

(2002) 02 MAD CK 0154

In the Madras High Court

Case No : Writ Petition No. 1803 of 2000

Badhili Dinacooli Thozhilalar Munnetra Sangam

APPELLANT

Vs

The Managing Director, Tamilnadu Sugar Corporation Ltd.,
Chennai, Perambalur Sugar Mills Ltd., Eraiyur Post,
Perambalur and Perambalur Sugar Mills Employees Union,
CITU

RESPONDENT

Date of Decision : 15-02-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1)

Citation : (2002) 02 MAD CK 0154

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : V. Chandrakanthan, for the Appellant; Vijay Narayan, R. Vaidhyathan, for Row and Reddy, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—Badhili Dinacooli Thozhilalar Munnetra Sangam is the writ petitioner. The said sangam has filed the writ petition for issue

of writ of mandamus seeking a direction to the respondents to regularise the service of 136 workmen, who are members of the petitioner sangam,

with effect from the date on which they completed 480 days in four seasons and consequently pay them all attendant benefits including the arrears

of pay, etc.

2. When the writ petition was taken up for hearing, Mr.V.Chandrakanthan, learned counsel for the writ petitioner submitted that out of 136

workmen, three workmen died, and this writ petition shall govern the remaining 133 workmen.

3. The writ petition has been filed on the following facts. 136 workmen, the

members of the petitioner sangam, were appointed as casual labour in the second respondent sugar mills. They have put in more than 480 days of service in four seasons. All of them were employed through employment exchange. Government of Tamilnadu in its letter dated 21.12.1987 addressed the first respondent, Tamilnadu Sugar Corporation Limited, had conveyed the permission for the absorption of casual workers initially appointed in the Sugar Mills through employment exchange against regular vacancies as and when they arise in the same Sugar Mills without further reference to Employment Exchange provided such casual workers have been in continuous service for a period of 480 days in four seasons subject to further condition that the resultant vacancies would be filled up through employment exchange. Pursuant to the said directions of the Government, by order of the second respondent dated 10.5.1988, as many as 72 casual workers were regularised. Thereafter a settlement under sec.18(1) of the Industrial Disputes Act, 1947 was also reached between the management and workmen of Perambalur Sugar Mills on 11.3.1993 accepting the staff strength as 789 for the second respondent. Therefore, the petitioner made a representation to the respondent seeking for regularisation of services in respect of 136 workmen. Since the said representation has not been considered, the petitioner is constrained to file the writ petition.

4. Mr.V.Chandrakanthan, learned counsel for the petitioner, while reiterating the above, further submitted that in terms of the Government Order which was implemented in part, the members of the petitioner sangam are also to be regularised since they have been recruited through employment exchange and they have put more than 480 days of service in four seasons. The above facts are not disputed by the respondents.

However, the second respondent has denied the regularisation only on the ground of financial difficulty.

5. The learned counsel for the petitioner relying upon the judgment of the Supreme Court in G.B. Pant University of Agriculture and Technology, Pantnagar, Nainital Vs. State of Uttar Pradesh and Others, submitted that pragmatism does not necessarily be deprivation of the legitimate claims of the members of the petitioner sangam for regularisation of service. He also relied upon yet another judgment of the Supreme Court in Gujarat

Agricultural University Vs. Rathod Labhu Bechar and Others, in support of the above submission. The learned counsel would also rely upon yet

another judgment of the Supreme Court in Morinda Co-op. Sugar Mills Ltd. Vs. Ram Krishan and others etc., to contend that in any event the

respondent being a sugar mill may be directed to maintain a register for all workmen engaged during the seasons and when the new season starts,

the mill should make publication in the neighbouring places in which the members of the petitioner sangam shall normally live and if they report for

duty, the mill should engage them in accordance with seniority and exigency of work. Hence, the learned counsel submitted that even though the

members of the petitioner sangam were fully entitled to regularisation of service, the claim was not considered by the second respondent and

therefore, the second respondent should be directed to regularise the services of the members of the petitioner sangam.

6. Mr.Vijay Narayan, learned counsel for the second respondent, on the other hand, submitted that the issue relating as pleaded by the petitioner in

this writ petition has already been settled by a Division Bench of this Court in the judgment dated 21.9.2001 in W.A.211 of 1998 and W.P.13112

of 1993.

