

W.P(MD).Nos.8623 to 8629 of 2017 and 5939 to 5942 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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ORDER RESERVED ON : 11.06.2025

ORDER PRONOUNCED ON : 26.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).Nos.8623, 8624, 8625, 8626, 8627, 8628 and 8629 of 2017
and 5939, 5940, 5941 and 5942 of 2018**

and

**WMP(MD).Nos.6542, 6544, 6545, 6547,
6549, 6551 and 6553 of 2017**

WP(MD).No.8623 of 2017:

The Management, Fuse off Call Centre
Through the Superintending Engineer
Kanyakumari Electricity Distribution Circle
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
Nagercoil

....Petitioner

Vs

1.The Labour Court
Thirunelveli

2.M/s.Selvin Gnana Rose
Pallam Senamvilai
Bethelpuram
Kanyakumari District

3.C.Pravin Subash

...Respondents

Prayer: : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in pursuant to the impugned order passed by the 1st respondent in I.D.No.34 of 2016 dated 02.03.2017 and quash the same.



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For Petitioner : Mr.Anand Gopalan
For M/s.T.S.Gopalan & Co.

For Respondents : Labour Court -R1
:No appearance for R2
:Mr.R.Thangasamy for R3

COMMON ORDER

These writ petitions have been filed challenging the common award passed by the Labour Court, Tirunelveli in I.D.Nos.34, 35, 36, 38, 39, 41 and 42 of 2016 dated 02.03.2017.

2.The Labour Court has passed an award of reinstatement with backwages in I.D.Nos.35, 36 and 39 and has awarded compensation of Rs.1,00,000/- in I.D.Nos.34, 38, 41 and 42. Challenging these awards, 7 writ petitions have been filed by the management.

3.The workmen have filed four writ petitions challenging the award of the Labour Court wherein the prayer for reinstatement has been rejected and an order of compensation has been passed in lieu of reinstatement.

(A).Factual Matrix:

4.Seven workmen were initially appointed in the fuse-off call centre of Tamil Nadu Generation and Distribution Corporation in Nagercoil City on 24.03.2008. Their duty was to receive complaints about fuse-off from the



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consumers, make entries in the registers and make necessary arrangements to attend the complaints. The workmen were appointed as call attenders. A contractor was selected through a tender process floated by the Corporation to man the call centre.

5.In the year 2014, the Corporation decided to engage its own employees and accordingly, terminated the contract which has resulted in disengagement of the call attenders. Challenging the disengagement, the call attenders have raised industrial dispute before the Labour Court seeking reinstatement, continuity of service and backwages. The Labour Court has passed an award granting compensation in four cases in lieu of reinstatement.

6.In other cases, reinstatement has been ordered with backwages. The management as well as the call attenders have preferred the above said writ petitions challenging the order of reinstatement and the payment of compensation alone respectively. The Labour Court in its common award has rendered the following findings.

a)The Corporation supervised the work of the call attenders and they alone allotted the works. 12 call attenders worked for 24 hours in 3 shifts, each 4 call attenders attending one shift.

b)The contract did not specify any mode of supply of man power and therefore, it is only a camouflage to pay salary to the call attenders.



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c)The call attenders got leave or permission only from the officials of the Corporation. Only the Corporation officials allotted the work and supervised the work.

d)The Government has issued G.O.Ms.No.950 (Labour and Employment) Department, dated 08.08.1990 invoking Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 prohibiting the appointment of contract labourers in fuse-off call centre. The present call attenders have been appointed after 2008 onwards. Therefore, the appointment of the present call attenders through a contractor is illegal.

e)Neither the principal employer nor the contractor have registered themselves under Contract Labour (Regulation and Abolition) Act. Except the payment of salary through the contractor, in all other respects the Corporation was the direct employer. Therefore, the call attenders are directly employed by the corporation.

f)The official of the Corporation has admitted in his cross examination that one company by name 'Koral' was engaged by the Corporation to give training to the employees. The training was given to the employees on 21, 22, and 23 of March 2008. However, a contractor was engaged for supply of man power only from 24.03.2008. Therefore, the call attenders should only be treated as direct employees of the Corporation. In such circumstances, the contract for supply of man power is nothing, but sham and nominal and it is a camouflage.



