



W.P.(MD).Nos.145, 146, 147, 148, 149, 150, 151, 13726, 15474, 15475, 15476,
15486 and 18764 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).Nos.145, 146, 147, 148, 149, 150, 151, 13726,
15474, 15475, 15476, 15486 and 18764 of 2017**

and

W.M.P.(MD).Nos.10707, 12231, 12232, 12233, 12259 and 15141 of 2017

W.P.(MD).No.145 of 2017:

K.Panneer Selvam

... Petitioner

Vs.

- 1.The Deputy Commissioner of Labour cum
Competent Authority,
Office of Deputy Commissioner of Labour,
52, Nehruji Nagar 3rd Street,
Dindigul.
- 2.The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
No.144, Anna Salai,
Chennai – 600 002.
- 3.The Superintending Engineer,
Dindigul Distribution Circle,
Tamil Nadu Electricity Board,
Dindigul,
Dindigul District.



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4. The Assistant Electrical Engineer,
Chinnakalayamputhur Electrical Sub-Division,
Tamil Nadu Electricity Board,
Chinnakalayamputhur,
Dindigul District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the second respondent to implement the order made in CPS.No.32/2011 dated 29.08.2016 made by the first respondent under Section 3 of the Tamil Nadu Industrial Establishment's (Conferment of Permanent Status to workmen) Act 1981, conferring permanent status to the petitioner in the second respondent establishment, within the time that may be stipulated by this Court.

(In W.P.(MD).Nos.145 to 150 of 2017):

For Petitioner : Mr.E.Marees Kumar
For R-1 : Mr.P.Thambi Durai,
Government Advocate.
For R-2 to R-4 : Mr.Anand Gopalan,
for M/s.T.S.Gopalan & Co

(In W.P.(MD).Nos.15474, 15475, 15486 of 2017):

For Petitioners : Mr.Anand Gopalan,
for M/s.T.S.Gopalan & Co
For R-1 : Mr.P.Thambi Durai,
Government Advocate.
For R-2 : Mr.E.Marees Kumar



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(In W.P.(MD).Nos.18764 of 2017):

For Petitioners : Mr.Anand Gopalan,
for M/s.T.S.Gopalan & Co

For R-1 : Mr.P.Thambi Durai,
Government Advocate.

For R-2 to R-13 : No Appearance

(In W.P.(MD).No.15476 of 2017):

For Petitioners : Mr.Anand Gopalan,
for M/s.T.S.Gopalan & Co

For R-1 : Mr.P.Thambi Durai,
Government Advocate.

For R-2 to R-4 : Mr.E.Marees Kumar

(In W.P.(MD).No.13726 of 2017):

For Petitioners : Mr.Anand Gopalan,
for M/s.T.S.Gopalan & Co

For R-1 : Mr.P.Thambi Durai,
Government Advocate.

For R-2 and R-3 : Mr.D.Malaichamy



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COMMON ORDER

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The Writ Petitions are filed by the individuals and TANGEDCO. The Writ Petitions filed by the individuals seeking to implement the order passed by the authority under permanency Act and the Writ Petitions filed by the TANGEDCO is to quash the order dated 29.08.2016 passed by the authority under Permanency Act.

2. In Writ Petition W.P.(MD).Nos.151 of 2017 and 15476 of 2017, the learned counsel appearing for the petitioner and the respondents submitted that the petitioner died and the matter has become infructuous.

3. Recording the same, this Court is inclined to dismiss the Writ Petitions in W.P.(MD).Nos.151 and 15476 of 2017 as abated.

4. The claim in the other Writ Petitions is the issue of permanency which was considered by the Hon'ble Division Bench of Madras High Court in the case of *Superintending Engineer, Erode Vs. Inspector of Labour* reported in *2022 SCC OnLine Mad 1003*, wherein, it is held as under:



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“22. In view of the above, while we are of the view that the Labour Inspector has the power to issue appropriate order to grant permanency to the workmen, it cannot be by adjudicating the complicated questions of fact and law. A perusal of the Act of 1981 does not provide power in Labour Inspector of the nature given to the Industrial Adjudicator, i.e., the Industrial Tribunal or Labour Court, as complete framework with procedure for it has been given under the Act of 1947. Certain provisions of the Civil Procedure Code have been made applicable therein for proper adjudication which does not exist under the Act of 1981.

