



W.P.(MD)No.18754 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.12.2022

PRONOUNCED ON : 11.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.18754 of 2017

and

W.M.P.(MD)No.15121 of 2017

1.The Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin-628 004.

2.The Superintending Engineer,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin-628 004.

3.The Chief Engineer,
Personnel,
TANGEDCO,
Chennai-600 002.

... Petitioners

vs.

1.The Joint Director,
Industrial Safety and Health,
Tuticorin.



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2.G.Prabhakar
3.R.Mariyappan
4.C.Edward Ravikumar
5.M.Santhanamari

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the 1st respondent in proceedings No.E/568/2013 and to quash its order, dated 05.03.2014.

For Petitioners : M/s.P.Malini
for M/s.T.S.Gopalan and Co.
For R1 : Mr.K.R.Laxman
For R2 to 5 : Mr.S.Seenivasan

ORDER

This writ petition is filed for issuance of a writ of Certiorari, to quash the impugned Proceedings No. E/568/2013 dated 05.03.2014 of the 1st respondent.

2. The brief facts as stated in the affidavit is that the Tuticorin Thermal Power Station of the Tamil Nadu Electricity Board was set up in the year 1957. The Board had also set up Thermal Stations in Ennore, North Madras and Mettur.



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the Board for not less than 480 days between 06.01.1996 to 05.01.1998 and continued to be in service as on that date may be absorbed. A committee was appointed in each of the four Thermal Power Stations to scrutinize the claims of the contract workmen and identify them. Thereafter the Board had abolished the engagement of contract workmen in all the four Thermal Power Stations from 01.05.1999 onwards and ineligible persons were **discontinued from 28.10.1999**. It was also directed that such of those contract workmen who were not absorbed may be engaged as casuals on a daily rate of wages. When once the process of absorption was completed, the Board directed all the four Power Stations including the Tuticorin Thermal Power Station to stop engaging contract workmen before **01.11.1999** and infact, the discontinuation of the engagement of casual workmen was done in the last week of **28.10.1999**.

4. The affidavit further states that the Board was construed as industrial undertaking and in respect of such industrial undertaking, employees other than



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those working in the Clerical Department would not be governed by the provisions of Tamil Nadu Shops and Establishment Act as held a Hon'ble Division Bench reported in 1961 (1) LLJ 297. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act is not applicable to the petitioner's establishment since the Board is not a factory, not a planation, not a motor transport undertaking, not a Beedi Industrial establishment, not a catering establishment. Hence, the respondent workmen will not come under the definition of workmen as stated in the Act. In spite of the same, the respondents have approached the 1st respondent under Permanency Act.

5. The affidavit further states that the application which the respondents submitted before the authority is a belated one, since they have submitted after a period of 13 years from the date of their cessation of engagement. According to the Board, the list of contract workers as identified by the Committee in terms of BP-17 alone were entitled for absorption and such of those contract workmen who were working and not absorbed and were engaged directly as casual labour



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in the services of the Board with effect from 01.05.1999 and 31.10.1999 were not engaged subsequently as they did not satisfy the eligibility criteria found in BP-17, that the Respondents 2 to 5 did not complete 480 days as on **05.01.1998** and as such would not be entitled for absorption. The first respondent, vide order, dated 05.03.2014, held that the application of the respondents 2 to 5 cannot be rejected on the ground that the cutoff date fixed by the Board cannot be put against the respondents 2 to 5. The plea of limitation raised by the petitioner was rejected by stating it is socio welfare legislation, the question of limitation cannot be applied and hence, directed the petitioner to grant permanency from the date of completion of 480 days. Aggrieved over the same, the present writ petition is filed.

6. The respondents 2 to 5 filed notes of arguments wherein it is stated that the individual respondents were originally employed as contract labours in the petitioner Corporation (TANGEDCO). After the abolition of contract labour



