



W.P.No.1420 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.09.2023

Pronounced on : 12.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.1420 of 2018

and

W.M.P.Nos.1808 and 6624 of 2018

1. The Chief Medical Superintendent,
Railway Hospital, Golden Rock,
Souther Railways,
Trichy Division,
Trichy – 620 004.

2. The Divisional Railway Manager,
Southern Railway,
Trichy – 620 001.

... Petitioners

Vs.

1. L.Irudayaraj

2. M/s.T.Girija Contractors,
15, Angappan Street,
Mittanamalli (Via),
IAF Avadi (Post),
Chennai – 600 055.

3. M/s.Thaa Foundation,
13, Jamburaburam Main Road,
Madurai – 625 002.



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4. The Presiding Officer,
The Central Government Industrial Tribunal-
cum-Labour Court,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the Award dated 18.07.2017 passed by the 4th respondent in Industrial Dispute No.6 of 2016 and quash the same.

For Petitioners : Mr.V.Radhakrishnan, Senior
Counsel for M/s.P.T.Ramkumar,
Standing Counsel

For Respondents : Mr.K.M.Ramesh, Senior Counsel
for M/s.S.Apunu [R1]

No Appearance [R2]

Mr.N.Umapathi [R3]

Tribunal [R4]

ORDER

Assailing the order of the 4th respondent in I.D.No.6 of 2016 dated 18.07.2017, the present writ petition has been filed.

The short facts necessary for the disposal of this writ petition is as under :-



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2. The petitioners, Tiruchirappalli Junction is an 'A' category railway station, however, seeking contractors for mechanized cleaning of Trichy railway station and Railway hospital, Trichy for a period of two years with adequate number of labourers and supervisors, tenders were called for by the Railways from interested contractors, in an by which, a specific clause stating that the contractor has to engage sufficient number of labourers and supervisors and the contractor alone is responsible for the agreed contract of mechanized cleaning of railway station and hospital. As per the agreement dated 01.05.2013, the petitioners entered into a contract with the 2nd respondent / contractor seeking sanitation workers for petitioners management and as per the said contract, the members of the 1st respondent union had been engaged for the purpose of sweeping and scavenging the petitioners management.

3. Seeking regularization of the services of the said labourers in Railways, the 1st respondent raised an Industrial Dispute representing 78 labourers engaged by the contractor of Trichy Railways Junction. The Central Government, Ministry of Labour & Employment vide order datd



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30.12.2015, referred the claim of regularization to the 4th respondent. The said dispute was numbered as I.D.No.6 of 2016 in and by which, the 4th respondent vide Award dated 18.07.2017, regularized the workers in the service of the petitioners and ordered that arrears of salary and other benefits due to the workers shall be paid within a period of two months of publication of the Award, in default, interest at the rate of 7.5% p.a. shall be payable on the amount, which has prompted the petitioners to knock on the doors of this Court seeking justice by filing the present petition.

4. The learned Senior counsel appearing for the petitioners submits that initially the petitioners entered into a contract seeking for sanitation workers in Trichy Railway Junction and Hospital with one R.Jayakumar in the year 2004, subsequently with the 2nd respondent contractor vide Agreement dated 01.05.2013, which was marked as Ex.M.1 in the Labour Court. It is crystal clear from the said agreement that, the period of contract is only for two years ie., from 01.05.2013 till 30.04.2015 and the petitioners agreed to pay a sum of Rs.7,01,100/- per month for 67



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labourers for mechanized cleaning and sweeping of the Railway Station, Tiruchirapalli Junction and Railway Hospital, Trichy covering upto 96,505 sq.mtr. approximately. As per the schedule, the contractor has to engage 29 labourers from 6:00 am. till 2:00 pm, 19 labourers from 2:00 pm. till 10:00 pm., 7 labourers from 10:00 pm. till 6:00 am., 9 labourers as RG/LR, 3 labourers as supervisors and 8 labourers as rag picking, apart from the above 67 labourers.

