

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.04.2019

Delivered on : 24.07.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.Nos.17935 to 17941, 18095 to 18114,
21654 and 23526 of 2011 &
M.P.Nos.1,1 1,2 to 2, 4 to 4 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.17935 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.17936 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.17937 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.17938 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.17939 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.17940 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.17941 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.18095 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.18096 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.18097 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.18098 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.18099 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.18100 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.18101 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.18102 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.18103 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642101
COIMBATORE DISTRICT.

... PETITIONER in WP No.18104 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642 101
COIMBATORE DIST.

... PETITIONER in WP No.18105 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642 101
COIMBATORE DIST.

... PETITIONER in WP No.18106 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642 101
COIMBATORE DIST.

... PETITIONER in WP No.18107 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642 101
COIMBATORE DIST.

.... PETITIONER in WP No.18108 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMIL NADU
ELECTRICITY BOARD MINPARAI-642 101
COIMBATORE DIST.

... PETITIONER in WP No.18109 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMILNADU
ELECTRICITY BOARD MINPARAI 642 101
COIMBATORE DISTRICT

... PETITIONER in WP No.18110 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMILNADU
ELECTRICITY BOARD MINPARAI 642 101
COIMBATORE DISTRICT

... PETITIONER in WP No.18111 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMILNADU
ELECTRICITY BOARD MINPARAI 642 101
COIMBATORE DISTRICT

... PETITIONER in WP No.18112 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMILNADU
ELECTRICITY BOARD MINPARAI 642 101
COIMBATORE DISTRICT

... PETITIONER in WP No.18113 of 2011

THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMILNADU
ELECTRICITY BOARD MINPARAI 642 101
COIMBATORE DISTRICT

... PETITIONER in WP No.18114 of 2011

- 1 MAHALINGAM
S/O.K.KANAGARAJ NO. 27/1 ARUMUGAM ST RAJA
MILL ROAD POLLACHI COIMBATORE
- 2 M.R.GANESAN
S/O.RAMAKRISHNAN 3 S.R.M.S. MILL ROAD
POLLACHI VIA COIMBATORE DT
- 3 M.SELVI
W/O. PALANISAMY NO. 4/102 GODAPALAYAM
THOPPAMPALAYAM POST BHAVANISAGAR ERODE
COIMBATORE
- 4 K. NAGAMANI
W/O. KANCHIMALAI KADAMBARAI POWER HOUE POST
POLLACHI VIA COIMBATORE DT

- 5 A. GEETHA
W/O. MATHIVANNAN 161-B 5TH CROSS ST
SIVASAKTHI NAGAR THANTHONRIMALAI POST
KARUR DT
- 6 P. MOORTHY
S/O.PALANISAMY NO. 3/453 VINAYAKAR KOIL
BACKSIDE CHERAN NAGAR THUNGAVI POST
UDUMALAIPET THIRUPPUR
- 7 S.RAMESH
S/O.SELVAM KADAMBARAI POWER HOUSE POST
POLLACHI VIA COIMBATORE DT
- 8 K. SIVAKUMAR
S/O.K.KANAGARAJ NO.26 ARUNACHALA GOUNDER ST
GANAPATHY COIMBATORE
- 9 S.VENUGOPAL
S/O.SIVASANKARAN MEENA NIVAS
KARINGARAPALLI POST PALLAKADU KERALA
- 10 V.MALLEESWARAN
S/O. VELUSAMY NO.10/82B J.J. NAGAR
ANGALAKURUCHI ALIYAR VIA POLLACHI
COIMBATORE
- 11 S.SAKKARAIAPPAN
S/O. SUPPAN 1/4 A.K.RETTIPALAYAM
KODUNKIYAM POST UDUMELPET COIMBATORE
- 12 S.DEVARAJ
S/O. SHANMUGAM KADAMBARAI POWER HOUSE
POLLACHI VIA COIMBATORE
- 13 A. AMUDHA
W/O.ARUMUGAM KADAMBARAI POWER HOUSE POST
KADAMBARAI POLLACHI VIA COIMBATORE
- 14 C.RAJA
S/O. CHINNA PERUMAL NO.8A 1 ST STREET 2ND
WARD OLD AYAKKUDI PALANI DINDUKAL
- 15 M.MURUGAN
S/O.MOOKKAN NO. 37/77 KARIKALIAMMAN ST
POLLACHI COIMBATORE

- 16 K. PONNUSAMY
S/O.KITTAS NO. 538 PAKUTHAM PALAYAM MGR
NAGAR IKKARAI THATTAPALLI POST
BHAVANISAGAR VIA SATHYAMANGALAM TK ERODE
- 17 M. AYYAMMAL
D/O. MOOKKAN NO. 37/77 KARIKALIAMMAN ST
POLLACHI COIMBATORE
- 18 R.LAKSHMI
D/O.RAMAN NO.8A 1 ST STREET 2ND WARD OLD
AYAKKUDI PALANI DINDUKAL
.... PETITIONERS in WP No.21654 of 2011

- 1 JAGATHESAN
C/O.B.MALATHY KADAMPARAI POWER HOUSE POST
POLLACHI TALUK COIMBATORE.
- 2 MOHANBABU
S/O.NATARAJAN NO.49 KURUVAPPAN STREET
THAVUTTUPALAYAM ANDHIYUR BHAVAN BHAVANI.
- 3 P.SUMATHI
C/O.MATHAIYAN KADAMPARAI POWER HOUSE POST
POLLACHI TALUK COIMBATORE.
- 4 DEENADHAYALAN
S/O.A.K.KANDASAMY 82-D KOTTUR
MALAYANDIPATTINAM POLLACHI TALUK
COIMBATORE.
- 5 KUMARAVEL
S/O.T.ARUMUGAM C/O.MATHAVAN SOOLAMMAL DEVI
POST MADATHUKULAM TALUK UDUMALPET
THIRUPPUR DIST.

- 6 M.KANNIAN
S/O.MALAN SETTLEMENT KADAMPARAI DAM VIA
POLLACHI COIMBATORE.
... PETITIONERS in WP No.23526 of 2011

VS

- 1 B.JAGATHESAN
C/O.B.MALATHY KADAMPARAI POWER HOUSE POST
POLLACHI VIA COIMBATORE DISTRICT.

2 SOUNDARARAJAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TALUK COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.

... RESPONDENTS in WP No.17935 of 2011

1 P.SUMATHI
C/O.MATIAIYAN KADAMPARAI POWER HOUSE POST
POLLACHI VIA COIMBATORE DISTRICT.

2 SOUNDARARAJAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TALUK COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.

... RESPONDENTS in WP No.17936 of 2011

1 K.DEENADHAYALAN
S/O.A.K.KANDASAMY NO.82-D KOTTUR
MALAYANDIPATTINAM POLLACHI.

2 SOUNDARARAJAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TALUK COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.

... RESPONDENTS in WP No.17937 of 2011

1 A.KUMARAVEL
S/O.T.ARUMUGAM C/O.CIVIL SECTION MINPARAI
POST POLLACHI VIA.

2 SOUNDARARAJAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TALUK COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.

... RESPONDENTS in WP No.17938 of 2011

1 M.KANNAIYAN
S/O.MALAN SETTLEMENT KADAMPARAI DAM (VIA)
POLLACHI-642 152.

2 SOUNDARARAJAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TALUK COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.

... RESPONDENTS in WP No.17939 of 2011

1 N.MOHAN BABU
S/O.NATARAJAN C/O.BALASUNDRAM 6/851
SUBRAMANI STREET KALLINGARAJAN
PALAYAMPUTHUR BHAVANI-638 301.

2 SOUNDARARAJAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TALUK COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.

... RESPONDENTS in WP No.17940 of 2011

1 P.VEERANAN
S/O.N.PALUSAMY UPPER ALIYAR DAM POST
VALPARAI TALUK-642 101.

2 SOUNDARARAJAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TALUK COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.

... RESPONDENTS in WP No.17941 of 2011

1 K.MAHALINGAM
S/O.K.KANAGARAJ KADAMPARAI DAM KADAMPARAI
POWER HOUSE (PO) COIMBATORE DISTRICT.

2 N.GOPINATHAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK. COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.
... RESPONDENTS in WP No.18095 of 2011

1 M.R.GANESH
S/O.RAMAKRISHNAN NO.3 S.R.M.S. MILLS ROAD
POLLACHI (VIA) COIMBATORE DISTRICT.

2 KARRUPA THEVAR
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK. COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.
... RESPONDENTS in WP No.18096 of 2011

1 M.SELVI
W/O.PALANISAMY C/O.B.MARY KADAMPARAI POWER
HOUSE POST POLLACHI (VIA) COIMBATORE
DISTRICT.

2 KARRUPA THEVAR
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK. COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.
... RESPONDENTS in WP No.18097 of 2011

1 K.NAGAMANI
W/O.K.KANJIMALAI C/O.B.MARY KADAMPARAI
POWER HOUSE POST POLLACHI (VIA) COIMBATORE
DISTRICT.

2 N.GOPINATHAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK. COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.
... RESPONDENTS in WP No.18098 of 2011

1 A.GEETHA
C/O.V.PALANISAMY 161-B SIVASAKTHI NAGAR
THANTHONTRIMALAI POST KARUR DISTRICT.

2 SOUNDARARAJAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK. COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.

... RESPONDENTS in WP No.18099 of 2011

1 P.MOORTHY
S/O.PALANISAMY KADAMPARAI POWER HOUSE POST
POLLACHI (VIA) COIMBATORE DISTRICT.

2 SOUNDARARAJAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TALUK COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.

... RESPONDENTS in WP No.18100 of 2011

1 S.RAMESH
S/O.SENNAN KADAMPARAI POWER HOUSE POST
POLLACHI (VIA) COIMBATORE DISTRICT.

2 N.GOPINATHAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TALUK COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.

