

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16..03..2016

Reserved on : 11.03.2016

CORAM :

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

W.P.Nos.20496 of 2013 and 23804 of 2013
and Cont.P.No.1008 of 2014
and

M.P.No.1 of 2013 in W.P.No.20496 of 2013
and

M.P.Nos.1 and 2 of 2013 in W.P.No.23804 of 2013

1. Palaniyammal
2. Chitra
3. Lalitha
4. Rani ... Petitioners in W.P.No.20496/13

1. Thangamani
2. Thilagavathy
3. Eswari
4. Sarasu
5. Vijaya
6. Senthamarai
7. Kavitha ... Petitioners in W.P.No.23804/13

1. Palaniyammal
2. Chitra
3. Lalitha
4. Rani .. Petitioners in Cont.P.No.1008/14

सतसमेव जयते
Vs.

1. The Government of Tamil Nadu
represented by its Secretary,
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai - 9.

2. The Executive Officer,
Vennanthur Town Panchayat,
Namakkal District.

.. Respondents in
both the W.Ps.

1. Mr.K.Dhanindra Reddy,
The Government of Tamil Nadu
Rep. by its Secretary,
Municipal Administration and Water Supply
Department,
Fort St. George, Chennai - 9.

2. K.Gnansundaram,
The Executive Officer,
Vennathur Town Panchayat,
Namakkal.

..Respondents in Cont.P.No.1008/14

* * *

Common Prayer in W.P.Nos.20496 of 2013 and 23804 of 2013 : Writ Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus to direct the respondents to regularise the services of the petitioners on and from 2009 as provided under G.O.Ms.No.199, dated 12.08.1997 with all consequential and attendant benefits.

Prayer in Cont.P.No.1008 of 2014 : Contempt Petition filed under Section 11 of the Contempt of Courts Act praying to punish the respondents for wilfully disobeying the order of this Court in M.P.No.1 of 2013 in W.P.No.20496 of 2013, dated 25.08.2013.

* * *

For Petitioners in : Mr.V.Raghavachari
all these petitions

For Respondents : Mr.V.Jayaprakash Narayanan,
Special Govt. Pleader,
for respondents in W.P.No.2049
and Cont.P.No.1008
of 2014 and

For Respondent No.1 : Mr.P.H.Aravind Pandian,
in W.P.No.23804/2013 Additional Advocate General
assisted by Mr.M.Digvijay Pandian

Mr.D.Nagasaila,
Amicus Curiae

C O M M O N O R D E R

Since the common question has arisen for consideration in both these writ petitions, these writ petitions are disposed of by way of this common order.

2. The petitioners in W.P.No.20496 of 2013 are Sanitary Workers employed in the second respondent Town Panchayat. The petitioners in W.P.No.23804 of 2013 are also Sanitary Workers in the second respondent Town Panchayat. In total, there are eleven Sanitary Workers all belonging to Scheduled Caste community.

3. According to them, they are in service from 2006 onwards as Sanitary Workers in the second respondent Town Panchayat. Their grievance is that they are daily rated monthly paid employees and they are not brought to regular time scale of pay, though they rendered long years of service. Hence, they filed these writ petitions seeking regularization and they relied on G.O.Ms.No.199, Municipal Administration and Water Supply Department, dated 12.08.1997.

4. When W.P.No.20496 of 2013 was admitted, this Court granted interim injunction on 25.07.2013 in M.P.No.1 of 2013 in W.P.No.20496 of 2013, restraining the respondents from interfering with the service of the petitioners as Sanitary Workers pending disposal of the writ petition.

5. Similar injunction was granted by this Court on 29.08.2013 in M.P.No.1 of 2013, when W.P.No.23804 of 2013 was admitted.

6. The petitioners complained that after obtaining injunction order, the salary was stopped and they were rendering service without getting salary. Hence, the petitioners in W.P.No.20496 of 2013 filed Cont.P.No.1008 of 2014 complaining that the order dated 25.08.2013 granting injunction was deliberately disobeyed, since salary was not paid to them.

7. Hence, M.P.Nos.1 and 1 of 2013 in W.P.Nos.20496 and 23804 of 2013 were taken up for hearing on 23.12.2014 and the learned Special Government Pleader submitted that the salary was given by way of cheque for every month in the name of Vaadamalli Women Self-Help Group and the petitioners, who belong to the said Self Help Group, may get the same without prejudice to their contentions in these writ petitions that they are direct employees of the second respondent Town Panchayat. In those circumstances, I passed the order 23.12.2014 permitting the petitioners to encash the cheque without prejudice to their contentions in these writ petitions. It is useful to extract paragraphs 3 to 5 of the said order :

"3. It is an admitted fact that the works are

carried out by the petitioners. The dispute is that the petitioners claim that they are directly employed by the second respondent Town Panchayat and the Town Panchayat states that these persons are employed through the Self Help Group.

4. All those issues could be resolved at the time of final disposal of the writ petitions. But the petitioners, who are doing work shall be paid salary. If the second respondent Town Panchayat has made payment to the Self Help Group, the same may be received and the petitioners could divide the amount as per the work carried out by them without prejudice to their contentions that they are directly employed by the Town Panchayat. The receipt of cheque after a particular point of time through the Self Help Group could not determine the issues raised in these writ petitions. Hence, there cannot be any apprehension in this regard.