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system, as per Section 10 of the Contract Labour Regulation Abolition Act, 1970, it amounts to direct employment as per the Constitution Bench judgment of the Hon'ble Supreme Court in SAIL case. The employment of contract labourers in Turbine Maintenance Division I of Tuticorin Thermal Power Station is prohibited under Section 10 of the Contract Labour Abolition and Regulation Act, 1970. The 1st petitioner employed the individual respondents as direct employees from the date of appointment as Contract Labour for a period from **April 1998 to October 1999**, they are entitled for conferment of permanent status as per the Tamil Nadu Industrial Establishment of Conferment of Permanent Status Act, 1981. Though originally employed by the contractor under the control and supervision of the 1st petitioner, further, the nature of the employment is perennial in nature and was supervised and controlled directly by the 1st petitioner. By engaging the individual respondents, they were deprived from getting minimum wages as per the Minimum Wages Act, 1948. But the 1st petitioner has arbitrarily terminated them without any show cause notice and it amounted to retrenchment under Section



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2(00) of the Industrial Dispute Act, 1947, without following the mandatory provision under Section 25-F of the Industrial Dispute Act, 1947. The termination is illegal and the respondents 2 to 5 are entitled for regular salary with full back wages for the non-employment period i.e., from October, 1999 to till date. Since the respondents 2 to 5 were employed from March 1998 to October 1999, the competent authority ought to have exercised the statutory duty of making necessary inspection under the Act. Since the above exercise was not done and the respondents 2 to 5 were not absorbed by the 1st petitioner, the respondents preferred an application before the Deputy Chief Inspector of Factories seeking to direct the 1st petitioner to absorb them as Helpers and to give them permanent status from the date of completion of 480 days and to direct the 1st petitioner to disburse all monetary benefits and other attendance and service benefits to them on 27.02.2013. The Deputy Chief Inspector of Factories by exercising his powers directed the 1st petitioner to confer permanent status to all the respondents 2 to 5 herein from the date of their appointment, vide order, dated 05.03.2014. The contention of the respondents is that they were engaged as contract workers



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between **01.04.1998 to 28.10.1999**, that contract workers who are waiting for absorption and **paid daily wages directly by Board for 01.05.1999 to 20.10.1999** were absorbed excepting respondents 2 to 5 and that they would be entitled to absorption in terms of BP-17. The respondents 2 to 5 further submitted that with effect from 28.10.1999, they were abruptly stopped by the Board. According to respondents 2 to 5, they have put in 480 days from April 1998 to October 1999 and hence, they would be entitled for permanency. Aggrieved over the same, the 1st petitioner has preferred this writ petition on various grounds. Hence, the respondents prayed to dismiss the writ petition.

7. Heard M/s.P.Malini, learned Counsel appearing for the petitioner and Mr. K.R.Laxman, learned Counsel appearing for the 1st respondent and Mr.S.Seenivasan, learned Counsel appearing for respondents 2 to 5 and perused the records placed before this Court.



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8. The first contention that was raised by the petitioner Board is that based on Justice Khalid Commission report, the petitioner Board has issued B.P. Proceedings in B.P.-17, dated 28.04.1999 and has decided to absorb the workmen who have worked for not lesser than 480 days between 06.01.1996 to 05.01.1998. The petitioners Board had taken earnest efforts to absorb the contract laborers by formulating a scheme by accepting the Justice Khalid Commission report. In the said B.P.No.17 it was accepted to absorb 18006 contract laborers in the regular post and also by creating supernumerary post, thereby had accommodated the contract labourers in a large scale. At the time of absorption several litigations were filed challenging the scheme, alleging malafides etc. But none of the Courts have rendered any finding against the said BP-17 proceedings. One such case was filed in Minvaria Oppanda Thozhilalar Sangam vs State of Tamil Nadu and others reported in (2000) II MLJ 243 and the Learned Single Judge vide order dated 18.02.2000 had considered various claims raised by the contract labourers. Finally the case was dismissed with certain observation and the same is extracted hereunder:



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“20. I have already pointed out that the second respondent Board has taken all the exercise in pursuance of its earlier decisions to confer the permanency on the contract labourers, at least on the basis of the documents filed before this Court, to which a liberal reference has been made in the earlier part of this order does not show that there are any mala fides on the part of the respondent Board. A mere cry in the name of mala fides on the part of the respondent Board is not sufficient. A plea of mala fide has to be substantiated with acceptable legal evidence and in this case, there is absolutely nothing to suggest that there was any mala fide on any of the officers of the Board. A general, vague and diabolic statement regarding the mala fides does not gain and inspire confidence and cannot activate this Court, much less in its exercise under Article 226 of the Constitution of India. This, precisely, has been the case here. I have deliberately referred to all the affidavits in detail to show that the petitioner has drifted from the original case and has allowed the whole issue to be snowballed by filing affidavits at every stage of hearing. I am afraid, such exercise was not possible. I have already pointed out that nothing contrary to the rules or law can be pointed out from the actions taken by the Board and, therefore, this petition has to be dismissed.

