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W.A.No.2190 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

CORAM:

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL**

W.A.No.2190 of 2021

Vellore District Consumer Co-operative
Wholesale Sales Stores Ltd.,
Rep. by its Joint Registrar/
Managing Director
Anna Salai,
Vellore-632 001

... Appellant/Petitioner

Vs.

1.The Authority Under
the Conferment of Status Act/
Assistant Commissioner
of Labour (implementation)/
Vellore.

2.K.Sanyasi

3.G.Rajaram

...Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters patent to set aside the order passed passed by this Court in W.P.No.30074 of 2021 dated 24.06.2021.

For Appellant : Mr.S.Palaniswamy
For Respondents : Mr.Balan Haridas for R2 and R3



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R1-Court

JUDGMENT

(Judgment of the Court was made by P.Dhanabal,J.)

This Writ Appeal has been filed as against the dismissal order passed in W.P.No.30074 of 2021 dated 24.06.2021, wherein, the appellant herein has filed the writ petition challenging the order of the first respondent in Na.Ka.No.E/327/2018 dated 29.08.2019.

2.The case of the appellant before the Writ Court is that the respondents No.2 and 3 were engaged as packers on daily wage basis and they were disengaged from services, as their services were no longer required. Since they did not come under the purview of Tamil Nadu Co-operative Acts and Rules and Bye-Laws of the Management, they neither issued any appointment order nor termination order and they cannot claim permanent status under the provisions of Tamilnadu Industrial Establishments (Conferment of Permanent Status Workmen) Act, 1981 (herein after referred as “1981 Act” for the sake of brevity). The Management under the 1981 Act had granted permanency without



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considering the fact that the respondents 2 and 3 filed a petition after a lapse of 18 years. Therefore, the order passed by the first respondent is liable to be set aside.

3. The case of the respondents 2 and 3 is that, they worked as packers receiving a sum of Rs.10/- per day through voucher and since they had completed 480 days in a period of 24 calendar months, they are entitled to permanent status. The Authority after considering various aspects of the provisions of 1981 Act, Rules and Bye-laws and various judgments produced by the Hon'ble Courts, the Authority has rendered finding that there is discrimination and unfair labour practice and therefore, conferred the permanent status on the Workmen. Therefore, the Writ Court after hearing the learned counsel on either side and considering the documents, dismissed the Writ petition filed by the petitioner/Management. As against the said order, the present writ appeal is filed by the appellant/Management, and the same is liable to be dismissed.

4. Learned counsel appearing for the appellant-Management



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would contend that the respondents 2 and 3 were engaged as packers on daily wages and thereafter, they were disengaged from services as their services were no longer required. Since they were not covered under the provisions of the 1981 Act, they were not issued any appointment order nor termination order and they cannot claim any permanent status under the 1981 Act. But, the first respondent-Assistant Commissioner of Labour had granted permanency without considering the fact that the respondents 2 and 3 filed a petition after a lapse of 18 years. He further submitted that the Writ Court also failed to consider that on the date of petition, the respondents 2 and 3 were not employees of appellate stores and no relationship of master and servant existed. The Inspector of Labour did not conduct any enquiry and issued certificate to the effect that the respondents 2 and 3 continued to work in the establishment on the date of invoking Section 3(1) of the Tamilnadu Industrial Establishments (Conferment of Permanent Status Workmen) Act, 1981. The Writ Court also failed to see that the respondents 2 and 3 did not challenge the non-employment before the Appropriate Forum but filed a petition before the 1st respondent. Therefore, the Writ Court ought to have allowed the petition and set aside the order of the first respondent



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since the employment is not subsisting. Therefore, the order dated 24.06.2021 passed in W.P.No.30074 of 2019 is liable to be set aside.

