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W.P.No.37367 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.37367 of 2016
and WMP Nos.32024 of 2016 and 16005 of 2018

The Management,
Rep by its Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Vellore

... Petitioner

Vs.

1.The Inspector of Labour,
Thiruvannamalai
Authority constituted as under
Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workmen) Act, 1981.

2. R.Ranganathan

3. T.Karunakaran

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 1st respondent made in Na.Ka.No.E76/2015 dated 27.11.2015 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.C.Selvaraj

For Respondents : Mr.T.M.Rajangam
Government Advocate
for R.1
Mr.V.Sanjeevi



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For R.2 and R.3

ORDER

The respondents 2 and 3 herein claim that they have been in continuous employment of the petitioner's Corporation and in consideration of such a claim, the first respondent herein, who is the authority under the provisions of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, had passed the impugned order dated 27.11.2015, directing the petitioner Corporation to confirm their permanency on completion of 480 days within a period of 24 calendar months. Challenging the same, the Corporation has filed this writ petition.

2. Learned counsel for the petitioner submits that the provisions of the conferment of permanent status will not be applicable to the respondents 2 and 3 since they are performing their work intermittently. Learned counsel further submits that since they are part time employees, they would not be entitled for conferment.

3. Per contra, learned counsel for the respondents 2 and 3 placed reliance on the decision of the Division Bench of this Court in the case of *The Regional*



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Manager, Tamil Nadu Civil Supplies Corporation Ltd, Vellore District vs

D.Sekar and others passed in W.A.No.1233 of 2015 dated 01.09.2015 and

submitted that a similar challenge to the order of an authority by the Civil Supplies Corporation was rejected by holding that the Corporation has not rebutted by finding of facts with regard to completion of 480 days in 24 calendar months. Since the present writ petition has also been filed by the same Corporation, learned counsel submits that no interference is required in the impugned order.

4. The provisions of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 would apply to every individual establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than fifty workmen were employed on any day of the preceding twelve months. This provision does not apply to the workmen who perform intermittent work, but rather to the Industrial Establishment that performs intermittent work. In the present case, the establishment is not of a seasonal character or in which work is performed only intermittently. Thus, the ground raised by the learned counsel for the petitioner that the respondents 2 and 3 are only part time workers, is not



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sustainable and cannot be accepted. Even otherwise, this ground has not been canvassed either before the authorities nor has been raised as a ground in the writ petition and therefore, the same does not deserve consideration.

5. The term “workmen” in labour jurisprudence would mean any person employed in Industrial Establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied and includes a badli workman also. In the case of ***Devinder Singh vs Municipal Council, Sanaur*** reported in (2011) 6 SCC 584, the Hon'ble Supreme Court has held that part-time or person appointed on contract basis are also deemed to be “workmen” in the following manner:

12 Section 2(s) contains an exhaustive definition of the term 'workman'. The definition takes within its ambit any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it is immaterial that the terms of employment are not reduced into writing. The definition also includes a person, who has been dismissed, discharged or retrenched in connection with



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an industrial dispute or as a consequence of such dispute or whose dismissal, discharge or retrenchment has led to that dispute. The last segment of the definition specifies certain exclusions. A person to whom the [Air Force Act, 1950](#), or the [Army Act, 1950](#), or the [Navy Act, 1957](#), is applicable or who is employed in the police service as an officer or other employee of a prison or who is employed mainly in managerial or administrative capacity or who is employed in a supervisory capacity and is drawing specified wages per mensem or exercises mainly managerial functions does not fall within the definition of the term 'workman'.

13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of [Section 2\(s\)](#) of the Act. It is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of [Section 2\(s\)](#) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and



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the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

14. Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of [Section 2\(s\)](#) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of 'workman'.

6. On a perusal of the ratio laid down in the aforesaid decision of the Hon'ble Supreme Court, the stand taken by the petitioner corporation that the respondents 2 and 3 are not “workmen” since they have been engaged on part-time basis cannot be sustained.

7. The Hon'ble Division Bench of this Court in the case of ***The Regional Manager, Tamil Nadu Civil Supplies Corporation Ltd, Vellore District vs D.Sekar and others*** passed in ***W.A.No.1233 of 2015 dated 01.09.2015***, also



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rejected the challenge made by the same Corporation against the order of the authority granting permanency in the following manner:-

“ We have carefully perused the order passed by the Labour Inspector, wherein, all the facts have been considered in detail. What is the requirement under the provisions of Section 3(1) of the Act is a continuous service for a period of 480 days in a period of 24 calendar months. The appellant Corporation has not produced any material in rebuttal of the said finding of facts, except the self-serving averment in the affidavit filed in support of the writ petition.

7. In the course of argument, the learned counsel for the appellant Corporation takes up a new plea, for the first time, that the provisions of the Act are not applicable. The appellant Corporation has not produced any justification in support of the said stand. Admittedly, the private respondents herein were working as Car-way Boys in the appellant corporation. It is also properly established that they have worked for a period of 480 days continuously in 24 calendar months, as aforesaid. Thus, we do not find any reason to take a contrary view to the one taken by the learned Single Judge.



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8. It is stated by the learned counsel for the respondents 2 and 3 that pursuant to the above orders passed by the Division Bench of this Court, all the benefits as ordered by the authority has been extended to the workmen. As such, the present claim of the petitioner Corporation that the respondents 2 and 3 are not entitled for the benefits since they are part time workmen cannot be sustained.

9. For all the foregoing reasons, I do not find any merit in the writ petition. The writ petition stands dismissed. The petitioner Corporation shall forthwith pass appropriate orders implementing the orders of the authority dated 27.11.2015, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

31.01.2023

Speaking
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To

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The Inspector of Labour,
Thiruvannamalai
Authority constituted as under
Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workmen) Act, 1981.



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M.S.RAMESH,J.,

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