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g)When the Corporation had engaged the contract employees after it was abolished by the State Government, the contract is illegal. Hence, relying upon the judgment of the Hon'ble Supreme Court reported in ***AIR 2001 SC 3527 (Steel Authority of India and others Vs. National Union Water Front Workers and others)***, the Labour Court had held that the absorption of call attenders is not automatic. However, the Labour Court is empowered to decide the right of reinstatement.

h)The termination is illegal and is in violation of Section 25F of the Industrial Disputes Act. The officials from the management had deposed that they are not maintaining the attendance registers even though they are covered under the Shops and Establishments Act. Since a statutory body had failed to produce records, adverse inference has to be drawn to the effect that all the call attenders have completed 240 days of continuous service and they were retrenched without following the statutory procedure. Therefore, the order of dismissal was set aside.

i) The three call attenders who had worked for more than six years were granted relief of reinstatement with full backwages. Four call attenders who have completed 3 to 4 years of service were awarded a compensation of Rs. 1,00,000/-.

j)As far as two call attenders namely R.G.Sridevi and Mr.S.Baskaran are concerned, their writ petitions were dismissed on the ground that they have produced false



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certificates.

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(B)In the light of the said factual matrix of the award of the Labour Court, the counsels appearing on either side made the following submissions:

7)The learned counsel appearing for management has submitted that the Government had issued a notification on 08.08.1990 invoking Section 10 of the Contract Labour (Regulation and Abolition) Act 1970. Under the said notification, the contract labour system was abolished in Tamil Nadu Electricity Board in fuse-off call along with other processes.

8.When the said notification was issued, the call centres were not started. In fact, the call centres were started only 01.04.2008. Therefore, the prohibition contemplated under the said Government Order would not be applicable to the employees of the fuse-off call centre which was started on 01.04.2008. In such circumstances, arranging a contractor for supply of man power or engaging staff through the said contract cannot be said to be illegal. When the Corporation decided to abolish the contract system, it had terminated the services of the contractors. In such circumstances, the call attenders can never be considered to be a direct employees of the Corporation. Only the contractor was their immediate employer.

9.The learned counsel appearing for the petitioner, relying upon the judgment of the Hon'ble Supreme Court reported in *AIR 2001 SC 3527 (Steel*



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Ors), especially paragraph No.122(3), contended that there cannot be any automatic absorption of contract labour after issuance of notification under Section 10(1) of CLRA Act. Therefore, the Labour Court ought not to have passed an award of reinstatement with regard to some of the employees. When the call attenders were only contractual employees and they were not appointed to a sanctioned post, the labour Court had erred in granting reinstatement.

10.On termination of the contract, the contractor can engage these call attenders in some other establishment. Only if disengagement is found to be illegal, the question of payment of compensation would arise. When the contractual employees got disengaged due to termination of contract, the employees cannot allege that they were illegally terminated by the principal employer. In such circumstances, the order of reinstatement or the order of payment of compensation as against the principal employer are not legally sustainable.

11.The learned counsel appearing for the management had relied upon a judgment of the Hon'ble Supreme Court reported in **1999 (2) LLN 497 (Radhey Shyam and another Vs. State of Haryana and another)** to contend that Section 2-A applies only to the disputes and the differences relating to discharge, dismissal, retrenchment or termination of service of an individual



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workmen. Therefore, the contractual employees cannot invoke Section 2-A and approach the Labour Court.

12.The learned counsel for the management had also relied upon a judgment of Madras High Court reported in **2012 SCC Online Mad 1914 (Augutine Vs. The Presiding Officer, II Additional Labour Court, Chennai and others)** to contend that when admittedly the workman has been employed through the contractor, the claim as against the principal employer cannot be justified. He further submitted that unless there is pre-existing relationship of the employer-employee, Section 2A of the Industrial Dispute Act cannot be invoked.