5. The learned petitioners' counsel further submitted that the contractor agreed to use the machineries for maintenance of cleanliness of Tiruchirapalli Junction as prescribed under Annexure – I of the said agreement and also agreed that the work done by the labourers will be monitored by the supervisor of the contractor on duty, which will be monitored by SMR/TPJ. He further submitted that as per the said contract, the contractor or his staffs are not eligible and shall not be granted any privileges due to Railway employees in connection with the work done by the employees. Thus, all the labourers engaged by the contractor are his own labourers and there is no direct contact between



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the petitioners and the labourers.

6. He further averred about a specific clause mentioned in the aforesaid agreement that a contractor shall observe the provision under the Bonded Labour System (Abolition) Act, 1976 and Payment of Wages Act, 1936. He further submits that as per the said contract, the 1st respondent was engaged only by the 2nd respondent and though the said facts were elaborately established before the Labour Court through management witness M.W.1, one Jayakumar, that the said contract has been entered between the 2nd respondent and the petitioners management, the 4th respondent mechanically arrived at a conclusion that there was existence of employer-employee relationship between the first respondent members of union and the petitioners, which is *per se* unsustainable.

7. The learned Senior counsel appearing for the petitioners further submitted that if at all there is any violation in the said contract, there is a remedy available to the 1st respondent to approach the authority



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concerned under the Contract Labour (Regulation and Abolition) Act, 1970, without doing so, the 1st respondent raised an Industrial Dispute in I.D.No.6 of 2016 u/s.10(1)(d) of Industrial Disputes Act, 1947 (in short 'the Act') on the file of the 4th respondent, which is wholly unsustainable and arbitrary.

8. The learned Senior counsel appearing for the petitioners, in support of the aforesaid submissions for challenging the Award passed by the Tribunal, placed reliance on the decision rendered by the Hon'ble Apex Court reported in **2004 1 SCC 126** in the case of ***Ram Singh and Ors. Vs. Union Territory, Chandigarh and Ors.*** The relevant portion of the said Judgment is extracted hereunder:

“15. In determining the relationship of employer and employee, no doubt 'control' is one of the important tests but is not to be taken as the sole test. In determining the relationship of employer and employee all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an



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employment instead of going by the sole "test of control". An integrated approach is needed. "Integration" test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are - who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organise the work, supply tools and materials and what are the "mutual obligations" between them.

16. Normally, the relationship of employer and employee does not exist between an employer and Contractor and servant of an independent Contractor. Where, however, an employer retains or assumes control over the means and method by which the work of a Contractor is to be done it may be said that the relationship between employer and the employee exists between him and the servants of such a Contractor. In such a situation the mere fact of formal employment by an independent Contractor will not relieve the master of liability where the servant is, in fact, in his employment. In that event, it may be held that an independent Contractor is created or is operating as a subterfuge and the employee will be regarded as the servant of the principal employer. Where a



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particular relationship between employer and employee is genuine or a camouflage through the mode of Contractor is essentially a question of fact to be determined on the basis of features of relationship, the written terms of employment, if any, and the actual nature of the employment. The actual nature of relationship concerning a particular employment being essentially a question of fact, it has to be raised and proved before an industrial adjudicator. Conclusions (5) & (6) of the Constitution Bench decision of this Court in Steel Authority of India (supra) are decisive for purposes of this case which read as under:

“125.(5) On issuance of prohibition notification under section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as



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employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and wherein such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise, found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

9. The learned Senior counsel for the petitioners further relied upon the decision rendered by the Hon'ble Apex Court reported in **2019 7 SCC 440** in the case of ***Director, Steel Authority of India Limited Vs. Ispat Khadan Janata Mazoor Union***. The relevant portion of the said



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judgment is extracted as under:

37. Tests which are to be applied to find out whether the person is an employee or an independent contractor in finding out whether the contract labour agreement is sham, nominal or a mere camouflage has been examined by this Court in International Airport Authority of India Vs. International Air Cargo Workers' Union by the two Judge Bench of this Court. The relevant paragraphs are as under :-

“38. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In



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short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.”

38. These are the broad tests which have been laid down by this Court in examining the nature and control of the employer and whether the agreement pursuant to which contract labour has been engaged through contractor can be said to be sham, nominal and camouflage.

