



W.A.MD) Nos.1000 and 1001 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 24.04.2025
Delivered on : 30.04.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

W.A(MD)Nos.1000 and 1001 of 2024
and
C.M.P(MD)Nos.7240 and 7241 of 2024

W.A(MD)No.1000 of 2024

1.P.Rajakumar

2.S.Thangaswamy

T.Raja Davidson(Died)

3.Glory

4.S.Packiyalakshmi

5.T.Arjunan

... Appellants/Respondents 2 to 6

-Vs-

1.The Management,
The Executive Officer,
Vellimalai Town Panchayat
Thirunainarkurichi, Ammandivilai Post,
Kanyakumari District-629 204.

...1st Respondent/Petitioner

2.The Presiding Officer,
Labour Court,
Tirunelveli.

...2nd Respondent/1st Respondent

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W.A.MD) Nos.1000 and 1001 of 2024

PRAYER: Writ Appeal filed under Clause XV of the Letters of Patent Appeal, against the order of this Court dated 19.04.2023 made in W.P(MD)No.2492 of 2017.

For Appellants : Mr.S.Parthasarathy
For R1 : Mr.Veerakathiravan,
Additional Advocate General II, assisted by
Mr.B.Ramanathan,
Additional Government Pleader
For R2 : Labour Court

W.A(MD)No.1001 of 2024

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2.S.Thangaswamy

T.Raja Davidson(Died)

3.Glory
4.S.Packiyalakshmi
5.T.Arjunan

... Appellants/Respondents2to6

-Vs-

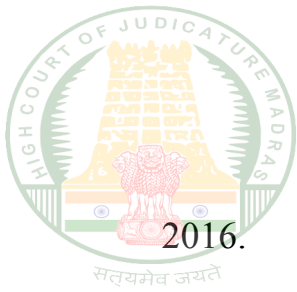
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...2nd Respondent/1st Respondent

PRAYER: Writ Appeal filed under Clause XV of the Letters of Patent Appeal, against the order of this Court dated 19.04.2023 made in W.P(MD)No.4496 of



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W.A.MD) Nos.1000 and 1001 of 2024

For Appellants : Mr.S.Parthasarathy
For R1 : Mr.Veerakathiravan,
Additional Advocate General II, assisted by
Mr.B.Ramanathan,
Additional Government Pleader
For R2 : Labour Court

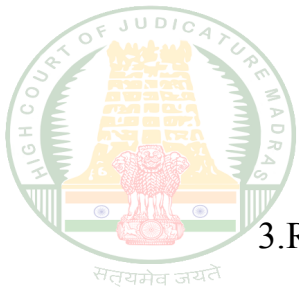
JUDGMENT

DR.G.JAYACHANDRAN, J.
AND
R.POORNIMA, J.

The point under consideration in this intra court appeal is whether the Pump Operators engaged by the first respondent Town Panchayat during the year 1998 on daily wage and later on monthly wage for the rate quoted by them in the tender called by the Panchayat are entitle regularisation of service with the aid of Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

2.The appellants 1, 2, 4, 5 and the husband of the third appellant claiming that they are all continuously engaged by the respondent panchayat as pump operators, initially with daily wage of Rs.53/- and later with monthly wage. The wage is paid directly to them by the Panchayat. While so, treating them as contract labourers, the panchayat is refusing to regularise their service.

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3.Relying upon G.O.Ms.198, dated 26.10.1998, which prescribes minimum qualification for the post of Pump Operators and sanction of posts and the resolutions passed by the Panchayat on various dates, the industrial dispute raised. The Labour Court in I.D.No.51 of 2014 vide order dated 03.18.2015 held that,

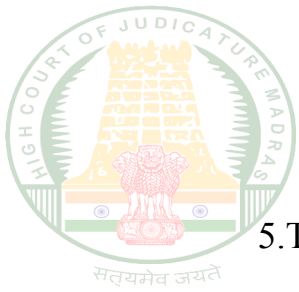
i) the petitioners were engaged by the panchayat as pump operators for more than 10 years continuously. They were paid Pongal bonus and were given other duties on rotation.

ii) Though they were not appointed through the recommendation of the Employment Office, they were all duly registered in Employment Exchange.

iii) Payment of consolidated wage will not disentitle them to get regularisation.

iv) Service of two other workers were regularised stating that they joined service before 31.12.1996, while so, the petitioners cannot be discriminated and denied regularisation.

4.In the result, allowed the petition in favour of the petitioners and directed the Panchayat to regularise their service and to pay salary from 16.02.2014 par with the pump operators appointed on permanent basis.

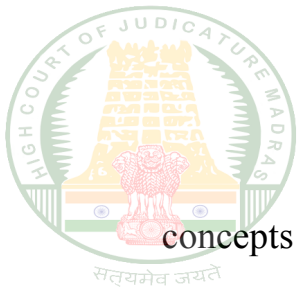


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5.The above award passed by the Labour Court challenged by the Town Panchayat in W.P(MD)No.4496 of 2016. Pending writ petition, the pump operators filed Claim Petition Nos.86 of 2016 to enforce the award. Hence, the Town Panchayat filed W.P(MD)No.2492 of 2017 to quash the Claim Petition 86 of 2016.