... RESPONDENTS in WP No.18101 of 2011

1 K.SIVAKUMAR
S/O.K.KANAGARAJ KADAMPARAI POWER HOUSE POST
POLLACHI (VIA) COIMBATORE DISTRICT.

2 N.GOPINATHAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TALUK COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.

... RESPONDENTS in WP No.18102 of 2011

1 S.VENUGOPAL
S/O.SIVASANKARAN MEENA NIVAS
KARINGARAPALLI POST PALAKAD KERALA.

2 N.BABU
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TALUK COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.

... RESPONDENTS in WP No.18103 of 2011

1 V.MALLEESWARAN
S/O.VELUSAMY KADAMPARAI POWER HOUSE POST
COIMBATORE DISTRICT.

2 N.GOPINATHAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TALUK COIMBATORE
DISTRICT.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.

... RESPONDENTS in WP No.18104 of 2011

1 S.SAKKARAIAPPAN
S/O.SUBBAN 1/4 A.K. RADIPALAYAM
KODUNKIYAM POST UDUMALPET 642 122.

2 KARRUPA THEVER
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK. COIMBATORE DIST.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.

... RESPONDENTS in WP No.18105 of 2011

1 S.DEVARAJ
S/O.SHANMUGAM KADAMPARAI POWER HOUSE POSE
POLLACHI (VIA) COIMBATORE DIST.

2 N.GOPINATHAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK. COIMBATORE DIST.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.
... RESPONDENTS in WP No.18106 of 2011

1 K.HANIFFA
S/O.V.K.KASIM 20 AATHUPURA COLONY ALIYAR
NAGAR POST COIMBATORE DIST.

2 N.BABU
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK. COIMBATORE DIST.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.
... RESPONDENTS in WP No.18107 of 2011

1 A.AMUTHA
W/O.ARUMUGAM KADAMPARAI POWER HOUSE POST
POLLACHI (VIA) COIMBATORE DIST.

2 N.GOPINATHAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK. COIMBATORE DIST.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.
... RESPONDENTS in WP No.18108 of 2011

1 C.RAJA
S/O.CHINNA PERUMAL C/O.RAJAMMAL KADAMPARAI
DAM POLLACHI (VIA) COIMBATORE DIST.

2 N.GOPINATHAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK. COIMBATORE DIST.

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.
... RESPONDENTS in WP No.18109 of 2011

1 M.MURUGAN
S/O.MOOKAN KADAMPARAI POWER HOUSE POST
POLLACHI VIA COIMBATORE DT

2 KARUPA THAVER
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK COIMBATORE DT

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE

... RESPONDENTS in WP No.18110 of 2011

1 K.PONNUSAMY
S/O.KITTAN C/O.ARUMUGAM (MAHALI)
KADAMPARAI POWER HOUSE POST POLLACHI VIA
COIMBATORE DISTRICT

2 N.GOPINATHAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK COIMBATORE DT

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE

... RESPONDENTS in WP No.18111 of 2011

1 M. AYYAMMAL
S/O.MOOKAN KADAMPARAI POWER HOUSE POST
POLLACHI VIA COIMBATORE DT

2 SOUNDARARAJAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK COIMBATORE DT

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.

... RESPONDENTS in WP No.18112 of 2011

1 R.LAKSHMI
D/O.RAMAN C/O.RAJAMMAL KADAMPARAI DAM
POLLACHI VIA COIMBATORE DT

2 N.GOPINATHAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK COIMBATORE DT

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE

... RESPONDENTS in WP No.18113 of 2011

1 A. SENTHIL KUMAR
S/O.S. ARUMUGAM MINPARAI MUGAM POST
COIMBATORE DT

2 N. BABU
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK COIMBATORE DT

3 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE

... RESPONDENTS in WP No.18114 of 2011

1 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE

2 THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMILNADU
ELECTRICITY BOARD MINPARAI
COIMBATORE 642 101

3 N. GOPINATHAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK COIMBATORE DT

4 KARUPPA THEVAR
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK COIMBATORE DT

5 SOUNDARARAJAN
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK COIMBATORE DT

6 N.BABU
LABOUR CONTRACTOR TNEB TNEB QUARTERS
KADAMPARAI VALPARAI TK COIMBATORE DT

... RESPONDENTS in WP No.21654 of 2011

1 THE PRESIDING OFFICER
LABOUR COURT COIMBATORE.

2 THE SUPERINTENDING ENGINEER
KADAMPARAI GENERATION CIRCLE TAMILNADU
ELECTRICITY BOARD MINPARAI-642 101
COIMBATORE.

3 SOUNDARARAJAN
LABOUR CONTRACTOR TAMILNADU ELECTRICITY
BOARD TNEB QUARTERS KADAMPARAI VALPARAI
TALUK COIMBATORE.

... RESPONDENT in WP No.23526 of 2011

Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari,

WP No.17935 of 2011:

Calling for the records in I.D.No.502 of 2004 dated 24.7.2009 on the file of the 3rd respondent herein and quash the same.

WP No.17936 of 2011;

Calling for the records in I.D.No.504 of 2004 dated 24.7.2009 on the file of the 3rd respondent herein and quash the same.

WP No.17937 of 2011:

Calling for the records in I.D.No.505 of 2004 dated 24.7.2009 on the file of the 3rd respondent herein and quash the same.

WP No.17938 of 2011:

Calling for the records in I.D.No.506 of 2004 dated 24.7.2009 on the file of the 3rd respondent herein and quash the same.

WP No.17939 of 2011:

Calling for the records in I.D.No.508 of 2004 dated 24.7.2009 on the file of the 3rd respondent herein and quash the same.

WP No.17940 of 2011:

Calling for the records in I.D.No.503 of 2004 dated 24.7.2009 on the file of the 3rd respondent herein and quash the same.

WP No.17941 of 2011:

Calling for the records in I.D.No.507 of 2004 dated 24.7.2009 on the file of the 3rd respondent herein and quash the same.

WP No.18095 of 2011:

Calling for the records in Award 27.06.2008 made in I.D.No.60 of 2003 by the 3rd respondent herein and quash the same.

WP No.18096 of 2011:

Calling for the records in Award 27.06.2008 made in I.D.No.61 of 2003 by the 3rd respondent herein and quash the same

WP No.18097 of 2011:

Calling for the records in Award 27.06.2008 made in I.D.No.62 of 2003 by the 3rd respondent herein and quash the same.

WP No.18098 of 2011:

Calling for the records in Award 27.06.2008 made in I.D.No.63 of 2003 by the 3rd respondent herein and quash the same.

WP No.18099 of 2011:

Calling for the records in Award 27.06.2008 made in I.D.No.64 of 2003 by the 3rd respondent herein and quash the same.

WP No.18100 of 2011:

Calling for the records in Award 27.06.2008 made in I.D.No.65 of 2003 by the 3rd respondent herein and quash the same.

WP No.18101 of 2011:

Calling for the records in Award 27.06.2008 made in I.D.No.66 of 2003 by the 3rd respondent herein and quash the same.

WP No.18102 of 2011:

Calling for the records in Award 27.06.2008 made in I.D.No.67 of 2003 by the 3rd respondent herein and quash the same.

WP No.18103 of 2011:

Calling for the records in Award 27.06.2008 made in I.D.No.68 of 2003 by the 3rd respondent herein and quash the same.

WP No.18104 of 2011:

Calling for the records in Award 27.06.2008 made in I.D.No.69 of 2003 by the 3rd respondent herein and quash the same.

WP No.18105 of 2011:

Calling for the records in Award 27.6.2008 made in I.D. No.70 of 2003 by the 3rd respondent herein and quash the same.

WP No.18106 of 2011:

Calling for the records in Award 27.6.2008 made in I.D. No.72 of 2003 by the 3rd respondent herein and quash the same.

WP No.18107 of 2011:

Calling for the records in Award 27.6.2008 made in I.D. No.73 of 2003 by the 3rd respondent herein and quash the same.

WP No.18108 of 2011:

Calling for the records in Award 27.6.2008 made in I.D. No.74 of 2003 dt 27.6.08 by the 3rd respondent herein and quash the same.

WP No.18109 of 2011:

Calling for the records in Award 27.6.2008 made in I.D. No.75 of 2003 by the 3rd respondent herein and quash the same.

WP No.18110 of 2011:

Calling for the records in Award 27.6.2008 made in I.D. No.76 of 2003 by the 3rd respondent herein and quash the same.

WP No.18111 of 2011:

Calling for the records in Award 27.6.2008 made in I.D. No.77 of 2003 by the 3rd respondent herein and quash the same.

WP No.18112 of 2011:

Calling for the records in Award 27.6.2008 made in I.D. No.78 of 2003 by the 3rd respondent herein and quash the same.

WP No.18113 of 2011

Calling for the records in Award 27.6.2008 made in I.D. No.79 of 2003 by the 3rd respondent herein and quash the same

WP No.18114 of 2011:

Calling for the records in Award 27.6.2008 made in I.D. No.80 of 2003 by the 3rd respondent herein and quash the same.

WP No.21654 of 2011:

to issue a Writ of Certiorarified Mandamus Calling for the records pertaining to Common Award dated 27.6.2008 in I.D.Nos.60 to 70, 72, 74 to 79/2003, quash the same in so far as depriving the petitioners backwages and other attendant benefits and direct the 2nd respondent to pay the petitioners full backwages and all other attendant benefits in addition to the relief of reinstatement with continuity of service already granted, and award costs.

WP No.23526 of 2011:

to issue a Writ of Certiorarified Mandamus Calling for the records pertaining to the common Award dated 24.07.2009 passed by the 1st Respondent in I.D.Nos.502 to 506/04 and 508/04 quash the same in so far as depriving the Petitioners continuity of service, backwages and other attendant benefits and consequently direct the 2nd Respondent to pay the Petitioners full backwages to give continuity of service and all other attendant benefits in addition to the relief of reinstatement already granted, and award costs.

