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W.P.No.29430 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2025

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.29430 of 2015

And

M.P.No.1 of 2015 and W.M.P.No.25937 of 2018

The Management of

A.B.T.Parcel Service

Rep. by its Asst. General Manager

... Petitioner

Vs.

1.The Joint Director

Directorate of Industrial Safety and Health

Salem.

2.N.Mani (Alias) Nesamani

3.Ganesan

4.S.Sankar

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for records leading to the order of the first respondent vide No.A/1122 of 2014, dated 23.03.2015 and quash the same.

For Petitioner : Mr.P.Raghunathan
for M/s.T.S.Gopalan and Co.

For Respondents : Mr.K.Surendran for R1
Additional Government Pleader
Mr.K.Elango for R2 to R4



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ORDER

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The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for records leading to the order of the first respondent vide No.A/1122 of 2014, dated 23.03.2015 and quash the same.

2.The case of the petitioner is that the petitioner is in the business of transporting goods and parcels across India. In the State of Tamil Nadu, the company has split its operations into 7 controlling offices, namely, Coimbatore, Trichy, Madurai, Salem, Madras and Palayamkottai and more than 1200 persons are employed and the present litigation pertains to Salem controlling office. In the year 2010, the union representing the permanent workmen submitted a charter of demands with regard to wages and other service conditions of the employees working in the petitioner establishment and the Management settled the demands of permanent workmen. Thereafter the union raised a frivolous claim with the first respondent that the respondents 2 to 4 also should be made permanent and the Management made it clear that there was no requirement for a mechanic or body builder on full time basis.



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3.The further case of the petitioner is that the primary activity of the petitioner company was only transportation of goods and parcels and the maintenance of vehicles do not require a full time employee, however, the union was insisting on the conferment of permanent status to respondents 2 to 4. The Management informed that the respondents 2 to 4 will be provided employment in other locations namely, Mani at Coimbatore, Ganesan at Chennai and Sankar at Bangalore, however, the respondents 2 to 4 did not report for work at the places of posting. On 31.08.2010, the petitioner sent a communication to respondents 2 to 4 that they are not reporting for work and if they are interested in regular job, they must report immediately at the locations allotted to them, however, they did not report for work and the union raised dispute under Section 2k of the Industrial Disputes Act, seeking permanency of respondents 2 to 4. The petitioner filed its reply in conciliation stating that the respondents 2 to 4 had not worked for more than 240 days in a year or 480 days in a period of 24 months and the Government of Tamil Nadu passed G.O.Ms.No.138 dated 22.03.2013 declining to refer the demand for permanency and indicating to file case seeking remedy provided under the Tamil Nadu Shops and Establishments (Conferment of Permanent Status) Act, 1981, if the workmen so desired.



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4.The further case of the petitioner is that thereafter the respondents 2 to 4 approached the first respondent by filing No.A/1122 of 2014 and the first respondent passed the impugned order directing the petitioner to confer permanent status to respondents 2 to 4 from 01.01.2005. Challenging the same, the petitioner has filed this writ petition.

5.The learned counsel appearing for the petitioner submitted that the respondents 2 to 4 stopped reporting for work from 15.08.2010 and there was no employer and employee relationship between the petitioner and the respondents 2 to 4 at the relevant point of time when the respondents 2 to 4 filed petition under Section 3 of the Tamil Nadu Shops and Establishments (Conferment of Permanent Status) Act, 1981, however, the first respondent without considering the same, passed the impugned order directing the petitioner to confer permanent status to respondents 2 to 4 from 01.01.2005, which is not sustainable one. In support of his contentions, the learned counsel relied upon the decision of the Hon'ble Division Bench of this Court reported in **2007 (1) L.L.N. 302 [S.Sivakumar and others Vs. Deputy Inspector of Factories, Chennai and another]**.



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6.Per contra, the learned counsel appearing for the respondents 2 to 4 submitted that the respondents 2 to 4 were orally terminated from service on 15.08.2010 and the oral termination is not binding on the respondents 2 to 4. The learned counsel further submitted that prior to the respondents 2 to 4 filing petition under Section 3 of the Tamil Nadu Shops and Establishments (Conferment of Permanent Status) Act, 1981, before the first respondent, the union representing the permanent workmen raised dispute under Section 2k of the Industrial Disputes Act, seeking permanency of respondents 2 to 4, however, the Government of Tamil Nadu declined to refer the demand for permanency and the Government indicated to file case seeking remedy provided under the Tamil Nadu Shops and Establishments (Conferment of Permanent Status) Act, 1981, pursuant to which, the respondents 2 to 4 approached the first respondent and the first respondent rightly passed the impugned order, which warrants no interference.

7.Heard the arguments advanced on either side and perused the materials available on record.