13.The learned counsel for the management also relied upon a judgment of the Hon'ble Supreme Court reported in **2014 (9) SCC 407 (Balwant Rai Saluja and another Vs. Air India Ltd., and others)** to contend that when the appointment, payment of salary and the power to take disciplinary action were vested with the contractor, the call attenders can never be considered to be a direct employees of TANGEDCO.

14.The learned counsel appearing for the management has also relied upon a judgment of the Hon'ble Supreme Court reported **(2014) 7 SCC 190 (Hari Nandan Prasad and another Vs. Employer I/R to Management of Food Corporation of India and another)** to contend that the Labour Court has not taken into consideration the qualification, length of service or



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availability of post, but has proceeded to grant order of reinstatement with continuity of service and backwages.

15.In the present case, there was no order of appointment and salary was not paid by the Corporation. In fact, there is no evidence that any disciplinary action was initiated by the Corporation as against the call attenders. Therefore, the learned counsel appearing for the management prayed for allowing the writ petitions filed by the Management and to set aside the order of the Labour Court.

16.Per contra, the learned counsel appearing for the workmen submitted that the workmen were appointed on 24.03.2008. They possessed S.S.L.C qualification with computer knowledge and they were appointed to the sanctioned posts. They received fuse-off call complaints from the consumers and forwarded the same to the concerned field staff who rushed to the spot. This function is permanent and essential one.

17.The learned counsel for the workmen had further submitted that only the officials of TANGEDCO maintained a shift register, attendance register etc. They were initially given training on 21.03.2008, 22.03.2008 and 23.03.2008 and the contractor was engaged only with effect from 24.03.2008. Therefore, the appointment of the contractor is only a paper arrangement for disbursement of salary. In all respects, the call attenders were direct employees of TANGEDCO. The contract for engaging supply of man power



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is prohibited after notification issued by the Government. Therefore, the contract is sham and nominal and it is only a camouflage to deny the benefits under the labour laws.

18.The learned counsel had further contended that though all the call attenders have completed more than three years, all of a sudden, they were retrenched on 15.04.2015 on the alleged ground that the contract system has been abolished. However, the management continued with the call centres with regular employees. On completion of 480 days, the call attenders are entitled to permanent status, but without regularising their services, they were retrenched and therefore, the retrenchment is illegal.

19.The learned counsel for the workmen had further stated that since the contract is sham and nominal, the workmen should be considered to be direct employees of TANGEDCO. Therefore, in case of illegal retrenchment, they are entitled to be reinstated with backwages. He further submitted that since the employees are direct employees, the petition filed under Section 2-A of Industrial Disputes Act challenging the order of illegal termination is maintainable.

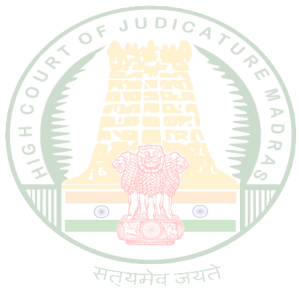
20.The learned counsel for the workmen had further submitted that though the call attenders had worked for more than three years, the employees' provident fund was not detected from their salary. This only reveals the unfair labour practice adopted by TANGEDCO. Therefore, the



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Labour Court has rightly broken the veil and the call attenders are direct employees of TANGEDCO. Since the contract was found to be a camouflage, the contract labourers have to be treated as employees of the principal employer and the services of the call attenders have to be regularised in the establishment concerned. As per Section 10(1) of the Contract Labourers (Regulation and Abolition) Act, 1970, after a particular process prohibited from employing the contract labourers, the principal employers should given preference to the erstwhile contract labourers after granting it regularisation and and other academic qualification.