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

For Respondents : Mr.V.Ajay khose for
M/s.R.Krishnaswamy for
R1 in WPs 17935, 17936,
17938, 1739 & 17941 of 2011
R2 No appearance

COMMON ORDER

All these Writ Petitions throw a common challenge to the award passed by the Labour Court, Coimbatore, in various industrial disputes raised by the workmen, questioning their termination from service and also seeking for reinstatement with all attendant benefits.

2. Both the Management, namely, erstwhile Tamil Nadu Electricity Board and the workmen have challenged two common awards of the Labour Court, viz., i) passed in I.D.Nos.60 to 80 of 2003, dated 27.06.2008, directing the reinstatement of the workmen with continuity of service and denying back wages and other attendant benefits; and ii) passed in I.D.Nos.502 to 508 of 2004, dated 24.07.2009, directing only reinstatement of the workmen without continuity of service, back wages and other attendant benefits.

3. While the Management filed the respective Writ Petitions, seeking to quash the common awards passed by the Labour Court, the Workmen, being aggrieved by the denial of continuity of service, back wages and other attendant benefits, filed the respective Writ Petitions.

4. For the sake of convenience, the parties, viz., erstwhile Tamil Nadu Electricity Board and the workmen who raised industrial disputes, are herein after referred to as 'the Board' and 'the workmen' respectively.

5. The genesis of the disputes raised by the workmen relates to their appointment as Helpers on various dates from 1985 onwards and their services were continued for some years and finally, their services stood terminated at a particular point of time, i.e. between 1995 and 1997. According to the workmen, their services were terminated orally on the instructions from the Board Officials. According to the workmen concerned, they were employed to carry out various works of the Board and similar to them, there were thousands of workers employed in the State of Tamil Nadu and during their initial period of employment, they were all treated as contract workers. According to the workmen, the Board treated the workmen as contract workers in order to deny them regular benefits as enjoyed by the permanent workers employed by the Board. The so-called contractual nature of the employment was only a sham and nominal and the Board was neither the principal employer recognized by the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to 'Contract Labour Act'), nor the middlemen engaged, designated as contractors were registered

contractors under the said Act. Therefore, for all purposes, the workmen were employed in Board Services for a number of years ranging from one year and few months to 8/10 years, served continuously for 240 days in a year and 480 days in 24 calendar months, yet their status remained as contractual workers without granting them permanency under Section 3(1) of the Tamil Nadu Industrial Labour Employment (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter, referred to as 'the Act 1981'). Several thousands of workmen like the petitioners, had been agitating at a particular time for regularization of their services and the issue went upto the Hon'ble Supreme Court of India which led to appointment of Justice Khalid Commission to identify several thousands employees who were employed as workers on contractual basis in order to absorb them as regular employees in the Board. After identification of several thousands of employees in regard to the continuous employment, many of the employees were ultimately came to be employed in the Board service in 1999. In fact, a seniority list was drawn up as on 5.1.1998 in terms of the relevant Board proceedings and on the basis of the said seniority list, several thousands workmen came to be absorbed. Many of the employees who were left out from the absorption, had also periodically approached the Labour Court and High Court and obtained orders for regularization of their service and such regularization was also granted in terms of various directions/awards.

6. As far as the case on hand is concerned, the workmen were engaged like the other workmen whose services came to be eventually absorbed, but their services unfortunately stood terminated orally before the Board taking a decision to absorb the Helpers on permanent basis during 1998 and 1999. These workmen, after learning about mass absorption of the workmen, who where similarly placed like them, raised disputes in 2003 and 2004, contending that they were also entitled to be absorbed and that their oral termination was illegal and contrary to the provisions of the Act, 1981. According to these workmen, they had completed 240 days of service in a year and also 480 days in 24 calendar months and therefore, they were entitled to be granted permanency in terms of the provisions of the Act, 1981. According to the workmen, the Board had taken a decision to orally terminate their service only to eventually deny them absorption. In these circumstances, all the workmen concerned in these litigations, raised disputes before the Government and after failure of the conciliation, the same were referred for adjudication before the Labour Court. After adverting to various materials placed both on behalf of the workmen as well as the Board, ultimately, the Labour Court passed the award as aforementioned.

7. The Labour Court, in respect of I.D.Nos.60 to 80 of 2003, has passed an award on 27.6.2008, directing the reinstatement of the workmen with continuity of service, but denied back wages and other attendant benefits, which is challenged by the Management in W.P.Nos.18095 to 18114 of 2011.

8. On behalf of the workmen, W.P.No.21654 of 2011 has been filed, questioning the same award dated 27.6.2008 in I.D.Nos.60 to 80 of 2003 in regard to denial of back wages and other attendant benefits. The Labour Court in respect of I.D.Nos.502 to 508 of 2004, has passed an award on 24.7.2009, directing the reinstatement of the workmen, but denied continuity of service, backwages and other attendant benefits. The Board has filed Writ Petitions, challenging the said award in W.P.No.17935 to 17941 of 2011. On behalf of the workmen, W.P.No.23526 of 2011 has been filed, challenging the very same common award, dated 24.7.2009 passed by the Labour Court in ID Nos.502 to 508 of 2004 in regard to denial of continuity of service, back wages and other attendant benefits.

9. From the above, it could be seen that the substantive challenge is by the Board, questioning the award ordering reinstatement and on behalf of the workmen, the challenge is only in regard to denial of continuity of service and consequential benefits.

10. For the sake of convenience, the award passed by the Labour Court in I.D.Nos.502 to 508 of 2004 is to be taken for a review in response to the challenge made by the Board as the finding of this Court in respect of the said award, would have a direct bearing which substantially and equally apply in respect of the award dated 27.6.2008 in I.D.Nos.60 to 80 of 2003.

11. In the said industrial dispute on behalf workmen, one of the petitioners, was examined as WW1 and on behalf of the Board, one Assistant Administrative Officer was examined as MW.1. On behalf of the workmen, Exs.W1 to W12 were marked, while on behalf of the Board, Ex.M1 was marked which document is of no legal consequence for deciding the present dispute since the said document is only an authorization letter given by the Board to the official concerned to appear before the Labour Court and give evidence. In the proceedings before the Labour Court, the evidence given by the Management Witness is to be seen in the context of the claim made by the workmen for seeking reinstatement with consequential benefits. The case of the workmen before the Labour Court was that they were employed directly by the Board and their employment was uninterrupted and continuous and they were employed continuously for 240 days in a year and 480 days in 24 calendar months. In support of their

claim, the workmen had marked Exs.W1 to W9 which were Service Certificates issued by the Board Officials, certifying the employment of the workmen with the Board. When the Management Witness was examined, he categorically accepted that such Certificates issued by the Board Officials. The Management Witness would further accept that the workmen were directly employed by the Board and they had also worked continuously for 240 days in a year and 480 days in 24 calendar months. The Management Witness would also admit that the workmen were supervised by the Board Officials and the type of work extracted from them was regular and permanent in nature. From the evidence of the Management Witness, it could be seen that the witness has completely supported the case of the workmen and there was no iota of evidence let in on behalf of the Board to counter the claim of the workmen.

12. The Labour Court, after considering the unequivocal evidence of the Management Witness which was fully supporting the claim of the workmen and also Exs.W1 to W9, which certified the workmen as the workers of the Board, had come to the conclusion that the oral termination of the workmen was illegal and without justification. In fact, the Labour Court found that the workmen having worked for 240 days in a year and 480 days in 24 calendar months, were entitled to be conferred with permanent status as per the provisions of the Act, 1981 and in regard to such entitlement, no sustainable objection has been raised by the Board. The Labour Court, on the basis of unimpeachable materials both documentary and oral evidence, has come to the conclusion that the workmen concerned were entitled to reinstatement, as the oral termination cannot be countenanced in law. In fact, the Labour Court has also given a clear finding that there was no genuine contract labour system in place and such contract labour system was not regulated as per Section 10 of the Contract Labour Act. In any event, the Labour Court found that the evidence of the Management witnesses was very clear and forthright that the workmen were directly employed and their employment was permanent and regular in nature. After referring to a few decisions, the Labour Court has ultimately come to the conclusion in para 26, which is extracted hereunder:

"26. The another defence raised by the first respondent in these cases is that the first respondent prepared a list of contract labourers as on 05.01.1998 and those persons whose names are found in the above list, were absorbed by the first respondent as permanent workers and the names of these persons are not found place in the above list prepared by the first respondent and therefore the petitioners are not entitled to reinstatement in service. Admittedly, even though these petitioners worked for more than two years

in the establishments of the first respondent they were orally removed from service prior to 1998 on various dates mentioned supra. This Court has already given a finding with regard to the truthness of the certificates produced by the petitioners. The mere omission on the part of the Electricity Board to include the names of these petitioners in the list prepared by them subsequently on 05.01.1998 cannot be taken as a ground for denying the employment to the petitioners. Having admitted that these petitioners were in employment under the first respondent for long periods as discussed supra, the first respondent is not entitled to make such a defence as against these petitioners. Therefore, this Court is of the view that the above objection raised by the first respondent is liable to be rejected and hence the same is rejected. For all the reasons stated herein before it is concluded that these petitioners were in employment in the establishments or departments of the first respondent prior to their termination orally from service for more than 240 days in a year and 480 days in two consecutive years prior to the termination and there was employer and employee relationship between these petitioners and the first respondent during the relevant period of employments. Therefore, it is concluded that the petitioners are all entitled for reinstatement in service under the first respondent."

13. The above conclusion reached by the Labour Court is on the basis of the factual finding with reference to the oral evidence and the materials placed on record. However, while concluding, the Labour Court felt that in view of the workmen raised disputes belatedly, it is not in the interest of justice, that these workmen should be given the benefit of continuity of service, back wages and attendant benefits, but confined the relief only to ordering reinstatement.

