



W.P.(MD)Nos.404 of 2014 batch

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On	Judgment Pronounced On
<i>20.12.2023</i>	<i>28.12.2023</i>

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD)Nos.404 of 2014, 3038 of 2014 &
5394 to 5404 of 2014**

and

W.M.P.(MD)Nos.2, 2, 2, 2, 2, 2, 3, 4, 1, 2, 2, 2, 2, 2 of 2014

W.P.(MD)Nos.404 of 2014

1. A.Ashok
2. S.S.Kumar
3. T.Arumugavel
4. S.Murugan
5. D.Periyasamy
6. T.Marimuthu
7. P.Subburaj
8. P.Sathish
9. M.Mariappan
10. S.Mutharasan
11. K.Kannan

... Petitioners

Vs.

- 1.The Commissioner of Corporation,
Tirunelveli Corporation,
Tirunelveli – 1.



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2.The Inspector of Labour,
O/o.the Inspector of Labour,
Department of Labour,
Tirunelveli – 2.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a *Writ of Mandamus* for a direction, directing the 1st respondent to give effect to the order passed by the 2nd respondent, dated 20.09.2013 and regularize the service of the petitioners within the time period stipulated by this Court.

For Petitioners : Mr.T.Lajapathi Roy, Senior Counsel for
M/s.Lajapathi Roy & Associates

For Respondents : Mr.Aayiram K.Selvakumar, for R-1
Mr.P.Thambidurai, for R-2

COMMON ORDER

Since the issue involved in these Writ Petitions are same and are arising out of order dated 20.09.2013 passed by the Inspector of Labour, hence all the writ petitions are taken up together and disposed of by a Common order.

2. The W.P.(MD)No.404 of 2014 is filed by A.Ashok and ten others for *Writ of Mandamus*, directing the respondents to give effect to the order dated



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20.09.2013 passed by the 2nd respondent / Inspector of Labour, within a stipulated time that may be fixed by this Court.

3. The W.P.(MD)No.3038 of 2014 is filed by A.Ashok and ten others for *Writ of Certiorarified Mandamus* to quash the impugned G.O.(D)No.13, Municipal Administration and Water Supply (MC5) Department, dated 17.01.2014 on the file of the 1st respondent to the extent of filling up of the sanctioned 27 posts of Skilled Assistant Grade-II without reserving 11 posts of Skilled Assistant Grade-II for the petitioners as per the order passed by the 3rd respondent, Inspector of Labour dated 20.09.2013.

4. The W.P.(MD)Nos.5394 to 5404 of 2014 is filed by the Corporation Commissioner, Tirunelveli Corporation for *Writ of Certiorari* to quash the impugned order passed by the 1st respondent Inspector of Labour, dated 20.09.2013.

5. The brief facts as stated in the affidavit filed in W.P(MD)No.5394 of 2014 is that the Corporation maintain the areas which comes within the



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jurisdiction. In order to carry out various permanent perennial activities, the regular work forces are employed and appointed by the Corporation. However, based on the exigencies and less work, the Corporation used to engage the labour on daily wages or delegate the works to the contractors. Apart from that there are another set of work force other than the regular work force, there are workers who discharge their duties as on and when required, or if any exigency arises. Those workers will be engaged temporarily and on completion of the said work, the workers will be automatically disengaged. In case of contract, the contractor will engage the work man of their choice.

6. In order to maintain the street light, tender was called for from eligible persons. On seeing the same one Akash Engineering Enterprises Private Limited, had participated in the tender process and they were awarded the contract for the purpose of maintaining the street light. The contractor was paid the contract amount in pursuance of the agreement executed by them. Even in the said contract, it was made clear that period of contract is from 01.06.2010 to 31.05.2013, at the end of 31.05.2013, the contract will be terminated automatically. The Municipal Corporation has received summons from the 1st



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respondent, wherein it is stated that one A.Ashok and several other persons have filed petition before the Inspector of Labour to grant conferment. The Municipal Corporation has filed a detailed counter, however, the Inspector of Labour without considering the same and passed the impugned order, dated 20.09.2013, directed the Corporation to regularize the service of the 3rd respondent. Aggrieved over the same, writ petitions in ***W.P(MD)Nos.5394 to 5404 of 2014*** have been filed raising various grounds.

