

(1998) 11 MAD CK 0134

In the Madras High Court

Case No : Writ Petition No's. 2972, 18687 of 1992 and 963 and 1383 of 1993, 14403 to 14405 and 20532 of 1994

Krishna Ramanujam V. and Others

APPELLANT

Vs

State of Tamil Nadu and Others
Administrator and
Management of Miseror Co-operative Spinning Mills Ltd. Vs
Deputy Chief Inspector of Factories and Others

RESPONDENT

Date of Decision : 20-11-1998

Acts Referred:

Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen)
Act, 1981 — Section 2, 2(1), 2(4), 3, 3(1)

Citation : (2001) 3 LLJ 630

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Judgement

P.D. Dinakaran, J.—Heard.

W.P. Nos. 2972 and 18687 of 1992 and 963 of 1993 were filed by the workmen who are employed by the fourth respondent-cooperative spinning mill, as workmen in the category of N.M.Rs.

2. The petitioners in W.P. Nos. 1383, 14403, 14404, 14405 and 20532 of 1994 are filed by the co-operative spinning mill agent.

3. For the purpose of convenience, the petitioners in W. P. Nos. 2972 and 18687 of 1992 and 963 of 1993 are referred to as workmen and the petitioners in W.P. Nos. 1383, 14403, 14404, 14405 and 20532 of 1994 are referred to as management-industrial establishment.

3. In W.P. Nos. 2972 and 18687 of 1992 and 963 of 1993, the workmen seek a writ of mandamus directing the Inspector of Factories, First Circle, Tallakulam, Madurai, the third respondent herein, to carry out the purposes of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, by passing appropriate orders for conferring permanent status in

respect of their employment under the fourth respondent, namely, the management-industrial establishment.

5. In W.P. Nos. 1383, 14403, 14404, 14405 and 20532 of 1994, the management-industrial establishment challenges the order of the first respondent in the respective writ petitions, conferring permanent status to workmen, who are hired as the contesting respondents in each of the writ petitions, some of them, have filed W.P. Nos. 2972 and 18687 of 1992 and 963 of 1993.

6. Admittedly, during the pendency of W.P. Nos. 2972 and 18687 of 1992 and 963 of 1993, the Inspector of Factories, Tallakulam, Madurai/Deputy Chief Inspector of Factories, Madurai, was directed to pass appropriate orders on the application filed by the workmen under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter referred to as "the Act"). In pursuance of such orders of this Court and also by exercising the power conferred under the provisions of the Act, the Inspector of Factories, Tallakulam, Madurai/Deputy Chief Inspector of Factories, Madurai, by proceedings dated July 7, 1993, passed orders, conferring permanent status to the respondent-workmen, and hence the management-industrial establishment challenged the said proceedings dated July 7, 1993, in W.P. Nos. 1383, 14403, 14404, 14405, and 20532 of 1994, and the above writ petitions are heard together.

7. Mr. Ibrahim Kalifullah, learned counsel for the management-industrial establishment, contends that the workmen are admittedly working as N.M.Rs., and, therefore, they cannot be considered to be in the service of the petitioner-mill. He further contends that, unless the Director of handlooms, sanctions the post, the management-industrial establishment, could not confirm the workmen, as per the circular dated September 11, 1991, and that the impugned proceedings of the Inspector of Factories/Deputy Chief Inspector of Factories is liable to be quashed as the same is violative of the principles of natural justice, as the management-industrial establishment was not given sufficient opportunity either to explain that the workmen N.M.Rs., are not workmen within the meaning of Section 3, Sub-clause (4) of the Act. In this regard, Mr. Ibrahim Kalifullah relies upon the decision dated July 8, 1992, in W. A. No. 1503 of 1988-Hindustan Petroleum Corporation Limited v. Inspector of Labour and also the decision in Nellai Cotton Mills Limited v. State of Tamil Nadu 1985 (2) LLN 738 and 1987 WLR 258.

8. Mr.P. Arivudai Nambi, learned counsel for the management-industrial establishment, in W.P. Nos. 1383 of 1994, adopts the arguments of Mr. Ibrahim Kalifullah, learned counsel for the management-industrial establishment in W.P. Nos. 14403, 14404, 14405 and 20532 of 1994.

