
(1997) 07 MAD CK 0082

In the Madras High Court

Case No : Writ Petition No. 12686 of 1986

Tamil Nadu Civil Supplies Corporation Modern Rice Mill
Engineering Section Employees Union

APPELLANT

Vs

Tamil Nadu Civil Supplies Corporation and Another

RESPONDENT

Date of Decision : 29-07-1997

Acts Referred:

Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen)
Act, 1981 — Section 3(1), 5, 6

Citation : (2000) 3 LLJ 845

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

Bench : Single Bench

Judgement

P.D. Dinakaran, J.—Heard Sri K. Chandru, learned counsel for petitioner and Sri N. Kannadasan, learned counsel for the contesting respondents.

2. The petitioner, viz., Tamil Nadu Civil Supplies Corporation Modern Rice Mill Engineering Section has filed the above writ petition for issue of a writ of mandamus directing the first respondent to forthwith regularise the 73 casual workmen, working in the Modern Rice Mills, those who have completed more than 24 calendar months with effect from the date on which they had completed 480 days of their service.

3. Sri K. Chandru, learned counsel for the petitioner however restricts the prayer with regard to 69 persons only, whose names are found in Annexures I and II of the proceedings of the first respondent-Corporation. Sri K. Chandru, learned counsel for the petitioner-union, also contends that as per Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter called as the Act), it shall be the statutory obligation on the part of the industrial establishment, such as the first respondent herein, to make every workman permanent, who is in service for a continuous period of 480 days in a period of 24 calendar months in such an industrial establishment. He further contends that there is no specific enquiry or

separate proceedings is contemplated under the Act for implementing the above statutory right by a workman, who has been denied of such right. But however, he points out Section 6 of the Act, which provides for a penalty to the employer who contravenes the provisions of Section 3 of the Act.

4. According to the learned counsel for the petitioner, as per the scheme of the Act, on a mere representation by the workman to the industrial establishment or the employer, as the case may be, seeking the above statutory right conferred u/s 3 of the Act, such industrial establishment or employer shall provide the benefits of Section 3 of the Act to the workman, otherwise, such employer shall have to face the prosecution as provided u/s 6 of the Act. In the instant case, he points out that the petitioner had made several representations to the first respondent-Corporation and also have approached the second respondent, Deputy Chief Inspector of Factories, Thiruchirapalli for necessary relief. The second respondent by his proceedings, dated May 2, 1986, informed the petitioner-union that their representations were forwarded to the first respondent-industrial establishment for appropriate relief. Again by the subsequent proceedings, dated May 20, 1986, the second respondent also advised the first respondent industrial establishment to extend all the benefits to all the deserving casual labourers strictly in accordance with Section 3(1) of the Act

5. It is no doubt true that in pursuance of such representations sent by the petitioner-union to the first respondent by proceedings, dated June 3, 1986 framed certain guidelines for regularising the casual labourers, who are similarly placed and who are entitled for the conferment of permanent status on completion of their continuous services for a period of four hundred and eighty days in a period of 24 calendar months. The proceedings so issued by the Chairman-cum-Managing Director of the Tamil Nadu Civil Supplies Corporation (Head Office, Madras, dated June 3, 1986, runs as follows):

"Copy of letter Re. E6/46073/82, dated June 3, 1986, received from the Chairman-cum-Managing Director, T.N.C.S.C., Ltd., Head Office, Madras.

Addressed to the Senior Regional Manager, T.N.C.S.C., Ltd., Thanjavur Region.

Sir,

Sub: Casual Labourers - Regularisation of service - Guidelines issued.

Ref: S.R.M. Thanjavur Rc.5148/81/A8, dated March 12, 1986, and April 24, 1986.

The above matter was placed before the Board and the Board has issued the following guidelines for regularisation of casual labourers services working in the Modern Rice Mills.

The casual labourers working on daily wages in Modern Rice Mills of the Corporation who have put in service for a continuous period of 480 days in the period of 24 calendar months be considered for regularisation in the scale of Rs. 450-10-720, subject to the following conditions:

(i) The casual service will count only from the date of appointment on being sponsored by the Employment Exchange, except in cases where such engagement without consultation with Employment Exchange is specifically approved by the Government.

(ii) If during the casual service in any calendar year, the casual worker renders less than 240 days service, his service becomes discontinuous and this particular year will not be counted for completion of eligible days of service.

(iii) The absorption of time-scale will be against sanctioned permanent posts only. Engagement of a casual labourer when there is no vacant sanctioned post is strictly prohibited.

(iv) In respect of the casual workers whose services have been ordered to be regularised against permanent vacancies during 1985 and 1986, the fixation against regular scale of pay would be with effect from the dates of issue of order from the head office viz., August 20, 1985 and January 17, 1986, respectively.