23. If the facts of this case are taken into consideration, we find that the Labour Inspector has recorded his finding in reference to the Act of 1970 while adjudicating the issue. Such powers have not been conferred on him, rather he can pass appropriate order after summary enquiry. The view expressed by the Single Judge of this court in the case of **Superintending Engineer, Vellore Electricity Distribution Circle, Vellore and others**, supra, is not in conflict with the view aforesaid, rather in paragraph 35 of the said judgment, the difference between the power of Labour Inspector and Labour Court or Industrial Tribunal under the Act of 1947 has been made. Paragraph (35) of judgment, referred supra, is extracted hereunder:

"35. Therefore, I am unable to accept the submission made on behalf of the Board that the exercise of the power by the Inspector of Labour in conferring permanent status after holding necessary enquiries contemplated under S. 5 read along with rule 6(4) should be construed as arrogating to himself the powers available to the other adjudicatory forums created under the provisions of the Industrial Disputes Act, 1947. It will have to be stated that while the exercise of powers vested with the Inspector under the provisions of the Act is summary in nature, the one under the provisions of the Industrial Disputes Act may be an elaborate one. Nevertheless the same does not mean that by exercising the power under the provisions of the Act the Inspector of Labour would be trespassing into the adjudication process contemplated under the provisions of the Industrial Disputes Act. In this context, if the judgment of the Supreme Court in Nirchiliya case [1990 (2) L.L.N. 4] (vide supra) is applied, it can be safely held that where there is no prohibition under the provisions of either the Industrial Disputes Act or the Act, exercise of the power in the manner in which it can be done by the Inspector of Labour under the Act cannot be found fault with. It will have to be stated that such an exercise would be well within the statutory limitations provided under the Act. In fact, in the above-referred to judgment of the Hon'ble Supreme Court, the question for consideration was whether the workmen who initially raised an industrial dispute under the Industrial Disputes



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Act and who did not pursue it till its logical end when chose to move the authority under the then Madras Shops and Commercial Establishment Act, the Hon'ble Supreme Court held that in the absence of any prohibition under either of the enactments, such a course adopted by the workmen cannot be faulted. Therefore, applying the said ratio to the case on hand, it can be safely held that the concerned workmen here were placed in a better footing when they chose to straightaway move the Inspector of Labour under the Act, inasmuch as according to the workmen, having regard to the facts prevailing as on date, they were entitled for the conferment of permanent status as provided under the Act. If such a claim of the workmen was not factually maintainable, it was for the Board to have resisted the said claim with all available materials and could have convinced the Inspector of Labour as the claim ought not to have been countenanced. The Board having miserably failed to perform its duties in the manner expected of it, it cannot be now allowed to contend or complain against the powers exercised by the Inspector of Labour which was within the provisions of the Act. In this context, if the judgment of the Division Bench of this Court in Metal Powder Company, Ltd. case [1985 (2) L.L.N. 738] (vide supra), is applied, then also it can be safely held that the Inspector of Labour was well within his jurisdiction in holding the proceedings in the manner it was held and in passing the order by directing the petitioner/Board to confer permanent status on the workmen."

24. The Labour Inspector vested with the power under the Act of 1981 is said to be having a summary power of enquiry, while an elaborate adjudication of questions of fact and law can be only under the Act of 1947.

25. In view of the above, we can safely hold that the Labour Inspector can exercise jurisdiction only in the nature of summary enquiry, while a case involving complicated question of fact and law to be left for its adjudication under the Act of 1947. The Labour Inspector can exercise his power under the framework of the Act of 1981. He has no power to adjudicate the issue in reference to other statutes, which includes the Act of 1970.

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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 adjudicate



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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 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 W.P.(MD)No.26223 of 2019 with batch cases Inspector are set aside with remand of the case to the Labour Inspector for passing orders afresh, after summary enquiry.

36. There will be no order as to costs. Consequently, all miscellaneous petitions are closed."

5. This Court is of the considered opinion that in the present case, admittedly, complicated questions of facts and law is involved. When there is no subsisting employment, the applicability of the Act itself is questioned, then the individuals are bound to approach the Labour Court and not the Labour Officer. Hence, the impugned order is quashed and the individuals are at liberty



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to approach the appropriate forum in accordance to law. If the petitions are filed before the Labour Court, the same shall be considered within a period of six (6) months from the date of filing of the petition.

6. In the Result:

(i) The Writ Petitions in W.P.(MD).Nos.151 of 2017 and 15476 of 2017 are dismissed as abated.

(ii) The Writ Petitions in W.P.(MD).Nos.145 to 150 of 2017 are dismissed.

(iii) The Writ Petitions in W.P.(MD).Nos.13726, 15474, 15475, 15486 and 18764 of 2017 are allowed.

No Costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr



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S.SRIMATHY, J.

Nsr

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