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W.P. No.7400 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>26.09.2024</i>
<i>Pronounced on</i>	<i>10 .01.2025</i>

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULAW.P. No.7400 of 2015

1. R.Antony Raj
2. N.Mahesha
3. V.Manjunath
4. V.Krishnamurthy
5. S.Ramesh
6. U.Chinnasamy
7. G.Prakasam

...

Petitioners

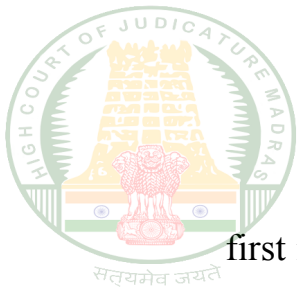
/vs/

1. The Presiding Officer,
Labour Court,
Salem.

2. The Management,
Reckitt Benckiser,
Rep. by its Managing Director,
No.176, SIPCOT Industrial Complex,
Hosur – 635 126.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India
to issue a writ of certiorarified mandamus to call for the records from the



W.P. No.7400 of 2015

first respondent, quash the award of the first respondent Labour Court in I.D.No.235 of 2005 dated 18.09.2014 in so far as the petitioners are concerned and consequently direct the second respondent to reinstate the petitioners with full back wages, continuity of service and all other attendant benefits.

For Petitioners : Mr.Balan Haridas

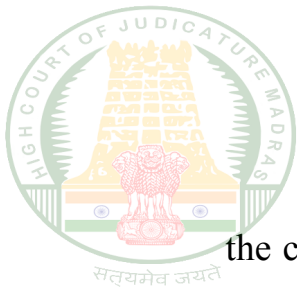
For R2 : Mr.J.Jayashankar
for M/s.T.S.Gopalan & Co.

R1 : Labour Court

ORDER

This Writ Petition has been filed by the petitioners challenging the award of the learned Presiding Officer, Labour Court, Salem, made in I.D.No.235 of 2005 dated 18.09.2014.

2. An Industrial Dispute has been raised by the petitioners' Union and it resulted on a reference made by the Government on the question of entitlement of 27 employees to get permanency. The stand taken by the petitioners' Labour Union is that the individuals have been working in



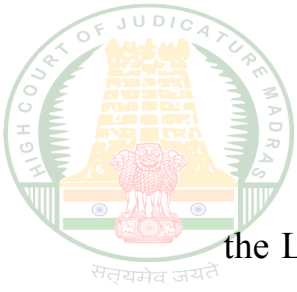
W.P. No.7400 of 2015

the company for a continuous period of 480 days within a period of two years and hence they are entitled for permanency but their services have been utilised without giving them the benefit of permanency.

3. On the other hand, the second respondent Management contended that the individuals were not the employees of the company and they were engaged only as “Trainees” and on the completion of their training they are terminated, but not in the context of any other type of termination of the services of the employee.

4. The Labour Court has arrived at a finding by accepting the argument of the Management that the individuals were the Trainees of the company and hence, they cannot claim any right of permanency on par with the workers and thus, dismissed the dispute. Now the individuals have filed this writ petition stating that the Union did not come forward to challenge the award.

5. The argument advanced on behalf of the petitioners is that they were not trainees and they have been actually engaged as workers and



W.P. No.7400 of 2015

the Labour Court did not appreciate the materials available on record in order to give them the benefit of permanency. It is further submitted that it is wrong on the part of the second respondent Management to plead that the individuals were only trainees. In the absence of any standing orders or if two different standards are applied for employees of the same company that would amount to unfair labour practice. In the absence of any standing orders for recruiting trainees, the allegation that the individuals have been taken as trainees cannot have any legs to stand. So without any proof to show that the individuals are trainees, they cannot be presumed as trainees. And they have to be treated as only employees. As they have the eligibility to get permanency in view of their 480 days of continuous service within a period of 2 years, they shall be given with the benefit of permanency.

6. Mr.J.Jayashankar, the learned counsel for the second respondent, submitted that the individuals cannot file the writ petition because they did not figure anywhere in the reference and all along it was the Union who canvassed the right of the individuals. It is further submitted that



W.P. No.7400 of 2015

their services have been terminated during the pendency of the conciliation but they have failed to raise any dispute under Section 2-A by claiming that they have been illegally terminated. So the petitioners have got no *locus standi* to claim that they are entitled to get the right of permanency by stating that they have rendered continuous period of 480 days of service.

7. No doubt the petitioners' services have been terminated during the pendency of the conciliation proceedings, however the petitioners have not filed any 2A petition. On the other hand the Union alone has filed Industrial Dispute and that has caused the reference to be made by the Government to the Court.

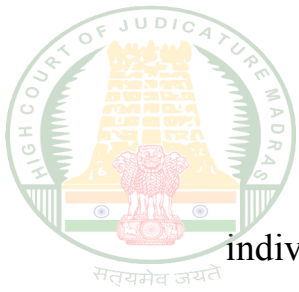
8. In support of his contention the learned counsel for the second respondent cited the judgment of the Hon'ble Supreme Court held in ***The Management of Hanil Tube India Pvt. Limited Vs. The Competent Authority & Inspector of Factories & others and others*** reported in ***2012 SCC OnLine Mad 297*** wherein it is held that in order to maintain a



W.P. No.7400 of 2015

claim under Section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act, 1981, on the date of filing of application, the employee should continue to be in employment. At the time when the conciliation proceedings were pending, the petitioners were working and during pendency of the said proceedings they have been terminated. At no point of time the petitioners have filed any petition before the appropriate authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act, 1981.

