



W.P.No.8365 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.8365 of 2023

and W.M.P.No.8550 of 2023

Stanadyne India Private Limited,
(Formerly Known as Stanadyne Amalgamations Private Limited)
96, Aranvoyal Village,
Thiruvallur District-602 025.

.. Petitioner

Vs.

1. The Joint Director, Industrial Safety and Health,
No.6, Lal Bahadur Sastri Street,
1st Floor, Periakuppam,
Thiruvallur-602 001.

2. M/s.UPSPL Integrated Services Pvt. Ltd.,
1st Floor, No.181, 1st Main Road,
Nehru Nagar, OMR,
Kottivakkam, Chennai-600036.

3. Velu S
4. Udhayakumar G
5. Prabhu D
6. Kumaran L
7. Gandikotamohan G
8. Kumeresan A
9. Nithyanandan J

.. Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue any Writ, directions or order, particularly a Writ of Certiorari to call for the records bearing Case No.B/2244/2022 dated 07th March 2023 of the 1st respondent and quash the same.

For petitioner : Mr.S.Chandrabose
For Respondents : Mr.S.John J.Raja Singh,
Additional Government Pleader for R1
: Mr.R.Ganesh Kanna for R2
: V.Prakash, Senior Counsel
for Mr.S.Arokia Mani Raj
for R3 to R9.

ORDER

Aggrieved by the order passed by the 1st respondent/The Joint Director, Industrial Safety and Health, the petitioner is before this Court.

2. It is the case of the petitioner that respondents 3 to 9/workmen are contractual employees employed by the petitioner under a contract with the 2nd respondent in terms of the agreement executed with the 2nd respondent. During the course of contract service agreement, the workmen entered into a settlement with the 2nd respondent and left the services of the 2nd respondent in the month of September 2022. Thereafter, the respondents 3 to 9 approached the 1st respondent by way of petitions seeking permanent



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employment in the Petitioner Company, pursuant to which, proceedings were initiated under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, pursuant to which, the present impugned order has come to be passed directing the petitioner company to confer permanent status on the respondents 3 to 9. Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner submits that the 2nd respondent is the licensed contractor and respondents 3 to 9 are under the employment of the 2nd respondent. While so, the remedy available for the workmen as against their employer would be either under the Contract Labour (Regulation & Abolition) Act 1970 or the Industrial Disputes Act. However, in the present case, respondents 3 to 9 have approached the 1st Respondent as against employment with the petitioner, who, without jurisdiction has entertained the applications made by the workmen pursuant to which, the present impugned order has come to be passed directing the petitioner company to confer permanent status to the workmen/respondents 3 to 9, which is wholly contrary to the order passed by the Division Bench



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of this Court in a batch of Writ Petitions in W.A.Nos.4061 of 2013 etc., vide order dated 07.03.2022.

4. Learned counsel for the respondents 3 to 9 though submitted that they had been working on contract basis under the 2nd respondent, but employed with the petitioner, all the salary and other allowances were paid by the petitioner to the 2nd respondent through whom respondents 3 to 9 received the said payment and only with a view to deprive the respondents 3 to 9 of their permanency, the contract has been entered into and, therefore, rightly the facts have been appreciated by the 1st respondent while passing the impugned order and the same does not require any interference.

5. This Court gave its anxious consideration to the learned counsel appearing on either side and perused the materials available on record.

6. Though the respondents 3 to 9 sought to stress the legality of the impugned order, however, the issue involved in the present case is no longer *res integra* as the similar issue has already been decided by this



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Court in a batch of Writ Appeal Nos.4061 of 2013 etc challenging the order passed by the Labour Inspector vide order dated 07.03.2022 wherein, this Court has held as under:-

34. We have considered the submission aforesaid and find 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 end, that too, after the completion of 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 claims 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



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the petitioner Corporation, as not only a 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 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.

From the above proposition, it transpires that there is a clear mandate that the workman, to claim permanent status, ought to have completed 480 days of continuous services in 24 calendar months, which is to be established and without establishing the same, conferment of permanent status cannot be granted.

7. In the case on hand, there is no dispute that respondents 3 to 9 are the employees of the 2nd respondent working on contract basis under the petitioner management. Though the respondents 3 to 9 claim that they are paid their wages by the petitioner, however, no material is placed before this Court to establish that the petitioner has paid the wages to respondents 3 to 9. The mere fact that the petitioner has employed respondents 3 to 9 on



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contract basis through the 2nd respondent and the amounts have been paid to the 2nd respondents towards fulfilment of contractual obligations cannot be the basis for the petitioner to claim at the hands of the petitioner. It is for the workmen to establish that they are employed by the petitioner through materials so as to claim entitlement for status of permanency under the petitioner. In the absence of any materials to establish a direct employer-employee relationship between the petitioner and respondents 3 to 9, the claim entertained by the 1st respondent directing the petitioner to provide permanent status to respondents 3 to 9 cannot be sustained.

8. In fact, it is the admitted case of respondents 3 to 9 that they have received the benefits from the 2nd respondent, while they were discharged from their work. Therefore, if at all the respondents 3 to 9 are aggrieved, the course open to the respondents 3 to 9 is to only proceed against the 2nd respondent and it cannot be against the petitioner.

9. Further, the admitted case of respondents, which is not disputed by



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the 2nd respondent is that the 2nd respondents and respondents 3 to 9 have entered into a settlement. That being the case, the proper course open for respondents 3 to 9 is to proceed for permanency against the 2nd respondent. This Court feels that this is a fit case, where permanency ought to be granted to the respondents 3 to 9 as against the 2nd respondent. Therefore, necessarily the order passed by the 1st respondent requires interference by way of modification. Accordingly, the order impugned in this Writ Petition is set aside with a further direction to the 2nd respondent to provide continuous employment to respondents 3 to 9 till the age of their superannuation.

10. This Writ Petition stands allowed in the above terms. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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NHS

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-Speaking Order



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To
WEB COPY

The Joint Director, Industrial Safety and Health,
No.6, Lal Bahadur Sastri Street,
1st Floor, Periakuppam,
Thiruvallur-602 001.



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M.DHANDAPANI, J.

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