

(2014) 07 MAD CK 0192

In the Madras High Court

Case No : Writ Petition No. 33877 of 2013 and M.P. Nos. 1 of 2013 and 1 of 2014

V.C. Vadivel

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2014) 3 LLJ 558

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Judgement

S. Vaidyanathan, J.—The writ petition has been filed with the following prayer: "to issue a Writ of Mandamus directing the respondents 1 to 2 herein to regularize the services of the petitioners from the date of their completion of 480 days within a period of 24 months along with time scale of pay and all other attendant and monetary benefits as done in the case of the petitioners in WP No. 1175 of 2005 by way of G.O. Ms. No. 596 (Municipal Administration and Water Supply Dept) dated 08.12.2010."

The case of the petitioners is that they have joined in the year 1983-84 in Tamil Nadu Water and Drainage Board (TWAD) as NMR - Fitter Grade II and Watchman. Some of the employees, who are likely to be terminated, have approached this Court in W.P. Nos. 537 and 538 of 1985 and sought for a prayer to get their services regularised. This Court, by order dated 25.6.1994 allowed the writ petitions and directed the respondents therein to regularise the services of the petitioners therein, if they completed 480 days of continuous service within a period of two calendar years in terms of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter referred as Act 81). By order dated 22.4.2009, this Court, in W.P. No. 1175 of 2005, directed the respondents therein to implement the orders passed in the said batch of writ petitions. Against which, Writ Appeal in W.A. No. 14 of 2010 has been filed before this Court by the State Government and the

same was dismissed on 11.1.2010. SLR No. 10204 of 2010 filed by the State Government was also dismissed by the Hon"ble Supreme Court on 16.7.2010. Therefore, the order dated 22.4.2009 directing the Municipality to implement the order dated 25.6.1994 became final. Therefore, some of the employees, who filed the said writ petitions, were transferred and absorbed in Alandur Municipality on 08.12.2010. The case of the petitioners is that they are also similarly placed as that of the petitioners in W.P. No. 537 and 538 etc batch, and that they should also be regularised on completion of 480 days of service within a period of 24 months. In spite of their representation dated 17.4.2011, the Municipality herein, did not take any further steps to regularise their services. Hence, the petitioners have approached this Court by way of this writ petition seeking regularisation of their services.

2. Though the respondents have not filed counter, the learned Special Government Pleader appearing for the respondents 1 and 2 contended that the petitioners are not entitled for regularisation of service as they are NMRs and they have not completed 480 days of continuous service.

3. When the matter came up before this Court on 16.6.2014, the respondents were directed to produce the Attendance Register and other particulars. Like wise, the petitioners were also directed to produce relevant records available with them as there is a dispute with regard to the question of facts. This Court, further observed that if the petitioners fail to produce any records in support of their case, this Court would dismiss the writ petition giving liberty to the petitioner to approach the authority under the Conferment of Permanent Status Act, mentioned supra.

4. Today, when the matter is taken up, the writ petitioners produced the Service Registers of the petitioners. Even though the attendance details are not available in the said Registers, in the document dated 27.6.2014 filed in the typed set of papers, it has been specifically mentioned that the services of the petitioners have been absorbed by the respondents. That apart, the said document clearly shows that the employees have been continuously working and they have also drawn salary for their services. In the Service Registers pertaining to the petitioners, at page Nos. 5,12,36, and 45, it has been specifically mentioned that the first petitioner, namely, V.C. Vadivel, has been absorbed in the service with effect from 29.5.1985 as Fitter and the other three petitioners, namely. B. Ravi, R. Kumar and E. Pakkiri have been absorbed as Watchman in the service with effect from 29.5.1985. The said service records were prepared on 25.10.1989. From this, it is very clear that the petitioners were in service till 25.10.1989 and unless they have completed the required number of years of service, they would not have been absorbed in the service of TWAD Board. That apart, the records clearly show that the wages have been paid to the petitioners till 2007 and thereafter.

5. This Court in A. Palanivel and Others v. Tamil Nadu Khadi and Village Industries Board and Others, 1997 (3) L.L.N. 509 has held that daily wager who

has put in a continuous service of 480 days in a period of 24 calendar months should be conferred permanent status in the establishment. Further, in the said judgment, it has been held that mere denial of such service by employer in its counter affidavit without any material in form of records or documents to prove his case is no ground to reject the claim of the petitioner to be made permanent. It has also been held that Social legislation like the Act, 1981 has to be fully implemented by the Central and State Governments as well as their Organisations and undertakings.

6. Even from the notification, given below it is clear that the Act is applicable to the Central Government Establishment situated in Tamil Nadu.

"Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981: Exemption of certain establishments from provisions of Act.

I

Kendriya Garhi Depot, Central Vehicle Depot, Avadi, Madras-55

G.O. Ms. No. 662, Labour, dated 4th April, 1985.(1)

No. II(2)/LAB/2017/85- In exercise of the powers conferred by section 9 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (Tamil Nadu Act 46 of 1981), the Governor of Tamil Nadu hereby exempts the establishments under the Control of Kendriya Garhi Depot, Central Vehicle Depot, Avadi, Madras 600 055 from all the provisions of the said Act.

