



W.A. No. 3553 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE K. RAJASEKAR

W.A. No. 3553 of 2023

&

C.M.P. No. 29047 of 2023

P. Karnan

..Appellant

Vs.

1. The Assistant Commissioner
(Enforcement)-II,
Department of Labour,
Government of Tamil Nadu,
DMS Campus, Anna Salai,
Teynampet, Chennai – 6
2. The Superintending Engineer,
Tamil Nadu Electricity Board
General Construction Circle,
Thiru-Vi-Ka Industrial Estate,
SIDCO, Guindy, Chennai – 32.

..Respondents



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Prayer: Writ Appeal as against the order dated 01.09.2023 passed in

W.P. No. 25758 of 2023.

For Appellant :: Mr.B. Manoharan

For Respondents :: Ms. Akila Rajendran for R1

J U D G M E N T

(Delivered by *S. Vaidyanathan,J.*)

The writ appeal has been directed as against the order dated 01.09.2023 passed in W.P. No. 25758 of 2023.

2. The summation of facts that led to the filing of this writ appeal are hereunder:

(a) The appellant herein, who was a contract workman, along with others, through their federation, had approached the 1st respondent, the authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status) Act, 1981 (hereinafter '1981 Act' for the sake of brevity) seeking permanent status and the same was conferred by orders dated 20.01.2020. Questioning the same, the 2nd respondent filed a batch of writ petitions and by order dated 07.03.2022, the said writ petitions were



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disposed of remanding the matter to the Labour Inspector for passing orders afresh, after summary enquiry. The relevant portions of the said order are extracted hereunder:

“34. We have considered the submission aforesaid and find that 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 adjudicated 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 and, that too, after the completion of continuous service of 480 days in 24 calendar months, and not for a prior period. The 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 claim



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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 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 of the Labour Inspector of passing orders afresh, after summary enquiry.

(b) Challenging the said order, though the workmen approached the Hon’ble Apex Court in Special Leave to Appeal (C) Nos. 17878-17882 of 2022, the same were dismissed on 10.10.2022 directing the Labour Inspector to conclude the proceedings on remand at the earliest, preferably within a period of six months.

(c) Pursuant thereupon, the 1st respondent herein had issued notices dated 26.07.2023 to some of the contractors to appear for an enquiry to be held on 14.08.2023. Stating that without any authority and without any application, the contractors cannot be summoned as witnesses, which is



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illegal and contrary to the orders passed by this Court; that the evidence of the contractors may not be taken note for passing orders and that the 1st respondent has no jurisdiction to conduct a detailed trial and pass orders, an objection memo was filed by the workmen. As no orders were passed on the said memo, W.P. No. 25758 of 2023 was filed before this Court by the appellant herein seeking a direction to the 1st respondent herein to pass orders on the objection memo before proceeding further with the enquiry and for a further direction to proceed with the enquiry as directed by this Court by order dated 07.03.2022 in W.P. No. 4061 of 2013 etc batch.

(d) When the said writ petition was taken up for hearing, it was submitted on behalf of the appellant/writ petitioner that a direction may be issued to the 1st respondent herein to permit the appellant/writ petitioner to cross-examine the contractors, who were summoned. In view of the said submission made, the writ petition came to be disposed of by the order under challenge as hereunder:

“5. In view of the fair submission made by the learned counsel for either side, this Court is inclined to issue a direction to the first respondent to permit the petitioner to cross examine the contractors on



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the same day and thereafter, the first respondent is directed to consider the petitioner's claim and pass appropriate orders on merits and in accordance with law as expeditiously as possible."

Stating that the learned Single Judge, while disposing of the writ petition, failed to take into consideration the direction given by this Court in W.P. No. 4061 of 2013 etc batch and taking advantage of the same, his claim would get rejected, the workman has preferred the present writ appeal.

3. The main contention of the appellant herein is that the procedure contemplated under the 1981 Act is only summary in nature and that the authority cannot examine any person on his own.

4. We are unable to accept the said contention raised by the appellant, more so, in the light of Section 5 of 1981 Act, which reads thus:

5. Power and duties of Inspectors. – *Subject to any rules made by the Government in this behalf, the Inspector may, within the local limits for which he is appointed,--*

(a) enter at all reasonable times and with such assistants, if any, who are persons in the service of the Government or of any local authority as he thinks fit to take with him, any industrial establishment;

(b) make such examination of the industrial establishment and of any registers, records and notices and take on the spot or elsewhere the evidence of such person as he may deem necessary, for carrying out the purposes of this Act: and



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(c) exercise such other powers as may be necessary for carrying out the purpose of this Act. “

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As could be seen from the aforesaid provision, the authority is empowered to examine any person as he may deem necessary for carrying out the purposes of the Act. So, issuance of summons to appear before the authority to examine any person, who may be relevant for the purpose of determination of the dispute is perfectly valid. Moreover, the order passed by the learned Single Judge is only based on the submission made on behalf of the appellant that a direction may be issued to the Assistant Commissioner of Labour (Enforcement) to permit him to cross examine the contractors, who were to be summoned, and the appellant cannot have any grievance at all as the said permission had also been granted by the learned Single Judge. Hence, the writ appeal stands dismissed. The authority/1st respondent herein is expected to proceed with the enquiry on a day-today basis without adjourning the matter beyond 10 working days at any given point of time. No costs. Connected C.M.P. is closed.

nv

(S.V.N.J.) (K.R.S.J.)
22.12.2023



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AND

K. RAJASEKAR,J.

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To

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