21.The learned counsel for the workmen relied upon Paragraph Nos. 122(5) and (6) of the judgment of the Hon'ble Supreme Court reported in ***AIR 2001 SC 3527 (Steel Authority Of India Ltd. & Ors. -vs- National Union Water Front Workers & Ors)*** and contended that as per the said judgement, the call attenders should be given preference in case of any recruitment by TANGEDCO. He had further submitted that the Labour Court had erred in not granting reinstatement in respect of four employees even though they have completed 480 days of service within a period of 24 months. He further submitted that it is discriminated on the part of the Labour Court to treat the similarly placed employees in two different methods and all the call attenders are entitled to be reinstated with full backwages.



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22.The learned counsel for the workmen has relied upon the following

judgements;

a) (2010) 3 MLJ 127 (SC) (Harjinder Singh Vs. Punjab State Warehousing Corporation);

b)2011 LIC 2799 (Devinder Singh Vs.Municipal Council, Sanaur);

c)2013 (1) LLN 318 (SC) (Assistant Engineer, Rajasthan Dev.Corporation and another Vs. Gitam Singh)'

d) (2013) 10 SCC 324 (Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and others);

e)(2014) 7 SCC 190 (Hari Nandan Prasad Vs.Food Corporation of India);

f)(2014) 6 SCC 434 (Iswarlal Mohanlal Thakkar Vs. Paschim Gujarat VIJ Co.Ltd.,)

23.Relying upon the judgements of the Hon'ble Supreme Court cited supra, the workmen prayed for allowing the writ petitions filed by the workmen and for dismissing the writ petitions filed by the management.

24.Heard both sides and perused the material records.

(C)Discussion:

25(a).Whether a contract labour system in the process of fuse off call centre has been abolished by way of an notification under Section 10 of Contract Labour (Regulation and Abolition) Act, 1970?

26.The Government of Tamil Nadu has issued a notification under



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Contract Labour (Regulation and Abolition) Act, in G.O.Ms.950, (Labour & Employment) Department dated 08.08.1990. Under the said notification, the process of fuse-off call in the Tamil Nadu Electricity Board has been listed as one of the processes in which the contract labour system has been abolished. The said notification has been issued under Section 10 Contract Labour (Regulation and Abolition) Act, 1970.

27.It is the contention of TANGEDCO that the fuse-off call centre was established in the year 2008. Therefore, the employees of the call centres were not covered under the notification dated 08.08.1990. Only the field workers who visited the consumer's place for rectification of the defects are covered and not the call centre employees.

28.The Executive Engineer of TANGEDCO has been examined as MW1. During her cross examination, she has deposed that the fuse-off call process starts when a consumer makes a call to the call centre and it ends when the line man rectifies the defects. Therefore, it is clear that the process of fuse of call starts as soon as a call received by a call attenders. Earlier, the consumer used to reach TANGEDCO office to register their complaints. After call centres was opened through a phone call, complaints are received by the call centres and the line-man are informed about the defects. Hence, it is clear that though the call centres were established in the year 2008, the Government notification of the year 1990, prohibiting the employment of



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contract labour in the fuse-off process covers call attenders also. In view of the matter, submissions of the learned counsel appearing for the management that the call centres employees are not covered by the said notification cannot be countenanced.

(b) The status of contract entered into between TANGEDCO and the contractor for supply of man power :

29.The Government of Tamil Nadu had abolished the contract labour system in fuse-off call process in the year 1990 itself in TANGEDCO. However, TANGEDCO has entered into a contract with private respondents in the industrial dispute on 24.03.2008 for a period of one year. Every year, a different contractor was engaged. The contract system got abolished on 14.04.2015. The call attenders were disengaged with effect from 15.04.2015 itself.

30.The contract having been entered into in violation of the statutory provision, is clearly an illegal contract. Neither the TANGEDCO nor the contractor have got registered themselves under CLRA Act. The Executive Engineer of TANGEDCO who was examined as MW1. During her cross examination, she has specifically admitted that the training was given to the call attenders by TANGEDCO between 21.03.2008 to 23.03.2008. The first contract was entered into between TANGEDCO and the contractor only on 24.03.2008. Therefore, it is clear that even before a contractor was engaged



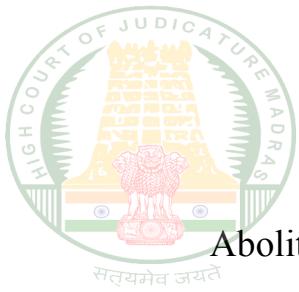
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for supply of man power, TANGEDCO had recruited the workmen and has also given a training to them through a private agency namely 'Koral'. Hence, it is clear that the call attenders were not supplied by the contractor after he was engaged by TANGEDCO. It seems to be a paper work for the purpose of disbursement of salary alone.