5. In these circumstances, the petitioners are directed to encash the cheques issued towards salary that were issued in the name of the Self Help Group without prejudice to their contentions in these writ petitions and if the cheques have become time barred, the same may be returned to the second respondent Town Panchayat and on such return, the second respondent Town Panchayat shall revalidate the same and issue fresh cheques within a period of one week thereafter."

8. While so, counter-affidavits were filed in both the writ petitions. The crux of the counter-affidavits is that the petitioners were not directly employed by the second respondent and there was no employer-employee relationship between the second respondent and the petitioners. The second respondent engaged a Self Help Group, namely, Vaadamalli Women Self Help Group for collection of solid waste from house to house on contract basis and the petitioners were employed through the said Vaadamalli Women Self-Help Group. It was also stated by the second respondent that as per the proceedings in Na.Ka.No.5030/2008/B4, dated 24.06.2008 issued by the Commissioner of Town Panchayat, the second respondent entered into a contract with the Vaadamalli Women Self Help Group under the Solid Waste Management Scheme for removal of solid waste from the houses. Since these petitioners are not employees of the second respondent and they are employed by the Vaadamallai Women Self Help Group, the petitioners cannot seek regularization of their service in the second respondent Town Panchayat and the writ petitions are liable to be dismissed.

9. Therefore, the central issue that arises for consideration is as to whether these petitioners are directly employed by the second respondent Town Panchayat or they are employed through the Vadamallai Women Self Help Group.

10. Taking into account the issue involved in these cases, this Court appointed Mrs.D.Nagasaila, learned Advocate as amicus curiae on 04.09.2014 and requested both the parties to give all the materials to the Amicus Curiae.

11.1. The Amicus Curiae filed written submissions on 18.09.2014 and she also filed a voluminous typed-set of papers, in support of her written submissions.

11.2. The Amicus Curiae collected the materials from the second respondent town Panchayat and gave her submissions based on those documents more particularly, the resolutions passed by the second respondent. She stated that there was no resolution of the second respondent mentioning any specific Self Help Group having been given the contract of door to door collection of garbage. She also stated that no contract between the second respondent and the Self-Help Group relating to collection of garbage was produced by the second respondent. The resolutions would only disclose about hiring of 12 women, who are members of a Self-Help Group. According to the Amicus Curiae, just because the petitioners are members of the Self-Help Group, the same could not disentitle the petitioners to claim that they are workmen employed by the second respondent, if they are directly employed by the second respondent. Though the Self Help Group avails Micro Credit for Rural Poor, that is, subsidies and loans, the receipt of the same by the Self-Help Group is separate and could be considered as independent of the employment of its members with the second respondent. That is, membership in the Self Help Group could not preclude the members from taking up employment with the second respondent as workmen.

11.3. In para 9 of the submissions, the Amicus Curiae categorically stated that the Attendance Register and the Acquittance Register maintained and produced by the second respondent Town Panchayat disclose that the petitioners were engaged directly by the second respondent Town Panchayat. It is also stated that every page of the Attendance Register has been counter signed by the Sanitary Officer and the Executive Officer of the second respondent Town Panchayat.

11.4. The Amicus Curiae stated in paragraph 10 of the submissions that the second respondent Town Panchayat supplied the push carts to the petitioners for collection of solid waste. The wages of the petitioners were calculated on daily wage basis as per the market rates notified by the Collector from time to

time, but paid on monthly basis. The wages were paid directly by the second respondent Town Panchayat to the petitioners till August 2013 and it was not through the intermediary. The Amicus Curiae further categorically stated that the Acquittance Register discloses that the payments were made to each of the individual petitioners directly by the second respondent and that the acquittance register contains the signature of the petitioners acknowledging the receipt of their monthly salary. After August 2013, the wages payable to the petitioners was credited as a lumpsum to the Vaadamalli Self Help Group. Besides the wages, a sum of Rs.45,000/- was paid as subsidy to the Self Help Group as part of the micro credit facilities.

11.5. The Amicus Curiae submitted that since the petitioners were directly employed from 2006, as stated above, they could not be termed as Contract Workmen, as per the judgment of the Apex Court in Workmen of Food Corporation of India V. Food Corporation of India, reported in 1985-II-LLJ 4. If conditions of service of the petitioners were altered by brining them as contract workmen from direct employment, the same is violative of Section 9-A of the Industrial Disputes Act (hereinafter referred to as "the I.D. Act"), as held by the Apex Court in the said judgment. The Amicus Curiae also submitted that the said ratio is followed by the Apex Court in a later judgment in Lokmat Newspapers Pvt. Ltd. V. Shankar Prasad, 1999 (6) SCC 274.