14. The above award of the Labour Court ordering reinstatement in service is the subject matter of challenge in the present batch of Writ Petitions and the principal objection according to the learned counsel, Shri Anand Gopalan, appearing for the Board is that the workmen themselves have admitted in their claim statement that their service stood terminated much prior to 5.1.1998 and in the said circumstances, the question of grant of reinstatement did not arise at all. Unfortunately, the Labour Court has overlooked this crucial factual aspect which

was disclosed by the workmen themselves that they were not in service on 5.1.1998, in which event, the workmen concerned herein were not entitled to the relief of reinstatement. According to the learned counsel, the evidence of the Management Witness cannot improve the case of the workmen since admittedly, the service of the workmen was already terminated. Further, the learned counsel would also contend that the workmen being employed through Contractor all along not entitled to absorption in Board service. Such contention, time and again, has been repulsed by this Court, when such contention is not supported by any material to show that there was genuine contract system in place during the relevant time.

15. According to the learned counsel for the Board, some of the workmen were employed only for a period less than two years as admitted by them and in such event, the said workmen cannot be conferred with the benefit of reinstatement. He would submit that the benefit of absorption granted to thousands of employees, cannot be extended to the present workmen, who firstly were not in service as on 5.1.1998 and secondly, they were not continuously employed as made out before the Labour Court either 240 days in a year or 480 days in 24 calendar months and their employment was only through contractors. According to the learned counsel for the Board, the Labour Court was unduly guided by the evidence of the Management Witness although his evidence was contrary to the admission of the workmen themselves. Therefore, the Labour Court has misdirected itself in placing too much reliance on the evidence of the Management Witness. He would therefore submit that the award of the Labour Court ordering reinstatement has to be interfered with particularly, when the workmen had approached and raised the dispute belatedly after several years of their termination. The delay by itself is a serious lapse on the part of the workmen, but unfortunately, the Labour Court has overlooked the delay and yet ordered reinstatement.

16. As regards the other batch of industrial disputes, namely, ID Nos.60 to 80 of 2003, there also the Labour Court has come to the conclusion in favour of the workmen on the basis of Service Certificates issued by the Officials of the Board themselves, namely, Exs.W1 to W19. The issuance of Certificates, certifying the employment of the workmen therein was also not disputed by the Management Witness before the Labour Court. In fact, the Labour Court has given an identical finding in the said batch of industrial disputes and also held that these workmen were also entitled to the benefit of Board Proceedings No.27 which were issued for absorbing the workmen who were continuously employed in the Board as on 5.1.1998. The Labour Court, in these batch of disputes also, given identical finding like this, that the workmen covered under the said IDs were

also employed directly by the Board. In fact, the Labour Court has held that the Board has not properly maintained the records and therefore, there was a possibility that the names of these workmen were left out from the list prepared under the supervision of Justice Khalid Commission. In fact, in these batch of industrial disputes on behalf the so-called contractors, counter statements were filed in which, they had admitted that they were acting only as brokers and not genuine contractors and in the counter statements, this fact was not rebutted nor seriously objected to by the Board. Therefore, the Labour Court has on the basis of unimpeachable materials and unequivocal evidence, has come to the conclusion and has ultimately passed an award on 27.6.2008 ordering reinstatement with continuity of service, but without back wages and other attendant benefits. The learned counsel for the Board also raised the same objections in regard to these batch of disputes.

17. The learned counsel for the Board would also submit that the Labour Court cannot extend the scope of Section 2(A) of the Industrial Disputes Act and can order absorption since the dispute was only with regard to the non-employment of the workmen and therefore, the Labour Court has exceeded its jurisdiction in ordering the reinstatement which would ultimately facilitate the absorption of these workmen. In fact, he would rely on a decision rendered by this Court in W.P.No.10738 & 10739 of 2010 dated 26.03.2018, this Court is unable to appreciate as to how the reliance could be placed on this decision since this Court in fact, discountenanced the restricted meaning given to Section 2A in paragraph 23 of the order which is extracted hereunder:

"23. The main thrust of arguments advanced on behalf of the Board is that the dispute under Section 2-A of the Industrial Disputes Act was not maintainable in the instant case. As rightly contended by the learned counsel appearing for the employees, in this case the termination of the first respondent employees was directly linked to their absorption in the service of the Board and therefore, the scope of Section 2A of the Industrial Dispute Act cannot be given constricted meaning in the facts of the present case, as both the termination and absorption was interlinked and cannot be separated. Such nuanced interpretation of Section 2A does not advance cause of scheme of Industrial Dispute Act. In industrial adjudication, such disputes are quite common, where employees used to be engaged on contract basis in order to restrict the benefits otherwise entitled to be the workmen. Such dispute can never be entertained by the industrial Tribunal, if such constricted meaning is

given to the scope of Section 2 A of the Industrial Dispute Act, for redressal of their legitimate grievance. Although the learned counsel for the petitioner relied on the judgments of the Punjab and Haryana and the Hon'ble Supreme Court of India, those decisions cannot be applied to the factual matrix of the present case. Since the termination of the employees herein does not stand independently as that of the absorption effectively. But for the involvement of the employees in the criminal case their names would have been automatically included in the list of absorption. When such was the fact, this Court does not think that the Labour Court has overreached in jurisdiction in ordering reinstatement. In the instant case, the award passed by the Labour Court cannot be faulted with and ordering reinstatement with continuity of service does not said to be an judicial overreach, as contended by the learned counsel for the petitioner."

18. In any case, this Court is of the view that such contention may not be relevant since the Labour Court has only ordered reinstatement and continuity of service without back wages, attendant benefits in respect of one batch of disputes alone and in respect of later batch of disputes, ordered reinstatement without continuity of service, back wages and attendant benefits. Therefore, the order per se appeared to be only a direction for reinstatement and ultimately it may facilitate absorption as a fallout of the order of reinstatement, nevertheless it cannot be today construed as award granting absorption of the workmen in the service of the Board. In any case, such constricted scope attributed to Section 2A by the learned counsel for the Board has been discountenanced by this Court in the above said decision.

19. The learned counsel would also raise objections regarding raising of dispute after a period of eight years and therefore, the dispute itself was not maintainable. He would rely on a decision reported in "2007 (9) SCC 353 (Uttaranchal Forest Development Corpn., versus M.C.Joshi), wherein, it was held by the Hon'ble Supreme Court of India that granting reinstatement was not justified when the employee concerned was only a daily wager. He would therefore, submit that in the case on hand, the workmen employed were casual employees and they were not entitled to reinstatement as a matter of course. Lastly, the learned counsel for the Board would submit that if the Labour Court wanted to give relief to the terminated workmen, it could have atleast ordered some monetary compensation to the workmen and not blanket reinstatement of all

workmen, regardless of the number of days worked by them. He would therefore, eventually implore this Court to interfere with the Awards passed by the Labour Court by setting aside the same.

20. Shri Ajay Khose, learned counsel appearing for the workmen would support the award of the Labour Court in regard to the direction for reinstatement of the workmen, but at the same time, assail the award in regard to denial of continuity of service, back wages and other attendant benefits in respect of ID Nos.502 to 508 of 2004 and also the award in regard to denial of back wages and other attendant benefits in ID Nos.60 to 80 of 2003. According to him, once the termination was found to be unjustified by the Labour Court, it ought to have granted continuity of service including back wages and other attendant benefits and denial of the same, cannot be countenanced both in law and on facts.

21. Apart from the above, the learned counsel for the workmen would draw the attention of this Court to number of decisions in respect of various contentions raised by him which are mentioned hereunder:

(i) "1999(1) LLJ 1096 (Secretary, Haryana State Electricity Board and Suresh & Others)", wherein, the learned counsel would draw the attention of this Court to paragraphs 6 to 9, 14, 19 and 21, which are extracted hereunder;

"6. In order to keep the said plants and stations clean and hygienic, the Appellant Board, upon tenders being floated, awards contracts to contractors who undertake the work of keeping the same clean and hygienic. One such contract was awarded to one Kashmir Singh, for "proper, complete and hygienic cleaning, sweeping and removal of garbage from the Main Plant Building" at Panipat, at the rate of Rs.33,000 per month with a stipulation to engage minimum 42 safai karamcharis with effect from 15th May, 1987 for a period of one year and in terms therewith the Contractor took over the work and performed the said work through the above-stated Safai Karamcharis. सत्यमेव जयते

7. Subsequently by reason however of a dispute raised by the Safai Karamcharis, as regards their entitlement to be absorbed permanently on completion of 240 days in the year with the Board, the matters were referred to the Conciliation Officer, Panipat culminating however in an order of reference by the State Government on 27.12.1988 to the Labour Court, Ambala which was subsequently transferred to Panipat. On the further factual score, it appears that the Labour Court upon consideration of the facts and the evidence taken on record passed the impugned award

inter alia recording therein that the workmen are otherwise entitled to reinstatement with continuity of service alongwith 10% back wages. We shall revert to the order of the Labour Court for further consideration shortly hereafter, but to complete the basic factual backdrop in the matter it ought to be noted that as against the order of the Labour Court, the appellant moved 37 Writ Petitions in the High Court of Punjab and Haryana, which were however, disposed of by a common judgment and order dated 24th January, 1995, inter alia, recording that there existed a relationship of employer and workmen between the Appellant Board and the respondents and by reason wherefor, the High Court directed reinstatement of the respondents with continuity of service though however, without back wages. While dealing with these matters the High Court did place strong reliance on the observation of this Court in the case of Hussainbhai Vs. Alath Factory Tezhilali Union (1978 LIC 1264) wherein this Court observed: "Who is employee, in Labour Law? That is the short, die-hard question raised here but covered by this Court's earlier decisions. Like the High Court, we give short shrift to the contention that the petitioner had entered into agreements with intermediate contractors who had hired the respondent-Union's workmen and so no direct employer-employee vinculum juris existed between the petitioner and the workmen. This argument is impeccable in laissez faire economics 'red in tooth and claw' and under the Contract Act rooted in English Common Law. But the human gap of a century yawns between this strict doctrine and industrial jurisprudence. The source and strength of the industrial branch of Third World Jurisprudence is social justice proclaimed in the Preamble of the Constitution. This Court in Ganesh Beedi's case (1974) 1 Lab LJ 367 (AIR 1974 SC 1832) has raised on British and American rulings hold that mere contracts are not decisive and the complex of considerations relevant to the relationship is different. Indian Justice, beyond Atlantic liberalism, has a rule of life. And life, in conditions of poverty aplenty, is livelihood, and livelihood is work with wages. Raw Societal realities, not fine-spun legal niceties, not competitive market economics but complex protective principles, shape the law when the weaker, working class sector needs succour for

livelihood through labour. The conceptual confusion between the classical law of contracts and the special branch of law sensitive to exploitative situations accounts for the submission that the High Court is in error in its holding against the petitioners. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship exonerates them of no consequences when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer, based on Arts. 38, 39, 42, 43 and 43-A of the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances."

