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W.P.Nos. 27043, 30344 of 2004 & 26659 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.Nos. 27043, 30344 of 2004 & 26659 of 2013

and

W.M.P.Nos.36802 of 2004, 332, 4997, 4998 of 2005 & 32274 of 2018

W.P.No.27043 of 2004

1. V. Narasimhan (Deceased)
2. Sangeetha
3. N. Vaishnavi
4. Vasanthachari
(P2 to P4 are substituted as LR's of the deceased P1
in vide order dated 26.03.2019 made in W.M.P.
No. 32278 of 2018 in W.P.No. 27043 of 2004)

... Petitioners

Vs

1. M/s. Larsen & Toubro Limited,
ECC Construction Division,
Mount Poonamallee Road,
Manapakkam, Chennai – 600 089.
2. M/s. Larsen & Toubro Limited,
Southern Regional Office,
Club House Road, Off. Mount Road,
Chennai - 600 002.



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3. Inspector of Labour,
Kancheepuram.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, directing the first and second respondent to implement the order dated 09.08.2004 bearing reference R.C.No. 2295/02 of the third respondent.

For Petitioners	: Mr.K.M.Ramesh, Senior Counsel Assisted by Mr. V.Subramani
For R1 & R2	: Mr.Jayesh B. Dolia, Senior Counsel Assisted by Mr.V.Kalyanaraman
For R3	: Mr.K. Tamilvanan Government Advocate

W.P.No. 30344 of 2004

1. M/s. Larsen & Toubro Limited,
ECC Construction Division,
Mount Poonamallee Road,
Manapakkam, Chennai - 89.
2. M/s. Larsen & Toubro Limited,
Southern Regional Office,
Club House Road, Off Mount Road,
Near Indian Express Estate,
Chennai - 600 002.

...Petitioners

Vs.



W.P.Nos. 27043, 30344 of 2004 & 26659 of 2013

1. The Inspector of Labour,
Authority under the Tamilnadu
Industrial Establishment (Conferment of
Permanent Status Act to Workmen) Act, 1981
Kancheepuram.

2. V. Narashiman (Deceased)

3. Sangeetha

4. N. Vaishanavi

5 . Vasanthachari

(P3 to P5 are substituted as LR's of the deceased R2
in vide order dated 26.03.2019 made in W.M.P.
No. 32278 of 2018 in W.P.No. 30344 of 2004)

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, to call for the records relating to the order dated 09.08.2004 in R.C.No. 2295 of 2002 from the first respondent and quash the same.

For Petitioners : Mr.Jayesh B. Dolia, Senior Counsel
Assisted by Mr.V.Kalyanaraman

For R1 : Mr.K. Tamilvanan
Government Advocate

For R2 to R5 : Mr.K.M.Ramesh, Senior Counsel
Assisted by Mr. V.Subramani



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W.P.No.26659 of 2013

1. Larsen & Toubro Limited,
ECC Construction Division Mount Poonamallee Road,
Manapakkam, Chennai - 600 089.

2. Larsen & Toubro Limited,
Southern Regional Office,
Club House Road, Off: Mount Road,
Chennai - 600 002.

...Petitioners

Vs.

1. The Presiding Officer,
III Additional Labour Court, Chennai 600 104.

2. V. Narashiman (Deceased)

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, for the records pertaining to the Award dated 02.07.2013 passed by the first respondent in I.D.No.356 of 2005 and quash the same.

For Petitioners : Mr.Jayesh B. Dolia, Senior Counsel
Assisted by Mr.V.Kalyanaraman

For R1 : Labour Court

For R2 : Mr.K.M.Ramesh, Senior Counsel
Assisted by Mr. V.Subramani



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ORDER

These three writ petitions are connected and taken up for disposal by this common order.