12.1. The learned counsel for the petitioners made his submissions in the same lines as that of Amicus Curiae that the workmen were directly employed by the second respondent and their work is directly supervised by the officials of the second respondent and that their salary payments were made by the second respondent. It is submitted that after approaching this Court in the year 2013, the salary of the petitioners were sought to be paid through the Self Help Group. The petitioners refused to receive their salary through Self Help Group as it amounted to altering the conditions of service to their detriment and also committing contempt of the interim order of injunction passed by this Court at the time of admission of these writ petitions. Hence, it was submitted that Contempt Petition No.1008 of 2014 was filed. He brought to the notice of this Court about the order dated 23.12.2014 passed in M.P.Nos.1 and 1 of 2013 in W.P.Nos.20496 and 23804 of 2013 permitting the petitioners to receive the salary without prejudice to their contentions. Therefore, it is submitted that keeping the petitioners/workmen on daily wages basis instead of providing regular work amounts to unfair labour practice under Section 2 (ra) of the I.D.Act read with Clause 10 of the Fifth Schedule. Therefore, this Court could issue directions to regularise the services of all the petitioners.

12.2. Further, he relied on G.O.Ms.No.199, Municipal

Administration and Water Supply Department, dated 12.08.1997 in support of his claim for regularization. He further submitted that as per the provisions of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981, the employer is duty bound to regularise the workmen, if the workmen are employed for 480 days in two years of service. According to him, the said Act is applicable to the second respondent, and the second respondent, being the Town Panchayat, is State under Article 12 of the Constitution and therefore, the second respondent shall behave like a model employer. In any event, he submitted that the second respondent is an industry under Section 2(j) of the I.D. Act, as held by the Constitutional Bench of the Apex Court in Bangalore Water Supply and Sewerage Board V. R.Rajappa and Others, reported in 1978 (2) SCC 213.

12.3. He submitted that taking into account, the second respondent is State under Article 12 of the Constitution and also the fact that the petitioners are Sanitary Workers belonging to the downtrodden section and Scheduled Caste community, a direction could be issued to regularize the services of the petitioners, if the second respondent committed unfair labour practice.

13.1. On the other hand, learned Additional Advocate General as well as the Special Government Pleader appearing for the respondents contended that the petitioners are not employees of the second respondent and there is no master-servant relationship between the second respondent and the petitioners. The petitioners are employed through a Women Self Help Group called Vaadamallai Self Help Group and therefore, the question of regularization of service in the second respondent Town Panchayat does not arise. According to them, regular workmen are not employed as Sanitary Workers by the Town Panchayat in the sanctioned posts. Hence, they sought to dismiss the writ petitions.

13.2. They relied on the following judgments :

- (1) Secretary to Government, School Education Department V. Thiru.R.Govindasamy and others, reported in CDJ Law Journal 2014 SC 146 ;
- (2) State of Rajasthan and Others V. Daya lal, reported in AIR 2011 SC 1193 ;
- (3) A Division Bench judgment dated 10.07.2014 in W.A.Nos.2911 of 2012 (C.Lakshmi V. Govt of Tamil nadu, rep. by Secretary to Government, Home Department, Chennai and others) ; and
- (4) A Division Bench judgment dated 17.04.2014 in W.A. (MD) No.1157 of 2013, (The State of Tamil Nadu rep. by Secretary to Government, School Education Department, Fort St. George, Chennai V. M.Seeniammal and Others)

14. I have considered the submissions made by either

side and I have perused the materials on record produced by both sides.

15. The Amicus Curiae stated in the submissions that she looked into the website of the Directorate of Town and Country Planning, Government of Tamil Nadu, relating to Self Help Group. Paragraph 3 of the submissions made by the Amicus Curiae in this regard is extracted hereunder :

"3. The website of Directorate of Town and Country Planning, Government of Tamil Nadu (<http://www.tn.gov.in/dtp/shg/htm>) describes Self Help Groups as follows-

"SHG is group of rural poor who have volunteered to organise themselves into a group for eradication of poverty of the members. They agree to save regularly and convert their savings into a Common Fund known as the Group corpus. The members of the group agree to use this common fund and such other funds that they may receive as a group through a common management. The group formation will keep in view the following broad guidelines:

Generally a self-help group may consist of 10 to 20 persons. However, in difficult areas like deserts, hills and areas with scattered and sparse population and in case of minor irrigation and disabled persons, this number may be from 5-20. The difficult areas have to be identified by the State Level SGSY Committee and the above relaxation in membership will be permitted only in such areas.

Generally all members of the group should belong to families below the poverty line. However, if necessary, a maximum of 20% and in exceptional cases, where essentially required, upto a maximum of 30% of the members in a group may be taken from families marginally above the poverty line living contiguously with BPL families and if they are acceptable to the BPL members of the group. This will help the families of occupational groups like agricultural labourers, marginal farmers and artisans marginally above the poverty line, or who may have been excluded from the BPL list to

become members of the Self Help Group. However, the APL members will not be eligible for the subsidy under the scheme. The group shall not consist of more than one member from the same family. A person should not be a member of more than one group. The BPL families must actively participate in the management and decision making, which should not ordinarily be entirely in the hands of APL families. Further, APL members of the Self Help Group shall not become office bearers (Group Leader, Assistant Group Leader or Treasurer) of the Group.

The group should devise a code of conduct (Group management norms) to bind itself. This should be in the form of regular meetings (weekly or fortnightly), functioning in a democratic manner, allowing free exchange of views, participation by the members in the decision making process.