9. The Trade Union had all along espousing the cause of the petitioners and others by claiming that they have the right to be conferred with permanency. The categorical contention of the Management before the Labour Court was that the petitioners have been appointed only on term basis for a period of 15 months and on the expiry of the said term, their employment would automatically come to an end and hence there is no question of permanency. So far as the *locus standi* of the petitioners to file the writ petition is concerned, it is submitted that the Union did not take the matter upon itself and challenge the award and hence the



W.P. No.7400 of 2015

individuals have the right to challenge the same. As each individual workman has got an issue about the permanency of his / her employment and in the absence of any interest evinced by the Union, the individuals should be allowed to safeguard their interest by filing this writ petition.

10. It has been the contention of the petitioners that the Management has adopted an unethical practice of denying the benefit of permanency and allowed them to work as short term workers / casual employees though they have been asked to carry out the regular works for employment. In support of his above contention, the petitioners cited the judgment of the Division Bench of this Court held in ***J.Harikrishnan and 22 others Vs. The Management of Hanil Tube Private Limited and another reported in 2014 SCC OnLine Mad 11764*** wherein it is held as under:

“ ... 14. In order to avoid their liability under various labour statutes employers are very often resorting to subterfuge by trying to show that their employees are, in fact, the employees of a contractor. It is high time that this subterfuge must come to an end.



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W.P. No.7400 of 2015

Labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited.

However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor; or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees.

This Court cannot countenance such practices any more. Globalization/ liberalization in the name of growth cannot be at the human cost of exploitation of workers.”

In S.Vijayalakshmi v. Tamil Nadu Water Supply and Drainage Board, represented by its Managing Director, Chennai reported in 2005 (3) LLN 706 made the following observations:

“A bare perusal of the Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, casts an obligation on the Employer to confer permanent status on an Employee who has completed 480 days work in course of two years. During the life time of the husband of the Petitioner, no such permanent status was actually conferred by any order of the Management. It is true that



WEB COPY



W.P. No.7400 of 2015

jurisdiction has been conferred on the Inspector to conduct enquiry if necessary to find out whether an Employee has completed 480 days or not. However, merely because no such enquiry had been conducted by the Inspector, the petitioners husband cannot be denied the benefits of the Act. In view of the mandatory nature of the provision, it shall be taken that an employee who had completed 480 days in a period of two years was permanent.”

11. The claim of the petitioners is that they were given with training and only after their completion of training they have been appointed for fixed term. It is the claim of the petitioners that they have been continuously worked from 09.04.2001 to 01.08.2004 and hence the termination of their services ought not to have been done without complying Section 25 F of the Industrial Disputes Act. But the applicability of Section 25 F of the Industrial Disputes Act would come into play only when the conditions prescribed therein has been fulfilled. For the sake of convenience Section 25 F is extracted under:

“ 25F. Conditions precedent to retrenchment of workmen.

—

No workman employed in any industry who has been in continuous service for not less than one year under an employer



WEB COPY



W.P. No.7400 of 2015

shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

12. The workmen who have filed this petition are not seen to be workers who have continuity of service at the time when they were retrenched.

13. The other argument of the learned counsel for the petitioners is that in the absence of any standing orders approving short time employment, the employment cannot be considered as short time employment.



W.P. No.7400 of 2015

14. The standing orders of the second respondent Management did

not prevent any fixed term employment and hence the claim of the petitioner that it is contrary to the standing order cannot be accepted.

When the appointment itself is for fixed term employment, there is no question of continuous service. Even the petitioners themselves have admitted that they have been termed as “trainees” but they have been discharging the permanent nature of work. It is also admitted by the petitioners that they have received the appointment orders stating that their services will automatically get terminated on the completion of 15 months. The petitioners have tried to include their period of training as service period. But such a contention of the petitioners cannot be entertained because their employment would start only subsequent to the training. Hence, the period from 09.04.2001 to 08.04.2003 which fall under the training period cannot be included in the services of the petitioners. In the absence of any continuous service, the petitioners cannot claim that the conditions of Section 25 F of the Industrial Disputes Act, with regard to retrenchment has to be complied. Since the petitioners are not permanent employees and their services was also not



W.P. No.7400 of 2015

continuous but for a fixed term, it comes to an end automatically by the expiry of the term and hence the petitioners cannot call it as termination or entrenchment.

15. It is contended by the petitioners that it is the Management which has to prove that the petitioners were trainees for a particular period. The petitioners themselves denied the fact that they have been called as “Trainees” for a period of two years and the appointment order also reads so. Having got a fixed term appointment, the petitioners try to make out a case for permanent employment and the same was disallowed by the Labour Court. It is probably because of that the Union had lost its interest subsequent to the dismissal of the reference.

16. The certificates given for completion of training have also been marked as Management documents and they have been marked as Exs.M1, M7, M23, M30, M34, M40, M45, M50, M54, M61, M58, M63, M69, M76, M83, M89, M90, M103, M110, M117, M123, M130, M137, M141, M146 & M150. In fact in the petitions sent by the workmen



W.P. No.7400 of 2015

seeking employment, they have admitted that they have completed two years of training and that they have to be given permanent employment.

Hence, in whatever angle it is viewed, the fact remains that the petitioners have been rendering their services as trainees and thereafter they have been appointed for a fixed term. As the petitioners did not prove their claim for permanent employment, it is unreasonable for them to claim it as a matter of right that their services should be declared as permanent employment. Hence, I feel the award of the Labour Court does not need any interference.

17. In view of the foregoing discussions, this writ petition is dismissed. No costs.

10.01.2025

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Index: Yes / No

Speaking order / Non-speaking order

Netural Citation Case : Yes

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WEB COPY



W.P. No.7400 of 2015

R.N.MANJULA ,J.

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To:

1. The Presiding Officer,
Labour Court,
Salem.

Pre-delivery order in
W.P.No.7400 of 2015

10.01.2025