2. Mr. V. Narasimhan, is the workman involved in this case. Mr. V. Narasimhan's father A.V.Chari, was working as Secretary to Erection Engineer in the management. While so, at the erection site, he was murdered in the year 1968. The compassionate appointment was provided to the workman in 1987. In 1988, the workman was offered a job at the Vizag site where he worked until 11.06.1989. After a three-month gap, the workman was again employed at the job site at Surat up to 27.08.1990. From 27.08.1990, his job particulars as extracted in the award passed under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status of Workmen) Act, 1981 (hereinafter the Act) are extracted as follows:-

Date of appointment	Place of work	From	To	Settlement date	Account settlement
11.09.1990	HO-Chennai	11.09.1990	10.04.1995	10.04.1995	7053.00
09.06.1995	Puttaparthi Job Site	11.04.1995	05.03.1997	05.03.1997	3775.00
10.03.1997	Erode – Palghat RE Site	10.03.1997	20.10.1997	15.11.1997	Nil



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22.11.1997	By-pass Road, Coimbatore	22.10.1997	09.12.1998	25.01.1999	1568.00
06.01.1999	DHDS, Cochin	14.12.1998	03.06.2000	16.08.2000	4987.00
29.06.2000	Chettinad Cement, Karur	05.06.2000	10.09.2001	11.10.2001	3106.00
27.09.2001	L & T Infotech Manapakkam	13.09.2001	31.07.2002	29.08.2002	2688.00
01.08.2002	Vellore Institute of Tech, Vellore	01.08.2002	Till date	N.A.	N.A.

3. Thereafter, the workman was relieved from Vellore and posted again as a stores assistant at the Panipat job site. While working at the Panipat job site, the workman approached the authority under the Act with a prayer to confer permanent status on him. The claim was resisted by the management. The first contention of the management is that when the workman's employment was originally terminated, and thereafter, he was employed in the construction sites only by way of fresh employment. Since the workman was involved only in the construction, Section 7 of the Act applies and therefore, the applicability of the Act is excluded in respect of the workman. It is the further contention of the management that the workman being employed in the stores as an Assistant was also supervising the other employees regarding the usage of materials etc., and was drawing higher wages and therefore he was not a workman. The appropriate authority considered the claim and passed an award on 09.08.2004 granting permanent



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status to the workman. Aggrieved thereof, the management filed

W.P.No.30344 of 2004 and the workmen also filed W.P.No.27043 of 2004

for a mandamus directing the management to implement the award of the appropriate authority. When the same was pending, the workman was finally terminated from the Punjab job site by following the usual procedure of calculating the benefits and paying him the same.

4. It is the case of the management that subsequently, he was also made a similar job offer in yet another job site in Calcutta. However, it is the case of the workman that after the said termination order, since he had already received an award in his favour, he was not given any other offer. Therefore, aggrieved by the non-employment, the workman raised a dispute. Upon the conciliation failing, a claim petition was filed and taken on file as I.D.No.356 of 2005.

5. The workman claimed that he was employed on a compassionate basis. Thereafter, he has been in continuous employment except for artificial breaks. He has worked for more than 480 days, even before his transfer to the



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job sites, and has already been conferred with permanent status. Therefore, the action of the management in passing an order of termination upon the project's coming to an end is illegal.

6. The claim is resisted by the management on the same terms that the conferment of permanent status on the workman is erroneous. He is only a construction worker. Upon the project being coming to a conclusion, he has been paid all dues and he was retrenched in the manner known to law. They contend that the award passed under the Conferment of Permanent Status Act is also being put to challenge before this Court, claiming that the said order is erroneous in law. It is their contention before the Labour Court that the workman cannot be conferred with permanent status in view of Section 7 of the Act itself. With the said pleadings, the Labour Court took up the enquiry.