9. Per contra, Mr. Ashok Viswanath, learned counsel for the workmen, contends that the provisions of the above Act, being a special enactment, prevails over the

other general enactment, namely, the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959; and that in view of the non obstante clause in Section 3(1) of the Act read with Explanation II, the respondents, the workmen, who are engaged as N.M.Rs., under the contract of service entered between them and the management-industrial establishment, they -are deemed to be workmen within the meaning of Section 2(4) of the Act, and, therefore, they are entitled for the benefit u/s 3(1) of the Act, and that the benefit conferred u/s 3(1) of the Act, would prevail over the circular, issued by the Director of Handlooms as well as over the provisions of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. In any event, it is contended that since the management-industrial establishment failed to dispute that the workmen are not workmen within the meaning of Section 2(4) of the Act, in their reply to the notice issued by the Inspector of Factories, the impugned proceedings of the authorities is not violative of the principles of natural justice, even as per the details furnished by them.

10. I have bestowed my careful consideration to the submission of both sides. In this regard, I am obliged to refer to Sections 2(4), 3 and 5 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, which reads as follows:

Section 2(4):

"workmen" means any person employed in any industrial establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person,-

(a) who is employed in the police service or as officer or other employee of a prison; or

(b) who is employed mainly in managerial or administrative capacity; or

(c) who, being employed in a supervisory capacity, draws wages exceeding one thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

3. Conferment of permanent status to workmen: (1) Notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty four calendar months in an industrial establishment shall be made permanent.

(2) A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike, which is not illegal, or a lockout or on account of non-employment or discharge of such workman for a period which does not exceed three months and during which

period a substitute has been employed in his place by the employer, or a cessation of work which is not due to any fault on the part of the workman.

Explanation 1. - For the purposes of computing the continuous service referred to in Sub-sections (1) and (2) a workman shall be deemed to be in continuous service during the days on which-

(i) He has been laid off under an agreement as permitted by Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946 (Central Act XX of 1946), or under any other law applicable to the industrial establishment;

(ii) He has been on leave with full wages, earned in the previous years;

(iii) He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave, so, however, that the total period of such maternity leave does not exceed twelve weeks.

"Explanation II- For the purposes of this Section, "law" includes any award, agreement, settlement, instrument or 1 contract of service whether made before or after the commencement of this Act.

5. Powers and duties of Inspectors- Subject to any rules made by the Government in this behalf the Inspector may, within the local limits for which he is appointed, -

(a) enter at all reasonable times and with such assistants, if any, who are persons in the service of the Government or of any local authority as he thinks fit to take with him, any industrial establishment;

(b) make such examination of the industrial establishment and of any registers, records -and notices and take on the spot or elsewhere the evidence of such persons as he may deem necessary, for carrying out the purposes of this Act; and

(c) exercise such powers as may be: necessary for carrying out the purposes of this Act."

11. Of course, a Division Bench of this Court in *Nellai Cotton Mills Ltd. v State of Tamil Nadu* (supra), has held as follows:

"Now, when we come to Section 3(2) of the Act, as we have already pointed out, it is a concept which has not been found incapable of implementation at any time and has stood the test of time since 1947, not only is the concept of continuous service" found in the Industrial Disputes Act, 1947, but we find the same concept in the Payment of Gratuity Act, 1972. In Section 2, Clause (c) "continuous service" has been similarly defined. It reads:

"continuous service" means uninterrupted service and includes services which is, interrupted by sickness, accident, leave," layoff, strike or a lockout or cessation of work not due to any fault of the employee concerned, whether such

uninterrupted or interrupted service was rendered before or after the commencement of this Act.

