IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.Nos.250 and 258/2023 and CMP.Nos.2606 & 2710/2023

W.A.No.250/2023 :

1. The Managing Director,
   Tamil Nadu Civil Supplies Corporation,
   No.12, Thambusamy Road,
   Kilpauk, Chennai-600 010.

2. The Senior Regional Manager,
   Tamil Nadu Civil Supplies Corporation,
   Thiruvarur Region,
   Thiruvarur. .. Appellants

-vs-

1. R.Usha
2. M.Shanmugavalli
3. D.Povunu
4. R.Elammal
5. A.Ganapathi
6. S.Anbu

rep. by C/o.State Secretary,
Tamil Nadu Civil Supplies Corporation Employees Union,
No.12, Thambusamy Road,
Kilpauk, Chennai-600 010.

7. The Inspector of Labour,
   Thiruvarur. ... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 01.11.2021 passed in W.P.No.32234/2012 and allow the Writ Appeal.

For Appellants : Mr.C.Selvaraj

For Respondents 1 to 6 : Mr.V.Prakash, Sr. Counsel, Mr.M.Karthikeyan

W.A.No.258/2023 :

1. The Managing Director,
   Tamil Nadu Civil Supplies Corporation,
   No.12, Thambusamy Road,
   Kilpauk, Chennai-600 010.

2. The Senior Regional Manager,
   Tamil Nadu Civil Supplies Corporation,
   Thiruvarur Region,
   Thiruvarur. .. Appellants

-vs-

1. K.Chinnathal

2. B.Saradha
rep. by C/o.State Secretary,
Tamil Nadu Civil Supplies Corporation Employees Union,
No.12, Thambusamy Road,
Kilpauk, Chennai-600 010.

3. The Inspector of Labour,
   Thiruvarur. ... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 01.11.2021 passed in W.P.No.32233/2012 and allow the Writ Appeal.

For Appellants	: Mr.C.Selvaraj
For Respondents 1 and 2	: Mr.V.Prakash, Sr. Counsel, Mr.M.Karthikeyan

COMMON JUDGMENT

[The judgment of this Court was delivered by S.VAIDYANATHAN, J.]

The Tamil Nadu Civil Supplies Corporation, the appellant herein, has preferred the present appeals questioning the orders of the learned Single Judge passed in W.P.Nos.32234 and 32233/2012 dated 01.11.2021 confirming the order of the authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 in C.P.S.Nos.2676 and 3320/2008 dated 16.04.2012 in granting permanent status to the workmen concerned in these appeals on and from the completion of 480 days of service in a period of 12 calendar months.

2. The main contention of the appellant Corporation is that these employees have been working as load man, discharging the work of loading and

unloading and that the work is of sporadic in nature, and not permanent. The work is of a seasonal character. The Conferment of Permanent Status to Workmen Act will not be applicable to the appellant Corporation and that the employees are not entitled to any relief and that the order of the authority conferring permanent status on the employees is bad. In this connection, he drew the attention of this Court to Section 1(3) of the Act which is extracted below:

> *(3) It applies to every industrial 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. If any question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently the decision of the Government thereon shall be final:*
>
> *Provided that the Government may, by notification, apply the provisions of this Act to any industrial establishment employing such number of workmen less than fifty* as may be specified in the notification.*
> **No.II (2)/LE/5527/82.----In exercise of the powers conferred by the proviso to sub-section (3) of section 1 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (Tamil Nadu Act 46 of 1981), the Governor of Tamil Nadu*

hereby applies the provisions of the said Act to all industrial establishments (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than ***twenty workers*** *were employed on any day of the preceding twelve months.*

(1st January, 1982 (vide G.O. Ms.No.2813, Labour and Employment, dated the 28th December, 1981)

Learned Counsel for the appellant Corporation would further contend that these employees have not been recruited through Employment Exchange and that there was no appointment order given to them as their entry into service is of back door in the light of the judgment of the Hon'ble Supreme Court in **Secretary, State of Karnataka and others vs. Uma Devi and others** reported in **2006 (4) SCC 1** dated 10.04.2006.

3. Learned Senior Counsel for the respondents-workmen would contend that the services of the respondents have been engaged throughout the year and that the job is of perennial in nature and these employees have joined on various dates which are mentioned in the tabular columns as under :

W.A.No.250/2023 :

S.No.	*Office Nagapattinam*	*Name of Employee*	*Date of Joining*	*Note*
57	Regional Office, Nagapattinam	M.Shanmugavalli	01.05.1992	Working without break
84	Vattakidangau, Sitharkadu	R.Usha	01.08.2001	Working without break
85	Vattakidangu, Nagapattinam	T.Pavunu	20.05.2003	Working without break
80	Harbour Godown, Nagai	A.Ganapathi	01.10.1999	Working without break
81	Harbour Godown, Nagai	S.Anbu	01.10.1999	Working without break
83	Vattakidangau, Thirukuvalai	R.Elammal	02.01.2001	Working without break

W.A.No.258/2023 :

S.No.	*Office Nagapattiam*	*Name of Employee*	*Date of Joining*	*Note*
56	Vattakidangu, Akkoor	K.Chinnathal	01.01.1986	Working without break
16	Vattakidangu, Akkoor	P.Saradha	01.01.2004	Nil