5. Learned counsel appearing for the first respondent would contend that the respondents 2 and 3 were engaged as packers and they have completed 480 days in a period of 24 calendar months and therefore, they are entitled to permanent status. Thereby, they approached the first respondent and the first respondent Authority had passed the order after referring the relevant Acts and Rules. He further submitted that the respondents 2 and 3 were working under the appellant's Petrol Bunk and in the Kerosene Bunk from 01.09.1994 to 04.05.2005 and therefore, the appellant cannot deny that the respondents 2 and 3 were appointed illegally. The similarly placed persons were already granted permanency and they were paid regular salary. Therefore, the first respondent after considering all the aspects, directed the appellant-Management by confirming the status of the respondents 2 and 3 and the Writ Court also after elaborate discussion, dismissed the writ petition filed by the appellant-Management. Therefore, the order passed by the Writ Court is in order and the present Writ appeal is liable



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respondents have produced the documents and on careful perusal of those documents, they revealed that these 2nd and 3rd respondents continuously worked for a period of more than 480 days in two years. Further, similarly placed persons were confirmed in service by the Management/appellant, but these respondents have not been confirmed in their service. According to the appellant, the respondents have not approached the authority concerned in time and after a decade. In this context, it is relevant to rely the provision of Section 3(1) of the 1981 Act, every workman who is in continuous service for the period of 480 days in a period of 24 months is entitled for permanent status, and nowhere in the said act prescribed any time limit for employees to redress their grievances.

8. In this context, the 1st respondent also elaborately discussed that these respondents 2 and 3 worked for Rs 10 as daily wages on voucher basis and thereafter, worked in petrol bunk and kerosene bunk of the appellant without voucher from 2009 to 28.02.2017 and had continuously worked more than 480 days in 24 calendar months. Further, as per proceedings of the appellant dated 22.03.2008 in



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Na.Ka.No.313/Aa5/3-04/ E.Ka.Pi dated 22.08.2008. The coolies working in the management from 9.7.1980 to 12.03.2001 were regularised in service by giving permanent status to Serial No.1 it was stated that the 3rd respondent-G. Rajaram worked from Feb 1999 to Nov 2001 for 499 days and the Serial No.3 it was stated that K.Sanyasi worked from Jan 1994 to Jan 2001 for 511 days.

9. The 1st respondent has also found that the respondents have not filed any documents to prove that the respondents 2 and 3 voluntarily stopped from work. When they filed a petition before the Labour Officer, Vellore under the Industrial Dispute Act, the Labour Officer sent a letter dated 27.12.2011 to the management to get instructions from the Registrar of Tamil Nadu Cooperative Societies regarding the claim of the 2nd and 3rd respondents so that their claim could be considered. It is also on records that the appellant/Management had sent a recommendation dated 08.06.2012 to the Registrar of Cooperative Societies to regularise the 2nd and 3rd respondents and sought for permission from the Registrar of Cooperative Societies for regularisation of service to these 2nd and 3rd respondents and 3 others, but till date no reply what so ever was



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received for the said letters. Therefore, it reveals the labour officer and the Management of supermarket feels that it is justifiable to regularise the service of the 2nd and 3rd respondents/petitioners. Therefore, the said observations clearly shows that the 1st respondent after went through the documents passed the order based on the records and the same is well reasoned one.

10. The Writ Court also after referring the judgement of the Division Bench of this Court in the case of *N.Mamundiraj vs. Bharat Heavy Electricals Ltd., Trichy*, reported in **1999 (I) LLJ 622** held that when other employees were provided employment, deprivation of employment to respondents 2 and 3 would amount to discrimination and in Labour legislation, the consideration should be liberal and also held that no time limit is prescribed under the 1981 Act for seeking permanency, but at the same time, the employee must have approached the authority concerned at least within a reasonable time frame, thereby, deprives back wages and after completion of 480 days in a period of 24 months, they are entitled to continuity of service with all other notional benefits. Further, held that the Authority concerned has gone into



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factual and legal aspects and conferred permanency status of the workmen and the same is perfectly valid and thereby, dismissed the writ petition. The order passed by the Writ Court is based on the well settled legal principles and therefore, there is no infirmity found in the order passed by the Writ Court and the present appeal is liable to be dismissed.

11. In the result, this Writ Appeal is dismissed. No costs.

(J.N.B.,J.) (P.D.B., J.)

08.04.2024

Index : Yes / No

Internet : Yes/No

Speaking order : Non-speaking order

Neutral Citation :Yes/No

msv

To

The Authority Under
the Conferment of Status Act/
Assistant Commissioner
of Labour (implementation)/
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