31.The contractor was examined as MW2. During his cross examination, he had deposed that he is not aware of the names of 12 employees. In his chief examination, he had deposed that during the contract held, he had not maintained attendance register or wage register. He had further deposed that the call attender will not seek leave for not attending duty. The deposition of the contractor would establish that the contract has been entered into only as a ruse to avoid conferment of benefits of the workmen under labour law and to camouflage the violation of notification issued under CLRA Act.

32.The Executive Engineer of TANGEDCO has admitted that during her cross examination that provident fund is not deducted from the salary of the employees.

33.The Labour Court after relying upon the above oral and documentary evidence, has rightly arrived at a finding that the contract is sham and nominal and it is a camouflaged to circumvent one of the notification issued under Section 10 of the Contract Labour (Regulation and



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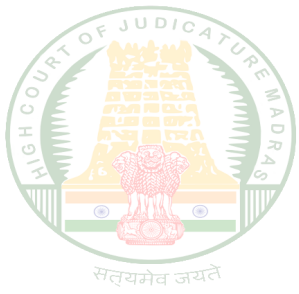
Abolition) Act, 1970.

WEB COPY (c).Status of workmen when the contract is sham and nominal:

34.The Hon'ble Supreme Court in a judgment reported in ***AIR 2001 SC 3527 (Steel Authority Of India Ltd. & Ors. -vs- National Union Water Front Workers & Ors)*** in Paragraph No.122(5) has held as follows:

“122(5). On issuance of prohibition notification under S.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 of 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 employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.”

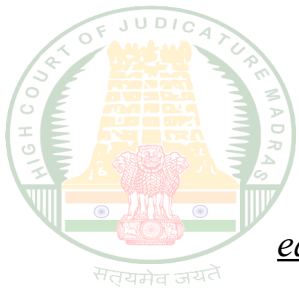
35.The Hon'ble Supreme Court in a judgment reported in ***(1999) 3 SCC 601 (Secretary, H.S.E.V., Vs. Suresh and others)*** in Paragraph No.20 has held as follows:



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“20.It has to be kept in view that this is not a case in which it is found that there was any genuine contract labour system prevailing with the Board. If it was a genuine contract system, then obviously, it had to be abolished as per Section 10 of the Contract Labour Regulation and Abolition Act after following the procedure laid down therein. However, on the facts of the present case, it was found by the Labour Court and as confirmed by the High Court that the so called contractor Kashmir Singh was a mere name lender and had procured labour for the Board from the open market. He was almost a broker or an agent of the Board for that purpose. The Labour Court also noted that the Management witness Shri A.K. Chaudhary also could not tell whether Shri Kahsmir Singh was a licensed contractor or not. That workmen had made a statement that Shri Kashmir Singh was not a licensed contractor. Under these circumstances, it has to be held that factually there was no genuine contract system prevailing at the relevant time wherein the Board could have acted as only the principal employer and Kashmir Singh as a licensed contractor employing labour on his own account. It is also pertinent to note that nothing was brought on record to indicate that even the Board at the relevant time, was registered as principal employer under the Contract Labour Regulation and Abolition Act. Once the Board was not a principal employer and the so called contractor Kashmir Singh was not a licensed contractor under the Act, the inevitable conclusion that had to be reached was to the effect that the so called contract system was a mere camouflage, smoke and a screen and disguised in almost a transparent veil which could



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easily be pierced and the real contractual relationship between the Board, on the one hand, and the employees, on the other, could be clearly visualised.”