7. Heard Mr.R.Vaidhyanathan learned counsel for the third respondent also.

8. In the light of the above pleadings, it is to be seen as to whether the principle laid down by the Division Bench of this court would be applicable

to the facts of the present case. In that case, Perambalur Sugar Mills Employees Union, C.I.T.U., represented by its Secretary filed the writ

petition representing 132 workers contending that 33 of its members worked under the sugar mill for about 4 to 10 years and completed 480 days

of service in four seasons are entitled to be regularised. Since that claim was not accepted, they raised a dispute in I.D. No.571 of 1990 which

was dismissed ultimately on the ground that some of the employees were not sponsored by the employment exchange and there is no evidence to

show that they worked 480 days in four seasons. The writ petition filed challenging the said award was also dismissed and the Union filed the writ

appeal. Simultaneously, Perambalur Sugar Mills Pattali Thozhil Sangam also filed a writ petition in W.P. No.13112 of 1993 challenging the order

of termination of its members since those employees have worked for 480 days

in four years and obtained permanent status. Both, the writ appeal and the writ petition were taken up for hearing by the Division Bench of this Court after relying upon number of judgments of the Apex Court including the order of the Division Bench of this court in T.N.C.S.C. WORKERS" UNION V. T.N.C.S.C. LTD. & OTHERS 1998 I LLJ 728 held that the second respondent is not an industry which could be brought within the purview of Tamilnadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act. It was also held that the industry is a seasonal one and the workers are committed to work only to particular season and after the crushing season is over, the industry would be closed. With the said finding, the Division Bench declined the relief sought for in the writ petition and the writ appeal. However, ultimately, the Division Bench directed as follows:-

Taking note of the grievance expressed by the Casual workers, we hereby direct the Management, Perambalur Sugar Mills to maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Only the employees whose names appear in the list have to be engaged in addition to the employees who are already working. The Management should not go in for fresh engagement of new workmen. To put it clear, the Sugar Mills is directed to maintain a register for all the workmen engaged during the seasons and when the new season starts, the Sugar Mills should make a publication in local Tamil dailies in the neighbouring places in which the workmen normally live and if they would report for duty, the Sugar Mills would engage them in accordance with seniority and exigency of work. Though Mr.Vijay Narayan, learned counsel for the Sugar Mills has stated that this procedure is being followed by them, in order to safeguard the interests of the Casual workers, we made this observation. With these observations, both the Writ Appeal and the Writ Petition are dismissed. No costs.

9. As contended by the learned counsel for the writ petitioner, of course, the Division Bench had no occasion to deal with the case of the official employees who were originally employed through employment exchange and the employees concerned in both the writ petition and the writ appeal were recruited without reference to the employment exchange. However, it is to be noted that the findings of the Division Bench is that the second

respondent mill is not an industry and the same could not be brought within the purview of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act. The Division Bench did not deny the benefit of regularisation only on the ground that they were not recruited through employment exchange. The claim of the petitioner was negated on the ground that the claim cannot be brought within the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act. Therefore, in my considered view, the judgment of the Division Bench is equally applicable to the facts of the present case as it makes no difference between the employees recruited through employment exchange and those who were not recruited through employment exchange.

10. The Supreme Court in *Morinda Co-op. Sugar Mills Ltd. Vs. Ram Krishan and others etc.*, while considering a similar request of the employees who were retrenched in sugar mill has observed as follows:-

The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated hereinbefore and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work.

11. I have also gone through the direction issued by the Division Bench of this Court. I do not find any reason to pass any other directions except the one issued by the Division Bench on the facts of this case also. In view of the same, the claim of the petitioner that their services should be regularised on the ground that they had been appointed through employment exchange and they have put in 480 days of service in four seasons cannot be accepted and this court cannot direct the second respondent to regularise their services. However, in view of the directions issued by the Division Bench, there will be a direction to the second respondent sugar mill to

maintain a register for all workmen engaged during the seasons and when the new season starts, the mill should make a publication in neighbouring places in which the members of the petitioner sangam normally live and if they would report for duty, the second respondent would engage them in accordance with seniority and exigency of work.

12. With the above observation, the writ petition is dismissed. No costs.