The group should be able to draw up an agenda for each meeting and take up discussions as per the agenda.

The members should build their corpus through regular savings. The group should be able to collect the minimum voluntary saving amount from all the members regularly in the group meetings. The savings so collected will be the group corpus fund.

The group corpus fund should be used to advance loans to the members. The group should develop financial management norms covering the loan sanction procedure, repayment schedule and interest rates.

The members in the group meetings should take all the loaning decisions through a participatory decision making process.

The group should be able to prioritise the loan applications, fix repayment schedules, fix appropriate rate of interest for the loans advanced and closely monitor the repayment of the loan instalments from

the loanee.

The group should operate a group account preferably in their service area bank branch, so as to deposit the balance amounts left with the groups after disbursing loans to its members.

The group should maintain simple basic records such as Minutes book, Attendance register, Loan ledger, General ledger, Cash book, Bank passbook and individual passbooks. The sample proforma for maintenance of above records by the group is in the Annexure II for guidance. These could be used with necessary changes/modifications wherever required.

50% of the groups formed in each block should be exclusively for the women. In the case of disabled persons, the groups formed should ideally be disability-specific wherever possible, however, in case sufficient number of people for formation of disability-specific groups are not available, a group may comprise of persons with diverse disabilities or a group may comprise of both disabled and non-disabled persons below the poverty line."

Thus the functioning of self Help Groups appears to be for the purpose of availing micro credit for rural poor. The subsidies and loans received by the SHG is separate and independent of the employment if any that the members may be engaged in."

16. Therefore, just because the petitioners are members of the Self Help Group and the Self Help Group gets some subsidies towards micro credit for the rural poor, the same could not be relied on by the second respondent to dis-entitle the petitioners from seeking regularization of their service, if they have rendered a long service with the second respondent in the work of collection of solid waste. Various resolutions of the second respondent were produced by the Amicus Curiae and those resolutions would disclose that the wages are periodically increased to these petitioners. Though it is stated in the resolution dated 21.12.2004 that the people can be engaged through Self Help Group on contract basis, there is no contract entered into between the second respondent and Self Help Group.

Further, no tender was called for from Self Help Groups to supply labour for the purpose of collection of solid waste.

17. In the counter-affidavits, it is specifically stated by the second respondent that the contract was entered into between the second respondent and the Self Help Group for collection of solid waste, but no such contract is produced before this Court. In my view, that is the crucial document to establish the case of the second respondent. On the other hand, the resolutions and various proceedings of the second respondent, that were filed by the Amicus Curiae in the typed-set of papers, after collecting of those materials from the second respondent, would disclose that the petitioners were directly employed by the second respondent, while they are the members of the Self Help Group. For instance, it is useful to extract the resolution of the second respondent dated 30.07.2007 as hereunder :

தீர்மான நகல்
2007-ம் வருடம் ஜூலை மாதம் 30.07.2007-ந் தேதி
தங்கள் கிழமை காலை 11.00 மணிக்கு வெண்ணந்தூர் பேரூராட்சி
அலுவலகத்தில் நடைபெற்ற சாதாரணக் கூட்டத்தில் நடவடிக்கை நகல்.

முன்னிலை : திரு.கே.சாமிநாதன்
சேர்மன் மற்றும் வருகைபுரிந்த உறுப்பினர்கள்,
வெண்ணந்தூர் பேரூராட்சி

பொருள் எண்.11

வெண்ணந்தூர் பேரூராட்சி திடக்கழிவு மேலாண்மை
திட்டத்திற்கு 12 தள்ளுவண்டிகள் பயன்படுத்தப்பட்டு வருகிறது.
மேற்படி 12 தள்ளுவண்டிகளையும் இயக்க மகளிர் சுயஉதவிக்குழு
உறுப்பினர்கள் 12 நபர்களை பயன்படுத்தப்பட்டு வருகிறது. மேற்படி
தள்ளுவண்டி இயக்கும் நபர்களுக்கு மாதம் ரூ.1000/- வண்டி
இயக்குப்படி வழங்கப்பட்டு வருகிறது. தற்சமயம் மேற்படி 12 நபர்கள்
காலை மற்றும் மாலை இருவேலைகளிலும் பணியாற்றி வருவதால் மேற்படி
12 நபர்களுக்கும் மாதம் ரூ.1200/- வீதம் இயக்குப்படி வழங்க மன்ற
அனுமதிக்கும் முடிவிற்கும் வைக்கப்படுகிறது.

தீர்மானம் எண்.99(11) நாள்.30.07.2007

மாதம் ரூ.1200/- வழங்க அனுமதிக்கப்பட்டது.

(ஓம்) கே.சாமிநாதன்,

சேர்மன்

வெண்ணந்தூர் பேரூராட்சி.”

18. Similar resolutions are found in the typed-set of papers. This resolution would disclose that the members of the Self Help Group were employed for collection of solid waste and they were given push carts for the same. The details of wages paid to the petitioners were also stated therein. The amount of wages was periodically increased in the resolutions.