36.A cumulative reading of the judgments of the Hon'ble Supreme Court will clearly indicate that the contract being not only sham and nominal but also illegal, the call attenders should be treated as direct employees of TANGEDCO.

(d) Validity of termination of call attenders:

37.This Court has arrived at a finding that the call attenders are direct employees of TANGEDCO. They were paid salary on monthly basis. However, the allotment of shift, work, supervision and grant of leave was with TANGEDCO officials. When the call attenders are deemed to be the direct employees of TANGEDCO, their retrenchment/termination without following Section 25F of Industrial Dispute Act is illegal. TANGEDCO cannot contend that they are employees of the contractor and therefore, their services were coterminous with termination of the contract. When the contract itself has been found to be sham and nominal and camouflaged to circumvent the prohibition notification issued under CLRA Act, such a contention on the side of the management cannot be countenanced.

(e) Jurisdiction of the Labour Court:

38.The learned counsel appearing for the management had contended



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that the call attenders were contract labourers and therefore, there was no employer employee relationship between them and TANGEDCO. In such circumstances, even assuming that there was an illegal retrenchment/termination, they cannot invoke Section 2-A of the Industrial Disputes Act.

39.The Hon'ble Supreme Court in a judgment reported in **(1995) 5 SCC 27 (Gujarat Electricity Board, Thermal Power Station, Ukai Gujarat Vs. Hind Mazdoor Sabha and others)** in Paragraph Nos.53(ii),(iv), 60 and 67 has held as follows:

(ii) if the contract is sham or not genuine, the workmen of the so called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the



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direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

(iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms.

60.The next contention of the learned counsel that the reference with regard to the abolition of the contract labour was not maintainable after the coming into force of the Act has been sufficiently answered by us earlier while discussing and recording our conclusions on the position of law in that behalf. Even on facts, we have pointed out that the present reference was not for the abolition of contract labour but for a declaration that the workmen were in law the employees of the appellant-Board. The industrial adjudicator has undoubtedly no jurisdiction to abolish a genuine labour contract in view of the provisions of Section 10 of the Act. However, it is not correct to say that the reference for the abolition of the contract, itself stands barred. It is the terms of the reference which will determine the jurisdiction of the industrial



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adjudicator to enetertain and decide the reference. The dispute as to whether the labour contract is genuine or not can be agitated by the workmen and the industrial adjudicator has jurisdiction to examine the controversy. If the contract is held to be genuine, the dispute if it is espoused by the direct workmen of the principal employer can be kept pending by the industrial adjudicator and the workmen may be referred by him to the appropriate Government for the abolition of the contract. If the appropriate Government abolishes the contract, the industrial adjudicator can thereafter grant futher relief, if claimed, viz., of the absorption of the workmen of the erstwhile contractor in the principal establishment. If, however, the appropriate Government does not abolsih the contract, the industrial adjudicator may reject the reference, as stated earlier. It is not, therefore, correct to say that the reference of an industrial dispute seeking to abolish the contract is per se barred, as contented by the learned counsel.

67.It is also not correct to say that the Act is a complete Code by itself and, therefore, the industrial Tribunal has no jurisdiction to give a direction to the principal employer to absorb the workmen in question. We have already pointed out that the Act is silent on the question of the status of the workmen of the erstwhile contractor once the contract is abolished by the appropriate Government. Hence, as far as the question of determination of the status of the workmen is concerned, it remains open for decision by the industrial adjudicator. There is nothing in the Act which can be construed to have deprived the industrial adjudicator of the jurisdiction to determine the same. So



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long as, therefore, the said jurisdiction has not been taken away from the industrial adjudicator by any express provision of the Act or of any other statute, it will have to be held that the said jurisdiction which, as pointed out above, has been recognised even by the decisions in Dimakuchi and Standard Vacuum cases (supra) continues to exist. In the exercise of the said jurisdiction, the industrial adjudicator can certainly make a contract between the workmen of the ex-contractor and the principal employer and direct the principal employer to absorb such of them and on such terms as the adjudicator may determine in the facts of each case.....”