(v) The performance of the casual workers should be closely watched and in the case of those casual workers whose performance is not within satisfactory levels, their services should be terminated after following the procedure laid down in the statutes.

(vi) Proposals for regularisation of eligible casual workers will be submitted by Regional Managers to the Chairman-cum-Managing Director every year as on the 1st of January 1 of the year.

The Senior Regional Managers and Regional Managers are requested to follow the guidelines and to take necessary action in this regard.

Yours faithfully,

for T.N.C.S., Ltd., (Sd) A.S. RAMASAMY MANAGER (Adm.I/C.)"

6. Sri K. Chandru, learned counsel for the petitioner also invited my attention to Clause (iii) of the said proceeding extracted above. Clause (iii) of the said proceeding would go to show that the absorption of time-scale will be against the sanctioned permanent posts only and that the engagement of casual labourers, when there is no vacant sanctioned post is strictly prohibited. Again, by another proceedings of the first respondent-Corporation, dated February 24, 1989, in MEI/46073/82, the Chairman-cum- Managing Director of the Tamil Nadu Civil Supplies Corporation, Ltd., requested all the Senior Regional Managers concerned to regularise the services of the 69 casual labourers, as shown in the Annexures I and II therein. They were stated to be in continuous service for a period of 480 days in a period of 24 calendar months in the time scale of Rs. 450-10-520-15-720 in the cadre of Junior Helper with effect from December 15, 1988. In pursuance of the said proceedings, dated February 24, 1989, the services of 40 casual labourers, whose names and other particulars are furnished in Annexure I and who are stated to have been appointed between January 1,

1978 and July 8, 1980 and 69 persons, whose names and other particulars are furnished in Annexure II and who are stated to have been appointed after July 8, 1980, were regularised with effect from December 15, 1988.

7. Sri K. Chandru, learned counsel for the petitioner further contends that the first respondent-Corporation, having agreed to regularise the services of the casual labourers in pursuance of Clause (iii) of the proceedings, dated June 3, 1986, ought to have regularised the services of the 69 persons immediately with effect from the date of completion of continuous service for a period of 480 days of service in a period of 24 calendar months but not with effect from December 15, 1988, irrespective of the sanction for the post or sponsorship of the names of the employees by the Employment Exchange.

8. Per contra, Sri N. Kannadasan, learned counsel appearing for the first respondent-Corporation contends that the grievance of the petitioner, viz., 69 persons have already been considered by the first respondent-Corporation and appropriate orders are passed in their proceedings No. MEI/46073/82, dated February 24, 1989, their services were regularised with effect from December 15, 1988, and therefore no further orders are required in the above writ petition. Sri N. Kannadasan further contends that since the first respondent is a Government owned Corporation, they cannot regularise the service of the labourers, whose names are not sponsored by the Employment Exchange.

9. I have given my anxious consideration to the rival submission of learned counsel appearing on either side.

10. In this connection, it is relevant to refer the following provisions of the said Act.

Section 3(1):

"Conferment of permanent status to workmen". 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."

Section 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 person as he may deem necessary, for carrying out the purposes of this Act; and

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

Section 6;

"Penalties". (1) Every employer who contravenes the provisions of section shall be punishable with fine which may extend to five thousand rupees and in the case of continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

(2) No prosecution for an offence punishable under the section shall be instituted except with the previous sanction of the prescribed authority."

11. Section 3(1), being a non obstante provision, it prevails over any law for the time being in force which includes any service rules, Government orders or Government instructions. Therefore, want of sanctioned posts as required under General Service Rules cannot take away the rights conferred u/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 u/s 3(1) of the Act of the petitioners (sic.) if they comply with the requirements prescribed u/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 u/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 Section 5 which prescribes the powers and duties of Inspectors. u/s 5(b), the Inspector is empowered to evidence (sic.) of such person as he may deem necessary 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 u/s 6 of the Act for contravention of Section 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 Section 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 u/s 6 of the Act.

14. That apart, fixing December 15, 1988 as a crucial date for conferment of

permanent status to all the persons and regularisation of their service is again unreasonable as much as Section 3(1) confers right of the permanent status on every workman, if the conditions contemplated u/s 3(1) are complied with, in the case of individual workman.

15. Therefore, the respondents are directed to modify the proceedings, dated February 24, 1989, to confer the permanent status to individual workman from the day on which they satisfy the condition namely completing the continuous service for period of 480 days in a period of 24 calendar months in the respondent establishment. The respondent shall pass appropriate orders as directed above within six weeks from the date of receipt of a copy of this order.

16. The writ petition is ordered accordingly. No costs.