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W.M.P.No.22780 of 2022

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in

W.P.No.23799 of 2022

DR.D.NAGARJUN, J.,

This petition is filed by 21 petitioners against Oil and Natural Gas limited (in short 'ONGC ltd.') with a prayer to pass interim injunction restraining the first respondent management from ousting the petitioners from service, pending disposal of writ petition.

2. The petitioners have filed writ petition against the respondent ONGC seeking to issue writ of certiorarified mandamus to quash the orders passed by the Industrial Tribunal cum Labour Court in I.D.No.11 of 2016 dated 21.01.2022 and consequently direct the respondent management to regularize the services of the petitioners as permanent employees of ONGC ltd., and for other connected reliefs.

3. The petitioners have joined the ONGC on various dates during the years 2008-2009 and 2013 as Field Operators as per the recruitment notification, on sponsoring by employment exchange and by following the selection procedure against clear vacancies. The petitioners



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were recruited as per the advertisement notification of the first respondent after fulfilling the eligibility criteria and after going through tough selection process viz., Common written examination, physical standards and fitness and medical fitness tests as per the Recruitment and Promotion Regulations Act, 1980 and not by back door manner. Initially, they were appointed for a period of four years for a fixed tenure for drilling operations at Cauvery Asset, Karaikal, however, the services of the petitioners were renewed successively after expiry of every four years.

4. The petitioners union has raised the demand on 10.10.2014 for regularization of the petitioners services, stating that the tenure of appointments are illegal and is in violation of the standing orders and therefore, sought for absorbing them as permanent employees under the Tamil Nadu Industries Establishment (Conferment of Permanent Status Act to Workmen) 1981 (for brevity 'the Act'). However, the demands made by the petitioners Union were not accepted by respondent ONGC on which the dispute was referred to Labour Commissioner, who has submitted a failure report on 16.10.2015. The Ministry of Labour, Government of India referred the dispute to the Central Government Industrial Tribunal for adjudication *vide* order No.K30011/3/2016-IR(M) dated 15/17.02.2016.



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The Industrial Tribunal has taken up the same as I.D.No.11 of 2016 and by order dated 21.01.2022 the same was dismissed. Aggrieved by the same, the present writ petition is filed. Pending dismissal of the writ petition, the petitioners have sought for passing orders in this writ miscellaneous petition for granting of interim injunction restraining the first respondent/management from ousting the petitioners from service till the disposal of the writ petition.

5. Ms.Vaigai, learned Senior Counsel for the petitioners submitted that since the petitioners have admittedly completed 480 days, their services have to be confirmed under the 'Act' and if there are no vacancies the respondent ONGC has to create vacancies and absorb them. She has submitted that as per the Division Bench judgment of this Court in W.P.No.600 of 2020, irrespective of the fact whether there are sanction posts or not the regularization cannot be denied under the 'Act', It is submitted further that even without there being any formal confirmation from the competent authorities, the services are deemed to have been confirmed after completion of 480 working days and that ONGC cannot terminate the services of the petitioner on the ground that the tenure period is expired. She has further submitted that the tenure period for some of the



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petitioners is going to expire on 13.07.2024 in case if interim directions are not passed, ONGC will disengage them thereby, lot of prejudice would be caused to them.

6. Mr.A.R.L.Sunderasan, Additional Solicitor General India representing the ONGC has submitted that there is no *prima facie* case and that there is no balance of convenience infavour of the petitioners thereby, interim orders cannot be granted. He has submitted that in the notification through which the petitioners were recruitment, it is clearly mentioned that the appointments are only for a fixed tenure of four years and the said tenure will get automatically ceased on completion of the stipulated period and that the engagement of the petitioners can be terminated at any time even during the period of the tenure by giving one month notice thereof. It is also submitted that in the notification at paragraph D (d) it is specifically mentioned that the selected candidates shall be required to sign an undertaking to the effect that their engagement on tenure basis will not entitle them for any regular employment and that they shall not prefer any claim for regularization of services in ONGC and that accordingly, the petitioners have given such undertaking to ONGC. He has further submitted that on account of policy of the State Government of



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banning the RIG machines and for other technical reasons the services of the petitioners are not required any more and thereby, the respondent ONGC is not intending to extend their tenure.

7. Heard the learned counsel for the petitioners as well as the respondents and perused the materials on record.

8. It is submitted by the learned Senior Counsel Ms.Vaigai appearing for the petitioners that writ proceedings before this Court are continuation of I.D.No.11 of 2016, thereby, respondent ONGC cannot disengage the services of the petitioner on the ground that the tenure is expired which is prohibited under Section 33 of the Industrial Tribunal Act, 1947.

9. Mr.A.R.L.Sunderasan, Additional Solicitor General India representing the ONGC on the other hand submitted that as long as I.D.No.11 of 2016 was pending the respondent ONGC has not disengaged the petitioner and some fixed tenure of the petitioners is about to expire the respondent ONGC can disengage them.



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10. Ms.Vaigai, learned counsel for the petitioners has cited the decision of the Supreme Court of India in **2024 SCC Online SC 982**, the relevant portion is as under:

“28. The next question to be considered is whether the High Court on remand, could have ignored the order of the Inspector of Labour and suggested that the employees raise an industrial dispute questioning their non-employment. The reason for remand, as is seen from the judgment dated 10th March,2016, was that the High Court had not considered that the Act would be applicable to the parties, which were the very same as the parties before us. In other words, the scope of the remand was limited. The order of the Inspector of Labour was passed under the Act. Since the High Court concluded that the Act would apply, there was no reason for it to disturb the findings of the Inspector of Labour and therefore, it ought to have simply ordered that the order of Inspector of Labour, which concluded that the members of the respondent-union be given permanent employment, be compiled with. When an issue stands already decided and such decision does not suffer from any vice of authority or jurisdiction then, putting those who enjoy an order in their favour through the wringer once more of having to re-establish their claim, would be unjustified.”