40. In the light of the judgment of the Hon'ble Supreme Court, it is clear that once the Labour Court arrives at a finding that the contract is sham and nominal, it will have jurisdiction to adjudicate the dispute for a declaration that the workmen are always the employee of the principal employer and for claiming appropriate service conditions. The Labour Court has also jurisdiction to consider whether the contract is genuine or not. It has got jurisdiction to grant further relief relating to absorption of workmen of erstwhile contractor in the principal establishment. Therefore, the Labour Court is not deprived of its power in determining the status of workmen of the erstwhile contractor once the contract is abolished. Hence, the contentions of the learned counsel appearing for the management with regard to the jurisdiction of the Labour Court in entertaining a petition under



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Section 2-A of the Industrial Disputes Act are liable to be rejected.

WEB COPY (f) Absorption, reinstatement and compensation:

41.Once the labour Court has arrived at a finding that the contract is sham and nominal and the employees are the direct employees of the management and their termination is illegal, can there can be any direction to absorb them into service.?

42.The Hon'ble Supreme Court in a judgment reported in *AIR 2001 SC 3527 (Steel Authority Of India Ltd. & Ors. -vs- National Union Water Front Workers & Ors)* in Paragraph Nos.122(3), (5) and (6) has held as follows:

“122(3).Neither S.10 of the CLRA Act or any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section(1) of S.10 prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.”

(5).On issuance of prohibition notification under S.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

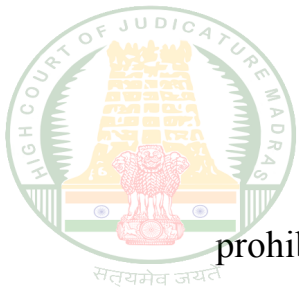


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contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of 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 employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment 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 S.10(1) of CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in 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 is 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.

43.In view of the judgment of the Hon'ble Supreme Court, merely because the contract is sham and nominal and it is in violation of the



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prohibition notification issued under Section 10 of CLRA Act, the call attenders cannot be automatically absorbed as employees of TANGEDCO.

However, they are entitled to be reinstated in service only as a temporary employee of TANGEDCO. There is no dispute whatsoever that the call centre has become a permanent feature and it is part and parcel of TANGEDCO as contemplated in Paragraph No.122(6) of the judgment of the Hon'ble Supreme Court reported in SAIL case (**AIR 2001 SC 3527**). There shall be given preference as and when the vacancies arise subject to the age relaxation, considering their initiate date of appointment as a contract employee. Therefore, the award of the Labour Court directing reinstatement of the employees is hereby confirmed.

44.The call attenders though were not permanent employees of TANGEDCO their retrenchment/termination can be considered to be in violation of Section 25-F of Industrial Disputes Act.

45.The Hon'ble Supreme Court in a judgment reported in (**2014**) 7 **SCC 177 (Bharat Sanchar Nigam Limited Vs. Bhurumal)** in Paragraph Nos.33 to 35 has held as follows:

“33.It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally



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and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: *State of Karnataka vs. Umadevi*) Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may

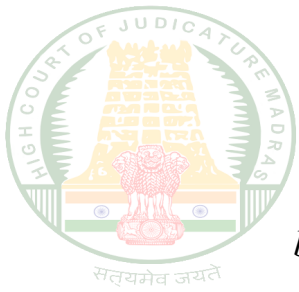


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be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.”

46.The Hon'ble Supreme Court in a judgment reported in **(2001) 10 SCC 606 (Deep Chandra Vs. State of Uttar Pradesh and another)** had held as follows:

“1. This appeal is directed against an order made by the High Court quashing the award made by the Labour Court. A dispute was raised by the appellant on the ground that though he had put in more than 240 days in each year of service from the year 1982 to 1988, he had been retrenched without following the procedure prescribed under Section 25F of the Industrial Disputes Act. The Tribunal, therefore, on adjudication came to the conclusion that termination of service of the appellant is bad and in particular noticed that persons who had been employed subsequent to the appellant have been continuing in service, whereas the services of the appellant had



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been put to an end to. In the circumstances the Labour Court made an award granting the reinstatement with back-wages and other consequential benefits that may flow from it. A Writ petition was filed against the order before the High Court.