Explanation 1 to the above definition is more or less similar to Section 25-B(2) of the Industrial Disputes Act. A careful reading of Section 3(2) of the Act would indicate that the emphasis is not on the number of days on which the workman has worked but the emphasis is on the subsisting contract of employment between the employer and the workman. When the Section refers to service, it refers to the contract of employment being subsisting, and the various events on account of which service can be interrupted would indicate that each one of them, except non-employment and discharge, for the time being, does not result in snapping the ties between the employer and the workman. Though service is interrupted, employment continues, and therefore, the emphasis is, that whoever continues to be in service for a period of 480 days in a period of twenty-four calendar months, inclusive of such breaks or absence as may be brought about by sickness or authorised leave or an accident or a strike which is not illegal or a lock-out, he is entitled to the benefit of permanent status. The first event which brings interruption u/s 3(2) of the Act is sickness. It is coupled with authorised leave. Undoubtedly, if a person falls sick, his employment does not stand terminated. If he is on authorised leave, there is no doubt that he continues to be the employee or the worker, and there is no question of the employment being terminated. Even if there is an accident, which will result in his absence, the service does not stand terminated. Of course, if long continued absence is such that it is possible to draw an inference of abandonment, then such a long absence would result in termination of employment. Similarly, even a strike does not result in termination of employment. It may be that a strike may result in an employee or workman being liable for disciplinary action. But merely going on strike by itself does not result in termination "of employment. The Legislature has, however, for the limited purpose of the conferment of the benefits under notwithstanding any interruption in service during those twelve months brought about by sickness, accident or authorised leave not exceeding ninety days in the aggregate for all three or by a lock-out, or by a strike which is not an illegal strike or by intermittent periods of involuntary unemployment not exceeding thirty days.

12. It is, therefore, almost over fifty years -that the concept of continuous service has been incorporated in statutes.

13. This decision of the Supreme Court has been referred with approval in Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd., , where the Supreme Court was concerned with the meaning of the terms "continuous service" and "actually employed" used in Section 2(c) of the Payment of Gratuity Act, 1972. In paragraph 13 of the judgment, after reproducing the observations, which we have extracted above, the Supreme Court pointed out that in Section 2(c) of the Payment of Gratuity Act, the meaning given to the expression "continuous service" in the decision in Jeewanlal (1929) Ltd., Calcutta Vs. Its

Workmen, , was modified by incorporating the words "not due to any fault on the part of the employee concerned" to give to that expression a restricted legal connotation. The Supreme Court in *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, was concerned with the definition of "continuous; service" in Section 2(eee), of Section 25-B of the Industrial Disputes Act, 1947. Referring to the definition in Section 2(eee), the Supreme Court held that before a workman can be considered to have completed one year of continuous service in an industry, it must be shown first what he was employed for a period not less than twelve calendar months and next that during these twelve calendar months he had worked for not less than 240 days. In that case, a worker was employed only for eleven months and the Supreme Court held that though during the said period of eleven months he had worked for more than 240 days that would not entitle him to get the benefit of Section 25-F of the Industrial Disputes Act. We are referring to this decision, because Section 3(1) requires two ingredients to be satisfied. The workman has to be in employment for a period of 24 calendar months and within such period of 24 calendar months he must be in continuous service for 480 days. Unless these conditions are satisfied the workman will not be entitled to the benefit of Section 3(1). As the Supreme Court held in *Sur Enamel and Stamping Works Ltd. v. Their Workmen* (supra), the workman, though he had completed 240 days, was not in service for one year, u/s 3(1) of the Act also it would not be enough for the workman to enable him earn the status of permanent workman only to show that he has been in continuous service for a period of 480 days. He has also further to show that he has been in service for 24 calendar months before he claims the benefits of the Act.

14. This brings us to the second argument advanced by Mr. Chidambaram, viz., whether Section 3(2) supersedes the agreements which are already in force between the employer and the workman, so far as the petitioner in W.P. Nos. 5918 of 1982 is concerned. There are settlements dated July 29, 1980, January 23, 1981, and September 11, 1981, respectively. These settlements dealt with certain rights of the employees. By one of these settlements dated July 29, 1980, the permanent strength of the workmen was fixed at 260 for 12,000 spindles. It was argued that casual labour would be engaged in temporary vacancies in the absence of permanent workmen. There was an agreement with regard to the payment of consolidated wages to these casual workers. This agreement was to come into force on July 1, 1980, and was to be effective for a period of three years. The other settlement, dated January 23, 1981, covered 15 casual workers who were given the status of badlis. Their wages were fixed providing for progressive increase in their basic wages in future. Then there was the settlement, dated September 11, 1981, which fixed the workload and the basic wages of the permanent workers. It is alleged that these three settlements are still in force and whatever matters are covered by these settlements, would have to be excluded from the purview of the provisions of Section 3. Mr Chidambaram's argument was also adopted by Mr. Dwarakanathan appearing in W.P. No 10419 of 1983. Learned Advocate-General as well as Mr. Janakiraman

