



W.P.(MD) No.18865 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 03.08.2023

ORDERS PRONOUNCED ON : 09.11.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.18865 of 2015

and

W.M.P.(MD) No.3545 of 2016

The Managing Director,
National Co-operative Sugar Mills Ltd.,
B.Mettupatti-625 502,
Alanganallur Via.,
Madurai District.

... Petitioner

Vs.

1.The Deputy Director of Industrial
Safety and Health,
II-Circle, Madurai,
Authority under TIE (CPSW) Act.

2.M.Krishnan

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records relating to the order dated --.06.2014 in No.B/2019/2010-18 issued by the Deputy Director,



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Industrial Safety and Health, Circle-2, Madurai, the first respondent herein and quash the same.

For Petitioner : Mr.C.Karthikeyan
for Mr.P.Chandrabose

For R1 : Mr.A.Kannan
Additional Government Pleader

For R2 : Mr.S.M.Mohan Gandhi

ORDER

Heard learned counsel for the petitioner, learned Additional Government Pleader for the 1st respondent and the learned counsel for the 2nd respondent and perused the material available on record.

2. The case of the petitioner is that the petitioner is a society registered under the Tamil Nadu Co-operative Societies Act. The objective of the petitioner is to “manufacture of white sugar from sugarcane and the sale of sugar so manufactured along with the by-products to the best advantage of the members”. The 2nd respondent is an agricultural worker in the Cane Farm. The 2nd respondent has filed a petition under Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status



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to Workmen) Act, 1981 (hereinafter referred to as “the Act 1981”) before the 1st respondent for issuance of directions to the petitioner to confer permanent status to him. After considering the oral and documentary evidence placed before the 1st respondent and after hearing both sides, the 1st respondent issued proceedings dated 23.06.2014 directing the petitioner to confer permanent status to the 2nd respondent with effect from the date of completion of 480 days of continuous service within a period of two years. Aggrieved by the proceedings dated 23.06.2014 of the 1st respondent, the present writ petition is filed.

3. Learned counsel for the petitioner submits that it is the contention of the 2nd respondent that he was engaged in Engineering Section, Stores, Cleaning Work, Pump Operation, Cane Planting, Maintenance etc. But, the place of work for Farm Labourers is Cane Farm. The main object of the Farm is to supply quality seeds to farmers, maintenance of cane plant, trial plots for inspection and guidance of farmers etc. Therefore, the provisions of the Act 1981 will not be applicable to the 2nd respondent.



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4. The learned counsel would submit that the 2nd respondent, being an agricultural worker, is not a workman under Section 2(4) of the Act 1981 and as such, the 1st respondent erroneously held that the 2nd respondent is a workman under Section 2(4) of the Act 1981. The Can Farm is away from the compound wall of the Sugar Mill and it is not situated within the premises of the Mill. But, the 1st respondent erroneously held that the Cane Farm is within the premises of the Mill. The work done by the 2nd respondent is not incidental to or connected with manufacturing of sugar. Learned counsel for the petitioner further submits that the Cane Farm is away from the compound wall of the Sugar Mill and it is not in the premises of the Mill. The Farm Labourers are not engaged in the factory work. The occasional engagement under extra-ordinary circumstances would not confer permanent title to them.

5. The learned counsel further submits that the 2nd respondent, working in the Farm maintained by the Mill, is not at all concerned with the manufacture of sugar, sale of sugar and sale of other products. The 2nd



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respondent's work involves assistance in cultivation of cane, maintenance of mango-groove, coconut trees, tamarind trees, bamboo etc. Therefore, the 2nd respondent is an agricultural labour. He was not recruited through Employment Exchange. Further, taking into account the automation of machineries, plants and the level of computerisation in various activities, the Commissioner of Sugar revised the cadre strength of the petitioner Mill from 765 to 529. The revised cadre strength was discussed with all Trade Unions and a settlement under Section 18(1) of the Industrial Disputes Act, 1947 was arrived between the Management and the workmen on 05.03.2008. As per the settlement, there was sanction for 271 regular employees and 258 seasonal employees. In the settlement, there was sanction for one post of Cane Assistant for the Cane Farm and there is no sanction for Cane Farm Labourers. The objects of the Sugar Mill and the Cane Farm are not the same. As there is no sanction for the post of Cane Farm Labour in the said settlement, the petitioner could not appoint the 2nd respondent on regular basis. However, the Cane Form Labourers, who were worked as on the date of settlement, have been allowed to continue on humanitarian grounds. As such, the provisions of the Act 1981 will not be



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applicable to the 2nd respondent. Finally, the learned counsel would submit that the 1st respondent has no jurisdiction in respect of the agricultural labours and the proceedings issued by the 1st respondent is without jurisdiction and it is liable to be quashed.

6. On the other hand, learned counsel for the 2nd respondent would submit that the 2nd respondent is working in the petitioner Mill from 01.10.1999 and he was engaged in Engineering Section, Stores, Cleaning Work, Pump Operation, Cane Planting, Maintenance, etc., throughout the year except holidays. After rendering nearly 14 years of service without break, he is entitled for conferment of permanent status as per the Act 1981 and accordingly, he filed a petition under Section 3 of the Act 1981 before the 1st respondent to issue orders to the petitioner to confer permanent status to the 2nd respondent. Considering the material available on record, the 1st respondent passed the impugned order, which is in accordance with the provisions of the Act 1981 and as such, no interference is required in the present writ petition and sought to dismiss the writ petition.