6.The Town Panchayat contended that the respondents in the writ petition were never employed by them as workmen nor they were employed in any sanctioned post of 'Pump Operator'. For the Town Panchayat, under a tender process of outsourcing the job of pump operators, these respondents were successful bidders. Their service utilised as per the contract on yearly basis. The G.O., relied and referred by the respondents applicable only to persons, who were engaged prior to 31.12.1996 that too appointed through employment exchange. The respondents neither engaged prior to 31.12.1996 nor were engaged through employment exchange.

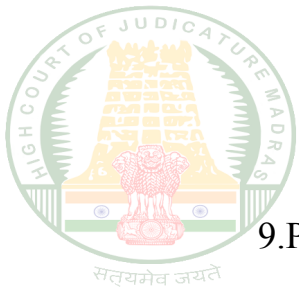
7.The learned single Judge, on considering the tender documents presented by the respondents accepted the plea of the Town Panchayat and passed the common order on 19.04.2023. The learned single Judge has held that, regularisation of service and conferment of permanent status are two different



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concepts in service jurisprudence. For regularisation of service, the employee ought to have participated in the recruitment process and got selected by following the necessary recruitment Rules, including rule of reservation. Conferment of permanent status for a workmen, who had put up 480 days of service is not for persons engaged through tender. Conferment of permanent Status Act is not applicable to Town Panchayat. With these observations, the both the writ petitions were allowed. The learned single Judge however gave liberty to the respondents to participate in the recruitment process in future when the Town Panchayat go for recruitment. In such circumstances, weightage to the experience of the respondents to be given.

8.In the Writ Appeal, the pump operators contend that, they were not employed by the Town Panchayat through any contractor. They were directly employed and paid directly, with due yearly increments. The appellants were card holders of the Employment Exchange. 23 documents were filed on their behalf before the labour Court to prove their right to get regularisation. The finding of the learned single Judge that G.O.Ms.198, dated 26.10.1998 and the proceedings dated 10.07.2000 issued by the Director of Town Panchayat, is not applicable to the case of the appellants herein is erroneous.

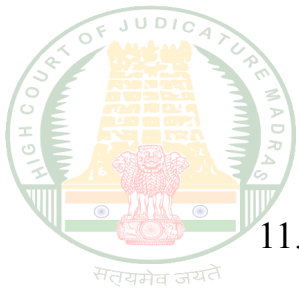


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9.Per contra, Thiru Ramanathan, learned Additional Government Pleader submitted that, the admitted case of the appellants is that they were initially daily wagers. They were engaged by the Town Panchayat between March 1998 and October, 2003. They were never employed through Employment exchange. They may hold registration card, but their employment was not on the recommendation received from the Employment Exchange. From the year 2003 onwards, the Town Panchayat started outsourcing the job of pump operators and other allied works. Tenders were called from interested persons and those were suitable, the tender was offered to them. Accordingly, these appellants participated in the tender process and got the tender on yearly basis. This will not place them in the definition of workmen or to claim regularisation. The Labour Court failed to consider the documents placed before it and the law governing workers engaged through contract ie., in this case the Tender and the workmen engaged following the recruitment Rules. The Learned Single Judge had rightly distinguished the two different source of employment and had rightly held that, the appellants who are engaged based on their tender cannot be considered for regularisation based on their past employment which is purely based on the terms of the tender contract.

10.We had given our deep and thoughtful consideration of the facts and the law on this aspect.

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11.The appellants came to serve the Town Panchayat as daily wagers and from 2003, they are not workmen for daily wage. The Panchayat had formulated a tender scheme of outsourcing, in which, the interested persons had quoted their yearly rate for the job prescribed. From the year 2003 onwards, the documents placed as well the admitted fact is that, the appellants were engaged into service only based on the rate offered by them for the job prescribed. The rate given is for annual basis. The peculiar fact in this case is that the labourer himself is the tenderer and not a middlemen. Therefore naturally, he is paid by the Town Panchayat as the successful tenderer/contractor. Because he plays the dual role, the appellants cannot take advantage of the Conferment of permanent Status Act for getting the relief of regularisation. As pointed out by the learned single Judge for getting regularisation of service, the entry into service as temporary or daily wager must be through a process known under law at the point of entry into employment.

12.Admittedly, in this case, none of these appellants entered into employment as daily wagers through employment exchange. Their registration with employment exchange is not sufficient, but their names should have been forwarded to the Town Panchayat, based on the seniority in registration and communal rotation. In the absence of evidence that their entry was through a



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know process established under law time being in force, regularisation of service a person who had been working with the Town Panchayat under a Tender for works contract, is legally impermissible. Even assuming that some of them were engaged by the Town Panchayat before 26.10.1998, it will not confer them any right to get regularisation since their entry is through back door and not through the recruitment process established. Further, their engagement as daily wagers had come to an end after change in policy and by floating tender for the work.

13. Therefore, we hold that, the Pump Operators engaged by the first respondent Town Panchayat during the year 1998 on daily wage and later on monthly wage for the rate quoted by them in the tender called by the Town Panchayat are not entitle for regularisation of service. The provisions of Industrial Establishments (conferment of permanent status to workmen) Act, 1981 will come to their aid in any manner.

14. As a result, both the writ appeals stand dismissed. The order of the Learned single Judge is confirmed. No order as to costs. Consequently, connected miscellaneous petitions are closed.

G.J., J.] & [R.P., J.]

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DR.G.JAYACHANDRAN, J.

AND

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To

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The Executive Officer,
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2.The Presiding Officer,
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