



Writ Appeal No.150 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.01.2023

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal No.150 of 2023
and
C.M.P.No.1392 of 2023

1. The Management/the Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Salai,
Kilpauk, Chennai-600 010.
2. The Management/Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Goundampalayam,
Coimbatore-641 030.

.. Appellants

Vs.

1. P.S.Thangamani
2. R.Palaniammal
3. A.Marathal
4. K.Kannammal
5. K.Palanal
6. A.Sundarammal
7. M.Mariammal
8. S.Malliga Begum

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9. K.Valliammal
10. T.Sundrammal
11. S.Sampath Rani
12. R.Jothimani
13. K.Sampooranam
14. M.Kilia
15. N.Lakshmi
16. P.Jayajothi
17. N.Kanniammal
18. S.Arukkani
19. A.Rani

(All are represented by
State General Secretary,
Tamil Nadu Civil Supplies Corporation
Employees' Union,
Regn.No.325/CPT,
No.12, Thambusamy Salai,
Kilpauk, Chennai-600 010.

20. The Inspector of Labour, Coimbatore.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 27.02.2012 passed by the learned Single Judge in W.P.No.33787 of 2012 on the file of this Court.

Writ Petition No.33787 of 2012 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for records relating to the Award made in Na.Ka.No.E/3500/2008, dated 27.01.2012 on the file of the 20th respondent/Inspector of Labour, Coimbatore and quash the same.

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For appellant : Mr.Sundaravadivel for M/s.C.Selvaraj

For respondents: M/s.Raman & Associates for RR-1 to 19

Mrs.E.Ranganayaki, Addl.G.P for R-20

JUDGMENT

(The Judgment of the Court was delivered by S.Vaidyanathan, J)

The present Writ Appeal has been filed challenging the order dated 02.11.2021 passed by the learned Single Judge, in W.P.No.33787 of 2012.

2. For the sake of brevity, the parties herein are referred to as "Management" (appellants herein) and "workmen" (represented by Union).

3. The workmen have been engaged by the Management and that they have rendered more than 480 days of continuous service in a period of 24 calendar months and that they have been deemed to have attained permanent status. They have approached the Authority seeking permanent status.

4. The Management took a stand that the workmen have been paid by the Maistry, and that there is no direct privity of contract between the Contractor and the workmen in terms of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. The Management pleaded



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before the Authority concerned that they had not maintained any record and that these employees are only casual and temporary employees.

5. Though it has been contended by the Management that these workmen have not been recruited in terms of the said Regulation, no evidence had been let in and no document has also been produced by the Management to establish their stand. Moreover, duty is cast upon the Management to submit the particulars of the workmen to the Authority concerned, more so, in the light of Rule 6 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Rules, 1981, by forwarding the list of casual/temporary employees and the number of days worked by them.

6. It has been vehemently contended by the learned counsel for the Management that, at present, only 3 employees are working and some of them have died. The Apex Court, in the case of State of Karnataka Vs. Umadevi (3) and others) reported in 2006 (4) SCC 1, heavily condemned the back door entry in public employment and thus, the employees are not entitled to any relief and the order of the learned Single Judge, confirming the order of the Authority conferring permanent status, needs to be



interfered with.

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7. Learned counsel appearing for the Management has produced a list showing the number of employees working as on date and some of them died and the said list is extracted below:

"8. I am advised to submit that the order dt.02.11.2021 passed by the Learned Judge of Hon'ble High Court, Madras by confirming the order dt. 27.02.2012 passed by the Inspector of Labour (i.e., Twentieth respondent) in RC.No.C/3500/2008 is not maintainable in the light of the order dt.10.04.2006 passed by the Hon'ble Supreme Court of India in State of Karnataka Vs. Umadevi and others, reported in 2006 (4) SCC 1 wherein the Apex Court held that in Public employment any person engaged/appointed without following the applicable service rules, cannot claim permanency or regularisation, even if they put long years of service and they cannot seek any preference when others are aspiring for employment in Public Service. The Apex Court further held that regularisation further more cannot give permanence to an employee whose services are adhoc in nature and it was also held that the fact that some persons had been working for a long time would not mean that they had acquired a right for regularisation.