8. Incidentally, the claim of the workmen arises by reason of discontinuation of the service at the units belonging to the appellant herein. The Labour Court while adjudicating the issue, as to the justification of the termination of services of the workmen in terms of the order of reference under Section 10 of the Industrial Disputes Act, came to a definite conclusion on the basis of evidence tendered that the work force did in fact work for more than 240 days in the year and as a matter of fact, there was no dispute raised on that score by the Board and it is on this factual score that the Labour Court did record that the presence of an intermediary would not, however, alter the situation as regards the existence of relationship of employer and the workmen and thus between the Board and the

claimants and as such answered the reference in the affirmative, resulting in a finding that the workmen are entitled to be reinstated with continuity of service along with 10% back-wages. It is this finding of the Labour Court which stands accepted by the High Court in writ petitions under Article 226 of the Constitution, challenging the validity of the award of the Labour Court and the High Court, as noted above rejected the writ petitions stating therein:

"On the admitted facts of the case it is to be ascertained as to whether after complying the principle of lifting of the veil, the existence of the relationship of workman and employer is surfaced or not. After critically examining the evidence lead in the case, the court below has come to the conclusion that there existed a relationship of employer and workman between the contesting parties and that the intermediatory contract was just an eye wash."

9. The High Court did in fact note with care and caution the doctrine of 'lifting of veil' in industrial jurisprudence and recorded that in the contextual facts and upon lifting of the veil, question of having any contra opinion as regards the exact relationship between the contesting parties would not arise and as such directed reinstatement though, however, without any back wages. While it is true that the doctrine enunciated in *Soloman vs. Soloman* (1897 Appeal Cases page 22) came to be recognised in the corporate jurisprudence but its applicability in the present context cannot be doubted, since the law court invariably has to rise up to the occasion to do justice between the parties in a manner as it deems fit. Rescopound stated that the greatest virtue of the law court is flexibility and as and when the situation so demands, the law court ought to administer justice in accordance therewith and as per the need of the situation.

"10. to 13.

14. Incidentally, the Haryana State Electricity Board in the usual course of business has had to maintain the plant and stations as a licensee within the meaning of Indian Electricity Act, 1910 and Electricity Supply Act, 1948. This

maintenance work cannot by any stretch be ascribed to be of seasonal nature but a continued effort to achieve the purpose of its existence in terms of the statute. The number of employees required for such purpose had been specified in the contract itself and as a matter of fact supervision of the Board as regards the attendance has also not been disputed before the Labour Court: Maintenance of records pertaining to other statutory duties and liabilities has also not been disputed. Documents, as disclosed before the Labour Court, (to wit Exb. M.5) depict the overall control of the workings of the contract labour including administrative control being with the Board. We deliberately refrain ourselves from going into the same, since that would be beyond the purview of writ jurisdiction and may amount to an appraisal of evidence but the factum of overall supervision and administration being with the Board and as dealt with by the Labour Court cannot in any way be doubted. It is on this perspective that the High Court also thought it fit to rely on the judgment and record its affirmation to what had been passed by the Labour Court, since no reasonable person could come to a conclusion different upon lifting the veil. In the contextual facts, we also record our concurrence to the observations of the High Court that finding of fact arrived at by the Labour Court cannot otherwise be interfered with while exercising powers under Article 226 of the Constitution, unless the same is otherwise perverse or there is existing an error apparent on the face of the record.

"15. to 18.

19. 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 Kashmir 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 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.

"20.

21. In that view of the matter we do not see any merit in these appeals and the appeals therefore fail and are thus dismissed. No order however as to costs."

From the above, it could be seen that the Hon'ble Supreme Court of India has held that, so called contractor was mere a name lender who procured labour for the Haryana State Electricity Board as broker, such contract was mere a camouflage which concealed real relationship of employer and employee. The Hon'ble Supreme Court has also held that if there was any genuine contract system, then obviously it had to be abolished as per Section 10 of the Contract Labour (Regulation and Abolition) Act following the procedure laid down therein.

In this case, there was also a finding of the fact that there was no genuine contract labour in place. In fact, it could be seen that in the above case, the workmen only served for a year and they were ordered to be reinstated in service on the ground that they have completed 240 days of service in a year and their termination was without complying with the requirement under Section 25F of the Industrial Disputes Act.

(ii) "2009 (1) LLN 121 (Kanpur Electricity Supply Company Ltd., versus Shamim Mirza)", wherein, the learned counsel would rely on paragraphs 4 to 9, 16, 20 and 24 which are extracted hereunder;

"4. The appellant-company was constituted by the U.P. State Government under Section 5 of the Electricity (Supply) Act, 1948 and was charged with several duties, as enumerated under Section 18 of the said Act, in relation to generation, transmission and distribution of electricity within the State. The appellant opened various cash centres in different divisions and sub-divisions for collection of electricity bills and for the said purpose, invited tenders for installation of Bradma Machines on contract basis. One such contract was awarded to M/s Vivek and Associates in the year 1995. Under the agreed terms and conditions, the machines were to be operated by the said concern, through its employees, for which it was to be paid Rs.175/- per day, per machine. The contract is stated to have continued till the year 1997.

5. Both the respondent-workmen raised an industrial dispute, alleging that their services had been illegally terminated by the appellant. Accordingly, the State Government referred, under Section 4K of the U.P. Industrial Disputes Act, 1947 (for short 'the Act'), the following dispute i.e. I.D. No.70 of 1997 for adjudication:

"Details of Industrial Dispute Whether removal/termination of services of the workman Shri Shamim Mirza, son of Shri Atiq Mirza, Cashier, w.e.f. 2.9.1996 by the Management is legal and justified? If not, to which relief/consequential benefits and from which date, the workman concerned is entitled to?"

(Except for change of name of the workman and date of termination of his services, the dispute referred in I.D. No.46 of 1997 was on similar lines.)

6. The case of the workmen in nutshell was that: they had been appointed as cashiers at two sub-stations when the appellant had adopted the policy of centralisation of all the 16-17 sub-stations for the purposes of collection of electricity bills; several new appointments were

made for operating these new machines; before their appointment as cashiers, they were all given six months training for this work; apart from collecting the electricity bills, they were also depositing the cash so collected in the Treasury in Chief Office as per the instructions of the Assistant Engineer (D); suddenly their services were terminated without assigning any reason and without giving any notice to them whereas persons junior to them were still working on the posts of cashiers. Their plea was that since the termination of their services was in violation of the provisions contained in Sections 6N, 6P & 6Q of the Act, they were entitled to be reinstated with continuity in service and with full back wages.

7. In the written statement filed before the adjudicatory authority, the stand of the appellant - management was that there was no relationship of employer and employee between them and the applicants and hence the dispute was not an industrial dispute; the post of the cashier was a promotion post which could be filled up by promotion from the cadre of assistant cashier; the cash centres were opened in various divisions and sub-divisions for the convenience of the consumers for depositing their electricity bills; tenders were invited for installing Bradma Machines in these centres on contract basis; the tender was awarded in favour of Vivek and Associates for the period from 1st July, 1995 to 30th June, 1996 which period was later extended upto 31st July, 1997 and that the contractor was responsible for the operation and upkeep of the machines, though the cash was to be handled by appellant's cashier or its duly authorised representative and, therefore, the question of applicants' employment with the appellant did not arise at all. In other words, the stand of the appellant was that the references in both the cases were factually and legally incompetent as the applicants were not "workmen" within the meaning of the Act.

8. Upon consideration of the evidence produced by both the parties, the adjudicatory authority formed the view that though no appointment letters had been filed by the workmen but it had come in evidence that before taking the work, letters were issued to them by an Assistant Manager of the appellant; though signatures of the

applicants did not appear in any of the columns of Electricity Cash and Revenue (ECR) rolls but their designation as cashier had been mentioned on all these sheets and in some of the letters there were signatures of the Assistant Engineer; in the contract given to M/s Vivek and Associates for operating Bradma machines it had been mentioned that it would be the responsibility of the contractor to operate these machines at all the 16 sub-stations but the cash was to be handled by the cashier of the appellant only but the appellant had failed to prove that any of its other cashiers' had handled the job of cash collection. It finally concluded that on the basis of the documents submitted by the workmen and for lack of proper rebuttal to these documents, there was no ground to presume that the workmen were the employees of the contractor and it stood proved that, in fact, they were in the regular employment of the appellant as cashiers. Thus, it was held that the workmen having worked for more than 240 days, their termination without notice and payment of compensation as contemplated under Section 6N of the Act, was illegal.