7. The said A.Ashok and others had filed ***W.P(MD)No.404 of 2014*** to implement order of the Inspector of Labour. The contention of the said Ashok is that the said various labourers were employed as Wireman under the Corporation and they were carrying out the works of the Corporation continuously for several years. They requested the Corporation to regularize their service. Since the same was not considered they were preferred petitions before the 2nd respondent requesting to provide permanent status as workmen under Section 3 of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. After adjudication, the impugned order came to be passed. The said Ashok and others have rendered service in the Corporation and have completed



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the required number of days. Since the said order was not implemented, the present writ petition in ***W.P(MD)No.404 of 2014*** is filed to implement the order passed by the Inspector of Labour. In the meanwhile, the 1st respondent, the Secretary to Government, Municipal Administration and Water Supply Department had passed G.O.(D)No.13, Municipal Administration and Water Supply (MC5) Department, dated 17.01.2014 permitting the Corporation to fill up the sanctioned vacant 27 posts of Skilled Assistant Grade II. The said A.Ashok and others had filed writ petition in W.P(MD)No.3038 of 2014 stating the said G.O.(D)No.13 had granted permission to the Corporation to fill up 27 posts of Skilled Assistant Grade-II but the said G.O. is issued without reserving 11 posts of Skilled Assistant Grade II for the petitioners. The Corporation is taking steps to fill up the said posts and if filled the said A.Ashok and other would not get the said post thereby the order passed by the Inspector of Labour could not be implemented. Hence challenging the said G.O.(D)No.13 the present Writ petition is filed.

8. Heard Mr.T.Lajapathi Roy, the Learned Senior Counsel for M/s.Lajapathi Roy & Associates appearing for the writ petitioners in



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W.P.(MD)No.3038 of 2014, Mr.P.Thambidurai, the Learned Government Advocate appearing for 1st respondent, Secretary to Government, MAWS and Mr.Aayiram K.Selvakumar, the Learned Counsel appearing for the 2nd respondent Corporation Commissioner and perused the material documents available on record. The parties are mentioned as per the ranking stated in W.P.(MD)No.3038 of 2014.

9. The Contention of the Municipal Corporation is that the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 is not applicable to the Municipal Corporation, since the Municipal Corporation is a Quasi-Governmental authority and ought to be considered on par with Government. The salary to the employees of the local body is being paid from the income generated from property taxes and other taxes and also from “Grants” received from the State and Central Governments. The Local Bodies are granted constitutional status under Article 243 of Constitution of India under 73rd amendment, where they were granted local self-government under “Panchayat Raj”. Moreover, the Local Bodies are not functioning for any profit motive.



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Hence the Local Bodies cannot be considered as any “establishments” as defined under section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. But the Learned Senior Counsel appearing for the writ petitioners submitted that the such plea was not taken before the Inspector of Labour and the same cannot be raised before the Court. Whether the Act, 1981 is applicable to Local Bodies is a “legal plea” and it is a settled preposition of legal plea can be raised at any point of time, hence the contention of the writ petitioners is rejected.

10. In order to consider, whether the Municipal Corporation comes under the category of “Establishment” under Section 3 under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, the said section 3 is extracted here under:

3. “Industrial establishment” means:

(a) A factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (Central Act LXIII of 1948) or any place which is deemed to be a factory under sub-section (2) of section 85 of that Act; or



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(b) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (Central Act LXIX of 1951); or

(c) a motor transport undertaking as defined in clause (g) of section 2 of the Motor Transport Workers Act, 1961 (Central Act 27 of 1961), or

(d) a beedi industrial premises as defined in clause (i) of section 2 of the Beedi and Cigar Workers (conditions of employment) Act, 1966. (Central Act 32 of 1966); or

(e) an establishment as defined in clause (6) of section 2 of the Tamil Nadu Shops and Establishment Act, 1947 (Tamil Nadu Act XXXVI of 1947); or

(f) a catering establishment as defined in clause (1) of section 2 of the Tamil Nadu Catering Establishment Act, 1958 (Tamil Nadu Act XIII of 1958); or

(g) any other establishment which the Government may, by notification, declare to be an industrial establishment for the purpose of this Act;

II. The Local Bodies cannot be considered as factory since there is no manufacturing process in Local Bodies. Likewise, the Local Bodies cannot be considered as plantation, motor transport, beedi workers and catering. There is no



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notification under section 3(g) to bring the Local Bodies under the purview of the Act. The nearest may be under section 3(e) “establishment” defined under section 2(6) of the Tamil Nadu Shops and Establishment Act, 1947 and the definition is extracted hereunder:

“(6) 'establishment' means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the [State] Government may by notification declare to be an establishment for the purpose of this Act.”