19. At the risk of repetition, it is reiterated that no contract between the second respondent and the Self Help Group was produced before this Court. On the other hand, the payment of salary was directly made to the petitioners by the second respondent and attendance register was maintained by the second respondent and the same was counter signed by the Sanitary Officer and the Executive Officer of the second respondent Town Panchayat. The acquittance register discloses that the salary payments were made by the second respondent to the petitioners. But, when they sought regularization and approached this Court and also obtained an interim order, the second respondent, thereafter, sought to issue cheques to the Self Help Group towards the wages of the petitioners and the petitioners were directed to encash those cheques by this Court and this Court passed the order dated 23.12.2014, in this regard, as extracted hereinabove.

20. If the second respondent employed the petitioners through any intermediary and did not have any control over them and they did not maintain any attendance register and they did not pay wages directly to the petitioners, then it is a different matter. In that event, the contention that the petitioners could not seek any relief against the second respondent has some substance. But the records disclose that the petitioners were employed by the second respondent directly and they have been given minimum wages, that was fixed by the District Collector.

21. As rightly contended by the learned Amicus Curiae, if the petitioners were directly employed, they could not be made as Workmen employed on contract basis as held by the Apex Court in Workmen of Food Corporation of India V. Food Corporation of India, reported in 1985-II-LLJ 4 and it is categorically held that if the direct employee is converted into a contract worker without notice, as contemplated under Section 9-A of I.D. Act, the same would amount to illegal change. Section 9-A of I.D. Act mandates issuance of prior notice if the change alters the conditions of service. It is useful to extract the paragraphs 17, 20 and 21 of the judgment in Food Corporation of India, (1985-II-LLJ 4) hereunder :

"17. The next question to which we must address ourselves is whether once on the introduction of the direct payment system, the workmen acquired the status of the workmen of

the Corporation, was it open to the Corporation to unilaterally discontinue the system without the consent of the workmen and reinduct contractor so as to again introduce a smoke-screen which may on paper effectively deny the status of being the workmen of the Corporation, acquired by these workmen. And on discontinuance of the system of direct payment, without ordering retrenchment of their services by the Corporation, they obtained a fresh employment under the Contractor Is it legally permissible ? The question provides its own correct and effective answer. No employer since the introduction of the I.D. Act, 1947 and contrary to its Certified Standing Orders as statutorily required to be drawn up under the Industrial Employment (Standing Orders) Act, 1946 can dispense with the service of any workman without complying with the law in force. Any termination of service contrary to the provisions of the Standing Orders and the provisions of the J.D. Act, 1947 would be void. It is not necessary to call in aid precedents to substantiate this too obvious and well-established proposition. Then workmen working under an employer are told that they have ceased to be the workmen of that employer, and have become workmen of another employer namely, the contractor in this case, in legal parlance such an act of the first employer constitutes discharge, termination of service or retrenchment by whatsoever name called and a fresh employment by another employer namely, the contractor. If the termination of service by the first employer is contrary to the well-established legal position, the effect of the employment by the second employer is wholly irrelevant. No attempt was made to justify the termination of service of the afore-mentioned workers of the Corporation by the subtle device of introducing a contractor so as to bring about a cessation of contract of employment between the workmen and the Corporation and a fresh contract of employment between the workmen and the contractor. If what was intended to be done was retrenchment, ex facie the action is contrary to the provisions of Sec. 25F of the I.D. Act, 1947. Viewed from either angle, the action of introducing so as to displace the contract of service between the Corporation and the workmen would be illegal and invalid and ab

initio void and such action would not alter, charge or have any effect on the status of the afore-mentioned 464 workmen who had become the workmen of the Corporation.

.....

20. The submission that it was open to the Corporation to engage a contractor for handling of foodgrains may be true or legally acceptable; the question, however, is whether once some workmen became the workmen of the Corporation as here in before discussed, was it open to the Corporation to induct a contractor and treat its workmen as workmen of the contractor. The answer is in the negative, for the reasons here in before discussed. The agony consequent upon such submission may be unmasked- While the trend is in the direction of abolition of contract labor, this public sector undertaking appears to be completely oblivious to the trend and the pace-setter as enacted by the Parliament in the Contract Labor (Regulation and Abolition) Act, 1970. An assertion in the Statement of Objects and Reasons accompanying the Bill, which was enacted into the law, may help the Corporation in freeing itself from the traditional master-servant relationship and help it in becoming an ideal employer where exploitation in any form is wholly eschewed. The statement reads as under:

"The system of employment of contract labor lends itself to various abuses. The question of its abolition has been under the consideration of government for a long time. In the Second Five Year Plan, the Planning Commission made certain recommendations, namely, undertaking of studies to ascertain the extent of the problem of contract labor, progressive abolition of system and improvement of service, conditions of contract labor where the abolition was not possible."

The Act was enacted with a view to abolishing wherever possible or practicable, the employment of contract labour. The proposed Bill aimed at abolition of contract labor in respect of such categories as may be notified. The Corporation attempted by its action to reverse that trend which does no credit to it. We say no more save

and except saying that where the law helps, such anti labor practices must be thwarted or nipped in the bud.