2. The High Court approached the matter rather strangely as it went at a tangent to consider not only whether the casual worker's services can be put to an end to but if the award made by the Labour Court would make him permanent employee, so on and so forth. The High Court lost sight of the point in issue that is, when an employee had put in service for more than 240 days in each year for several years whether his services can be put to an end to without following the procedure prescribed under Section 25F of the Industrial Disputes Act. If there has been violation thereof such an employee will have to be reinstated in his original service on the same terms and conditions in which he was working earlier. If this is the position in law, we fail to understand as to how the High Court could have interfered with the award made by the Labour Court. We set aside the order made by the High Court and restore the award made by the Labour Court. The appeal is allowed accordingly.

47. This Court has already arrived at a finding that the call attenders have been illegally retrenched without following the procedure contemplated under Section 25-F of the Industrial Disputes Act. Thereafter, they have to be reinstated as direct temporary employees of TANGEDCO. The TANGEDCO



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was not able to establish before the Labour Court that none of the disengaged employees have completed 240 days of continuous service in the calendar year before disengagement. All the disengaged employees have completed three years or more at the time of said disengagement. In such circumstances, the Labour Court was not right in discriminating between the employees on the basis of years of service put in by them.

48. That apart, this Court has already arrived at a finding that TANGEDCO had engaged these call attenders in violation of notification issued under Section CLRA Act under a sham and nominal contract. Besides that, employees provident fund has not been deducted from any one of the employees resulting in unfair labour practice. In such circumstances, as found by the Hon'ble Supreme Court in Paragraph No.35 of the judgment reported in **(2014) 7 SCC 177**, terminated workers cannot be denied reinstatement adopting a course of grant of compensation instead of reinstatement. No exceptional circumstances have been pointed out for denying the relief of reinstatement.

49. The Hon'ble Supreme Court in a judgment reported in **AIR 2001 SC 3527** in paragraph No.122(6) has held that when a contract is prohibited under Section 10 of the CLRA Act, the principal employer shall give preference to the erstwhile contract labour, if otherwise found suitable and if necessary, by relaxing the condition is to maximum age limit taking into



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consideration the age of the workers at the time of their initial appointment by the contractor. The call attenders have been given training by TANGEDCO before their appointment and they have worked for more than three years. In such circumstances, there cannot be any dispute with regard to their technical qualification in handling the calls and computer operations.

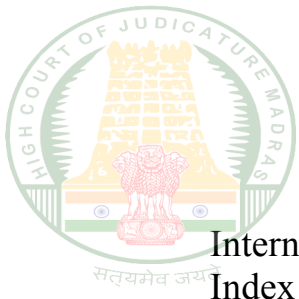
50. In view of the above said deliberations, this Court passes the following orders.

a) WP(MD).Nso.5939, 5940, 5941 and 5942 of 2019 filed by the workmen stand allowed directing the management to reinstate the workmen with continuity of service with 25% backwages.

b) As far as WP(MD)Nos.8623, 8624, 8625, 8626, 8627, 8628 and 8629 of 2018 filed by the management are concerned, the award of reinstatement stands confirmed. However, the direction for payment of full backwages is hereby modified as payment of 25% of backwages.

51. Accordingly, all the writ petitions stand allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

26.08.2025.



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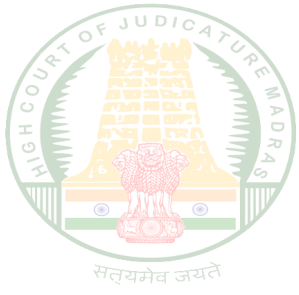
NCC : Yes/No

msa

To

1.The Presiding Officer,
Labour Court
Tirunelveli

2.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

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26.08.2025