
(2014) 07 MAD CK 0244

In the Madras High Court

Case No : Writ Petition Nos. 28086, 28087, 28088, 28089, 28090, 28091, 28092, 28093, 28094, 28095 and 28096 of 2011

Management, Hotel Tamil Nadu

APPELLANT

Vs

C. Athirstabooopathy

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Beedi and Cigar Workers (Conditions of Employment) Act, 1966 — Section 2
Factories Act, 1948 — Section 2, 85
Motor Transport Workers Act, 1961 — Section 2
Plantations Labour Act, 1951 — Section 2
Tamil Nadu Shops and Establishments Act, 1947 — Section 2, 2(6)

Citation : (2014) LabIC 3631 : (2014) 3 LLJ 429 : (2014) 3 LLN 723

Hon'ble Judges : N. Paul Vasantha Kumar, J

Bench : Single Bench

Judgement

N. Paul Vasantha Kumar, J.—These writ petitions are filed by the management of Hotel Tamil Nadu, managed by the Tamil Nadu Tourism Development Corporation Limited (hereinafter referred to as TTDC), challenging the order of the Inspector of Labour dated 14.7.2011 passed under Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status of Workmen) Act, 1981 ordering permanency of the 1st respondents/workmen in the posts as detailed in the table below:

The first respondents in all the writ petitions were employed as Daily Wage Labourers by the Tamil Nadu Tourism Development Corporation (TTDC) and they were engaged in the Hotel Tamil Nadu, Hogenakkal for number of years. The TTDC is fully owned by the Government of Tamil Nadu and the first respondents/workmen having worked for more than 480 days in 24 calendar months, have claimed conferment of permanency of their posts under Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status of Workmen) Act, 1981 (hereinafter referred to as the "Act").

2. The Inspector of Labour viz., Second respondent in these writ petitions

considering their claim with reference to the object of the said Act, ordered permanency by a common order dated 14.7.2011.

3. The said order is challenged in these writ petitions by the petitioners/management contending that the respondents have not been engaged in sanctioned posts and they were employed without following the service regulations of TTDC and the Government has changed its policy to outsource Group "D" category Daily Wage Labourers and the TTDC being owned by the Government, is bound by the directions issued. The petitioners also contend that the first respondents were not eligible to be made permanent as per the Service Regulations of the TTDC and on various grounds and therefore, the common order dated 14.7.2011 passed in the claim petition are liable to be set aside.

4. The learned Senior Counsel appearing for the Petitioners/Management submitted that the first respondents/workmen are not having the required qualifications for the post as per the service regulations framed by TTDC and the Hotel is functioning on seasonal basis, and therefore the Inspector of Labour was not justified in ordering permanency. The learned Senior Counsel relied on the decisions reported in *A. Veerasundaram v. State of Tamil Nadu* 2002 (5) CTC 615: LNIND 2001 MAD 436 and *Management of Tirunelveli Co-operative Milk Producers' Union Ltd. Vs. P. Pechimuthu*, in support of his contentions.

5. The learned counsel appearing for the contesting respondents/workmen on the other hand submitted that the contention that TTDC Hotel at Hogenakkal is a seasonal one is not correct as Hogenakkal receives Tourists throughout the year and the first respondents were also engaged throughout the year and they having worked for more than 480 days in 24 calendar months, are entitled to get permanency/regularisation as a matter of right statutorily in terms of Section 3 of the Act, as the said Act will prevail over other enactments. The learned counsel relied on the judgment of this Court reported in *Superintending Engineer v. Inspector of Labour* 2004 (3) LLN 598 , Division Bench order reported in *R. Lakshmi Vs. Chief Engineer (Personnel), Tamilnadu Electricity Board, Chennai and Another*, and *Tamil Nadu Civil Supplies Corporation Modern Rice Mill Engineering Section Employees Union Vs. Tamil Nadu Civil Supplies Corporation and Another*, in support of his contentions.

6. I have considered the rival submissions made by the learned Senior Counsel for the writ petitioners/Management, learned counsel for the first respondents/workmen and also the learned Special Government Pleader appearing for the second respondent.

7. It is not in dispute that the first respondent in each of these writ petitions are serving in TTDC Hotel from 1.8.2002, 1.10.1998, 21.8.2003, 22.11.1998, 6.12.2007, 6.11.1999, 7.4.2003, 1.3.1999, 27.11.2001, 10.2.2003 and 15.6.2002 respectively and they were engaged by the TTDC management and are continuously serving for several years ranging from 7 to 16 years as on date.