11. However, Mr.A.R.L.Sunderasan, Additional Solicitor



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nature, in our considered opinion. Per contra, they are mandatory in character. In short, the deeming clause of Section 3(1) of the Act as aforesaid is explicit and admits of no exception as opined by this Court. Furthermore, the petitioner's husband late Raju satisfied the essential condition of being a worker and the Tamil Nadu Electricity Board being his master, so as to claim the permanent status. Thus, the logical conclusion that can be deduced in the present case is that even if no order of regularization was passed in respect of the petitioner's husband Raju (since deceased), the statutory benefit of permanent status is to be necessarily granted to him by the Respondent/ Tamil Nadu Electricity Board.

36. *We also hold that even in the absence of any enquiry conducted by the Inspector under the Act, the right conferred upon the petitioner's husband to claim the benefit of permanent status could not be denied by any means because of the simple fact that Section 3(1) of the Act imposes an obligation upon the Respondents/Electricity Board Authorities to confer permanent status of the petitioner's husband, who had rendered 480 days to work continuously in a period of 24 calendar months and on that basis, we hold that the petitioner's husband deceased S.Raju is entitled to be made permanent by the Respondents/ Tamil Nadu Electricity Board Authorities and once, in law, he was entitled to the benefit of conferment of permanent status, the resultant benefit could not be deprived to the petitioner (wife) notwithstanding the fact that during his lifetime no such permanency was conferred on him. Viewed in that perspective, we hold that a workman, who has completed 480 days of*



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continuous service in a period of 24 calendar months, would become automatically a permanent employee under the employer, even if, an employer has not conferred him with the permanent status or even if, an employer had not conferred him with the permanent status or even if, no direction was issued by the competent authority in this regard under the Act, 1981 or the Rules framed thereunder. Accordingly, we answer the Reference.”

13. It is submitted further by Mr.A.R.L.Sunderasan, Additional Solicitor General India representing the ONGC that the petitioners have participated in the regular recruitment process and that they could not be selected.

14. The learned Senior Counsel appearing for the petitioners has submitted that the petitioners were asked to provide training to the regular employees which clearly go to show that they have sufficient expertise in the field thereby, the recruitment process where the petitioners were though selected in written examination, could not get through in the oral test, can be doubted.

15. In the main writ petition the issues that fall for consideration are whether the provisions of “Conferment of Service Act”



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applies to the petitioner in the light of the fact that the term of the contract of the petitioner is for a fixed tenure and more importantly that the petitioners have given undertaking that they will not seek for regularization in ONGC. Thereby, the issue to be considered is whether the provisions of “Conferment Act” prevails the undertaking given by the petitioners. These questions cannot be decided in this Interlocutory Application. However, since the petitioners have completed 480 days *prima facie* the provisions of the Act may apply to the facts of the case consequently, the services of the petitioners may not be disengaged.

16. In the impugned orders passed by the Labour Court it is mentioned that the appointment of the petitioners is purely on adhoc basis and that the action of the ONGC cannot be termed as unfair labour practices. As rightly submitted by the Additional Solicitor General of India the petitioners who have given undertaking are aware that their tenure is going to expire on completion of the fixed term and since their services are not required any more after expiry of the term, the respondent gets the right to disengage them and the respondent ONGC cannot be compelled to continue the services of the petitioners.



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17. This application is filed basically to maintain the status quo in respect of the services of the petitioners with the respondent ONGC.

The concern of the petitioners is that in case if the impugned orders are not granted the respondent ONGC may likely to disengage them thereby, the petitioners will be out of service and will come on to the streets. If the impugned orders are passed until the disposal of the main writ petition, then their services will be continued for until disposal of writ petition and in case if the writ petition is allowed then consequential proceedings will follow and in case if the writ petition is dismissed then the petitioners can be disengaged even at that stage. Thereby, the balance of convenience is infavour of the petitioners. The only factor which troubles this Court is that when the respondent management is not in requirement of the petitioners service on account of technical reasons then passing of impugned orders amounts to compelling the ONGC to continue services of the petitioners even though, their services are not required.

18. Considering the above, the request of the petitioner to grant injunction to restrain the first respondent ONGC from ousting the petitioners from service can be considered.



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19. Considering the facts that the respondent ONGC has raised contentious issues in respect of the applicability of Conferment of Permanent Status Act, since this Court has come to a conclusion that until the writ petition is disposed of the services of the petitioners cannot be disengaged and since the respondent ONGC has taken a plea that the petitioners are no more required, this Court is of the opinion that the issues raised in writ petition have to be resolved at the earliest. Therefore, both the parties are directed to get ready for final hearing of the writ petition, subject to the convenience of the learned Senior Counsel for the petitioners as well as the learned Counsel for the respondent ONGC, list the writ petition on 07.08.2024 under the caption “for final hearing”

20. Accordingly, this writ miscellaneous petition is allowed as prayed for.

12.07.2024

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Issue order copy on 12.07.2024



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