The Local Bodies cannot be termed as shop, commercial establishment, restaurant, eating-house, residential hotel, theatre, any place of public amusement or entertainment. The word “commercial establishment” may be nearest since the Local Bodies are collecting taxes etc. and the phrase “commercial establishment” is defined in the Tamil Nadu Shops and Establishment Act, 1947 under section 2(3) and the same is extracted hereunder:

“2(3) ‘commercial establishment’ means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance



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company, joint stock company, bank, broker's office or exchange and includes such other establishments as the State Government may by notification declare to be a commercial establishment for the purposes of this Act.”

The Local Bodies cannot be termed as carrying on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange. Therefore, it is clear that the Local Bodies cannot come under the purview of Tamil Nadu Shops and Establishment Act, 1947 and in turn cannot come under the purview of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. In the present case if the Thirunelveli Municipal Corporation being a Local Body is not coming within the purview of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, then the impugned order dated 20.09.2013 is passed without jurisdiction. Hence the impugned order is liable to be quashed.



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12. The Learned Senior Counsel appearing for the writ petitioners submitted that the *Bangalore Water Supply and Sewerage Board, etc. and A.Rajappa and others, etc., reported in AIR 1978 SC 548 (equivalent citation 1978 (1) LJ 349)* has brought all the establishment under the purview of “Industries” and “Establishments”. The said contention of the writ petitioners cannot be accepted since in the aforesaid judgment the Hon’ble Court was dealing with the word “Industry” stated in Industrial Disputes Act and the reference is as follows:

“In order that there should be a comprehensive, clear and conclusive declaration as to what is an “industry” under the Industrial Disputes Act as it now stands, this matter was placed before a larger bench of seven judges.”

Infact this Court has elaborately dealt with the issue in W.P.(MD)No.9322 of 2014 vide judgment dated 01.06.2023. The judgment of Bangalore Water Supply case was rendered as earlier 1970. Since certain issues were raised about the said Judgement, the said Judgment is again referred to the Larger Bench. Therefore, at this stage, the Bangalore Water Supply Board case cannot be relied on. Moreover,



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the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 gives definition for 'workmen' and the 'establishment'. The external aid of other similar Acts may be invoked whenever the applicable Act is silent or there is no clarity. It is not the situation in the present case and hence the definition stated under some other Act cannot be relied on. Hence the Bangalore Water Supply case cannot be made applicable.

13. Earlier the Local Bodies have engaged employees under “Nominal Muster Roll” (NMR) for street light maintenance etc. Subsequently, the Government through G.O.Ms.No.125, Municipal Administration and Water Supply Department dated 27.05.1999 has taken a policy decision to regularize all NMR including the employees engaged for street light maintenance, Sweepers and Scavengers with a condition that in future no one should be appointed for these services since in future these services would be outsourced. Based on such policy decision, in the present case the Corporation has outsourced the said work by calling tender. The successful bidder namely M/s.Aakash Engineering Associates where the contract was awarded for the period 01.06.2010 to



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31.05.2013. After 31.05,2013 the Corporation has again called for new tender and awarded tender, based on the quotation given by the contractor. The Corporation has also enclosed the contract executed by the said Akash Engineering Associates Private Limited and the Corporation and the terms of contract states,

“Whereas, Tirunelveli City Municipal Corporation had invited tenders from the manufactures of street light materials of National repute with ISI certificates, wholesale dealers, distributors of such manufacturer for operation and maintenance of street lights for three years under Tirunelveli City Municipal Corporation area.”

The said contract was executed for three years only. The terms also states that the contractor shall provide one Wiremen and one Helper with necessary tools, equipment and vehicles for every 600 street lights. And the list of Wiremen and Helper engaged by the tenderer shall be furnished at the time of signing in the agreement. Moreover, the contractor was directed to comply with the statutory mandates. From this, it is evident that the Corporation has executed contract with the said Akash Engineering Associates Private Limited based on tender process.



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Moreover, once the contractor's name is disclosed there is no room to disbelieve that the Corporation engaged the labourer directly. It is pertinent to state that the said contract was produced before the Inspector of Labour, but the same was not taken into account. Therefore, this Court is of the considered opinion that the Inspector of Labour had terribly erred in not taking the said contract.