contended that a settlement derives its force from the provisions of the Industrial Disputes Act, 1947, such as Section 18, and, therefore, the settlements must be treated as law. It appears to us that when the Legislature incorporated a non obstante clause in Section 3(1) and restricted the non obstante clause only to "any law for the time being in force", Section 3(1) must be construed as evincing an intention that Section (sic) of the Industrial Disputes Act, 1947, such as Section 18, and, therefore, the settlements must be treated as law. It appears to us that when the Legislature incorporated a non obstante clause in Section 3(1) and restricted the non obstante clause only to "any law for the time being in force", Section 3(1) must be construed as evincing an intention that the Section 3(1) will operate notwithstanding any statutory law to the contrary. Whenever the Legislature has intended that either awards or agreements or decrees of Courts were to be superseded by legislation, reference was always made in the non obstante clauses to such agreements. By way of illustration, we may refer to Section 14 of the Payment of Gratuity Act, 1972, which reads:

"The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

15. It is obvious that when the Legislature has made reference to "any instrument or contract having effect by virtue of any enactment other than this Act", the Legislature had in mind the provisions of Section 18 of the Industrial Disputes Act under which the effect of the settlement between the employer and the workman was to be provided for. We may also refer to Section 40 of the Bccdi and Cigar Workers (Conditions of Employment) Act, 1966. Section 40(1) of the said Act, which is marginally headed, "effect of laws and agreements inconsistent with this Act", reads as follows:

"17. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, or contract of service whether made before or after the commencement of this Act...."

16. A similar provision is made in Section 37 of the Motor Transport Workers Act, 1961. This Section reads as follows:

"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service which are made before or after the commencement of this Act.

17. We are bound to take notice of the legislative practice that where the intention of the Legislature is that a law is to have effect notwithstanding any award, agreement or contract of service, such an intention is expressed in clear and unambiguous words. Consequently, in the absence of reference to an award, an agreement or a contract of service in Section 3(1) and restricting the operation of the non obstante clause in Section 3(1) only to "anything contained

in any law for the time being in force". We must accept the contention of learned counsel for the petitioner that Section 3 will not supersede a settlement between the employer and the employees in so far as the subject matter of the settlement is conferment of permanent status to the workmen. What is the nature of the settlement in a given case and how far it covers the subject matter in respect of which Section 3(1) has been enacted, will have to be determined on the facts and circumstances of each case.

18. An argument was then advanced that workmen who are badlis or apprentices are also sought to be brought within the purview of Section 3(1). We shall first deal with the question as to whether the apprentices are covered by Section 3. Learned counsel for the petitioner has contended that apprentices are learners in the trade and notwithstanding the fact that they are classified as workmen under the model standing orders so far as the conferment of permanent status is concerned, the apprentices will have to be excluded. The model standing orders classify workmen as permanent, probationers, badlis, temporary, casual and apprentices. There is also in force the Apprentices Act, 1961, in which an apprentice is defined as a person who is undergoing apprenticeship training in pursuance of the contract of apprenticeship. Section 4 of the said Act provides for the period of apprenticeship. Section 7 provides for the termination of apprenticeship contract. It appears that the subject of apprenticeship is, in the Apprentices Act, dealt with only in Section 2, Clause (e), which speaks of apprentices in a designated trade. In that clause, "designated trade" is defined as meaning any trade or occupation or any subject field in engineering or technology which the Central Government, after consultation with the Central apprenticeship council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of this Act. The learned advocate-General and Mr. Somayaji have contended the Apprentices Act does not exhaust all the categories of apprentices, and such of the apprentices as are not covered by the Apprentices Act will, according to them, become workmen and will be entitled to the benefits of the Act. The argument of learned counsel for the petitioners become necessary, because the register of workmen which is required to be maintained in Form I under Rule 6(1) contains columns to specify the nature of the workmen. Column (4) therein reads:

"whether permanent, temporary, casual, badli, or apprentices (other than those covered under the Apprentices Act, 1961)."