21. It is at this stage necessary to examine the implication of Sec.9A of the I.D.Act, 1947. As hereinbefore pointed out, Sec. 9A makes it obligatory upon an employer who proposes to effect any A change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Sec 9A which has no relevance here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent-Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item 1 in the Fourth Schedule provides: 'wages, Including the period and mode of payment'. By canceling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any

such illegal change invites a penalty under Sec. 31(2) of the I.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective."

22. The ratio laid down by the Apex Court in FCI's case (1985-II-LLJ 4) is followed by the Apex Court in Lokmat Newspapers Pvt. Ltd. V. Shankarprasad, reported in (1999) 6 SCC 275. It is useful to extract paragraph 37 of the said judgment as hereunder :

"37. In view of the aforesaid settled legal position, there is no escape from the conclusion that the impugned notice dated 25.03.1982 under Section 9-A which was issued long after the actual installation of the photo composing machine had fallen foul on the touchstone of Section 9-A read with Schedule IV item no.10. Such a notice in order to become valid and legal must have preceded introduction of such a machine and could not have followed the actual installation and effective commission of such a machine. The decision rendered by the Division Bench in this connection is found to be perfectly justified both on facts and in law. It must, therefore, be held that the impugned termination or discharge of the respondent was violative of the provisions of Section 9-A of the I.D. Act and he was discharged from service without the appellant's following the mandatory requirements of Section 9-A of the I.D. Act. Effect of non-compliance of Section 9-A of the I.D. Act renders the change in conditions of service void ab initio. This legal position is well settled in the case of Workmen of Food Corporation of India V. Food Corporation of India [(1985) 2 SCC 136], wherein, a three Judge Bench of this Court, speaking through Desai J., in para 19 of the Report, laid down as under :-

"19."

23. In my view, the petitioners were employed by the second respondent and they were paid directly by the second respondent and they could not be made as a contract workmen subsequently and such a course is illegal and against the ratio of the decisions of the Apex Court in FCI's case [(1985) 2 SCC136] and Lokmat's case [(1999) 6 SCC 275].

24. Further, the second respondent could not avoid the

regularization of the services of these underprivileged workmen stating that there are no sanctioned post. If the work is available on regular basis for the petitioners and they worked continuously for years together, it is the bounden duty of the Government, the first respondent, to sanction posts.

25.1. At this juncture, it is relevant to refer Section 153 of the District Municipalities Act, 1920 and the same mandates that the cleaning work shall be carried out by the municipality. Hence, it is the statutory duty on the municipality to keep the town panchayat clean. If the petitioners are employed to collect solid waste and they were also given push carts by the second respondent, the first respondent is bound to create sanctioned posts, in view of the mandate of Section 153 of the District Municipalities Act, 1920. It is useful to refer to the Constitutional provision under Articles 38(1), 42 and 47 of the Constitution :

"38. State to secure a social order for the promotion of welfare of the people -

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

42. Provision for just and humane conditions of work and maternity relief - The State shall make provision for securing just and humane conditions of work and for maternity relief

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

In the light of those Articles, the second respondent is bound to regularize the service of the petitioners.

25.2. At this juncture, it is useful to refer to the judgment of the Apex Court in Nihal Singh V. State of Punjab, (2013) 14 SCC 65 :

(i) In that case, the State of Punjab recruited the Ex-Servicemen, those who were having armed licence and enrolled with the employment exchange between 1986, as Special Police Officers under Section 17 of the 45 Police Act, 1861 during the large scale disturbance during 1980s. They were recruited to guard the public sector banks and they were paid honorarium at

the rate of Rs.15 per day and the same was periodically increased by the State and the said salary was paid by the public sector banks which utilized their service. But the appointment, discipline and control of these persons were with the State. Those Special Police Officers sought regularization of their services by approaching the Punjab High Court.

(ii) The High Court dismissed their writ petitions on the ground that they were not appointed against the sanctioned posts and those persons were not appointed by following the regular recruitment procedure.

(iii) The Apex Court held that the aforesaid procedure adopted by the State in appointing Special Police Officers cannot be said to be unreasonable or arbitrary.

(iv) While considering the issue as to the appointment of those persons in the absence of sanctioned posts, taking note of the facts and circumstances of the case, the Apex Court directed the State to create the posts. In this regard, it is useful to extract paragraphs 32, 33 and 35 as hereunder :

"32. Coming to the other aspect of the matter pointed out by the High Court - that in the absence of sanctioned posts the State cannot be compelled to absorb the persons like the appellants into the services of the 47 State, we can only say that posts are to be created by the State depending upon the need to employ people having regard to various functions the State undertakes to discharge. "Every sovereign Government has within its own jurisdiction right and power to create whatever public offices it may regard as necessary to its proper functioning and its own internal administration." [42 American Jurisprudence 902].

33. It is no doubt that the assessment of the need to employ a certain number of people for discharging a particular responsibility of the State under the Constitution is always with the executive Government of the day subject to the overall control of the Legislature. That does not mean that an examination by a Constitutional Court regarding the accuracy of the assessment of the need is barred.

35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the 48 creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop

extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State."