The learned Senior Counsel would further contend that the Senior Regional Manager of the appellant Corporation has recommended the names of these persons vide letter Nos.E3/457/2006 dated 17.07.2006 and 10.08.2006 for absorption stating that these employees have completed the required years of service and they are eligible for permanent status. It is further stated that the Corporation has also addressed a letter stating that there are about 377 daily rated workmen who have sought for permanent status and for those employees who have completed 10 years of service on 31.01.2006 onwards. He would further submit that the appellant is a shop within the meaning of Section 2(3)(e) of the 1981 Act. Section 2(3) of the Act defines an Industrial Establishment and the definition of "establishment" in the Tamil Nadu Shops and Establishments Act, 1947 under Section 2(6) has been borrowed into the said provisions of the 1981 Act. Unless there is an exemption u/s. 9 of the 1981 Act, the Act applies to the appellant establishment and the employees are entitled to permanent status on or from the date of completion of 480 days in 24 calendar months, more so, Section 3 of the said Act has a deeming provision. The contention of the employer that Uma Devi's case will be applicable to the facts of the case may not hold good as it has not considered the 1981 Act.

4. Heard both sides.

5. As contended by the learned Senior Counsel for the employees, the factum of employment and that the job is of perennial in nature have been admitted by the employer as could be seen from the recommendation Order dated 17.07.2006 and 10.08.2006 of the Senior Regional Manager as stated *supra*. The appellant is an industrial establishment falling within the purview of Section 2(3) of the Act.

Unless there is an exemption under Section 9 of the said Act, the Act is applicable. As stated *supra*, the definition clause of "establishment" in the Tamil Nadu Shops and Establishments Act alone has been legislatively incorporated. Section 4(1)(c) of the Shops and Establishments Act may not be applicable to the present case as the said provision has not been legislatively incorporated into the provisions of the 1981 Act. In order to reiterate, we make it very clear that not the entire provisions of the Shops Act have been legislatively incorporated into the Tamil Nadu Conferment of Permanent Status Act, and only certain definition clauses have been bodily incorporated. Unless, there is a specific exemption under Section 9 of 1981 Act, referring to Section 4(1)(c) of the Shops Act and contending that the Permanent Status Act will not be applicable to the appellant establishment may not be correct.

6. In the case of C.V.Raman vs. Bank of India reported in **(1988) 3 SCC 105**, the Apex Court has held that the Tamil Nadu Shops and Establishments Act may not be applicable to the Nationalised banks. It is on account of an exemption contained under Section 4(1)(c) of the 1947 Act. For better appreciation, relevant portion of the said judgment is extracted hereunder:

"1. ... ... C.V.Raman, the appellant in these two appeals was an *employee in the Bank of India which is a Nationalised Bank. He was dismissed from service in pursuance of disciplinary action for certain charges framed against him. Aggrieved, he preferred an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 (hereinafter referred to as the Tamil Nadu Shops Act). A preliminary objection was raised on behalf of the Bank of India to the effect that the Tamil Nadu Shops Act was not applicable to the Bank in view of the provisions contained in Section 4(1)(c) thereof which exempted inter alia an establishment under the Central Government from the purview of that Act. ... ... the Madras High Court accepting the plea raised by the Bank of India that it was an establishment under the Central Government and consequently the provisions of the Tamil Nadu Shops Act were not applicable to it in view of the exemption contained in this behalf in Section 4(1)(c). ... ...”*

7. Similarly, there should be an exemption by the Government under Section 9 of the Permanent Status Act to exempt this establishment from the provisions of the 1981 Act by issuing a Notification. That apart, though the employer has contended that in the light of the Uma Devi's case of the Apex Court, the employees are not entitled to the permanent status as the law was settled by the Supreme Court as early as on 10.04.2006, these employees have been allowed to continue even after the judgment of the Apex Court. The employer cannot use the judgment to suit their convenience. Whenever they wanted to recruit these

employees on regular rolls, they recruited them and extracted work and thereafter taking shelter under the judgment of the Supreme Court (cited supra), attempted to deprive them and such a different stand cannot be accepted. These employees should have been stopped from work immediately after the judgment of the Apex Court.

8. The Senior Regional Manager vide orders dated 17.07.2006 and 10.08.2006 cited supra, stated that these employees are eligible to be made permanent. From that, it is very clear that the engagement of these employees was not in dispute and the work is not of seasonal in nature. Hence, we are of the view that the order of the learned Single Judge confirming the order of the Labour Inspector, Thiruvarur in C.P.S.Nos.2676 and 3320/2008 dated 16.04.2012 granting permanent status on or from the date of completion of 480 days of joining is a finding of fact and need not be interfered with by this Court. Those employees, namely, Usha, Pavunu and Shanmugavalli, who are in service shall be continued in service. The employees, namely, Ellammal, Anbu and Ganapathy, who have already attained the age of superannuation will have to be paid the terminal benefits, as if they have continued in service on permanent basis, within a period of three months from the date of receipt of a copy of this judgment.

9. With the above observations, these Writ Appeals stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.V.N., J.] [R.K.M., J.]
09.02.2023

Index: Yes / No
Internet: Yes / No
tsi

To

The Inspector of Labour,
Thiruvarur.

S. VAIDYANATHAN, J.
and
R.KALAIMATHI, J.

tsi

W.A.Nos.250 and 258/2023

09.02.2023