21. The writ petition is dismissed without any order as to costs.”

9. The petitioner Board admittedly has engaged contract workers and several contract workers and Workers Unions had repeatedly demanded to regularize them. Several litigations were fought and finally the litigations ended before Hon'ble Supreme Court. In order to resolve the issue, the Hon'ble Supreme Court appointed Justice Khalid Commission and based on the report, the



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B.P. proceeding was passed imposing certain criteria for absorbing the existing contract labourers. In the aforesaid case the Hon'ble Court had held that there is no infirmity in the scheme. Therefore, re-adjudicating the said issue cannot be entertained and the respondents cannot be allowed to reagitate the scheme in B.P.No.17, dated 28.04.1999 as invalid. Hence the respondents' plea against the said B.P.No.17 is unsustainable and the plea raised by the respondents 2 to 5 is rejected. Therefore, this Court is of the considered opinion that the said BP-17 dated 28.04.1999 is valid and there is no infirmity in the said B.P. proceedings.

10. The next plea that was raised by the petitioner Board is that the Board is neither factory nor any establishment coming under the purview of Conferment of Permanent Act. Only a person who satisfies the criteria laid down in Rule 6(4) of said Act can approach the competent authority. The respondents 2 to 5 will not satisfy the criteria under Rule 6(4). Moreover, the power under Rule 6 is only to issue direction to correct the entries in the register and the 1st respondent cannot



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after a lapse of more than 13 years. The 1st respondent has stated that the Permanency Act is a welfare legislature and hence limitation cannot be a bar in conferring permanency. Such a reasoning is against the very scheme of the Act. The Act can be invoked when the employment is subsisting. The Act mandates the Officer to inspect in the establishment and verify the records. When the Act specifically directs the concerned authority to verify the entries, if the records shows that the worker had completed 480 days, the authority has power to direct the employer to make proper entries, then the worker may be eligible for permanency. In the present case, since the respondents 2 to 5 have approached after a lapse of 13 years, no records would be available after the lapse of 13 years to scrutinize the evidence and it is absolutely not possible to verify the records. Therefore, this Court is of the considered opinion that the impugned order passed by the 1st respondent is without jurisdiction and as well as without any evidence and beyond the scope of Conferment of Permanency Act.



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11. The next contention of the petitioner is that there is no subsisting employment and when the applicability of the Act itself is questioned, then the individuals are bound to approach the Labour Court and not Labour Officer and relied on the judgment rendered by the Hon'ble Division Bench in ***the Superintending Engineer, Erode Vs. Inspector of Labour*** reported in ***2022 SCC OnLine Mad 1003***, where it has been held that wherever there is complicated question of facts or different Acts apart from Permanency Acts are involved, the Labour Officer has no power to entertain such petition. The relevant portion is extracted hereunder:

“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



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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 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



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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



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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 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."



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12. This Court is of the considered opinion that in the present case, admittedly, complicated questions of facts and law are 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 Labour Officer. The 1st respondent has no jurisdiction to pass an order under the Permanency Act and the Labour Court alone is empowered. Therefore, following the judgment cited supra, this Court is of the considered opinion that the impugned order is liable to be quashed.

13. The next contention that was raised by the petitioner Board is that the respondents 2 to 5 were admittedly taken as contract employees in the petitioner's Board from 01.05.1999 and were terminated on October 1999 and the respondents 2 to 5 have not completed 480 days within the above said period. Even according to the respondents 2 to 5, they were working with the original Contractor from April 1998 to 30.04.1999 and if at all the respondents is seeking permanency, then they are entitled to permanency against the original contractor



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and not against the Board. Moreover, the Board had paid directly to the said respondents 2 to 5 from 01.05.1999 and terminated on 28.10.1999. Since the respondents have not completed 480 days from 01.05.1999 to 28.10.1999 in the Board service, then the respondents are not entitled to permanency.

