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W.P No.34224 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2015

CORAM

THE HONOURABLE MR. JUSTICE **P.DHANABAL**

W.P.No.34224 of 2012
and MP.No.1 of 2013

The Management of Coimbatore Murugan Mills
Post Box No.7004
Mettupalayam Road,
Coimbatore 641 043.
Rep by its General Manager.

.. Petitioner

Vs.

1.The Deputy Chief Inspector of Factories II
(Authority under the Tamil Nadu Industrial
Establishment (Conferment of Permanent
Status to Workmen) Act, 1981)
Coimbatore.

2. Thiru I. Paneer Selvam

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
pleased to issue a Writ of Certiorari, calling for the records of the 1st
respondent in case No.A 1756 of 2010 and quash its order dated
07.09.2012.

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



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For Respondents : Mr.T.Chezhan, AGP for R1
No Appearance for R2

ORDER

This writ petition has been filed by the Management against the order passed by the first respondent in Case No. 1756 of 2010 dated 07.09.2012, to quash the same.

2. The learned counsel appearing for the petitioner would submit that the petitioner is a composite mill employing 460 workmen. Due to exigencies of work, the petitioner used to engage some casual workmen. In terms of the provisions of Tamil Nadu Industrial Employment (Conferment of Permanent Status to Workmen) Act, 1981, the management confers permanent status to casual workmen who have put in continuous service of 480 days in 24 calendar months. As of the date of filing this writ petition, 67 casual workmen have been made permanent. Meanwhile, the second respondent, after completing training, was engaged as a casual workman from 01.07.2008. He was not required to report for work daily like a permanent workman and whenever he reported for work, he earned emoluments. The second



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respondent was in continuous service for 469 days, however he filed an application to the first respondent contending that from 01.07.2008 to 30.06.2010, he worked continuously and completed 480 days, therefore he should be made permanent. In fact, he did not complete 480 days of continuous service within 24 calendar months.

2.1. Before the authority, the second respondent was examined as WW1 and marked Exs.W1 and W2, stating that he was suffering from illness and had undertaken treatment at the ESI Hospital. Therefore, the said period has to be included for the computation of continuous service. He has not pleaded in the petition and the first time introduced the theory of suffering from illness from 02.09.2009 to 29.09.2009, and he never submitted any medical certificate for reckoning continuous service. Therefore, he is not entitled for permanency without completing 480 days within 24 calendar months. Before the Labour Court on the side of the department, MW1 was examined and Exs.M1 to M24 were marked. Though Section 3(2) of the Tamil Nadu Industrial Employment (Conferment of Permanent Status of Workmen) Act, authorises interrupted on account of service, or authorised leave or an accident or a



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strike, which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman, the second respondent has not stated in the application about his absence due to illness. Therefore, he has not proved that he was illness and obtained certificate from the ESI Hospital. Even as per the records submitted by the petitioner, there is no mention about the OP number, bed number and other particulars. He simply introduced for the first time that he was admitted to the hospital, and there is no reference in the application filed by him. Therefore, the order passed by the Authority holding that he was sick and thereby he is entitled to the benefit of Section 3(2) is not acceptable and the order of the first respondent is liable to be set aside.

3. There is no representation for the second respondent. Despite the notice served on him, none appeared, and the name of the second respondent is also printed in the cause list. Therefore, this Court heard the petitioner's side and passed the order.

4. In this case, there is no dispute that the second respondent was working under the petitioner as a casual labourer. According to the



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second respondent, he continuously worked for 480 days within 24 calendar months, and thereby he is entitled to permanency. According to the petitioner, he did not complete 480 days within 24 calendar months and only completed 469 days, and he was absent from 02.09.2009 to 29.09.2009. According to the 2nd respondent, he was absent due to illness and was unable to attend duty. However, he has not submitted any leave application to the petitioner's management, and even as per the application, there is no mention of the illness or the leave and treatment taken by him, and there is no any leave application filed before the concerned authority, and there is no mention about the alleged treatment taken at the ESI Hospital. For the First time during the enquiry before the first respondent, the second respondent introduced the theory of illness and produced Exs.W.1 and W.2, but the particulars were not fully furnished, and there was no mention about the bed number or the treatment given to him. Therefore, the authority did not consider that the second respondent had not stated the leave obtained by him in the petition filed before the first respondent. Therefore, the order passed by the first respondent is not in accordance with law, and the second respondent failed to prove that he continuously worked for 480 days



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within 24 calendar months. During the course of arguments, the learned counsel for the petitioner also submitted that the mill is now closed, and the petitioner also failed to prove that he continuously worked for 480 days within 24 calendar months. The petitioner, without mentioning about the leave due to his illness in the petition filed by him before the first respondent, it is not appropriate to hold that due to illness, he was absent. Moreover, the workman not even applied any leave before the concerned Management. In order to invoke Section 3(2) of the Tamil Nadu Industrial Employment (Conferment of Permanent Status of Workmen) Act, the workman has to prove that he was absent due to illness, but in the case on hand, the workman failed to prove the same. Therefore, the order passed by the Labour Court is erroneous and is liable to be set aside.

5. In the result, this writ petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

06.01.2025

Index: Yes/No.
Internet/Yes/No



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