II

Southern Railway in Tamil Nadu

G.O. Ms. No. 663, Labour dated 4th April, 1985.(1)

No. II(2)LAB/2018/85 - In exercise of the powers conferred by section 9 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (Tamil Nadu Act 46 of 1981), the Governor of Tamil Nadu hereby exempts the industrial establishments under the Control of Southern Railway in Tamil Nadu from all the provisions of the said Act.

1. T.N. Govt. Gaz., Dt. 24-4-85, Pt. II, Sec. 2, P.317"

A Writ petition will not be maintainable if there are disputed questions of fact.

7. Admittedly, in the case on hand, there is no dispute with regard to the facts. Further, the Hon''ble Supreme Court in the case of Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, , has held that if the facts are not in dispute, the High Court can decide the issue without relegating the affected party to approach the alternate forum.

8. In this context, it is also useful to refer the judgment of the Hon''ble Supreme

Court in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, wherein, in para 15, it has been held as follows:

"We may point out that what we have said above in regard to the exercise of jurisdiction by the Supreme Court under Art. 32 must apply equally in relation to the exercise of jurisdiction by the High Courts under Art. 226, for the latter jurisdiction is also a new constitutional jurisdiction and it is conferred in the same wide terms as the jurisdiction under Art. 32 and the same powers can and must, therefore, be exercised by the High Courts while exercising jurisdiction under Art. 226. In fact, the jurisdiction of the High Courts under Art. 226 is much wider, because the High Courts are required to exercise this jurisdiction not only for enforcement of a fundamental right but also for enforcement of any legal right and there are many rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced urgently and vigorously as fundamental rights."

(emphasis supplied)

I am satisfied that the petitioners are entitled to succeed in all the three cases. Further in the similar circular issued by the Reserved Bank of India Apex Court in the above referred case, i.e., 1985 (2) L.L.N. 1037 (vide supra) has held as "including in unfair labour practice". Here also the respondents have indulged in methods amounting to unfair labour practice by issuing the impugned circular and so this cannot be countenanced."

9. It is also not in dispute that that petitioners are in service for more than two decades. The contention of the respondents that in view of the decision reported in the case of *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, , the petitioners have no right to seek for absorption cannot be accepted as this Court, while considering the cases with regard to the employees seeking relief under Permanent Status Act, has distinguished the facts of *Secretary, State of Karnataka v. Umadevi* (supra) case and the decisions are reported in *Hindustan Petroleum Corporation Ltd. and Another Vs. Presiding Officer, Central Government Labour Court cum Industrial Tribunal and Others*, and *Oil and Natural Gas Corporation Ltd. Vs. Petroleum Coal Labour Union and Others*, . Therefore, the decision of the Hon'ble Supreme Court in *Secretary, State of Karnataka v. Umadevi* (supra) case is not applicable to the facts of the present case.

10. Following the decision of this Court in *A. Palanivel and Others v. Tamil Nadu Khadi and Village Industries Board and Others* (supra), the writ petition is allowed. The first two petitioners have completed 480 days of continuous service in a period of 24 calendar months and the same could be seen from the service records produced by the petitioner. Since there is no Attendance Register with regard to the other two petitioners and they have been absorbed in the service as early as in the year 1985 dehors the permanent status Act and all the petitioners have completed 480 days in a period of 24 calendar months, as could

be seen from the Service Register that was prepared in 1989, I direct the respondents to confer permanent status to the first two petitioners, namely, V.C. Vadivel and B. Ravi, from the year 1985 and for other two petitioners, namely, R. Kumar and E. Pakkiri, on completion of two years from the date of entering into service and grant all the other benefits available to the petitioners in view of conferment of permanent status as the petitioners are deemed to have attained permanent status in terms of 1981 Act. A letter dated 27.6.2011, sent by the Executive Officer, Pammal Municipality to the Commissioner, Municipal Administration, Chennai, clearly gives the details of the four persons and their date of joining. Hence, they are entitled to permanent status on completion of 480 days. To avoid multiplicity of litigations, the respondents are directed to regularise the services of B. Ravi with effect from 6.8.1985, V.C. Vadivel with effect from 28.8.1985, E. Pakkiri with effect from 26.12.1985 and R. Kumar with effect from 30.6.1986. Since the petitioners have approached this Court only in the year 2013, the petitioners are entitled to get the back wages only from the date of filing of the writ petition. The respondents 1 and 2 are directed to complete the whole exercise within a period of two weeks from the date of receipt of a copy of this order.

11. It is made clear that this order will not preclude the respondent in extending the benefit of G.O. Ms. No. 596 dated 08.12.2010, if the petitioners fulfill the conditions mentioned therein and if the petitioners are otherwise eligible and if there are no legal impediments. The writ petition is ordered in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.