8. The first respondents/workmen were not given permanency, due to which they

went before the Inspector of Labour to declare/confer their status as permanent workmen in terms of Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. The said Act defines "workman " under Section 2(4) which reads thus,

"2(4) "workman" 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 to express or implied and includes a badli workman, but does not include any such person,

(a). who is employed in the police service or as an 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 three thousand and five hundred 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.

Explanation.-"Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment."

Section 3 of the Act mandates that all workman, who is in continuous service for a period of 480 days in 24 calendar months in an Industrial Establishment shall be made permanent, notwithstanding anything contained in any law for the time being in force. Even if there is an 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 lock out or cessation of work, which is not due to any fault on the part of the workman, the said period shall also be counted. "Industrial establishment" is defined under Section 2(3), which reads thus,

"2(3) "industrial establishment" means-

(a). a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (Central Act LXIII of 1948) or any place which is deemed to be a factory under sub-section (2) of section 85 of that Act; or

(b). a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (Central Act LXIX of 1951); or

(c). a motor transport undertaking as defined in clause (g) of section 2 of the Motor Transport Workers Act, 1961 (Central Act 27 of 1961); or

(d). a beedi industrial premises as defined in clause (i) of section 2 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (Central Act 32 of 1966); or

(e). an establishment as defined in clause (6) of section 2 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947); or

(f). a catering establishment as defined in clause (1) of section 2 of the Tamil Nadu Catering Establishments Act, 1958 (Tamil Nadu Act XIII of 1958); or

(g). any other establishment which the Government may, by notification, declare to be an industrial establishment for the purpose of this Act."

Section 2(6) of the Tamil Nadu Shops and Establishment Act, 1947 (Act XXXVI of 1947) defines establishment as follows:

"2(6) "establishment" means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the State Government may by notification declare to be an establishment for the purposes of this Act."

TTDC and its hotels are coming within the definition of Section 2(6) of the Tamil Nadu Shops and Establishments Act, 1947, as the management is running restaurants, eating-houses, residential hotels for commercial purpose and the TTDC hotels are not excluded from the purview of Section 7 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, which states about non-application of the provisions of the Act to workman employed in certain establishments viz., establishment engaged in construction of building, bridges, roads, canals, dams or other construction work, where structural, mechanical or electrical.

9. Section 9 of the Act gives power to the Government to give exemption to any establishment by issuing a notification. TTDC is managing Hotels attached with bar, residential hotels, etc. Hence it is coming within the definition of Industrial Establishment. It is not the case of the petitioner management that the management has got exemption from the Government and the Government had issued a notification. Section 3(1) of the Act is a overriding provision, which reads as follows:

"Section 3(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."

Thus, the learned Senior Counsel for the petitioner is not justified in contending that as per the service regulations, first respondents/workmen are not qualified and they were initially engaged without following the sponsorship of Employment Exchange under the provisions of The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.

10. Similar issue was considered by this Court in the decision reported in Tamil Nadu Civil Supplies Corporation Modern Rice Mill Engineering Section Employees Union, Sundarakottai v. Tamil Nadu Civil Supplies Corporation, Madras (supra). In the said decision it is held that permanency cannot be denied under Section 3 of the Act on the ground of want of post under the service rules and Government Orders or on the ground of non-sponsorship through Employment Exchange, as

