



W.A.(MD) No.1518 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment Reserved On 29.04.2024	Judgment Pronounced On 06.01.2025
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CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A.(MD) No.1518 of 2018

and

C.M.P.(MD) Nos.10841 of 2018 and 4061 of 2021

1.The Assistant Director,
Government Horticulture Farm,
No.10, English Church Road,
Tirunelveli, Tirunelveli District.

2.The Management,
Government Horticulture Farm,
Five Falls, Courtallam,
Tenkasi, Tirunelveli District.

... Appellants/
Respondents 1 & 2

Vs



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1.General Workers Union (CITU),
Tenkasi Taluk,
Presently known as
General Workers Union (CITU),
Tenkasi Vattara,
Rep., by its General Secretary,
N.Paulraj, Tirunelveli District.

... 1st Respondent /
Petitioner

2.The Presiding Officer,
Labour Court,
Tirunelveli.

... 2nd Respondent/
3rd Respondent

Prayer: Appeal filed under Clause 15 of Letters Patent against the order dated
18.06.2018 passed in W.P.(MD) No.1191 of 2010.

For Appellants	:	Mr.Veerakathiravan Additional Advocate General assisted by Mr.N.Muthuvijayan Special Government Pleader
For R1	:	Ms.D.Geetha
Respondent-2	:	Labour Court



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JUDGMENT

This appeal is preferred by Respondents 1 and 2 in W.P.(MD) No.1191 of 2010, challenging an order dated 18.06.2018 passed therein.

2. The issue before the learned Single Judge was a challenge to an order passed by the Labour Court, Tirunelveli in an industrial dispute in I.D.No.130 of 2000, dated 29.12.2008 raised by a Trade Union on behalf of workmen of the 2nd appellant herein.

3. The facts are:

(a) The workmen concerned were working as daily rated workers under the 2nd appellant and they have completed 240 days of uninterrupted service and they sought regularisation of their service. The Labour Court concerned raised three issues of which the first relate to its own jurisdiction to entertain the issue. The other issue is whether the workmen concerned have completed 240 days of continuous service in



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a year. *Vis-a-vis* the second mentioned question, which is on facts, the Labour Court held in favour of the Trade Union. However, when it came to its own jurisdiction, it relied on Section 2(j)(i) of the Industrial Disputes Act, 1947(hereinafter referred to as ‘the Act’) and held that it did not have jurisdiction.

4. Before the learned Single Judge, it was contended on behalf of the Trade Union that Section 2(j)(i) of the Act had not been brought into force. On this solitary ground, the learned Judge has allowed the petition. This is now under challenge in this writ appeal.

5. The learned Additional Advocate General made his pointed arguments:

(a) When once the Labour Court has rendered a finding that it has no jurisdiction as the activity of the Workmen involved will not constitute an industry within the meaning of Section 2j(i) of the Act, it should not have embarked on entering a finding on fact that all the twenty employees involved in the case have worked for 240 days.

(b) It might be true that Section 2(j)(i) of the Act., was not notified, but



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still the activity of the appellants should fall within the understanding of the term 'industry' as laid down in ***Bangalore Water Supply and Sewerage Board Vs A.Rajappa*** [(AIR 1978 SC 548)]. The nature of activity for which the appellants have been engaged is essentially for developing saplings in a nursery to be given to agriculturists, that it is a seasonal job only for three months a year, and since 15.12.2012 the nursery has been closed and is not even functioning.

(c) So far as the plea of the Trade Union on behalf of twenty workmen are concerned, the Labour Court has relied on Exs.L12 to 15 and found that Employees' Provident Fund is being deducted for only four workmen. In its counter affidavit, the appellants have categorically stated that few of the employees ceased to be working anywhere from the year 2000-2001. Therefore, even the finding of the Labour Court on facts *vis-a-vis* the employment of twenty workmen is concerned, at the best only four employees needs consideration, but still the Writ Court has directed regularization of all the twenty workmen.

(d) Now the next aspect is that even if any of the employees were to be regularized, it needs to be specified the specific Post in which they



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could be regularized. These people are casual labourers whom the appellants had employed seasonally and they have not indicated the specific post to which they could be absorbed and regularized and also from the date from which they could be regularized.