9. Being aggrieved, the appellant filed writ petitions under Article 226 of the Constitution, which have been dismissed by the impugned orders. The High Court has held that the Labour Court/Industrial Tribunal having considered all the aspects of the matter in the light of the evidence on record, no interference in exercise of power under Article 226 of the Constitution was called for. However, while dismissing the writ petition arising out of I.D. No.46 of 1997, the High Court modified the Award to the extent that the workman in that case would be entitled to 50% of the back wages pursuant to the Award.

10. to 15.

16. It is true that in the instant case, the workmen did not produce the letters of appointment as also their salary slips but they have been successful in adducing some contemporaneous documentary evidence, including ECR sheets bearing the signatures of the workmen and that of another senior officer of the appellant company (Ex.W-7, W- 10 to W-15), which shows that they were collecting cash on behalf of the appellant; depositing it in the van or central office of the appellant and were answerable to the officials of

the appellant. In this regard, Clause 5 of the terms and conditions of the contract awarded to Vivek and Associates is also relevant, which provides as under:

"You will be responsible for the operation of machines only. The cash handling is to be done by K.E.S.A., Cashier or a representative of K.E.S.A. duly authorised by Dy. C.A.O./Head Cashier."

20. In the light of the aforementioned factual matrix and the evidence on record, we are of the opinion that the courts below were justified in holding that both the workmen have established their claim of having worked with the appellant for more than 240 days as their employees. We find no reason whatsoever to interfere with the impugned judgments to that extent.

"21. to 23.

24. Bearing in mind the afore-noted broad parameters, we are of the opinion that the facts at hand do not warrant payment of back-wages to the respondents. In both the cases, though the respondents have succeeded in establishing that they were in the employment of the appellant when their services were terminated but nothing has been brought on record to show that they were selected through a regular recruitment process. It has also not been shown whether they were actually qualified for the post of a cashier. Besides, on their own showing they had worked with the appellant for about two years when their services were terminated. These circumstances, in our view, disentitle them from their claim for back wages. Accordingly, the orders of the High Court to the extent they affirm the directions of the adjudicatory authority with regard to the payment of back wages are set aside."

In this case, the issue was whether the employees were employed by the contractor and such plea was rejected by the Labour Court and it was held that the workmen were the direct employees of the Electricity Supply Company Limited and ordered for the reinstatement with the continuity of service and full backwages. However, the High Court has confirmed the award of reinstatement with continuity of service, however, modified the award insofar as backwages and reduced the same to 50%. The Hon'ble Supreme Court of India has ultimately confirmed the

substantial portion of the award namely reinstatement and continuity of service and denied 50% of backwages. In this case also, factually, the workmen there had served only for about two years.

(iii) Order, dated 25.10.2007 passed by a learned single Judge of this Court in a batch of writ petitions in W.P.Nos. 2188 to 29192 of 2004 (The Superintending Engineer TNEB, Masinagudi, Nilgiris versus G.Rajan and others).

In the above case, the same Electricity Board was involved and identical awards have been passed including grant of backwages apart from reinstatement. Further, the learned Single Judge has dismissed the Writ Petitions by confirming the award in paragraph 8 which is extracted hereunder;

"8. After careful consideration of the rival submissions made and looking into the materials available, this Court is of the considered opinion that all the writ petitions require and order of dismissal in the hands of this Court. The gist of the case of the claimants before the forum below was that they were all directly employed by the writ petitioner; that they have been working for more than a period of four years continuously; that in two consecutive years, they have worked for more than 240 days per year; that apart from that, they were regularly employed; that their work was being inspected by the department then and there, and thus, there was contractual relationship of employer and employee between the parties, and hence, their termination was illegal and bad. What was all contended by the writ petitioner before the Forum below and equally here also is that they were not entitled for the relief on the reasons that they were all employed by the contractors who were in turn engaged by the department writ petitioner; that they were not even given work regularly; but, they were engaged temporarily then and there by the contractors and not by the department; that they have not even worked for 240 days in one year as contended by them; that in fact, they were not entitled for the relief. After looking into the materials available, this Court has to reject the contentions put forth by the writ petitioner's side. In its elaborate order, the fourth respondent Labour Court has pointed out that the identity cards were issued by the department; that their work was being inspected by the officer of the writ petitioner department, and there are

materials to indicate that they have been working for more than four years and consecutively for 240 days per year for two years. Under the circumstances, the contentions put forth by the writ petitioner's side that there was no contractual relationship of employer and employee between the parties was rightly rejected. Once they have consecutively worked for 240 days in each year and also for two years, they should have been absorbed. On the contrary, the termination order was issued, which, as rightly recorded by the Labour Court, is illegal. Under the circumstances, the Labour Court only on consideration and appreciation of evidence both oral and documentary, has taken the correct view that the claimants who are the first respondent in all these writ petitions, were entitled for the relief and accordingly, ordered. This Court is unable to see any infirmity in that order calling for interference."

(iv) 2013 (10) SCC 324 (Deepali Gundu Surwase versus Karanti Junior Adhyapak Mahavidyala (Died) and others)", wherein, the learned counsel draw the attention of this Court to paragraph 25 which is extracted hereunder:

"25. The principle laid down in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra) was reiterated in P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar (2001) 2 SCC 54. That case makes an interesting reading. The respondent had worked as helper for 11 months and 18 days. The termination of his service was declared by Labour Court, Chandigarh as retrenchment and was invalidated on the ground of non-compliance of Section 25-F of the Industrial Disputes Act, 1947. As a corollary, the Labour Court held that the respondent was entitled to reinstatement with continuity of service. However, only 60% back wages were awarded. The learned Single Judge of the Punjab and Haryana High Court did not find any error apparent in the award of the Labour Court but ordered payment of full back wages. The two Judge Bench of this Court noted the guiding principle laid down in the case of Hindustan Tin Works Private Limited and observed:

"8. While it is true that in the event of failure in compliance with Section 25-F read with Section 25(b) of the Industrial

Disputes Act, 1947 in the normal course of events the Tribunal is supposed to award the back wages in its entirety but the discretion is left with the Tribunal in the matter of grant of back wages and it is this discretion, which in Hindustan Tin Works (P) Ltd. case this Court has stated must be exercised in a judicial and judicious manner depending upon the facts and circumstances of each case. While, however, recording the guiding principle for the grant of relief of back wages this Court in Hindustan case, itself reduced the back wages to 75%, the reason being the contextual facts and circumstances of the case under consideration.

"9. The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however the finding of fact is based on any misappreciation of evidence, that would be deemed to be an error of law which can be corrected by a writ of certiorari. The law is well settled to the effect that finding of the Labour Court cannot be challenged in a proceeding in a writ of certiorari on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though, however, perversity of the order would warrant intervention of the High Court. The observation, as above, stands well settled since the decision of this Court in Syed Yakob v. K.S. Radhakrishnan AIR 1964 SC 477.

"10. & 11.

12. Payment of back wages having a discretionary element involved in it has to

be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. As regards the decision of this Court in Hindustan Tin Works (P) Ltd. be it noted that though broad guidelines, as regards payment of back wages, have been laid down by this Court but having regard to the peculiar facts of the matter, this Court directed payment of 75% back wages only.

13.

14. The issue as raised in the matter of back wages has been dealt with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue, upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. In the event, however, the High Court's interference is sought for, there exists an obligation on the part of the High Court to record in the judgment, the reasoning before however denouncing a judgment of an inferior Tribunal, in the absence of which, the judgment in our view cannot stand the scrutiny of otherwise being reasonable. There ought to be available in the judgment itself a finding about the perversity or the erroneous approach of the Labour Court and it is only upon recording therewith the High Court has the authority to interfere. Unfortunately, the High Court did not feel it expedient to record any reason far less any appreciable reason before denouncing the judgment.

The aforesaid judgment became a benchmark for almost all the subsequent judgments."

According to the learned counsel for the petitioner, it is entirely within the discretion of the Labour Court to decide as to what relief could be granted to the workmen depending on the facts and circumstances of each case. Once such finding is given

ordering reinstatement unless such finding is ex facie illegal or perverse, this Court cannot interfere with such factual finding rendered by the Labour Court.

(v) "2012 (3) LLN 681 (DB) (Mad.) (R.Lakshmi versus The Chief Engineer (Personnel), TNEB & another), wherein, the learned counsel would draw the attention of this Court to paragraphs 34 and 36 of the said judgment, which are extracted hereunder;

"34. On going through the ingredients of Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, we are of the considered view that the petitioner's husband, completed 480 days of work in a period of 24 calendar months (during his lifetime), and would become automatically a permanent employee under the respondents/Tamil Nadu Electricity Board, because of the simple fact that the Section mandates the respondents to confer permanent status on the petitioner's husband S.Raju and the conferment of permanent status to the petitioner's husband S.Raju/Employee/Workman would not depend upon his Employer on his own or on a direction given by the Competent Authority under the Act.

35.

36. We also hold that even in the absence of any enquiry conducted by the Inspector under the Act, the right conferred upon the petitioner's husband to claim the benefit of permanent status could not be denied by any means because of the simple fact that Section 3(1) of the Act imposes an obligation upon the respondents/Electricity Board Authorities to confer permanent status of the petitioner's husband, who had rendered 480 days of work continuously in a period of 24 calendar months and on that basis, we hold that the petitioner's husband deceased S.Raju is entitled to be made permanent by the respondents/Tamil Nadu Electricity Board Authorities and once, in law, he was entitled to the benefit of conferment of permanent status, the resultant benefit could not be deprived to the petitioner (wife) notwithstanding the fact that during his lifetime no such permanency was conferred on him. Viewed in that perspective, we hold that a workman, who had completed 480 days of continuous service in a period of 24 calendar months, would become automatically a permanent Employee under the Employer, even if, an Employer

had not conferred him with the permanent status or even if, an Employer had not conferred him with the permanent status or even if, no direction was issued by the Competent Authority in this regard under the Act, 1981 or the Rules framed thereunder. Accordingly, we answer the reference.