10. Per contra the learned counsel for the 1st respondent submitted that the 1st respondent had been engaged through contractors and had been employed for a period of 5 to 10 years in the petitioners' organization. He further submitted that though the petitioners had been changing the contractors year after year, the members of the 1st respondent workmen continuously rendered their services without any default. However, the work in which the members of the petitioners herein are involved is of perennial and permanent in nature and the



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petitioners instead of employing workmen directly to do the said sweeping and scavenging work, engaged the members of the 1st respondent through contractors in order to deny them to the status of permanent workmen and the benefit of regularization in service and extension of various social welfare statutes. The engagement of the members of the 1st respondent through intermediary contractors is not only illegal and unjust but also contrary to the provisions of the Contract Labour (Regulation & Abolition) Act, 1970.

11. It is further the submission of the learned counsel for the 1st respondent that the so called contract entered into between the contractors and the writ petitioners is sham and nominal. The contractor under whom the members of the 1st respondent herein are engaged, did not supervise the work, but it was the officials of the writ petitioners who directly supervised and extracted work from the members of the 1st respondent, moreso, the materials for performing the work of sweeping and cleaning were supplied by the writ petitioners. Hence, the contractor had no role to play except lending its name and paying the monthly



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salary.

12. The learned counsel for the 1st respondent further submitted that the members of the 1st respondent have been making repeated representations to the writ petitioners to absorb them in the rolls of Railways and to regularize their services. It is not out of place to mention here that most of the members of the 1st respondent herein hail from lower strata of the Society belonging to Scheduled Caste/Scheduled Tribe community and they are the most misfortunes of this country doing sanitary and scavenging work. He further submitted that most of the women workers covered in the case are either destitute or widows eking out their livelihood with meagre income they derive from their work. The members of the 1st respondent herein after making all out efforts to get their services absorbed and regularized by the Railways, at last raised industrial dispute before the Ministry of Labour of the Government of India. Upon failure of conciliation talks, the Ministry of Labour & Employment referred the industrial dispute raised by the 1st respondent before the 4th respondent for adjudication vide order bearing No.L-



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41011/68/2015 (IR(B-I) dated 30.12.2015 in the following terms:

"Whether the services of 78 contract workmen of Souther Railway Contract Mazdoor Union to be regularized or not in view of the job of perennial nature they performed continuously in the Railway Establishment without any statutory benefits. If not, what are the relief they entitled to".

13. The learned counsel for the 1st respondent further submitted that the industrial dispute was taken up as I.D.No.6 of 2016 on the file of the Central Government Industrial Tribunal cum Labour Court, Chennai and during the course of adjudication, three witnesses were examined as W.W.1 to W.W.3 on behalf of the 1st respondent and exhibits W-1 to W-32 were marked. One witness was examined as M.W.1 on behalf of the management / petitioners and exhibits M-1 to M-5 were marked. Upon appreciating the oral and documentary evidences, the learned Tribunal has passed the impugned award dated 18.07.2017. Hence, the impugned Award passed by the Tribunal needs no interference of this Court and this writ petition is liable to be dismissed.



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14. The major contention of the 1st respondent is that though the petitioners have been changing the contractors, the 1st respondent continued to do the work which was allotted by the railways and the said work has been supervised only by the officials of the railways. In support of his contentions, he relied upon the decision rendered by the Hon'ble Apex Court reported in **1978 4 SCC 257** in the case of ***Hussainbhai, Calicut Vs. The Alath Factory Thozhilali Union, Kozhikode and ors.***

The relevant portion is extracted hereunder:

“5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the



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conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The court must be astute to avoid mischief and achieve the purpose of the law and not be misled by the maya of legal appearances.

6. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefits and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the Management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off.”



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15. The learned counsel for the 1st respondent further relied upon the decision rendered by this Court reported in **2015 2 LLJ 12** in the case of ***The General Manager, Bharat Heavy Electrical Ltd., Ranipet Vs. Canteen Workers of BHEL, represented by the BHEL Canteen Workers Union, Chennai & Ors***, which is extracted hereunder:

“42. The learned Judge further found that two Assistant Supervisors are functioning as Supervisors in the Canteen and six other workers of BHEL are working as godown in-charge as well as attenders of the Canteen and in paragraph 73 also has taken note of the additional factors and it is extracted below:

"Additional Factors In BHEL Case:-

73.(a) The persuasive control is always with BHEL on account of their strategic position in the Board of Management. The President and Vice-President would be nominated only by BHEL. It was not possible for the workers to become the President or Vice-President of the Society at any point of time. The by-laws were suitably amended and a specific clause was inserted to the effect that only the nominees of BHEL could become the President and Vice-



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President of the Society.