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7. Having heard the submissions of the respective counsels and upon careful perusal of the material available on record, it appears that the main activity of the petitioner Mill is manufacture of sugar from sugarcane. The sugarcane for using the manufacturing process is cultivated in Cane Farm of the Mill besides purchasing from outside depending on it.

8. The main contention of the petitioner is that the 2nd respondent was temporarily engaged as a Farm Labour on daily wage basis to carry out agricultural work in the Cane Farm situated outside the Mill premises and the Farm Labourers are not included in the approved cadre strength of the Mill. It is the further contention of the petitioner that the Mill is a seasonal factory and hence, Act 1981 will not apply to the petitioner Mill and to its employees. It is also their contention that the Factories Act will not apply to the Cane Farm and the Act 1981 will not apply to the agricultural farm and the Farm Labour cannot file petition under the Act 1981 before the Inspector of Factories. It is also contended by the petitioner that the 2nd respondent has not served for 480 days continuously in any two years block in the petitioner Mill.



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9. With regard to the contention of the petitioner that the 1st respondent is not having jurisdiction to entertain the petition of the 2nd respondent, it is an admitted fact that the petitioner Mill is a factory as defined under Section 2(m)(i) of the Factories Act, 1948. The Inspector of Factories re-designated as Deputy Director, Industrial Safety and Health *vide* G.O.Ms.No.226, Labour and Employment Department, dated 17.09.2013, II Circle, Madurai, is an Inspector notified under the Factories Act, 1948. The officials of Labour Department as well as the Inspector of Factories are notified as Inspectors under the Act 1981. Admittedly, the petitioner Mill is situated within the administrative jurisdiction of the 1st respondent. As such, the 1st respondent has statutory powers to deal with the original petition of the 2nd respondent.

10. Though the petitioner contends that the Cane Farm is situated outside the mill, but the 1st respondent on examination of the approved plan submitted by the Management, held that the Cane Farm is situated within the premises of the petitioner and the nature of work carried on in the Cane



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Farm is only an extension work of the Sugar Mill. In view of the same, the 1st respondent considered the Cane Farm of the Mill and the Mill falls under Section 2(3)(a) of the Act 1981. The 1st respondent also concluded that the Farm Labourers employed in the Cane Farm and employed in works incidental to/connected with the manufacturing process will definitely fall within the scope of definition of 'worker' under Section 2(1) of the Factories Act, 1948. In the light of the same, the Farm Labourers fall under the definition of 'workmen' under Section 2(4) of the Act 1981.

11. The 1st respondent, on relying a decision of the Constitutional Bench of the Apex Court in *Ardeshir H.Bhiwandiwalla vs. State of Bombay⁽ⁱ⁾*, wherein it was held that “premises” can consist of open area and need not be confined in its meaning to buildings alone and in the light of the approved plans of the petitioner Mill, rightly held that the Cane Farm of the Mill shall be covered by the word “premises” and would form part of the factory for the purpose of Section 2(M) of the Factories Act, 1948.

(i) AIR 1962 SC 29



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13. Some of the Cane Farm Labourers could not produce all relevant documents before the 1st respondent, as they would have difficulty in having access to all the official records and documents, muster rolls, wage registers etc., in connection with their services. The 1st respondent on relying the available documents, issued the impugned proceedings.

14. In the case of the 2nd respondent, the petitioner filed a statement showing the month-wise attendance details from January, 2006 to June, 2012 and it was marked as Ex.R.1. On perusal of Ex.R1 and abstract of attendance registers from 01.08.2012 to 31.12.2013, it is proved that the 2nd respondent has worked for 310 days in 2012 and for 346 days in 2013. It is also evident from Ex.R.1 that the 2nd respondent has worked for 273 days in the year 2007 and for 302 days in the year 2008 aggregating 575 days in the particular two years block.

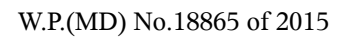
15. In view of the above factual position, it is established that the Cane Farm is situated within the premises of the petitioner Mill and the



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nature of work carried on in the Cane Farm is only an extension work of the petitioner Mill and the Farm Labourers have been engaged by the petitioner continuously for many years and paid minimum daily wages for more than 30 years. The material available on record proved that the petitioner used to engage the Farm Labourers for some other works inside the Mill. It is also proved that all the Farm Labourers were engaged throughout the year except on holidays.

16. In view of the above, the 1st respondent rightly held that the 2nd respondent has acquired right under Section 3 of the Act 1981 for conferment of permanent status by satisfying the condition viz., continuous service for a period of 480 days in a period of 24 calendar months. In some cases, in the absence of relevant records pertaining to the past period and the exact date on which the Cane Labourers acquired right for permanency would not be assessed, the 1st respondent directed the petitioner to confer permanent status to them with effect from the date of completion of 480 days of continuous days, within a period of two years.



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BATTU DEVANAND, J.

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To

The Deputy Director of Industrial
Safety and Health,
II-Circle, Madurai,
Authority under TIE (CPSW) Act.

Pre-delivery Order made in
W.P.(MD) No.18865 of 2015

09.11.2023