In the above decision, the Division Bench of this Court has held that the workmen would get permanent status automatically under Section 3(1) of the Act, 1981, once he completes 240 days of service in a year or 480 days in 24 calendar months even in the absence of specific order issued by the Management. In this case, he would submit that there is a finding of the fact that the workmen had completed 240 days in a year and 480 days in 24 calendar months and therefore, they are automatically entitled to reinstatement into service.

(vi) "2013(10) SCC 324, (Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya & others)"

In this case, the learned counsel would rely on the ruling of the Hon'ble Supreme Court holding that denial of backwages would amount to punishing the employee and would amount to rewarding the employer even the termination was held to be invalid. Therefore, he would submit that the denial of wages despite the fact that the termination was found to be illegal, is bad in law and therefore, the award of the Labour Court ought to be interfered with on that account.

(vii) "1980 (4) SCC 443, (Surendra Kumar Verma & others versus Central Government Industrial Tribunal-cum-Labour Court, New Delhi & another)", wherein, he learned counsel would draw the attention of this Court to paragraphs 6, 10 and 13 which are extracted hereunder;

"6. We do not propose to refer to the cases arising under section 33 and 33A of the Industrial Disputes Act or to cases arising out of references under sections 10 and 10A of the Industrial Disputes Act. Nor do we propose to engage ourselves in the unfruitful task of answering the question whether the termination of the services of a workman in violation of the provisions of S. 25F is void ab initio or merely invalid and inoperative, even if it is possible to discover some razor's edge distinction between the Latin 'Void ab initio' and the Anglo-Saxon 'invalid and inoperative'. Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against

certain kinds of mischief, the Court is not to make inroads by making etymological excursions. 'Void ab initio'. 'invalid and inoperative' or call it what you will, the workmen and the employer are primarily concerned with the consequence of striking down the order of termination of the services of the workmen. Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums: the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The Court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.

"7 to 9

10. In the result all the appeals are allowed and the workmen-appellants are directed to be reinstated with full back wages. We, however, super-impose the condition that the salary on reinstatement of the workmen will be the salary which they were drawing when they were retrenched (subject of course to any revision of scales that might have been made in the meanwhile) and the period from the date of retrenchment to the date of reinstatement will

not be taken into account for the purpose of reckoning seniority of the workmen among temporary employees. The respondent is free to deal with its employees, who are temporary, according to the law. There will be no order regarding costs.

"11, 12.....

13. Proceeding on the footing mentioned above, my learned brother Chinnappa Reddy has, I say with respect, rightly concluded that on the facts and circumstances before us the appellants should be reinstated with full back wages subject to the proviso that the salary on reinstatement will be the salary drawn by the respective appellants on the date of their retrenchment, qualified by the impact of any revisional scale meanwhile, and subject to the further proviso that the period intervening between the date of retrenchment and the date of reinstatement will be omitted from account in the determination of the seniority of these appellants among temporary employees. Ordinarily, a workman who has been retrenched in contravention of the law is entitled to reinstatement with full back wages and that principle yields only where the justice of the case in the light of the particular facts indicates the desirability of a different relief. It has not been shown to us on behalf of the respondent why the ordinary rule should not be applied."

In this case, the Hon'ble Supreme Court of India has held that the normal rule when reinstatement is ordered, back wages was automatic. In case of departure from application of normal rule, it must be only on compelling reasons.

(viii) "2010(3) SCC 192 (Harjinder Singh versus Punjab State Warehousing Corporation)", wherein, the learned counsel would rely on paragraphs 30 and 31 which read as under:

"30. Of late, there has been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalisation are fast becoming the raison d'etre of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present

one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman-employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood.

31. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer - public or private."

In the above paragraphs, the Hon'ble Supreme Court has upheld the importance of the fundamental and constitutional right of citizen and held that the citizens cannot be deprived of their livelihood. Therefore, the learned counsel for the workmen would submit that the Labour Court ought to have ordered backwages if not full, atleast some percentage of backwages.

(ix) "2010 (5) SCC 497, (Anoop Sharma versus Executive Engineer, Public Health)", wherein, the learned counsel would rely on paragraphs 22, 25 and 27 which are extracted hereunder;

"22. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25-F of the Act.

"23, 24.

"25. The judgment of the Constitution Bench

in Secretary, State of Karnataka vs. Uma Devi (supra) and other decisions in which this Court considered the right of casual, daily wage, temporary and ad hoc employees to be regularised/continued in service or paid salary in the regular time scale, appears to have unduly influenced the High Court's approach in dealing with the appellant's challenge to the award of the Labour Court. In our view, none of those judgments has any bearing on the interpretation of Section 25- F of the Act and employer's obligation to comply with the conditions enumerated in that section.

"26.

"27. In the result, the appeal is allowed. The impugned order of the Division Bench of High Court is set aside and the award passed by the Labour Court is restored. If the appellant has not already been reinstated, the respondent shall do so within one month from the date of receipt/production of copy of this order. The respondent shall also pay the back wages to the appellant within a maximum period of three months, failing which the appellant shall be entitled to interest at the rate of 9% per annum from the effective date of reinstatement i.e., 21.3.2000. The parties to bear their own costs."

The above judgment of the Hon'ble Supreme Court held that when the Labour Court has interfered with the termination of the workmen for non-compliance of Section 25F, the same cannot be interfered with by the High Court stating that his original appointment was not in accordance with the rules. The Hon'ble Supreme Court was held that the High Court was unduly influenced by judgment of Umadevi case.

(x) "2011(6) SCC 584 (Devinder Singh versus Municipal Council, Sanaur)", wherein, the learned counsel would particularly draw reference to paragraph 13 which is extracted hereunder:

"13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. It is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on

contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

In the above case, the Hon'ble Supreme Court has held that Section 2(s) of the I.D. Act does not make any distinction in regard to the method of recruitment, terms and conditions of employee/contract of service etc., This Section also does not make any distinction between full time or part time employee or a person appointed on contract basis. Therefore, the Hon'ble Supreme Court of India has held that in case there is a violation of Section 25-F, the workman is entitled to the grant of relief of reinstatement into service and the reasoning of the High Court reversing the award of reinstatement, was interfered with by the Hon'ble Supreme Court of India.

22. Apart from the above decisions, the learned counsel would also rely a decision of a Division Bench of this Court reported in "1992-I LLJ 9, (S.Ramaiah Mudaliar Bros & others versus Presiding Officer, Industrial Tribunal, Madras & another)" the learned counsel would draw the attention of this Court to paragraph 13, wherein the Division Bench of this Court has observed as under:

"13.Even otherwise, we are of the opinion that the discrepancy as such cannot be made much of by the petitioners as the Tribunal had not relied upon the figures given in the claim statement as such. But the affidavits can be placed on a higher pedestal and they can be treated as evidence. The claim statement does not amount to evidence. Once the affidavits are filed before the Tribunal, it is for the opposite party to contradict the same by filing counter affidavit with regard to each of the factories."

The learned counsel for the workmen would submit that the evidence tendered by the Management Witness has more significance than the statement filed by the workmen. Therefore, the Labour Court has rightly drawn support from the evidence of the Management Witness for its eventual conclusion.

23. The learned counsel also would rely on yet another decision of the Hon'ble Supreme Court reported in "1999 (6) SCC 82, (Ajaib Singh versus Sirhind Cooperative Marketing-cum-

processing service society limited and another)", wherein, he would draw attention of this Court to paragraph 10 which is extracted hereunder:

"10. It follows, therefore, that the provisions of the Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman namely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour Court or Board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned counsel for the respondent management on the Full Bench judgment of the Punjab and Haryana High Court in Ram Chander Morya Vs. State of Haryana is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held "neither any limitation has been provided nor any guidelines to determine as to what shall be the period of limitation in such cases".

24. The above decision was in relation to whether workman can be denied relief merely on the ground of delay. According to the Hon'ble Supreme Court of India, which held that even in a case where delay is shown to be existing, the Labour Court, while dealing with the case, can properly mould the relief by declining the grant of relief to the workmen till the date he raised the dispute regarding his illegal termination or dismissal. Therefore, the learned counsel would submit that the delay per se cannot be fatal to the dispute raised by the petitioners herein.

25. In regard to last submission made on behalf of the Board at least compensation to be granted instead of reinstatement, the

learned counsel for the workmen would submit that before the Labour Court, such plea was not raised and therefore, it is not open to the Board to plead alternative relief to be granted to the workmen in the proceedings before this Court. According to him, such plea must be raised and adjudicated by the Labour Court in first instance.

26. On the whole, the learned counsel for the workmen would submit that the award of the Labour Court should be interfered with only in regard to the denial of continuity of service, backwages and other benefits by the Labour Court and therefore, he would urge that the writ petitions filed on behalf of the workmen namely W.P.Nos.23526 of 2011 and 21654 of 2011 may be allowed.

27. This Court considered the rival submissions made on behalf of the Board and the workmen and also gone through the legal principles laid down by various Courts on the subject matter, perused the materials and pleadings placed on record.

28. The common awards passed by the Labour Court in respect of both batches of industrial disputes are on the basis of the unimpeachable and unequivocal materials placed for consideration before the Labour Court both in terms of presentation of documents as well as tendering of oral evidence. As narrated above, the Labour Court has rendered its finding on the basis of the documents issued by the Board Officials themselves certifying the employment of the workmen with the Board during a particular period of time. The Board has not tendered any evidence at all in the proceedings before the Labour Court to repulse the contentions and the plea raised on behalf of the workmen about the nature of their employment, period of employment and also in regard to the sham and nominal arrangement of contractual system which was adopted by the Board. In the absence of any evidence to show that there was a genuine contract system in place during the relevant time, and such contract system was regulated and governed by the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, the mere contention that the workmen were employed on contractual basis would not be acceptable and therefore the Labour Court has rightly held that the so called arrangement as contended by the Board was sham and nominal.

