

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 12.01.2009

Coram

The Honourable Mr. Justice K. CHANDRU

W.P. No.17013 of 1999

The Tamil Nadu Civil Supplies
Corporation Limited,
rep. by its Regional Manager
Erode.

... Petitioner

..Vs..

1. The Inspector of Labour,
Erode.
2. The Regional Secretary,
Tamil Nadu Civil Supplies
Employees Union,
Periyar Region, Erode.

... Respondents

Petition under Article 226 of The Constitution of India,
praying to issue a writ of certiorari, to call for the records of the
first respondent relating to his proceedings No.Na.Ka.No.E/5610/95 dated
22.3.1999 and quash the same.

For Petitioner : Mrs. Selvanayagam
For Respondents : Ms. Sneha, Govt. Advocate

O R D E R

The petitioner-State owned Civil Supplies Corporation,
aggrieved by the order dated 22.3.1999 passed by the first respondent-
Inspector of Labour, filed the present writ petition.

2. The second respondent-Union approached the first
respondent, who is the competent Authority under Section 4(1) of the
Tamil Nadu Industrial Establishment (Conferment of Permanent Status of
Workmen) Act, 1981 (Tamil Nadu Act 46 of 1981) (hereinafter referred to
as "the Act"), seeking for grant of permanent status to one
Jagannathan, who is working as technical staff in the godown of Bhavani
Taluk coming under the control of the Regional Manager, Erode. It was
alleged by the second respondent-Union that since the said Jagannathan
was engaged as a Godown Keeper from 1.9.1991 and as on 24.12.1992, he
has put in service beyond 480 days, he is eligible to be confirmed to
the permanent status.

3. The Authorities took up the case on its file in Na.Ka.No.E/5610/95 and issued notice to the petitioner-Corporation. The petitioner-Corporation filed a written statement dated 21.6.1995. The contention raised by the respondents was that the said Jagannathan was engaged for fumigating the foodgrains in the godown and he was not a regular employee. The Union filed rejoinder, refuting the allegations alleged by the petitioner-Corporation. The written argument was also filed by the workman. The respondent-Corporation also filed counter written argument stating that the workman Jagannathan was not employed by giving any appointment order. He was also not recruited by the Employment Exchange. He was not given work on daily basis.

4. The authorities, on the basis of materials placed before it, came to the conclusion that the said Jagannathan had worked for the following periods:-

"பணியாளர் பெயர்"	பணியாற்றிய காலம்	பணிபுரிந்த நாட்கள்
திரு..க.ஜெகநாதன்	1.9.91 முதல் 31.8.93 வரை	731 நாட்கள்
	1.9.93 முதல் 31.12.93 வரை	122 நாட்கள்
	1.1.94 முதல் 31.12.94 வரை	365 நாட்கள்
	1.1.95 முதல் 31.12.95 வரை	365 நாட்கள்
	1.1.96 முதல் 31.12.96 வரை	366 நாட்கள்
	1.1.97 முதல் 31.12.97 வரை	365 நாட்கள்
	1.1.98 முதல் 31.3.98 வரை"	90 நாட்கள்

5. The authorities also found that the said Jagannathan was paid in the vouchers except for Sundays and other days, which he has not worked. They also found that the person being temporarily employed has

no relevance for considering the grant of permanency in terms of Section 3 of the Act. Therefore, the Authorities found that since he worked for 482 days from 1.9.91 till 24.12.1992, he is eligible for permanent status as workman. This order was challenged in this writ petition.

6. The writ petition was admitted on 15.10.1999. Status quo order was also granted, which was also made absolute on 1.9.2003. Today, when the matter came up for final hearing, Mr. Selvanayagam, learned counsel appearing for the petitioner submitted that the order of the Authorities was illegal and liable to be interfered with by this Court. He submitted that there was no appointment order for the said workman Jagannathan and he was employed intermittently.

7. The effect of Section 3(1) of the Act came up for consideration in respect of very same Corporation in the decision reported in the case of TAMIL NADU CIVIL SUPPLIES CORPORATION MODERN RICE MILL ENGINEERING SECTION EMPLOYEES UNION (REPRESENTED BY ITS SECRETARY), SUNDARAKOTTAI v. TAMIL NADU CIVIL SUPPLIES CORPORATION (REPRESENTED BY ITS MANAGING DIRECTOR), MADRAS AND ANOTHER (1999(3) L.L.N. 286), wherein it is held as follows:-

" 11. Section 3(1), being a non obstante provision, it prevails over any law for the time being in force which includes any Government orders or Government instructions. Therefore, want of sanctioned posts as required under General Service Rules cannot take away the rights conferred under S.3 (1) of the Act. Similarly, Government orders which require that the appointment should be made only through Employment Exchange also cannot be a ground to refuse the right provided under Section 3(1) of the Act of the petitioners (sic.) if they comply with the requirements prescribed under S.3(1). Therefore, it is not open for the respondent to take shelter under any other law in force much less any Government orders, Government instructions to deny the benefits conferred under S.3(1) of the Act, to the petitioners if they satisfy the conditions prescribed therein, irrespective of the fact whether there are irrespective of the availability of sanctioned posts or sponsorship from Employment Exchange.

12. It is also relevant to observe S.5 which prescribes the powers and duties of Inspectors. Under S.5(b), the Inspector is empowered to evidence (sic.) of such person as he may deem necessary for carrying out the purposes of the Act. Section 5(c) further empowers the Inspector to exercise such other powers as may be necessary for carrying out the purposes of the Act. Therefore, under the scheme of

the Act, the Inspector is empowered to exercise all such powers that are necessary for carrying out the purposes of the Act including taking evidence, holding enquiry, passing orders, achieve the object of the Act and also to implement such orders for carrying out the purposes of the Act which includes power to initiate penal action under S.6 of the Act for contravention of S.3(1) of the Act.

13. In the instant case, the second respondent after satisfying himself that the members of the petitioner-union are entitled for the benefit of S.3 (1) of the Act, forwarded the representation of the members of the petitioner-union for appropriate relief. Under such circumstance, if the first respondent-Corporation failed to pass appropriate orders, giving benefits of conferring permanent status to the members of the petitioner-union, certainly the first respondent shall face the consequences of prosecution provided under S.6 of the Act."

8. In the light of the above, the order of the first respondent does not call for any interference. Hence the writ petition stands dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssa.

To

1. The Inspector of Labour, सत्यमेव जयते
Erode.

2. The Regional Secretary,
Tamil Nadu Civil Supplies
Employees Union,
Periyar Region, WEB COPY
Erode.

+ 1 cc to Mr.Government Pleader, SR.NO.1749

W.P. No.17013 of 1999

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