Section 3 has got overriding effect. Same is the position explained by the Division Bench of this Court in the decision reported in *R. Lakshmi v. Chief Engineer (Personnel), Tamilnadu Electricity Board, Chennai (supra)*. In the said judgment the earlier decisions of this Court reported in *Metal Powder Co. Ltd., Tirumangalam and Another Vs. The State of Tamil Nadu and Another*, ; *J.K. Cotton Spinning & Weaving Mills Co. Ltd., Kanpur v. State of U.P. and Others*, 1998 WLR 514; *N. Mamundiraj and Others v. Bharat Heavy Electricals Ltd., Trichy and Another*, 1999-I-LLJ-622; *Hindustan Petroleum Corporation Ltd. rep. by its Chairman-cum-Man-aging Director, Mumbai v. Presiding Officer, Central Government Labour Court-cum-Industrial Tribunal, Chennai* LNIND 2008 MAD 2300: (2009) 1 MLJ 1115; *The Tamil Nadu Handicrafts Development Corporation Limited, Madras v. The Inspector of Factories, Madurai* dated 27.7.2007, Judgment in W.A. No. 411 of 1998 and 2410 of 1999; the Judgment of Supreme Court reported in *State of Tamil Nadu and Others Vs. Nellai Cotton Mills Ltd. and Others*, etc., were followed and granted relief to the widow of Electricity Board employee on completion of 480 days of continuous service in 24 calendar months even though during his lifetime he had not approached the Inspector of Labour as conferment of permanency is automatic. This Court in *Superintending Engineer, Vel-lore Electricity Distribution Circle, Vellore v. Inspector of Labour, Perambalur* 2004 (3) LLN 598: LNIND 2003 MAD 2159 held that if permanency is ordered by the Inspector of Labour, appropriate proceedings should be initiated by the management conferring permanent status, as Inspector of Labour is the competent fact finding authority.

11. The only contention raised by the petitioner management before the authority was that the activities of the Hotels are seasonal. The same was not proved by placing acceptable materials.

12. The decision relied on by the learned Senior Counsel for the management viz., *A. Veerasundaram v. The State of Tamil Nadu (supra)* is distinguishable on facts as the persons employed were engaged in different capacities during hulling season in Civil Services Corporation, which work is admittedly seasonal in character. The Inspector of Labour in the said case gave a finding that their employment was seasonal and therefore they are not entitled to seek permanency under the Act. Apart from that Section 12(3) settlement was reached between the Union and the management. Therefore factually it was found that the said workmen were not entitled to be ordered as permanent as their employment/engagement were seasonal in nature. The Division Bench judgment reported in *Management, Tirunelveli Co-operative Milk Producers Union Ltd., v. P. Pechimuthu (supra)* was relying upon the judgment of the earlier Division Bench judgment reported in *L. Justine v. Registrar of Cooperative Societies* 2002 (4) CTC 385: LNIND 2002 MAD 1149, where large number of employees were appointed illegally by the Board of Directors of the Co-operative Societies and the Cooperative Societies were forced to pay huge amounts as salary and the said judgment is also distinguishable, as in this case the workmen are limited to 11, who are engaged for several years as Barman, Room boy, Bill

Clerk, Kitchen Cleaner, etc., necessary for maintaining TTDC Hotel, which is a Government of Tamil Nadu Undertaking.

13. As already pointed out, the order of the second respondent viz., Inspector of Labour has been passed by virtue of the powers conferred under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status of Workmen) Act, 1981, which specifically excludes all other enactments while conferring permanency under Section 3(1) of the Act. The legislative intent for enacting the said statute is to be borne in mind while appreciating the orders passed by the Inspector of Labour under the said beneficial labour welfare legislation. If the intention of the legislature is clear and unambiguous, the Judge is not expected to give different interpretation and the said position is made clear in the decisions reported in Bhudan Singh and Another Vs. Nabi Bux and Another, ; K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, ; Atma Ram Mittal Vs. Ishwar Singh Punia, ; Indian Administrative Service (S.C.S.) Association, U.P. and Others Vs. Union of India (UOI) and Others, ; Nasiruddin and Others Vs. Sita Ram Agarwal, ; and High Court of Gujarat and Another Vs. Gujarat Kishan Mazdoor Panchayat and Others, . In Prakash Kumar @ Prakash Bhutto Vs. State of Gujarat, it is held thus.

"14. The more stringent the law, the less is the discretion of the court. Stringent laws are made for the purpose of achieving its objectives. This being the intendment of the legislature the duty of the court is to see that the intention of the legislature is not frustrated....."

"20..... The court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language.

Applying the principles stated in the above cited decisions, this Court is not inclined to set aside the order of the second respondent. The order passed by the Inspector of Labour dated 14.7.2011 is in tune with the provisions contained in the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, which is to be interpreted positively in favour of the workmen. TTDC management is directed to confer permanent status to the first respondents/workmen. If any of the workman is not able to perform his duties which are technical in nature, which requires special skill, it is open to the management to engage the said workman in appropriate post in which he is having experience and skill, and no workman shall be denied permanency on the ground of want of qualification.

In fine, the writ petitions are dismissed with the above observations. No costs.