(b) Appointments in the canteen were restricted to the family members of BHEL employees.

(Employment notification dated 9.1.1988 - Ex.W.9)

(c) BHEL recommends the candidature for appointment in Canteen. (Ex.W.10).

(d) Disciplinary proceedings were initiated at the instance of BHEL against the workman of the Society.

(Minutes dated 20.11.1990 - Ex.M.9)

(e) Wages to be paid to the workers of the canteen including revision of wages were decided only by BHEL. (Minutes dated 6.1.1990)

(f) The entire provisions, vegetables and other materials were supplied only by BHEL.

(g) Materials were kept in the custody of BHEL.

(h) Supervisors, Assistant Supervisors, godown incharge and attenders were deputed only by BHEL.

(i) The wage revision to the employees of the canteen were made only after wage revision given to the BHEL employees."

43. The second respondent Society has exercised only minimal control and almost all administrative functions and exercise of control



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over the employees of the second respondent Society, are in the hands of the appellant/first respondent Management.

44. It is very pertinent to point out at this juncture that the workers continue to be employed under the services of the private contractors and thereafter, under the services of the second respondent Society for very long time and Ex.W.1 - Letter dated 12.06.1986 contains the background facts leading to the formation of the second respondent Society.”

16. It is further the contention of the learned counsel for the 1st respondent that in the typed set of papers filed in this writ petition, several new documents have been included by the petitioners, however no documents were produced before the Tribunal, during the course of adjudication. He further submits that no reliance can be placed on new and additional documents produced by the writ petitioners before this Court and the same is impermissible in law. In this regard, he relied upon the decision rendered by the Hon'ble Apex Court reported in **2015 9 SCC 345** in the case of **Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker,**



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Kanpur Nagar. The relevant paragraphs in the said judgment is extracted

hereunder:

“24. The contention urged on behalf of the respondent-firm that the Award of compensation of Rs.2 Lakhs in lieu of the reinstatement and 50% back wages by the High Court is on account of the alleged closure of the respondent establishment is neither supported by any pleading nor any evidence has been adduced before the Labour Court or this Court in that regard by the respondent-establishment. If any additional material is produced before the High Court, the same would be impermissible in law for the reason that the respondent-employer was required to plead with regard to the alleged closure and substantial evidence must be produced in support of the same before the Labour Court at the first instance, and no such plea has been taken before the Labour Court by them. In absence of such a plea, producing additional documents by the respondent-establishment before the High Court is totally impermissible in law for the reason that the High Court’s jurisdiction is to examine the correctness of



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the Award passed by the Labour Court in exercise of its judicial review power under Article 227 of the Constitution of India which is very limited.”

17. This Court paid its undivided attention to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions relied on by the learned counsel on either side.

18. Admittedly, the members of the 1st respondent raised industrial dispute seeking regularization of their services of the petitioners establishment before the Central Government, the Central Government while exercising the powers conferred u/s.10 (1)(d) of the Act referred the said dispute for adjudication before the 4th respondent, pursuant to which the 4th respondent, upon appreciating the oral and documentary evidences passed the Award dated 18.07.2017 in favour of the workmen and directed the petitioners to regularize their services from the date on which the dispute was raised before the Assistant Labour Commissioner, which has been challenged before this Court by the petitioners herein.



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19. The question that arises for consideration in the present petitions is:

(i) Whether the members of the 1st respondent union are employees of the petitioners and whether there was employer-employee relationship or not;

(ii) Whether the job extracted by the petitioners are perennial in nature or not;

(iii) Whether the 1st respondent workmen are entitled for regularization or not;

(iv) Whether the 4th respondent has power to regularize the services of the members of the 1st respondent union.

20. In order to ascertain the above said facts, it is for this Court to holistically decide the aforesaid issues, for which the relevant provisions of the Act requires to be adverted to. Section 10(1)(d) of the Act deals with reference of dispute to Boards, Courts or Tribunals, which provides for-



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10. Reference of dispute to Board, Courts or Tribunals – (1) [Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in-

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

21. Further the unfair labour practices is spoken to in the fifth schedule of the Act, wherein clause 10 is extracted hereunder:

“10. To employ workmen as “badlis”, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.”