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8.The facts of the case is not in dispute. Admittedly, prior to the respondents 2 to 4 filing petition under Section 3 of the Tamil Nadu Shops and Establishments (Conferment of Permanent Status) Act, 1981, before the first respondent, the union representing the permanent workmen raised dispute under Section 2k of the Industrial Disputes Act, seeking permanency of respondents 2 to 4. The petitioner filed its reply in conciliation stating that the respondents 2 to 4 had not worked for more than 240 days in a year or 480 days in a period of 24 months and the Government of Tamil Nadu passed G.O.Ms.No.138 dated 22.03.2013 declining to refer the demand for permanency and indicating to file case seeking remedy provided under the Tamil Nadu Shops and Establishments (Conferment of Permanent Status) Act, 1981, if the workmen so desired, pursuant to which, the respondents 2 to 4 approached the first respondent.

9.It is equally un-disputed fact that the Management informed the respondents 2 to 4 that they will be provided employment in other locations namely, Mani at Coimbatore, Ganesan at Chennai and Sankar at Bangalore, however, the respondents 2 to 4 did not report for work at the places of posting and they did not work in the petitioner establishment from 15.08.2010. Hence there was no employer and



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employee relationship between the petitioner and the respondents 2 to 4 at the relevant point of time when the respondents 2 to 4 filed petition under Section 3 of the Tamil Nadu Shops and Establishments (Conferment of Permanent Status) Act, 1981.

10. Similar issue was considered by the Hon'ble Apex Court in the decision reported in **(2001) 4 SCC 469 [T.N.Civil Supplies Corpn. Workers' Union Vs. T.N.Civil Supplies Corpn. Ltd. and others]**, the relevant portion of which reads as follows:

"7. The Division Bench held that the questions raised by the appellants herein in that appeal were the same which were pending in the writ petition filed by the 1st respondent against the orders made by the Inspector of Labour. The Division Bench held that the Union had to await the final outcome of those writ petitions. The Division Bench also agreed with the conclusion of the Single Judge that since the services of the employees had been terminated, it was for the employees to seek their remedies in a manner known to law. We find no infirmity with the reasoning of the Division Bench and see no reason to interfere.

8. Mr Sharma submitted that even



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though the Division Bench has held that the questions raised in the appeal of the Union were the same as those pending in the writ petitions filed by the 1st respondent, yet the Division Bench has gone on to give a finding that the establishment is of a seasonal character and the work is not (sic) intermittent. Mr Sharma submitted that these findings would now come in the way of the Union while defending the writ petition filed by the 1st respondent. He submitted that this Court should either set aside these findings or clarify that those writ petitions would be decided without taking those findings into account.

9. *We are unable to accept these submissions. Those findings were given because the individual employees, who had filed various other writ petitions, raised these contentions before the Division Bench. As those contentions were raised the Division Bench has answered these contentions. None of the workmen, in whose matters those findings are given, have come up in appeal to this Court. They have accepted those findings. It is, therefore, not open for the Union to claim that those findings should be set aside.*



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10. *In any event, as stated above, the services of the workmen have been terminated. Therefore, even if the said Act squarely applied and the establishment of the 1st respondent was not of a seasonal character and the work was not intermittent, the remedy would now be to file the appropriate proceedings against the order of termination. In this view of the matter no purpose would be served by dealing with the correctness of the finding given by the Division Bench."*

11. It is also useful to extract hereunder the decision of the Hon'ble Division Bench of this Court reported in **2007 (1) L.L.N. 302 [S.Sivakumar and others Vs. Deputy Inspector of Factories, Chennai and another]**:

"14. In view of the above discussion, we are of the considered view that for claiming the permanent status under [Section 3](#) of the Act, there must be subsistence of the relationship of master-servant or employer-employee between the parties and if this requirement is not satisfied even though the petitioners have completed four hundred and eighty days in a period of twenty-four calendar months in the



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respondent industrial establishment, in the absence of master-servant or employer-employee relationship between the petitioners and the respondent Management as on the date of making of the application under [Section 3](#) of the Act, they cannot maintain the application under [Section 3](#) of the Act seeking permanent status. Unless and until the order terminating their services are set aside by the competent authority, they cannot approach the competent authority under the Act seeking conferment of permanent status as per [Section 3\(2\)](#) of the Act.”

12.The decisions cited supra makes it clear that in the absence of master-servant or employer-employee relationship between the parties as on the date of making of the application under [Section 3](#) of the Tamil Nadu Shops and Establishments (Conferment of Permanent Status) Act, 1981, the application under [Section 3](#) of the Act seeking permanent status is not maintainable. In the present case, there was no employer and employee relationship between the petitioner and the respondents 2 to 4 at the relevant point of time when the respondents 2 to 4 filed petition under Section 3 of the Tamil Nadu Shops and Establishments (Conferment of Permanent Status) Act, 1981, however,



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the said fact was not properly appreciated by the first respondent and hence the impugned order is perverse and is liable to be set aside.

13.The writ petition is dismissed. The impugned order dated 23.03.2015 is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

11.03.2025

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Joint Director
Directorate of Industrial Safety and Health
Salem.



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