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W.P.No.18175 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16/3/2023

C O R A M

THE HONOURABLE Mr.JUSTICE S.S.SUNDAR

Writ Petition No.18175 of 2010

K. Kalairajan ... Petitioner

Vs

1. The Deputy Commissioner of Labour
Cuddalore.

2. M.R.Kulothungan ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the Proceeding of the first respondent in No.E3156/2010 dated 2/7/2010 and quash the same.

For Petitioner ... Mr.C.P.Goutham
for Mr.V.Vijay Shankar

For Respondents ... Mr.P.Rajarajeswari
for R.1.

For R.2 – No appearance



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ORDER

This writ petition has been filed to quash the Proceeding of the first respondent, in No.E3156/2010, dated 2/7/2010.

2. The petitioner is a Co-operative Sugar Mill, which is engaged in crushing a sugarcane during the harvest times. The second respondent was appointed as a Technical Assistant in the year 1989 in relation to civil works. It is the case of the petitioner that there was no sanction post available in the petitioner industry to engage the second respondent on permanent basis. It is also stated that people like the second respondent, who are engaged for different works used to send to other Cooperative Sugar Mills, wherever the work is available.

3. Admittedly, the petitioner was originally appointed as Technical Assistant in the year 1989 and thereafter, due to non-availability of work, he was sent to some other Sugar Mill. Vide, Proceeding, dated, 27/8/1994 of the Special Officer of Amaravathi Cooperative Sugar Mill, second respondent was transferred back to the petitioner Mill from 1/9/1994. Thereafter, the second respondent had filed a petition before the first respondent, viz., the Deputy Chief Inspector of Factories,



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seeking confirmation of his permanent status, under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status of Workmen) Act, 1981.

4. It is the case of the second respondent that he was in service continuously for 480 days in two consecutive years and that therefore, in terms of provisions of the Act, second respondent is entitled to conferment of permanent status.

5. The first respondent not only granted permanent status, but also directed regularisation of the petitioner on permanent basis in appropriate position with service benefits and monetary benefits, as may be given to any permanent employee of the petitioner Establishment.

6. Heard Mr.C.P.Goutham, learned counsel for the petitioner and Mr.P.Rajarajeswari, learned Government Advocate for the first respondent. There is no representation on behalf of the second respondent.



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7. The learned counsel appearing for the petitioner submitted that employment of the second respondent was seasonal and not permanent. Since any Industrial Establishment which is seasonal in character, in terms of Section 1 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status of Workmen) Act, 1981 is exempted, from the application of Act, it was contended by the petitioner that the impugned order of the first respondent is not sustainable.

8. The learned counsel then submitted that the second respondent was absorbed only in the post of Technical Assistant which is not a regular sanctioned post in the petitioner Establishment, since the services of the second respondent was required temporarily in relation to construction activity. Further, it is contended that regularisation of the second respondent is impermissible and the impugned order is therefore, cannot be sustained.

9. On the other hand, in the counter affidavit filed by the second respondent it is stated that the second respondent who was working continuously for a period of 480 days in the petitioner Establishment is



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entitled to conferment of permanent status and regularisation and entitled for service benefits and monetary benefits.

10. This Court is unable to accept the case of the second respondent for the following reasons:-

The second respondent was never employed on permanent basis in any sanctioned post. Therefore, there is no question of regularisation of service of the second respondent in any post carrying time scale and other service conditions. The petitioner himself in the affidavit admits that skilled or unskilled or semi skilled workers are employed on temporary basis. Since the second respondent was employed on seasonal basis, the petitioner cannot be compelled to give regular work. It is further submitted that all the seasonal/temporary workers are given lay off with 50% of their wages.

11. From the case pleaded by the petitioner in the additional affidavit, this Court finds that findings of the first respondent regarding the engagement of the second respondent for a period of 480 days in two years period, is against the petitioner's version. Though the second



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respondent is not entitled for regularisation of services in the petitioner Establishment, the second respondent is certainly entitled to the benefit of permanent status as declared by the first respondent.

12. Accordingly, this writ petition is partly allowed. While confirming the order of the second respondent, conferring the permanent status to the second respondent, a direction regarding the regularisation of the petitioner in a suitable post with pay protection and service benefits is set aside. No costs.

16/3/2023

Index :yes/no

Neutral Citation: Yes/No

mvs.

To

1. The Deputy Commissioner of Labour, Cuddalore.

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