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W.P.No.12072 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.12072 of 2020
and WMP.No.14806 of 2020 & 30872 of 2022

The Managing Director,
Tamil Nadu Fisheries Development Corporation,
No.571, Integrated Office Complex for Animal Husbandary
and Fisheries Department,
Nandanam,
Chennai – 600 032. ... Petitioner

Vs.

1.The Assistant Commissioner of Labour (Enforcement)
Inspector acting under the
Provisions of Tamil Nadu Industrial Establishments,
(Conferment of Permanent Status to Workmen) Act, 1981,
Thiruvavur.

2.S.Padmanaban ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to
issue a Writ of Certiorari, to call for the records in Na.Ka.No.A/2323/2019
dated 21.05.2020 and consequently quash the same.

For Petitioner : Mr.R.Kumaravel
M/s.D.Murugan Pradeepa

For R1 : Mr.P.Sanjay Gandhi,
Government Advocate

For R2 : Mr.S.F.Mohamed Yusuf



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ORDER

This writ petition is filed to call for the records in Na.Ka.No.A/2323/2019 dated 21.05.2020 and consequently quash the same.

2.The writ petition is filed by the Tamil Nadu fisheries Development Corporation challenging the order dated 21.05.2020 passed by the Assistant Commissioner of Labour. The said case was filed by the 2nd respondent under Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, seeking for permanent status.

3.The Tamil Nadu Fisheries Development Corporation will be referred to as the petitioner and the second respondent/workman will be referred to as the respondent.

4.The respondent was working in the subsidized Diesel Outlet of the petitioner Management located at Akkaraipettai (Keechankuppam). The respondent was in charge of booking of diesel load, billing of loads, maintaining of registers, stock maintenance and yearly audit. According to the



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respondent as he was working continuously from 1997 in the said position in the petitioner Department he was entitled to permanent status under Act of 1981. The petitioner's case was that there was no employee and employer relationship between the petitioner and the respondent. It was contended that the human resource of the aforesaid diesel outlet was initially entrusted to private contractor viz., ADS Security Services Karaikal and thereafter to another entity viz., Star Security Services, Kumbakonnam. According to the petitioner, the respondent was not an employee of the petitioner but an employee of the contractor. It was the petitioner's further case that no appointment order was issued to the respondent and he was not recruited through employment exchange and therefore he could not claim for regularisation. The petitioner relied on the Judgment of the Hon'ble Supreme Court in Uma Devi's case in support of its contention that regularization and permanency could be claimed only if the appointment was made against a sanctioned post.

5.The Assistant Commissioner of Labour on an appreciation of the entire evidence found that the respondent was entitled to conferment of permanent status under the Tamil Nadu Industrial Establishments (Conferment of



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Permanent Status to Workmen) Act, 1981. Aggrieved by the order of the Assistant Commissioner of Labour, the petitioner has filed the above writ petition.

6.The learned counsel for the petitioner submitted that there was no employer and employee relationship between the petitioner and the respondent and that as the respondent had not completed 480 days of continuous service, he was not entitled for permanent status under Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

7.The learned counsel for the respondent on the other hand submitted that the Assistant Commissioner of Labour on proper appreciation of the evidence on record rightly found that the petitioner failed to prove that the respondent was a contract employee and not the direct employee of the petitioner. The learned counsel further submitted that the factual finding of the Assistant Commissioner of Labour on the basis of the materials placed on record that the respondent had put in 480 days in 24 calendar months could not be interfered in the Writ Petition in the absence of proof of perversity. The



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learned counsel for the respondent submitted that there was absolutely no necessity to interfere with the finding of the Assistant Commissioner of Labour as it was based on proper appreciation of the evidence and therefore there were no merits in the writ petition.

8.I have heard both the learned counsels and I have perused the materials on record.

9.It is seen that the defence taken in the counter filed by the respondent was that the respondent was a contract labour and therefore he was not entitled to regularisation. As rightly found by the Assistant Commissioner of Labor the petitioner has not filed any document to show that the petitioner was registered under the Contract Labour Abolition Act, 1970. The Assistant Commissioner of Labour relying on Section 9 of the Contract Labour Abolition Act found that only a registered establishment could employ contract labour. The Assistant Commissioner found that in the absence of any proof that the petitioner was a registered establishment under the Act, the plea of the petitioner that the respondent was contract labour could not be sustained. It is pertinent to note that the petitioner examined two witnesses as contractors on its behalf. The



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contract agreement was not filed by the contractor's and in the absence of the Contract Agreement and in the absence of the license of registration under the Contract Labour Abolition Act, 1970, the finding of the Assistant Commissioner that the petitioner did not prove that the respondent was contract labour cannot be faulted. Therefore, I find no infirmity in the finding of the Labour Court that the petitioner had failed to prove that the respondent was employed only through the contractors. The objection of the petitioner that the respondent had not worked for more than 480 days in 24 calendar months is belied by the petitioner's own evidence. It was categorically admitted by the petitioner that from January 1997 till the date of the petition before the Assistant Commissioner of Labour, the respondent was working in the petitioner establishment. Therefore, it does not lie in the mouth of the petitioner to challenge the finding of the Assistant Commissioner of Labour that the petitioner had not worked for 480 days in 24 calendar months.

10. For all the above reasons, I find absolutely no merits in the Writ Petition and the same is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.



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Index : Yes / No
Internet : Yes / No
Speaking order/Non-speaking order
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N.MALA, J.

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