14. However, the said contention of the petitioner Board was refuted by the respondents 2 to 5 by stating that even though they joined the service from April 1998, they continued until October 1999 and had completed 480 days. But the petitioner Board terminated the respondents 2 to 5 on 28.10.1999 along with several other persons without notice. The petitioner had unilaterally fixed the cutoff date and the same is illegal and against the Act. The issue of fixing cutoff date was already dealt by the Hon'ble Division Bench in W.A.No.311 of 2004 and followed in another writ appeal in W.A.(MD)No.1491 of 2011, vide order, dated 06.11.2012, wherein the cutoff date stated as 28.10.1999 for giving the benefit of Conferment of Permanency Act was held to be unsustainable. The Hon'ble Bench had held that the Act does not prescribe any cutoff date and hence fixing the



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cutoff date by the petitioner Board is against the Act and it is illegal. Since similarly placed persons were granted relief, the same ought to be considered to the respondents. Therefore, the respondents 2 to 5 prayed to confirm the order of the 1st respondent.

15. After considering the rival submissions of either sides, this Court has given its anxious consideration. In the present case the respondents had approached the authority under Permanency Act on 27.02.2013 after the order of termination was passed as early as 28.10.1999. The Board in order to stop the contract workers had prescribed qualifications for the post of Helper vide proceedings dated 23.05.1986, which was challenged in various forums. Finally, it had ended with the appointment of Justice Khalid Commission. The abolition of contract labour was started from prescribing qualifications to the said post as earlier as 1986 and was prolonging until 28.10.1999. Infact the employee who were employed as contract labour from 1986 onwards were considered for absorption. Hence the BP-17 has prescribed that the contract employee should be



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in Board service from 06.01.1996 to 05.01.1998 and ought to receive wages directly from the Board from 06.01.1996 to 05.01.1998 are entitled for absorption. Since the respondents had received wages directly from the Board from 01.05.1999 to 28.10.1999, the respondents are not coming with the zone of consideration since they have not completed 480 days and hence, they were disengaged from 28.10.1999. The plea of the respondents that they were engaged by the contractor from April 1998 until 30.04.1999 and then engaged by the Board from 01.05.1999 to 28.10.1999, by taking both the services they have completed 480 days and hence they are eligible for permanency. When the Board had considered workers who were engaged as contract from 1986 onwards and has prescribed a condition that those who have completed 480 days from 06.01.1996 to 05.01.1998, there is no infirmity in the said condition. Admittedly the respondents were engaged after the said cutoff date even with the contractor i.e. on April 1998 and such engagement by the contractor is against the rules of the Board. The mistake committed by the contractor cannot be fasten on the Board and hence the respondents cannot be conferred with the permanency status.



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16. The next ground that was raised by the petitioner Board is that the respondents 2 to 5 were already terminated from service. Without setting aside the said termination order, the respondents 2 to 5 cannot invoke the Permanency Act. The respondents 2 to 5 submitted that the termination order need not be challenged, since the Act conferred permanency on completion of 480 days. It is only recognizing the benefits accrued to the employees, a separate declaration of completion of 480 days is not necessary. Once the respondents 2 to 5 have completed 480 days, the petitioner ought not to have terminated the service of the respondents 2 to 5. If the permanency is granted on completion of 480 days, the termination would be automatically set aside.

17. The said proposition cannot be accepted, since the respondents 2 to 5 have merely stated that they have completed 480 days from April 1998 to October 1999 without any evidence. On perusal of the impugned order, the 1st respondent has not marked any documents to show that the respondents 2 to 5 have



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completed 480 days and the list of documents were not stated in the impugned order. The order simply states that the documents were perused, but has not stated what are the documents that were perused, but none of the documents were marked before the authority. The Labour Officer had conferred permanency without perusing the documents. In fact, the mandate under the Act is that the Labour Officer is supposed to inspect the factory premises, scrutinize the records. If the claim of the employee is based on evidence, the officer shall issue direction to make proper entries. The 1st respondent has granted permanency without scrutinizing the records and acted beyond jurisdiction. Moreover, the respondents have filed a petition after a lapse of 13 years. From this, it would be evident that there are no records at all, that is why, no records were marked before the 1st respondent. Since, the 1st respondent passed an erroneous order without scrutinizing the evidences, hence, the impugned order cannot be sustained.



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18. For the reasons stated supra, the impugned order is set aside and writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No
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To

The Joint Director,
Industrial Safety and Health,
Tuticorin.



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