6. Per contra, the learned counsel appearing for the first respondent made the following submissions:

- (a) The contention of the appellant that notwithstanding the fact that Section 2(j)(i) of the Act which was sought to be introduced *vide* Act 46 of 1983 was not brought into force, yet the appellants will not fall within the definition of Section 2(j) of the Act and as interpreted by the Hon'ble Supreme Court in ***Bangalore Water Supply and Sewerage Board (supra)***, the fact remains that the appellants in their counter before the Labour Court has explained the nature of their activity which if scrutinized will fit in squarely within the definition. According to the counter, the workmen in question had engaged in developing hybrid saplings of certain fruit bearing trees and plants as well as spices and horticulture plants, for sale the farmers and growers.



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When this activity looked at, it shows (i) there is a cooperative effort between the employer and the employee; (ii) it produced a good viz., the saplings; and (iii) that it is sold to satisfy a human need. While profit motive is not a criterion for an establishment to qualify as an industry, in this case, the saplings are not even sold free of cost, but only for a price and this aspect of the matter has been admitted by both the witnesses examined by the Management viz., M.W.1 and M.W.2.

(b) Turning to the power of the Labour Court to decide issues on fact after holding that it does not have jurisdiction is concerned, under Order XIV Rule 2 of Code of Civil Procedure, every Court is required to decide all the issues and even if the Court considers that a decision on law that touches upon jurisdiction may be decided as a preliminary issue, yet it is still not obligatory for the Court to decide it first. In other words, the Court has an option to decide any question on law that may resolve the issue either as a preliminary issue or it may take up that issue along with all other issues. Therefore, this approach of the Labour Court cannot be faulted with.

(c) The next issue is whether the 20 workmen whose cause the respondent-



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Trade Union agitated before the Labour Court is concerned, whether these 20 workmen actually worked for 240 days in a calender year. Here the Labour Court has considered it and has indicated that it perused and examined Ext.W.1 to Ext.W.5 that were produced on behalf of the 20 workmen and has entered a finding that all of them have worked continuously for 240 days for several years and this view has held in more than one place in this order. In this context, the 1st respondent has taken out an application in I.A.No.225 of 2000 for a direction to the appellants to produce attendance register and bonus register for the workmen from 1994 to 1999 and despite an order directing the production by the appellants, the appellants have chosen not to produce them, driving the Labour Court to draw adverse inference against it. When the Labour Court has entered a finding on fact and when this fact was not adequately canvassed or agitated before the learned Single Judge, it is impermissible for the appellants to canvass a case on facts before the appellate Court.

(d) Of the 20 workers, two viz., M.Durai Samy and V.Subbaiah have died and four others have reached the age of superannuation, which implies,



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the remaining 14 are still eligible for being considered for regularisation.

7. It is more than two decade that the issue raised is being debated, but it must be underscored that when rights are in conflict where facts and law are intertwined, it is essential that the same is addressed. In judicial review of the approach of the tribunal undertaken, the space available to the Court to investigate on facts are minimal. There are three facts: (a) to identify whether a seasonally operated nursery will fall under the category of an industry; and (b) Assuming it is so, then to identify who among the workmen who might be eligible for remedy. And, (c) If the institution in question is closed even on 15.12.2012, where to accommodate them.

8. The case to be decided by the rule of probability. So far as identifying the workmen who are entitled to be regularised, four workmen can be identified for they had been paid bonus as seen from Ext.L12 to L15. As to the rest the enquiry must have to continue. Hence this Court deems it appropriate that the Labour Court considers these issues pointedly, and to facilitate the same the



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matter is required to be remanded back to the labour Court.

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9. In the result, this appeal is partly allowed, and the case is remanded back to the Labour Court, and the Labour Court is required to pointedly address the issues raised vis-a-vis the workmen whose regularisation is now in dispute, except those who are covered by Ext.L12 to L15 and those who have passed away, and this required to be done within a period of four months. No costs.

(N.S.S., J.)

(P.V.M., J.)

06.01.2025

NCC : Yes/No

Index : Yes/No

ABR/PM

To

The Presiding Officer,
Labour Court,
Tirunelveli.



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N. SESHASAYEE, J.
and
P.VADAMALAI, J.

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