7. On behalf of the workman, he examined himself as W.W.1 and Ex.W1 to W52 were marked. On behalf of the management, one Shyama Prasad was examined as M.W.1 and Ex.M1 to M31 were marked. The Labour Court then considered the case of the parties and agreeing with the



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interpretation given by the authority under the Conferment of Permanent Status Act, held that the workman cannot be termed as a construction worker nor as a worker in a supervisory or managerial capacity and therefore once the permanent status is already confirmed, periodical shifting from one job site to another by itself will not entitle the management to terminate him without any justification and accordingly, set aside the order of dismissal. It also concluded that subsequent employment was never offered to the workman. The Labour Court, therefore, held that the dismissal was erroneous and directed the management to reinstate the workman into service with continuity of service and back wages by its award dated 02.07.2013. Aggrieved thereby, the management filed W.P.No.26659 of 2013. Pending the writ petition, the workman died on 25.03.2018 and his legal heirs were substituted as the respondents as well as the petitioners in the appropriate writ petitions.

8. Heard Mr.Jayesh B. Dolia, the learned senior counsel appearing on behalf of the management and Mr. K.M. Ramesh, the learned Senior counsel appearing on behalf of the workman.



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9. The learned senior counsel appearing on behalf of the management would submit that though the workman was initially employed in the head office, his services duly came to an end. Upon cessation of his service, he has been offered fresh employment at the construction sites. When the employment is for construction purposes, then, as and when the project is over, his employment is duly terminated, and the termination is duly following the provisions of the Industrial Disputes Act by paying the compensation as per Section 25FFF. All along, the workman had duly accepted the fresh employment and also accepted the compensation, and he had continued to about six job sites in the same manner whatsoever. Therefore, firstly, the authority ought to have seen that the workman is only working in the industrial establishment engaged in the construction and, therefore, ought to have seen that Section 7 would apply to him also and ought not to have conferred permanent status on him.

10. It is his second submission that the workman being employed in the store, managing and supervising the other workman while drawing higher wages, cannot fall within the definition of the workman. It is his third



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submission that, in any event, when the workman had gone to the job site on his own volition to the construction industry, then no relief ought to have been granted both by the Labour Court as well as by the authority under the Conferment of Permanent Status Act. The learned senior counsel would submit that the additional grounds were duly raised even before the Labour Court. Certain documents relating to the termination of his service and his subsequent fresh employment were not marked and are produced as additional documents before this Court by way of additional evidence. This Court has the power to consider those additional documents since proper justification is given in the application. Therefore, upon consideration of the application, it can be seen that it is only of his own volition that the workman asked for employment at the job sites. Accordingly, he was employed at the job sites and was also duly terminated as per Section 25FFF. Therefore, the workman is not entitled for conferment of permanent status and to the consequential order of the Labour Court. Section 7 of the Act cannot be interpreted as made by the authority.



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11. In support of his submission, the learned Senior Counsel appearing on behalf of the management would rely upon the judgement of the Hon'ble Supreme Court of India in ***Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar and Company and others***¹ more specifically relying upon paragraph No. 20. He would submit that when the words of a statute are very clear and unambiguous, the plain meaning if it is in accordance with the purpose of the statute should only be taken. The plain meaning is that if the workman is employed in the establishment which is carrying on construction activity, then there must be exclusion. The same goes in tune with the purpose. The company like the management as and when it undertakes a project, employs a large number of persons for that project of construction only. Therefore, the permanent status cannot be conferred on each workman. Therefore, the interpretation which is given by the authority and consequently by the Labour Court is erroneous in law.

12. The learned Senior Counsel appearing on behalf of the management would also rely upon the judgement of the Hon'ble Supreme Court of India in ***Gangadhar Pullai Vs. Siemens Limited***², to contend that a workman such as

1 (2018) 9 SCC

2 (2007) 1 SSS 533



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the one who is involved in the present case cannot claim permanent status.

He would specifically rely upon paragraph No. 26 of the said judgment. The learned Senior counsel also pointed out to the judgement relied upon by the workman before the authority that is ***Mithilesh Singh Vs. Union of India and others***³ and would distinguish the same on the ground that the same related to misconduct and consequent non-employment and would not have any applicability in the instant case.

