



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2018

CORAM:

WEB COPY

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.21391 of 2018
and
WMP (MD) No.19267 of 2018

B.Sivakumar ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by
Its Secretary,
Municipal Administration and Water Supply Department,
Secretariat,
Fort St.George,
Chennai.

2.The District Collector,
Office of the District Collector,
Thanjavur District,
Thanjavur.

3.The Commissioner,
Thanjavur Municipal Corporation,
Gandhiji Road,
Thanjavur.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to allow the petitioner to continue to do his work as over head tank operator in the respondent No.3 Municipal Corporation with all service and attendant benefits in accordance with law and also to regularize his services.

For Petitioner	: Mr.S.Malaikani
For Respondents	: Mr.K.Mu.Muthu
(R1&R2)	Addl.Govt.Pleader
For Respondent-3	: Mr.N.Dilipkumar

**ORDER**

The petitioner has come forward with the present Writ Petition for issuance of a Writ of Mandamus, directing the respondents to allow the petitioner to continue to do his work as overhead tank operator in the respondent No.3 Municipal Corporation with all service and attendant benefits in accordance with law and also to regularize his services.

2. Mr.S.Malaikani, the learned counsel appearing for the petitioner would submit that the petitioner was working as overhead tank operator in the respondent Municipal Corporation, since 2012. Eventhough he has been engaged through contractor, they were discharged the work to the 3rd respondent. According to the petitioner, the job is perennial in nature and that the contract system itself is sham and that the petitioner is a direct employee. The petitioner has not been paid wages regularly and that even the EPF and ESI Contributions deducted from him had not been remitted to the Authorities. According to the petitioner, the arrears of pay had not been paid for the last three months and that the respondents are engaging new hands in the place of petitioner and that will jeopardise the interest of the petitioner. Hence, he sought the aforesaid relief.

3. Mr.N.Dilipkumar, the learned standing counsel appearing for the 3rd respondent would submit that the petitioner has been engaged through contract that has been entrusted to M/s.MSG Infra, Thanjavur, from July 2017 and that the contract period is over. They are not aware as to the actual employees, who have been engaged from 2012, as they have no direct control over the employees. The 3rd respondent used to pay the contractors the entire amount, as per the contract, who will disburse the wages and others benefits to the employees. It is further submitted that the petitioner has not made the contractor as party to the present proceedings and that the petitioner cannot seek for such a relief. The petitioner has been disengaged from the services on account of expiry of the contract, as early as since 1st August, 2018. He further stated that under the guise of seeking the relief in the Writ Petition, the representation made by the petitioner is that, P.F. and ESI have not been paid and that a complaint has been made to the Commissioner and that it is the responsibility of the contractor to pay the aforesaid amount.

4. Mr.K.Mu.Muthu, the learned Additional Government Pleader appearing for the respondents 1 and 2 would contend that the petitioner is not a direct employee and he has no locusstandi to maintain the writ petition. According to him, as there is a disputed question of fact, the relief sought for by the petitioner



5. I have heard the learned counsel appearing on either side and perused the materials available on record.

6. It is not in dispute that the petitioner was employed under the 3rd respondent, but according to the 3rd respondent, he has been engaged through contractor. The petitioner has also stated in the affidavit that he has been engaged, since 2012 and thereafter, the contract system was introduced in 2017. Even though the contractors changed, employees remain constant and that the work is of perennial nature, he should be absorbed. Whether there is a direct relationship or not? Whether the contract system is a sham or not? are got to be decided before the appropriate forum.

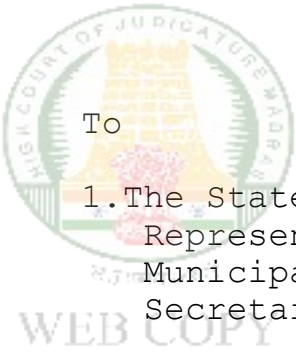
7. It is open to the petitioner to raise an industrial dispute before the appropriate labour forum and in case, the Labour Forum comes to a conclusion that the contract system is sham and nominal, it is open to grant such other relief at the discretion of the Forum. In case, the contract system is found to be genuine, the Labour Forum has got to direct the petitioner to approach the appropriate authorities, constituted under the Contract Labour (Regulation and Abolition) Act, 1970, seeking absorption. As there is a disputed question of fact, the relief sought for by the petitioner cannot be granted, more particularly, when services have been disengaged from 01.08.2018. It is also made very clear that a duty is cast upon the principal employer to pay the contribution of the employer and employee's ESI and EPF. In case of non-payment of money by the contractors, it is open to the petitioner to make representation to the Authorities concerned, who shall look into the matter and decide the same. If the new contractor wants to engage the services of the petitioner, it is open to him to do so, but, this will not give any right to the petitioner seeking absorption, as the issue has got to be decided prior to 01.08.2018.

8. In the result, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
AssistantRegistrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-IV)



To

1.The State of Tamil Nadu,
Represented by Its Secretary,
Municipal Administration and Water Supply Department,
Secretariat, Fort St.George, Chennai.

2.The District Collector,
Office of the District Collector,
Thanjavur District, Thanjavur.

3.The Commissioner,
Thanjavur Municipal Corporation,
Gandhiji Road, Thanjavur.

+1cc to Mr.S.Malaikani Advocate in SR.No.90731

+1cc to Mr.N.Dilipkumar Advocate in SR.No.90665

+1cc to Special Government Pleader, SR.No.90857

W.P. (MD) No.21391 of 2018
12.10.2018

MPK

PSSKN SAR4 10.12.2018 4P 8C