22. A cursory perusal of the above provisions reveals that the Central Government has power to refer any industrial dispute to the Industrial adjudicator for adjudication and the 4th respondent has jurisdiction to grant relief to the labourers as per the fifth schedule of the Act.



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23. Now, this Court has to consider whether the 1st respondent has adduced any documentary evidences with regard to employer-employee relationship between the petitioners and the members of the 1st respondent union. In order to prove the same, the members of the 1st respondent marked exhibits Ex.W1 to W32 on behalf of workmen before the 4th respondent. In respect of exhibits W.W.1 to W.W.3, they deposed that the concerned workmen were doing work which is continuous and perennial in nature and also that the workmen were being supervised by the petitioners and that they were directly under the control of railway officials. Insofar as exhibit W.8 is concerned, it is the photo Identity Card issued to the members of the 1st respondent and exhibits Ex.W9-W26 relates to muster rolls maintained by the respective contractors.

24. In this regard, the decision in *Hussainbhai case (supra)*, clearly stipulates that the tests, which are to be applied and so long as the services are for the business of another, inspite of the fact that the workmen are employed under a contractor and further the control over



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the workers as also their subsistence, skill and continued employment is at the pleasure of the principal employer, merely because the workmen are employed through the intermediate contractor alone would be of no consequence and necessarily in such cases, lifting of veil to look at the factors governing such employment requires to be looked into. When the livelihood of the workmen depends on the service which they render to the principal employer, even in the absence of direct relationship between the workmen and the Management, the presence of dubious intermediaries in the form of contractor, is nothing but a sham and nominal contract, which is woven for the purpose of negating the claim of the workmen for permanency at a later point of time. The aforesaid decision in *Hussainbhai's case (supra)*, is squarely applicable to the case on hand.

25. Further, it is clear from the above evidences that, the members of the 1st respondent union were engaged for the purpose of cleaning and sweeping the petitioners establishment. One of the contractor namely Pandithurai, who was examined as W.W3 on behalf of the 1st respondent

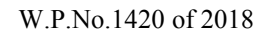


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Union and during his cross examination he has stated that the same workmen were continuing the work allotted to them irrespective of the contractors being changed by the petitioners establishment and they were directly supervised by the petitioners. All these facts make it clear that there was direct employer-employee relationship between the petitioners and the 1st respondent.

26. Apart from that one Jayakumar / Assistant Health Officer, who was examined as M.W.1 on behalf of the petitioners and during his cross examination he has stated that the officials who are working under him used to give instructions to the Supervisor regarding sanitation work and the supervisor in turn will give instructions to the concerned workmen, who is also the official of Railways. All these facts make it clear that the work done by the 1st respondent union is perennial and essential in nature.

27. The aforesaid evidence of the contractor as also the Assistant Health Officer clearly establish that supervisory control over the



28. From the discussion above, the decision in *Hussainbhai's case* is directly attracted as in the case on hand the workmen who labours to produce goods or services, are for the business of the petitioners, who exercise the economic control over the workers' subsistence, skill and continued employment. Thus, the real employer of the workmen is the management / petitioners herein and not the immediate contractor.

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respondent, however, in the present case on hand, there is no material evidence to substantiate that the workmen are being supervised by the contractors, but contrarily it is the petitioners who control the workmen. In order to substantiate that the workmen are directly being supervised by the petitioners, the 1st respondent produced muster rolls before the 4th respondent which was marked as exhibits W9 to W.29. Hence, the agreement entered into between the petitioners management and the contractor is sham and nominal. Upon appreciating the oral and documentary evidence, the 4th respondent has passed the impugned Award dated 18.07.2017, which cannot be interfered with.

30. With the above observations, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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RAP

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No



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M.DHANDAPANI, J.

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To

The Presiding Officer,
The Central Government Industrial Tribunal-
cum-Labour Court,
Chennai.

Pre-Delivery order
in
W.P.No.1420 of 2018
and
W.M.P.Nos.1808 and 6624 of 2018

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