many units were closed, the fact remains that the Unit, Pettai, Tirunelveli was continuously functioning. The second respondent's retirement was in



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the year 2019. Even after the direction of the High Court, the Management has rejected the representation and failed to confer permanency status to the second respondent.

7. The contention of the employee is that, the claim of the management that there is ban of fresh recruitment cannot be sustained since only fresh recruitment was alone banned that too in the year 1996 to 2002, whereas the second respondent was employed in August 1985 at least 11 years prior to the date of such ban through G.O.Ms.No.68 dated 24.08.1996. Moreover, the second respondent has every right to get permanent status as per the 1981 Act and the 12(3) Settlement. The judgments relied on by the management are not applicable to the present case. Moreover, there are several cases wherein the Honourable Apex Court and Madras High Court had held that the financial position of the management cannot be cited as a reason for denying permanency or granting statutory benefits. The impugned order was passed on 15.05.2002 but the writ petition has been filed in the year 2005, hence the writ petition is filed belatedly and it is hit by the principles of delay



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8. The further submission of the second respondent is that the management claims that the second respondent was working as a part time employee, but the said statement is false, since the petitioner was employed in a permanent regular employment, that is why the petitioner has opened the service register and it was maintained till the year 2000, but closed thereafter, for the reasons best known to the petitioners. Further, the contention of the second respondent is that the similarly placed persons in TANSI were paid Rs.40,000/- per month. But the management denied the salary that is applicable to the post. In the entire service, the management has treated the second respondent as a daily rated employee by false allegation and by misconstruing the G.O.Ms.No. 68. Hence, the second respondent prayed to dismiss the writ petition.

9. Heard Mr.A.Thiyagarajan, the learned Senior Counsel for Mr.S.Karunakar and Mr.D.Sivaraman, the learned Counsel appearing for second respondent and perused the records.

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10. The first contention that was raised by the management is that the second respondent was appointed as a part time employee. However, the contention of the petitioner was refuted by the second respondent by stating that the second respondent was appointed as a daily rated employee and relied on the appointment order. The relevant portion of the appointment order is extracted hereunder:

“ Thiru V.Murugesan, C/o K.Ganapathy, 38, Industrial colony, Pettai, a Candidate sponsored by the District employment officer, Tirunelveli is appointed as Watchman on daily rated basis at Rs-15/- per day. He is informed that this appointment is purely temporary and he is liable for termination at any time without any prior notice. He should report for duty within 7 days from the date of receipt of the order”.

On perusing the appointment order, it is seen that the second respondent was sponsored by the District Employment Officer and was appointed as Watchman on daily rated basis at Rs.15/- per day. Nowhere it is mentioned that the second respondent was employed as a part time employee. The learned Counsel appearing for the second respondent further relied on the Service Register, which was opened in the year 1985 itself and there is an entry where it states that the second respondent is employed as watchman on daily rated at Rs.15/-. Even in the Service



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Register, it has not been stated that the second respondent is employed as a part time employee. Moreover, the employer would not have opened the service register for any part time employee. Therefore, this Court is of the considered opinion that the contention of the management that the second respondent was employed as a part time employee is incorrect.

11. The next contention that was raised by the management is that there was a ban for fresh recruitment as per G.O.Ms.No.68, dated 24.08.1986 and hence the Second Respondent cannot be considered for regularizing the employment. This contention is refuted by the learned Counsel appearing for the second respondent by stating that there was a ban for fresh recruitment in TANSI in the year 1996-2002. These said Government order is not applicable to the second respondent, since the second respondent was appointed in the year 1985. The second respondent is seeking only regularization by declaring probation and it cannot be considered as fresh recruitment. The second respondent was already in service from 1985 to 1996 and has completed 11 years of service when the government order which bans recruitment was issued.

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Therefore, this Court is of the considered opinion that the management is absolutely erroneous in claiming that there was a ban in recruitment.

12. The management had entered into 12(3) settlement dated 04.09.1985. On perusing the said 12(3) settlement it is seen that the management had agreed that the watchman who had completed 2 years of service would be declared as completed probation. As on 31.12.1984, the watchman would have been considered as completed probation in 2 years. Therefore, this Court is of the considered opinion that since the second Respondent was appointed on 08.08.1985, the second respondent ought to have been considered for regularization and also ought to have been treated as completed probation on 08.08.1987 and hence the second respondent is entitled to the benefits conferred under 12(3) settlement. Atleast the second respondent is entitled for permanency under Section 3 of Conferment of Permanent Status Act. Therefore, the management is directed to confer the benefits of permanency / regularization under Section 12(3) settlement and consequently disburse the monetary, service and attendant benefits that is applicable to the said post from the date of

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appointment. The management shall grant all the aforesaid benefits within a period of eight (8) weeks from the date of receipt of a copy of this order.

13. Before parting with the judgement, the management has acted in vindictive way against the second respondent, therefore, the petitioner management is liable to pay cost to the second respondent. Hence the petitioner management is directed to pay the cost of litigation of Rs. 50,000/- (Rupees Fifty Thousand only) to the second respondent.

14. With the above said direction, both the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

02.12.2022

Index : Yes / No
Internet : Yes / No

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To

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The Commissioner,
Kuzhithurai Municipality,
Kanyakumari District.



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S.SRIMATHY, J

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Order made in
W.P.(MD)No.33538 of 2005 & 6366 of 2015

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