19. Now, it appears to us that making a provision for different kinds of workmen in the register which is to be maintained by the employers does not necessarily mean that all those who are included in that register will necessarily be entitled to the benefits of the Act. Section 3(1) refers to a workman being in continuous service. The nature of employment as an apprentice is entirely different from the employment of a regular workman. Strictly speaking, the period of apprenticeship can never be clubbed with the period of service, because an apprentice continues to be a learner until he is absorbed as a regular workman.

That an apprentice is not an employee but a learner, is now well-established by the decision of the Supreme Court in *The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another*, . The Supreme Court held in that decision that an apprentice was not a workman for purposes of the Employees' State Insurance Act. The Supreme Court pointed out that in an apprenticeship, the dominant object and intent is to impart on the part of the employer and to accept on the part of the other person learning under certain agreed terms. That certain payment is made during the apprenticeship, by whatever name called, and that the apprentice has to be under certain rules of discipline do not convert the apprentice into a regular employee under the employer. Such a person remains a learner and is not an employee. We may also refer to the fact that under the Apprentices Act, it is not incumbent upon any employer to offer any employment to any apprenticeship and training in his establishment, nor is it obligatory on the part of the apprentice to accept an employment under the employer. This provision is a recognition of a general concept of apprenticeship that an apprentice is not an employee as such, but is there only to take some training which will make him fit for proper employment.

20. The next argument of Mr. Chidambaram is as regards the inclusion of a badli worker in the term "workman" in Section 3. The argument is that a badli worker is given work only when some permanent employee is absent, and, therefore, he can never be said to be in service as such, much less in continuous service. The concept of a badli worker, which is peculiar to textile mills, is now well recognised. The working of a badli system is elaborately brought out in a report of the Badli Labour Inquiry Committee in the Cotton Textile Industry in Bombay. The committee has observed that there is absenteeism in each mill, and, therefore, there is a badli labour force in each mill. At the same time, it is also observed that there is absenteeism among the badlis. It is observed that 70 per cent of the total number of badlis in some of the mills in Bombay get work almost everyday. But, at the same time, it is observed that in some of the mills, some of the badlis get work even for less than 20 days in a month. On an average, it was shown that badlis get work for 18 days in a month, and this is because most of the mills are following the practice of providing work by rotation to badlis to ensure fair distribution of work. It is stated 1 that in Tamil Nadu more or less a similar situation prevails. The concept of a badli worker, therefore, implies he is given work only when some permanent worker is absent. He is employed on an independent contract of employment for that day alone. He cannot, therefore, be strictly called to be a person in service in the sense that there is a subsisting contract of employment throughout the month or throughout the year. The contract of employment 1 comes up when he is employed in a particular day or on a particular number of days, and there is no further right of badli workers to ask for work on some other day. "Continuous service", as contemplated by Section 3 of the Act, must pre-suppose a contract of employment, and as pointed out in *Bombay Union Dyeing and Bleaching Mills*

v. N.T, More, which is a decision of the Bombay High Court, a contract of employment between a master and servant is not the something as rendering continuous service, and the two are not synonymous. Explaining the concept of employment, the Supreme Court, in Chintaman Rao and Another Vs. The State of Madhya Pradesh, , has observed as follows in 1958-II-LLJ-252 at 256:

"The concept of employment involves three ingredients:

- (1) employer
- (2) employee; and
- (3) the contract of employment.

The employer is one who employs, i. e., one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision."

21. Section 3(1) refers to a continuous service for a period of 480 days in a period of 24 calendar months. As already pointed out this only means that there must be an employment for a period of 24 calendar months, and in that period; there must be a continuous service for a period of 480 days. If the contract of service in the case of a badli worker is only of an intermittent nature, then, in our view, it would not be possible to hold that the workman contemplated by Section 3(1) of the Act includes a badli worker.

22. In this regard it is relevant to point out that, subsequent to the above decision which is dated February 5, 1985, the Legislature has inserted Explanation II to Section 3 of the Act, which reads as follows:

"Explanation II to Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981:

For the purposes of this Section, "Law" includes any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of this Act."