14. The next contention raised by the Corporation is that the Inspector of Labour has not relied on any documents and has passed an order simply based on the averments of the labourer, in turn the labourer had no evidence to substantiate the claim. On perusing the order, the Inspector of Labour has not relied on even a single bit of evidence. The mandate under the Act is that the Inspector of Labour should visit the premises of the alleged employer and ascertain the register and other documents maintained by the employer and ascertain whether the Labourers were engaged for more than 240 days in one calendar year, if so whether they are eligible for permanency. But the Inspector of Labour has completely deviated from the mandate granted under the Act. Simply by relying on the affidavit filed by the labourer, the Inspector of Labour has come



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to the conclusion that they were engaged by the Municipal Corporation and never ascertained the facts by inspecting the premises. Had the Inspector of Labour inspected the premises, it would be evident that the Local Body had not engaged the employees but it is only tender.

15. The next contention of the Corporation is that the contract was granted from 2010, however the Labour of Inspector has given permanency from the year 2009 onwards. On perusing the impugned order, it is seen for the Sl. No. 1 Ashok son of Arunachalam, the service was taken from 01.03.2009 to 28.02.2011. When the said person was engaged by the said company 2010 onwards, granting permanency from 2009 is total non-application of mind. From this it would be evident that the Inspector of Labour has passed the order without any records.

16. The next contention of the Corporation is that the Corporation can appoint persons only against sanctioned post by following recruitment process and by following communal reservation policy. Since there is no sanctioned post, the 2nd respondent cannot issue direction to grant permanency to



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the contract workers. The issue of granting regularization, absorption against unsanctioned post was considered by the Hon'ble Supreme Court in the case of Union of India & others Vs Ilmo Devi and another in Civil Appeal No.5689-5690 of 2021 in judgment dated 07.10.2021, wherein it is held that the High Court has no power to direct the employer to grant regularization and absorption, if there is no sanctioned post. The relevant portion is extracted hereunder:

“8.4 The observations made in paragraph 9 are on surmises and conjectures. Even the observations made that they have worked continuously and for the whole day are also without any basis and for which there is no supporting evidence. In any case, the fact remains that the respondents served as part-time employees and were contingent paid staff. As observed above, there are no sanctioned posts in the Post Office in which the respondents were working, therefore, the directions issued by the High Court in the impugned judgment and order are not permissible in the judicial review under Article 226 of the Constitution. The High Court cannot, in exercise of the power under Article 226, issue a Mandamus to direct the Department to sanction and 17 create the posts. The High Court, in exercise of the powers under Article 226 of the Constitution, also cannot direct the Government and/or the Department to formulate a particular regularization policy. Framing of any scheme is no function of the Court and is the sole prerogative of the Government. Even the creation and/or sanction of the posts is also the sole prerogative of the Government and the



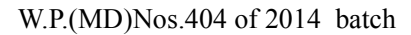
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High Court, in exercise of the power under Article 226 of the Constitution, cannot issue Mandamus and/or direct to create and sanction the posts”.

Even though the above case states about regularization and absorption, the same reasoning is applicable to the permanency also. Therefore, this Court is of the considered opinion that the said judgment is applicable to the present case also and the respondents cannot seek permanency if there is no sanctioned post.

17. If there are complicated question of facts and law, then the Inspector of Labour is not empowered to entertain the petition at all as held by the Hon’ble Division in the case of Superintending Engineer, Erode Vs. Inspector of Labour and others reported in 2022 SCC Online Mad 1003. In the said case it has been held that in the Permanency Act the authority is not empowered with adjudicatory powers. Moreover, when the other Acts are invoked then the Inspector of Labour is not having any power to entertain the petition. In the present case when the Tamil Nadu Municipal Service Rules are applicable and in such circumstances the Inspector of Labour is not having power to entertain the said petition as per the aforesaid judgment.



Index : Yes / No
Internet : Yes
KSA

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1.The Commissioner of Corporation,
Tirunelveli Corporation,
Tirunelveli – 1.

2.The Inspector of Labour,
O/o.the Inspector of Labour,
Department of Labour,
Tirunelveli – 2.



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S.SRIMATHY, J

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Common Order made in
W.P.(MD)Nos.404 of 2014,
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