13. Per Contra, Mr K.M.Ramesh, the learned senior counsel appearing on behalf of the workman would submit that firstly the additional documents were not produced before the Labour Court and without an opportunity for the workman to cross-examine in this regard, those documents cannot now be looked into by this Court. Secondly, even as per the said documents, the workman only wanted a transfer of employment. This is a case of making the workman believe as if he is in continuous employment on the one hand and creating documents as if he was only working on different projects on the other hand. The various records are nothing but artificial and therefore, the authority has rightly conferred permanent status. He would submit that the

³ (2003) 3 SSS 309



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authority has correctly interpreted Section 7 of the Act. Section 7 not only postulates that the industrial establishment should be in construction activity, the workman should also be engaged in construction activity as contained therein in structural, mechanical or electrical work. Here, the workman was working as a peon in the head office and was posted as a Stores Assistant and continuously in various other designations and was never involved in the construction activity. Further, the workman had also completed 480 days of service even before his posting to the construction site. Therefore, when a permanent employee is deputed to a construction site, section 7 cannot be pressed into service. He would submit that the workman had also since passed away and there is no error whatsoever in the award of the Labour Court.

14. I have considered the rival submissions made on either side and perused the material records of this case.

15. The first question which is to be decided is whether or not the workman services stood from the purview of the Act by operation of Section 7 of the Act. Section 7 of the Act is extracted hereunder:-

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“7. Act not to apply to workmen employed in certain industrial establishment. — Nothing contained in this Act shall apply to workmen employed in an industrial establishment engaged in the construction of buildings, bridges, roads, canals, dams or other construction work whether structural, mechanical or electrical.”

16. Thus, it is very clear that Section 7 applies only to those of the workmen who are engaged in the construction of buildings etc. In this case, though, indeed, the management is also involved in constructing roads, bridges, etc., but it has other establishments. Originally, this workman was employed in the regular establishment as a peon. When he was shifted to a construction site to manage a particular activity, then Section 7 could not be pressed into service. I am of the view that the authority under the Act, as well as the Labour Court, have correctly interpreted Section 7. The purpose of Section 7 is that when an industrial establishment employs a large number of persons for the construction of a particular road or bridge, then permanency cannot be conferred on those workmen merely because they have put in 480 days. After all, once the project is over, then they can no longer be relevant.

17. In this case, this workman is a regular employee of the establishment, having worked as a peon in its head office. It has to be seen



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that he has been provided compassionate employment and his employment was not at the construction site as a construction worker. Compassionate employment was given since his father was murdered at the work site. He has been continuously employed by the establishment.

18. Further, I am inclined to take the additional documents on file, the said documents only throw light on the facts of the case. It can be seen that during March 1995 the workman remained unauthorisedly absent and communications were sent to him that even after the expiry of his leave, he was not reporting back. Under these circumstances, he came before the management on 03.04.1995, there the management decided to give him one more opportunity. He has written by his own hands which reads as follows:
“As I have discussed with you in my own interest and build up my career, I want to work in our job sites. Please transfer me to any of the job site”

19. Thus, it can be seen that whatever happened in the chambers of the authorities, the workman believed that he was being transferred to the job site. In the said letter, the following three endorsements are there:- The first



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endorsement reads "*Please process termination letter and appointment letter on getting JR from Madras Region*". Therefore the first endorsement requests the processing of the termination of employment and offering fresh employment. The second endorsement, reads "*Please talk to TVA giving him full background. I have no objection in him getting an opportunity to go to a job site outside Madras city*". Then the third endorsement is that "*He can be posted in Bangalore Stadium site as Stores Assistant*". Therefore, the said letter and the endorsements bring the facts to light. The workman was being told that he would be continued in employment but only in the job sites outside Madras. The workman sincerely believed and wrote as if it was a transfer to the job site. Even thereafter, even though there is a termination letter which is dated 10.04.1995 there is no evidence that the same was served on the workman and the workman was put to notice that he was terminated and thereafter only offered employment. The same is neither pleaded nor there is any evidence even now before this Court that the said termination order was served on the workman.