26. Further, the second respondent could not employ these workmen on daily wages basis for decades together, thereby denying the benefits payable to permanent/regular workmen. Such a practice amounts to unfair labour practice under Section 2(ra) of I.D.Act read with Clause 10 of the Fifth Schedule. Clause 10 of the Fifth Schedule of the I.D. Act reads as 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."

The same is prohibited by Section 25-T of I.D. Act. Hence, the second respondent, being the State under Article 12 of the Constitution, shall behave like a model employer and they could not indulge in unfair labour practice. Further, the petitioners belong to the downtrodden section and Scheduled Caste community. Hence, I am of the view that the petitioners are entitled to be regularised in service from the date of filing of the writ petition.

27.1. The judgments, relied on by the learned Additional Advocate General and the learned Special Government Pleader could not render any assistance. Let me discuss those judgments one by one.

I. Secretary to Government, School Education Department V. Thiru.R.Govindasamy and others, reported in CDJ Law Journal 2014 SC 146 :

In the said judgment, the Apex Court held that the part time employees of the Government Department could not seek regularization of the service in full time post. Hence, the said judgment would render no assistance to the respondents.

II. State of Rajasthan and Others V. Daya lal, AIR 2011 SC 1193 :

(i). The Apex Court in Secretary to Government, School Education Department V. Thiru.R.Govindasamy and others, reported in CDJ Law Journal 2014 SC 146, relied on this judgment in AIR 2011 SC 1193.

(ii). The said judgment in AIR 2011 SC 1193 is also relied on by the learned Additional Advocate.

(iii) Paragraphs 8(ii), 8(iv) and 8(v) of the said judgment in AIR 2011 SC 1193 is relied on by the Apex Court in CDJ Law Journal 2014 SC 146 (supra) and it was held that part-time employees could not claim regularization in full time employment.

(iv) In the cases on hand, it is the case of the second respondent that the petitioners were not workmen of the second respondent and they were contract workmen. Hence, the said judgment could not apply to the facts of this case.

III. The judgment of a Division Bench of this Court dated 10.07.2014 in W.A.Nos.2911 of 2012 (C.Lakshmi V. Govt of Tamil nadu, rep. by Secretary to Government, Home Department, Chennai and others) :

A Division bench of this Court in the said judgment placed reliance on the judgment of the Apex Court in AIR 2011 SC 1193 and the judgment of the Apex Court in Secretary to Government, School Education Department V. Thiru.R.Govindasamy and others, reported in CDJ Law Journal 2014 SC 146 and declined regularization to part-time employees on full time basis. Therefore, that judgment also could not render any assistance.

IV. The Judgment of a Division Bench of this Court in W.A.(MD) No.1157 of 2013, dated 17.04.2014 (The State of Tamil Nadu rep. by Secretary to Government, School Education Department, Fort St. George, Chennai V. M.Seeniammal and Others) :

(i) A Division Bench in that judgment held that part time employees could not claim regular full time employment.

(ii) The judgment of the Apex Court in Secretary to Government, School Education Department V. Thiru.R.Govindasamy and others, reported in CDJ Law Journal 2014 SC 146 is relied on by the Division Bench in this judgment.

(iii) Hence, the said judgment also could not render any assistance.

27.2. In my view, the said judgments, Secretary to Government, School Education Department V. Thiru.R.Govindasamy and others, reported in CDJ Law Journal 2014 SC 146, State of Rajasthan and Others V. Daya lal, AIR 2011 SC 1193, Division Bench judgment dated 10.07.2014 in W.A.Nos.2911 of 2012 (C.Lakshmi V. Govt of Tamil nadu, rep. by Secretary to Government, Home Department, Chennai and others) and the Division Bench judgment in W.A.(MD)No.1157 of 2013, dated 17.04.2014 (The State of Tamil Nadu rep. by Secretary to Government, School Education Department, Fort St. George, Chennai V. M.Seeniammal and Others) could not render any assistance to the respondents, as in those judgments, it is held that the part time employees could not seek regularization in full time employment. There is no quarrel over the said proposition. The same would not render any assistance in this case, as the issue herein is as to whether these workmen are directly engaged by the second respondent or not.

28.1. The learned Additional Advocate General and the

learned Special Government Pleader placed heavy reliance on the judgment of the learned Single Judge dated 23.06.2011 in W.P.No.1574 of 2011, that was filed by one person claiming to be the Sanitary Worker in the third respondent town panchayat therein. He claimed regularization in terms of G.O.Ms.No.199, dated 12.08.1997.

28.2. According to the petitioner therein, he was in direct employment of the town panchayat therein for 15 years. But no materials were produced in support of his claim. On the other hand, the town panchayat pleaded that he was engaged on contract basis only for a period between 01.04.2008 to 30.06.2010 for the purpose of collecting garbage. The records were produced that he was employed through an intermediary. The Court also found in that case that the Town Panchayat floated a tender on the basis of the resolution and the work was entrusted to a Self Help Group on contract basis and the petitioner was employed through the Self Help Group. Based on the said finding, the writ petition was dismissed.

