



WP(MD)No.24073 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 19.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.24073 of 2022

and

WMP(MD)Nos.18180 of 2022, 26791 of 2023

The Management of

Anna Co-operative Spinning Mills Ltd.,
Andipatti – 628 902,
Theni District.
Rep. by its Managing Director

: Petitioner

Vs.

1.The Joint Director,

Industrial Safety and Health Authority under
Tamil Nadu Industrial Establishments (Conferment
of Permanent Status to Workmen) Act, 1981,
Dindigul.

2.Theni District Spinning Mills Workers Union,

162 B, Subban Street,
Theni – 625 531.

Rep. by its District President

: Respondents



WP(MD)No.24073 of 2022

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari calling for the records relating to the proceedings of the first respondent in No.B/3553/2021 dated 09.05.2022 and quash the same.

For Petitioner : Mr.M.Elanchezhian

For Respondents: No appearance for R.1

Mr.S.Bharathy Kannan for R.2

ORDER

The petitioner, a Co-operative Spinning Mill coming under the control of Commissioner of Textiles, Government of Tamil Nadu, has filed this writ petition challenging the order passed by the first respondent dated 09.05.2022, u/s.3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1985 [hereinafter referred to as 'the Act'], conferring permanent status to 208 NMR workers.

2.Learned Counsel appearing for the petitioner Mill submitted that being a Co-operative Society, the employment, if any, in the Mill can be



made only through the Employment Exchange and these 208 NMRs referred by the first respondent are not appointed through the Employment Exchange nor as per the by-laws of the petitioner Mill. By referring to the decision of the Hon'ble Apex Court in *State of Karnataka and Others v. Uma Devi and Others* [2006 (4) SCC 1], he contended that the workmen, who are appointed on irregular basis, are not having any right to claim permanent status of their employment. The appointment of these 208 NMRs is against the provisions of the Tamil Nadu Co-operative Societies Act and the by-laws and therefore, they are not entitled for any claim of permanent status.

3.Learned Counsel further contended that the impugned order has been passed based on the representation received from the second respondent / Theni District Spinning Mills Workers Union. As per Section 3 of the Act, for conferring permanent status, a separate application has to be filed. However, in this case, no such application has been made. Even otherwise, neither the representation of the second respondent nor the details produced along with the same have been furnished to the petitioner



enabling them to offer their objections. Without examining the NMRs and the petitioner, the impugned order has been passed in a causal manner, which is in violation of the principles of natural justice. In the event, if the first respondent is inclined to confer permanent status under the Act, in all fairness, he ought to have conducted an enquiry by providing due opportunity of hearing. Therefore, the learned Counsel prayed for appropriate orders.

4.Learned Counsel appearing for the second respondent Union submitted that the second respondent is a registered Trade Union formed in the year 1998 to protect the rights and welfare of its members. The petitioner Mill was established in the year 1984 and after the retirement of the old workers, new workers were not recruited in the Mill for the past several years. New workers were recruited only as NMRs and they have not been made permanent even after the completion of 480 days of continuous service. Therefore, a representation was made by the Union on 06.11.2021 and the first respondent, in turn, has conducted a spot inspection on 21.12.2021.



WP(MD)No.24073 of 2022

WEB COPY

5.He further submitted that the first respondent, after issuing a notice on 06.01.2022, has collected the required documents. The Management of the petitioner Mill has furnished the details on 23.02.2022 and thereafter, an enquiry was also conducted at the factory premises on the same day. After ascertaining the documents, the first respondent has considered for permanent status for 208 NMRs out of 263 NMRs working in the factory. 55 NMRs in the factory were not considered for permanent status, as they have not completed 480 days of continuous service, as required under the Act. Therefore, according to him, the first respondent has conducted an enquiry, in accordance with the provisions under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Rules, 1981 and as such, he prayed for dismissal.

6.This Court considered the rival submissions made on either side and perused the materials placed on record.



WP(MD)No.24073 of 2022

WEB COPY

7.The main contention of the petitioner is that the first respondent has conducted an enquiry based on the representation of the second respondent Union dated 06.11.2021 and has proceeded under the Act and passed the impugned order, without even furnishing a copy of the representation. Therefore, according to the learned Counsel for the petitioner, the impugned order has been passed without providing an opportunity and without furnishing the copies and it is also passed on an inspection conducted by the first respondent.

8.Perusal of the impugned order reveals that in pursuance to the representation of the second respondent, the factory was inspected on 21.12.2021 and on that day, the petitioner has not furnished any documents. Subsequent to a notice dated 06.01.2022, the Management of the petitioner Mill has submitted the details and thereafter, an enquiry was conducted in the factory premises on 23.03.2022, in the presence of the Managing Director of the factory. In fact, the Managing Director has produced the list of 263 NMR workers, signed by him, showing the date of joining,



designation and the date of completion of 480 days. Based on these documents and on the enquiry conducted, the first respondent has passed the impugned order directing the Management to confer the permanent status to 208 NMRs out of 262 NMRs, working in the factory.

9. Section 5 of the Act enables the Inspector to conduct an inspection of the factory, its registers as well as records. In addition to this power conferred u/s.5 of the Act, the Inspector shall, for the purpose of giving effect to the provisions of the Act, was also conferred with a power to do the following as per Rule 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Rules, 1981:-

"3. Powers of Inspectors -

...

- i) to satisfy himself at each inspection that the prescribed registers and forms are properly maintained;*
- ii) to point out all such defects or irregularities as he may have observed and to give orders for their rectification and to record and furnish to the employer a summary of the defects or irregularities and of his orders;*
- iii) to note how far the defects pointed out at previous inspections*



have been removed and how far orders previously issued have been complied with;

iv) to require any employer to supply or send any return or true copy of any document or information relating to the provisions of the Act;

v) to prosecute, conduct or defend before a court any complaint or other proceedings arising under the Act."

10. Every employer of an industrial establishment is expected to maintain a register of workmen in Form I and is expected to produce the register whenever it is required by the Inspector having jurisdiction, as per Rule 6. In this case, as directed by the first respondent, the Managing Director has also produced the list of 263 NMR workers on 23.02.2022 in Form I. Out of this 263 NMR workers, the conferment of permanent status has been recommended only to 208 NMR workers, based on the date of their enrolment.

11. In view of the above discussions, this Court is of the view that the Authority is having every power under the Act and Rule to conduct an



WP(MD)No.24073 of 2022

inspection, call for the records and to pass orders. Moreover, it is clear that the petitioner Management was provided with opportunity before passing the impugned order and therefore, this Court does not find any violation of principles of natural justice.

For the foregoing reasonings and discussions, this Court is not inclined to entertain this writ petition and the same is accordingly, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Internet : Yes

19.08.2024

Index : Yes / No

NCC : Yes / No

gk

To

The Joint Director,
Industrial Safety and Health Authority under
Tamil Nadu Industrial Establishments (Conferment
of Permanent Status to Workmen) Act, 1981,
Dindigul.



WEB COPY



WP(MD)No.24073 of 2022

B.PUGALENDHI, J.

gk

WP(MD)No.24073 of 2022

19.08.2024