20. In that scenario when at every work site, the workman has been



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continuously employed, however by terming it as fresh employment and settling his dues, this Court is inclined to accept that it is only a make-believe affair to the workman as if he has been employed continuously on one hand while creating records as if he was only in the project site. Therefore, I am of the view that this is nothing but an unfair labour practice on the part of the management. The contention that he was only a construction worker and that Section 7 is applicable cannot be accepted. Secondly, merely because the workman had accepted the payments, the same will not prevent him from making a claim before the Labour Court.

21. Useful reference can be made in this regard to the judgment of this Court in *M. Selvaraj -Vs- The Presiding Officer & others (W.P. No. 42544 of 2006 etc)*. Therefore, the workman can maintain the action in spite of receiving the compensation. I do not find any error on the part of the authority under the Act in confirming the permanent status. Without the said order being set aside, the management still proceeded to terminate the workman in the year 2005. As such, the Labour Court is right to hold that termination was illegal and consequently, ordered reinstatement of the workman.



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22. As far as the second contention regarding the fact that the employee is not as per Section 2(s) of the Industrial Disputes Act, I am of the view that being a Stores-Assistant he only manages the materials and not the men. There is no evidence on record that he was supervising any of the employees or functioning in a managerial capacity. He was originally working as a peon and thereafter posted as a Stores-Assistant. Therefore, I'm not in a position to accept the contention of the learned counsel that he is not a workman within the meaning of Section 2(s) and that the explanation under subclause 4 is applicable in this case. Therefore, I hold that V. Narasimhan is very much a workman. In view thereof, I do not find any merit in the contentions of the learned senior counsel against the authority confirming permanent status or against the award of the Labour Court in ordering reinstatement.

23. Now considering the further relief that is to be granted to the workman, even though the Labour Court has awarded full back wages, we are in the year 2024. The workman has also passed away in the year 2018, and his legal heirs have come on record. It is to be noted that the workman has



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also received the retrenchment compensation periodically, over and above the wages. It must also be noted that the workman was being paid the 17B wages from the date of the award till the date of his death. Under these circumstances, I am inclined to modify the back wages portion alone. The workman would be deemed to be in service till the date of his death. The management shall calculate his scale of pay and the salary payable, etc., by giving due continuity of service to the workman and accordingly calculate the death benefits and the gratuity payable to the legal heirs. No further arrears of back wages need to be paid to the workman or his legal heirs. But all other terminal benefits be paid by taking into consideration as if the workman was continuously employed.

24. In view thereof, all these three writ petitions are disposed of on the following terms:-

(i) The award dated 09.08.2004 made in proceedings R.C.No. 2295 of 2002 shall stand confirmed inasmuch as it confers permanent status to the workman;

(ii) The award of the Labour Court made in I.D.No.356 of 2005 dated 02.07.2013 shall stand confirmed



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inasmuch as it declares the termination as illegal and orders reinstatement;

(iii) It is ordered that the workman namely V.Narasimhan, shall be deemed to be in regular and continuous service till the date of his death on 25.03.2018;

(iv) His salary and other emoluments shall be notionally worked out by treating his service as continuous, and the terminal benefits/death benefits that are payable by considering him as died while in service shall be paid to the legal heirs;

(v) No further arrears of back wages need be paid;

(vi) All the arrears which are to be paid to the legal heirs/respondents No. 3 to 5 in W.P.No. 30344 of 2004 shall be paid within eight weeks from the date of receipt of a copy of this order;

(vii) If the amounts are not paid within eight weeks thereafter, the amount shall carry further interest at the rate of 9% per annum from today.

(viii) No Costs. Consequently, connected miscellaneous petitions are closed.

03.12.2024

Neutral Citation: Yes



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D.BHARATHA CHAKRAVARTHY, J.

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To

1. The Presiding Officer,
III Additional Labour Court, Chennai 600 104.
2. The Inspector of Labour,
Authority under the Tamilnadu
Industrial Establishment (Conferment of
Permanent Status Act to Workmen) Act, 1981
Kancheepuram.

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