9. I submit that out of 19 casual labourers (i.e. from respondents 1 to 19 herein) only 3 are doing the casual work now 9 persons have not reported for duty for a long time and 7 persons



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died in the meantime as detailed below:

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<i>Respondent No.</i>	<i>Name</i>	<i>Remarks</i>
1	P.S.Thangamani	Not reported for work from the year 2013
2	R.Palaniammal	Died during 2021
3	A.Marathal	Died during 2011
4	K.Kannammal	Not reported for work from 31.12.2016
5	K.Palanal	Died during 2010
6	A.Sundrammal	Died during 2018
7	M.Mariammal	Not reported for work from 15.05.2010
8	S.Mallika Begum	Not reported for work from 31.01.2020
9	K.Valliammal	Not reported for work from 2013
10	T.Sundrammal	Not reported for work from 2012
11	S.Sambath Rani	Not reported for work from 2011
12	R.Jothimani	Not reported for work from 2011
13	K.Sampoornam	Not reported for work from Jan.2018
14	M.Kilia	Died on 26.04.2014
15	N.Lakshmi	Working now
16	P.Jayajothi	Working now
17	N.Kanniammal	Working now
18	S.Arukkani	Died on 26.04.2014
19	A.Rani	Died on 31.01.2020

8. Firstly, the decision of the Apex Court in Umadevi's case (supra) may not be applicable to the facts of the present case, as the employees therein have directly approached the High Court without going before the



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industrial forum. That apart, the provisions of the Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 have not been considered. In the present case on hand, the employees have approached the Authority seeking permanent status and decision has been rendered by the Authority based on evidence let in by the parties and the same has been confirmed by the learned Single Judge. If the Management herein really wanted to adhere to the decision of the Umadevi case (supra), workmen should have been stopped from work immediately after the decision of the Supreme Court (supra), instead of allowing them to continue their work and as the job is of perennial in nature, the attempt to take the shelter under Umadevi case (supra) is not justified. The Management would continue to do the irregularity and whenever there is a problem, they are trying to take the shelter under Umadevi's case (supra), which we do not agree. Furthermore, the decision relied on by the learned counsel for the Management in Umadevi's case (supra), is distinguishable on facts and the facts of each case have to be looked into in its perspective and the decision of the higher forum cannot be applied mechanically blindly, as held by the Supreme Court in the decision reported in 2002 (3) SCC 533 (Padma

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Sundara Rao Vs. State of Tamil Nadu), wherein the Apex Court has held as

follows:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington Vs. British Railways Board* (1972 (2) WLR 537 = 1972 AC 877 (HL)). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

9. From the above decision of the Supreme Court in *Padma Sundara Rao* case, it is clear that one fact may make a world of difference when the same is relied on. Hence, in the case on hand, the said *Umadevi's* case (quoted *supra*) is not applicable to the case on hand.

10. That apart, these employees have been working for years together



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and continuing them without conferring permanent status, is an unfair labour practice in terms of Clause 10 of the Schedule V to the Industrial Disputes Act.

11. There were also proceedings dated 06.08.1999 that had taken effect with effect from 15.07.1999 to minimise the expenses. These employees have been engaged periodically for years together and they have attained the permanent status much prior to that.

12. When there are specific instructions, and those instructions have not been followed and given a go-by, by the establishment, this Court will prevent the Management to take a stand that the employees will not be entitled to be absorbed permanently, more so, when they have chosen not to let in evidence before the Authority concerned. The employees have established that there is "contract of service" and not "contract for service".

13. Since some employees have died and some of them are not reporting for work, as could be seen from the above tabular column, and that there are only three employees working, we are of the view that the three employees shall be granted permanent status in terms of the order of the Authority, as confirmed by the learned Single Judge in the order



impugned herein.

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14. Insofar as the persons who have died during the pendency of the proceedings, their legal heirs would be entitled to the monetary benefits up to the date of the death of the deceased employees.

15. Insofar as other employees who have not reported for work and attained permanent status, are concerned, it is open to them to raise appropriate industrial dispute, if so advised and if there is no prohibition of limitation under the Industrial Disputes Act. If any such dispute is raised, it is open to the appropriate Court to adjudicate the same, in view of the stand taken by the Management that those employees have abandoned their service by not reporting for work. Further, re-employment is not automatic, unless the same is interfered with by the appropriate forum. There is no automatic employment if they raise a dispute even though they have attained permanent status. We make it clear that in this judgment, we are neither giving any liberty to those workmen to raise the industrial dispute, nor condoning the delay in raising such industrial dispute, as it is for the concerned forum to decide.

16. The order of the Authority insofar as the employees who have



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died and were on the Rolls, are concerned, shall be implemented within four months from the date of receipt of a copy of this judgment.

17. With the above observations/directions, the Writ Appeal is disposed of. There shall be no order as to costs. Consequently, the miscellaneous petition is closed.

(S.V.N., J) (J.S.N.P., J)
23.01.2023

Index: Yes/no

Speaking Order: Yes/no

Neutral Citation: Yes/no
cs

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S.VAIDYANATHAN, J

and

J.SATHYA NARAYANA PRASAD, J

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