28.3. In fact, this Court noted that a direction was issued to the learned counsel for the petitioner therein to produce any proof to show that the petitioner therein had worked earlier with the Town Panchayat directly prior to the contract engagement through the Self Help Group. But, the learned counsel was unable to produce any proof showing that he was actually engaged by the town panchayat directly before contractual engagement through the Self Help Group. In those circumstances, the claim for regularisation of the petitioner therein in the service of the Town Panchayat therein was declined. Therefore, I am of the view that if the petitioner therein was able to establish that he was directly employed before being engaged on contract basis, this Court could have issued a direction for regularization. At this juncture, it is useful to extract following passage in paragraph 4 of the order dated 23.06.2011 in W.P.No.1574 of 2011 :

"4. Though the learned counsel for the petitioner stoutly denied the applications, the learned counsel was directed to produce any proof showing that the petitioner had worked even earlier to the contract engagement and the matter was adjourned. But, however, the learned counsel for the petitioner is unable to produce any such proof showing that he is actually engaged by the Town Panchayat for the period which is ascertained by him."

28.4. On the other hand, in these cases, there are plenty of documents showing that the petitioners are directly

engaged by the second respondent and they were paid directly by the second respondent and no floating of tender by the second respondent was produced and no contract was entered into between the second respondent and the Self Help Group relating to collection of solid waste. Hence, in my view, the said judgment cannot be relied on to the facts of this case.

29. In these circumstances, the writ petitions are allowed and a direction is issued to the respondents to regularise all these petitioners, Sanitary Workers, from the date of filing of the writ petitions and to pay monetary benefits, accordingly, after adjusting the wages, that were paid as daily wages. A further direction is issued to the respondents to comply with the aforesaid direction within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

30. In view of this common order, the Contempt Petition is also closed.

31. After the pronouncement of the common order today, the learned Special Government Pleader appearing for the second respondent Town Panchayat submitted that these workmen could be regularly absorbed as and when vacancies arise in the sanctioned post. Though this submission is a departure from the submissions made by him at the time of arguments, the same is recorded. But I have decided the issue on merits and gave directions to regularize their services as Sanitary Workers, taking into account that these petitioners rendered a very long service in the collection of solid waste in the second respondent Town Panchayat.

-s/d-

Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

WEB COPY

gg

To

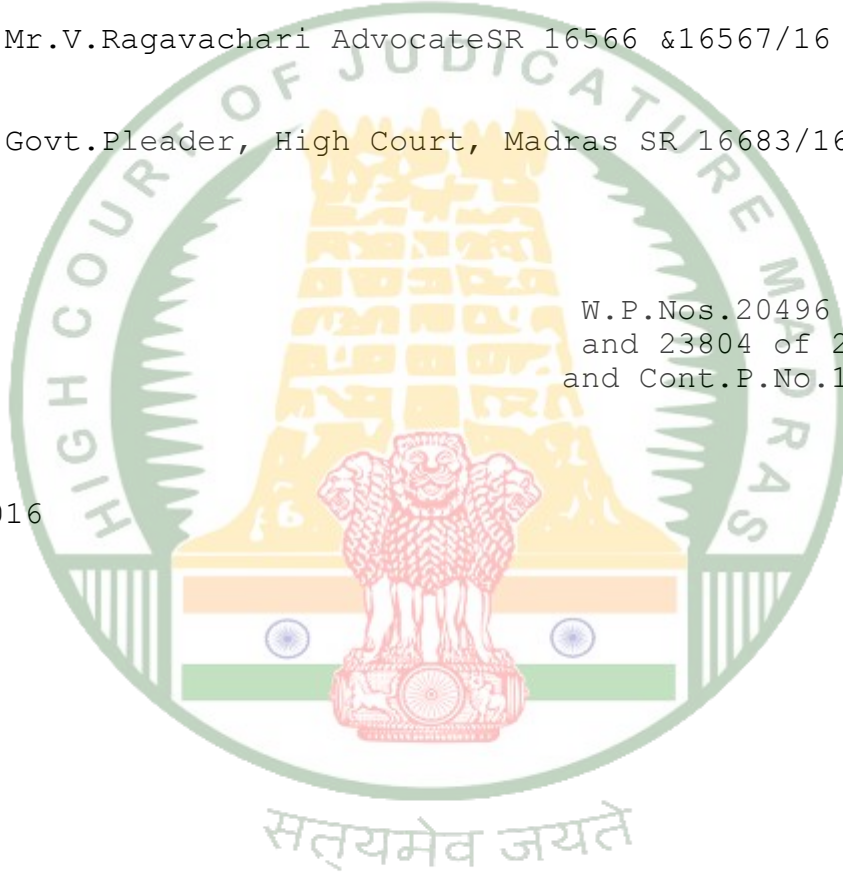
1. The Principal Secretary,
Municipal Administration and
Water Supply Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 9.
2. The Executive Officer,
Vennanthur Town Panchayat,
Namakkal District.

+ 1 cc to Mr.V.Ragavachari AdvocateSR 16566 &16567/16

+ 1 cc to Govt.Pleader, High Court, Madras SR 16683/16

W.P.Nos.20496 of 2013
and 23804 of 2013
and Cont.P.No.1008 of 2014

aa07/04/2016



WEB COPY