23. I am also obliged to refer the decision dated July 8, 1992, in W.A. No. 1503 of 1988, Hindustan Petroleum Corporation Ltd. v. Inspector of Labour, wherein, it is held as follows:

"In this appeal it is contended by learned counsel for the appellant that a proper opportunity was not given to the appellant-corporation to prove its stand taken before the Inspector of Labour. It is stated that in the course of discussion a representation was made that the matter shall be settled by consulting with the head office and in the next discussion when the Inspector of Labour was informed that there was no settlement, he proceeded to pass the order impugned in the writ petition without any enquiry. According to learned counsel, if an enquiry had been held by Inspector of Labour, the appellants would have

proved that respondents Nos. 2 and 3 are not workmen as defined by the Act and they were only contractors for service and not contractors of service.

Section 2(4) of the Act defines "workman" as a person employed in any industrial establishment to do any skilled or unskilled, manual, supervisory, technical or electrical work for hire or reward, whether the terms of employment be express or implied. It is not necessary to refer to the exceptions mentioned in the definition. Section 3 of the Act provides for conferment of permanent status to workmen if certain conditions are satisfied. Section 4 of the Act provides for appointment of Inspectors. The powers and duties of such Inspectors are set out in Section 5 of Act. u/s 5(b) of the Act, the inspector may, within the local limits for which he is appointed, make such examination of the industrial establishment and of any registers, records and notices and take on the spot or elsewhere the evidence of such person as he may deem necessary for carrying out the purposes of the Act. In the Rules framed under the Act. Rule 6 provides for maintenance of registers by employers. Rule 6(4) is relevant for the purpose of this case. It reads as follows:

"Any employee who finds his name not entered in the list referred to in Sub-rule (2) or finds that the entries have not been made correctly or finds that though entries regarding his service have been made correctly but he has not attested the entries in the registers of workmen in Form I may make a representation to the Inspector concerned. The Inspector, after examining the representation or after making enquiries, may issue suitable directions to the employer for the rectification of the register in Form 1 for the issue of orders conferring permanent status to the workman concerned."

Rule 6(4) contemplates examination by the Inspector of the representation and making enquires and thereafter issuing suitable directions to the employer for the rectification of the register, if necessary.

Thus, the Acts, as well as the Rules contemplates that the Inspector incharge shall make such enquiry as may be necessary to decide whether the claim put forward by the persons concerned is true or not. In the present case, the claim of respondents Nos. 2 and 3 was that they were entitled to be conferred permanent status in view of the fact that they were workmen within the meaning of the Act and that they had put in the period of service as required by the Act. But the procedure adopted by the Inspector in this case does not seem to be in consonance with the provisions of the Act and the Rules. After finding that there can be no settlement between the parties, the Inspector ought to have given an opportunity to both the parties to produce relevant evidence to substantiate their respective cases. In the absence of such an opportunity, it is certainly open to the affected party to contend that the order of the Inspector of Labour is vitiated."

24. I am of the considered opinion that in view of Explanation II to Section 3 of the Act, if read with Sections 2(4) and 3(1) of the Act, the workmen, who are

engaged as N.M.Rs. under a contract of service and their names are found on the rolls of the management-industrial establishment, with or without reference to the sanctioned post maintained by the management-industrial establishment, such workmen, are entitled for the benefit of Section 3(1) of the Act, provided they satisfy the conditions referred to therein,

25. That apart, a perusal of the impugned proceedings passed by the Inspector of Factories/Deputy Chief Inspector of Factories, makes it clear that appropriate notice was given to the management-industrial establishment calling on them to furnish the relevant details, to which, the management-industrial establishment, without protesting that the workmen engaged as N. M. Rs. , are not covered under any contract of service, furnished the details on the basis of which, the impugned proceedings were passed, and, therefore. I do not see any violation of the principles of natural justice. Hence, the decision dated July 8, 1992 in W.A. No. 1503 of 1988 Hindustan Petroleum Corporation Ltd. v. Inspector of Labour (supra) will in no way, help the management-industrial establishment.

26. Therefore, all the contentions raised by Mr. Ibrahim Kalifullah, fail. Hence, W.P. Nos. 1383, 14403 to 14405 and 20532 of 1994 are dismissed and W.P. Nos. 2972, 18687 of 1992 and 963 of 1993 are ordered in terms of the impugned proceedings with reference to the case of the petitioners in W.P. Nos. 2972 and 18687 of 1992 and 963 of 1993. The connected W.M.Ps. are closed.

27. In view of the disposal of these writ petitions, the management industrial establishment are directed to pass appropriate orders expeditiously. No costs.