29. Infact, much emphasis has been placed by the Labour Court itself on the categoric and clear evidence given by the Management Witness particularly in regard to the evidence of Management Witness MW.1 in respect of ID Nos.502 to 508 wherein the witness has completely supported the claim of the workmen. He not only clearly deposed that the workmen were doing the work of the Board but also that they had also completed 240 days in a

year and 480 days in 24 Calendar months. He had also deposed that the nature of employment was continuous and permanent and their employment was supervised by the Board Officials. What more is required for the Labour Court to come to a conclusion in favour of the workmen is what this Court is called upon to decide. In fact, the evidence of the Management was hardly helping the case of the Board to put up any resistance at all against the claim of the workmen. When such is the case, the arguments advanced on behalf of the Board before this Court hardly merit any serious consideration since it was almost a open and shut case for the workmen for grant of relief of reinstatement by the Labour Court.

30. The arguments put-forth on behalf of the Board that the workmen themselves have admitted that their services were terminated much before the crucial date i.e., 05.01.1998 cannot advance the case of the Board any further since ultimately the decision has to be taken on the basis of the number of days worked by the workmen in terms of the provisions of the Tamil Nadu Industrial Labour Employment (Conferment of Permanent Status to Workmen) Act, 1981. In fact, the Management Witness himself has admitted that the workmen concerned had worked 240 days in a year and 480 days in 24 Calendar months and that evidence was a clinching factor for the Labour Court to order reinstatement eventually. Today, it is not open to the Board to disown its own evidence tendered duly before the Labour Court.

31. If one could see the common awards passed by the Labour Court in both the batch of industrial disputes, no Court which is entrusted with the task of judicial review of the awards of present nature, can come to any other conclusion except to endorse the awards substantially. When the awards have been rendered on the basis of factual findings, such findings cannot be interfered with by this Court unless the same is wholly illegal or perverse. In fact, no perversity has been pointed out even remotely by the learned counsel appearing for the Board. Even otherwise, there appears to be no lacunae in the findings rendered by the Labour Court in favour of the workmen.

32. In fact, in terms of the above referred decisions cited on behalf of the workmen, it could be seen that even the workmen who have rendered less number of the years of service, say, one year or two years were also granted the benefit of reinstatement if their ultimate termination was found to be illegal and unjustified and was in violation of the provisions of the Industrial Disputes Act. Therefore, it does not lie in the mouth of the Board today to put-forth their objections that these workmen were not in service of the Board as on 05.01.1998 and hence not entitled to reinstatement. Such objection have no merit whatsoever in regard to the ultimate relief granted by the

Labour Court which in the opinion of this Court, deserve to be upheld in all fours. The arguments put-forth on behalf of the Board that the alternative relief of compensation being granted, this Court is of the view that once the termination was found to be illegal and invalid, unless there was a specific pleading taken by the Board before the Labour Court pleading special circumstances, the automatic relief that could be granted to such illegal termination of the workmen was only reinstatement in service. Such pleading ought to have been raised and adjudicated by the Labour Court and in the absence of such adjudication, it is not open to the Board to raise the plea of compensation for the first time before this Court. More over, when the Board itself has implemented similar awards passed in respect of the similarly placed workmen in pursuance of the confirmation by the High Court in its order dated 25.10.2007 in W.P.Nos.29188 to 29192 of 2004, the Board cannot now take a plea of compensation to be paid to the workmen in lieu of the reinstatement. Such plea per se appears to be discriminatory, unreasonable and the same cannot stand the test of constitutional scrutiny, particularly, in terms of Article 14 of the Constitution of India.

33. In regard to the delay in raising the dispute, no doubt the Board has legitimate objections in that regard, but at the same time, the Labour Court did appreciate the belated raising of disputes by the workmen concerned and rightly denied continuity of service, backwages and attendant benefits in respect of one batch of disputes, viz., I.D. Nos. 502 to 508 of 2004 and denied backwages and attendant benefits in respect of other batch of disputes, viz., I.D. Nos. 60 to 80 of 2003. Therefore, the Labour Court was conscious of the belated approach by the workmen and denied them full benefits which the workmen were normally otherwise entitled to. Therefore, this Court does not find anything amiss or wrong in the approach of the Labour Court in granting the main relief of reinstatement and denying certain consequential benefits.

34. Be that as it may, the number of decisions relied on by the learned counsel appearing for the workmen would undoubtedly strengthen the claim of the workmen, namely, that the specious plea advanced by the Board that these workmen were engaged by the contractors, did not cut much ice with the Labour Court. Ultimately, the Labour Court found that such plea was not supported by any materials and it was merely pleaded by the Board in order to avoid its liability towards its own workmen. After all, it was undeniably established before the Labour Court that the workmen concerned were employed for executing the work of the Board and once such factum has been unequivocally established, the claim of the workmen seeking permanency or reinstatement on their being illegally terminated, gets

strengthened in view of the completion of 240 days of continuous service in a year or 480 days of continuous service in 24 calendar months.

35. As rightly relied on by the learned counsel in the above quoted decision, the Hon'ble Supreme Court has consistently held that the violation of the provisions of the Industrial Disputes Act, will entail reinstatement being ordered. On the other hand, the objection of the learned counsel for the Board in regard to the grant of relief of reinstatement as these workmen were employed on contract basis, cannot be countenanced both in law and on facts since, the employees were covered under the Tamil Nadu Industrial Labour Employment (Conferment of Permanent Status to Workmen) Act, 1981 and by virtue of Section 3, they were entitled to be made permanent immediately when they completed 240 days in a year and 480 days in 24 calendar months as held by the Hon'ble Supreme Court in one of the above quoted decisions.

36. The objections raised on behalf of the Board that the Labour Court has mis-directed itself by unduly relying on the evidence tendered by the Management Witness and overlooking the admission of the workmen themselves in regard to the period of employment, this Court is of the view that such contention cannot be pressed into service for the simple reason that the evidence of the Management Witness was very clear and lucid without any contradiction. Ultimately, the Labour Court has to be guided by the uncontroverted evidence tendered before it, no matter what the claim of the workmen was. This is more so, when the Board itself was not maintaining proper records in regard to the period of employment of thousands of employees employed by them through a sham arrangement by having a middleman who were acting as brokers and not as contractors as defined under the Contract Labour Abolition Act, 1970. Therefore, the Labour Court has rightly relied on the evidence tendered by the Management Witness coupled with the fact that the Certificates issued by the Officials of the Board are self explanatory and the Labour Court need not look for any other material to uphold the claim of the workmen. In fact, the Labour Court, as narrated earlier in the judgment and gave a categoric finding that the Board has not taken any effort to bring in any contra evidence to refute the claim of the workmen. On the other hand, the Board has, by and large, remained passive in the face of workmen's claim being established beyond any doubt. Therefore, in such scenario, it is not open to the Board to expect this Court to exercise its judicial review and interfere with the findings of the Labour Court. Once, the findings of the Labour Court are clear and sound, both in terms of factual aspects and in terms of legal principles, this Court has to necessarily shy away from

interfering with the award ultimately passed by the Labour Court.

37. While upholding the award of reinstatement and continuity of service in respect of ID Nos. 60 to 80 of 2003, at the same time, this Court is unable to endorse the denial of continuity of service to the other batch of disputes, viz., I.D. Nos. 502 to 508 of 2004 since that would cause extreme loss and hardship to the workmen covered under the said batch of industrial disputes. Of-course, the reasoning of the Labour Court that if ordering continuity of service without attendant benefits, it would unsettle the settled position and would also dilute the interest of the workmen who were on employment as on 05.01.1998. Nevertheless, the Labour Court atleast ought to have ordered continuity of service only for the purpose of counting of service towards terminal benefits and not for any other purpose like seniority, promotion etc. Therefore, denial of attendant benefits is not to be faulted with, but denial of continuity of service in respect of award passed in ID Nos. 502 to 508 of 2004 dated 24.07.2009 is liable to be interfered with.

38. In the said circumstances, this Court is of the view that the said award is liable to be modified only to the extent that the continuity of service is also to be granted to the workmen covered under the said IDs only for the purpose of terminal benefits and not for other purpose. To that extent, the award, dated 24.7.2009 passed in ID Nos.502 to 508 of 2004 stands modified and in other respects, like denial of back wages and other attendant benefits, the same shall remain intact.

39. In the light of the above discussion, this Court pass the following:

i) The Writ Petitions in W.P.Nos. 17935 to 17941 of 2011, 18095 to 18114 of 2011 filed by the Board shall stand dismissed.

ii) Likewise, the Writ Petition in W.P.No.21654 of 2011 filed by the workmen, seeking for back wages and attendant benefits shall stands dismissed. As regards the Writ Petition in W.P.No.23526 of 2011, it is partially allowed only to the extent of modifying the award by granting continuity of service to the workmen concerned only for the purpose of terminal benefits.

iii) Accordingly, the Board is directed to comply with the awards passed by the Labour Court including the award as modified by this Court to the extent as indicated in para (ii) above, within a period of eight weeks from the date of receipt of a copy of this order.

iii) No costs.

iv) Consequently, all connected MPs are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Superintending Engineer,
Kadamparai Generation Circle,
TANGEDCO (erstwhile TNEB),
Minparai-642 101, Coimbatore District.

2. The Presiding Officer,
Labour Court,
Coimbatore.

+1cc to Mr.V.Ajoy Khose, Advocate Sr.63512

+2cc to M/s.T.S.Gopalan & Co., Advocate Sr.63026 and 63027

सत्यमेव जयते

W.P.Nos.17935 of 2011 etc.,

vd[co]
srg 25/10/2019

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