

9. IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 24.07.2019
CORAM
THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P.No.24938 of 2013
and
M.P.No.1 of 2013

The Management,
represented by its Administrator,
Cheyyar Co-operative Sugar Mill,
Anakkavur,
Thiruvannamalai District. ... Petitioner

Vs

1. The Presiding Officer,
Additional Labour Court,
Vellore,
Vellore District.
2. Dina Kooli Thozhilalar Sangam,
represented by Secretary,
J. Ravindran,
Cheyyar Co-operative Sugar Mills,
Anakkavur,
Thiruvannamalai District. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records culminating in the passing of the award dated 08.09.2009 made in I.D.No.34 of 2005 on the file of the first respondent and quash the same.

For Petitioner : M/s. G. Thilakavathi
Sr. Counsel
for Mr. R. Gopinath

R1 : Court

For R2 : Mr. S. Anbazhagan

ORDER

The petitioner has come forward to challenge the order of the 1st Respondent in I.D.No.34 of 2005 dated 08.09.2009. The Government has referred the dispute of the union / second respondent under Section 10(1)(d) of I.D Act, 1947 to the Labour Court to decide, as to whether the demand of the union that the contract system

must not be implemented in production departments is justified or not.

2. The case of the 2nd Respondent/Union is that all the casual and daily wages workers employed under the Management in Cane Section, Boiler Section, Cane Yard, Engineering Department and Manufacturing Department had been employed from 1988 and were recruited over the period till 1996. There were nearly 290 casual workers working in various departments, including packing the chemicals in gunny bags, etc. The members attached to the second respondent union is continuously working for more than a decade and that there is already a demand with regard to regularization of those employees. The management is trying to engage contract workers in the place of the casual workers. Every time when Tenders were issued regarding recruitment, the members of the second respondent union had to approach the Court so that their employment is not disturbed.

3. Per contra, it is the case of the Management that the reference itself is without jurisdiction and contrary to the provisions of Contract Labour (Regulation and Abolition) Act, 1970. In the connected Writ Petition in W.P.No.14998 of 2011, it has been observed that the issue with regard to the contract labour may be considered. It is submitted that the reference itself is not maintainable and that there is yet another dispute regarding regularization and abolition pending in I.D.No.70 of 2004.

4. When the reference itself is vague and that the question of abolition of contract labour cannot be dealt with by the Court, the employees are not entitled to get any relief. Before the Labour Court, the representative of the union was examined, wherein it has been categorically stated that for the very same job performed by the members of the union, tenders have been called for and that the said work as stated supra have been performed by the casual workers. As the job performed by the members of the union Sangam was perennial in nature, the question of introduction of contract labour system in a job that is perennial in nature would be banned.

5. There is no oral and documentary evidence let in by the management to substantiate the case of the management. As stated by the parties, the issue related to payment of wages and drawing of seniority list and consequential absorption has been referred to in I.D.No.70 of 2004. The union has questioned the adoption of contract labour system, when the members are doing the work which is perennial in nature and engaged as casual labour.

6. The contentions raised by the respondent that abolition of contract labour issue cannot be referred to, to the Tribunal/ Labour Court appears to be sound. The issue on hand is not with regard to abolition of contract labour but with regard to introduction of contract labour system, which is not permissible. It is no doubt true that the contention of the management that the question of abolition of contract labour system cannot be a reference and that dispute has to be adjudicated only by the authority under the Contract Labour (Regularization and Abolition) Act, 1970.

7. It is to be noted that the question as to whether the contract labour system is sham and nominal, can be referred to, for effective adjudication and if the Labour Forum comes to a conclusion that the contract labour system is sham and nominal, certainly the labour Forum has got powers to grant relief. If it is a genuine contract labour system, the only source available to the Tribunal or the Forum is to send the matter to the concerned authority under the Contract Labour (Regularization and Abolition) Act, 1970 and the Government will have to take a decision with regard to abolition of contract labour system. Those two issues do not arise in the facts of the case. The issue is with regard to introduction of contract labour system which has been sought to be prevented by the union. The Labour Court has answered the reference that the contract labour system cannot be introduced in a job that is perennial in nature and indirectly held that the job has been regularly performed by the members of the petitioners Sangam.

8. That apart, the other dispute in I.D.No.70 of 2004 regarding the relief of regularization has been granted and the writ petition filed against the award was rejected. That being the case, the issue in the present writ petition is more academic, but in any event as the labour Court has rightly rejected the issue with regard to introduction of contract labour system on the ground that the job is in perennial in nature and that management shall not engage contract labours by terminating the casual labours, cannot be found fault with.

9.Hence, this writ petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

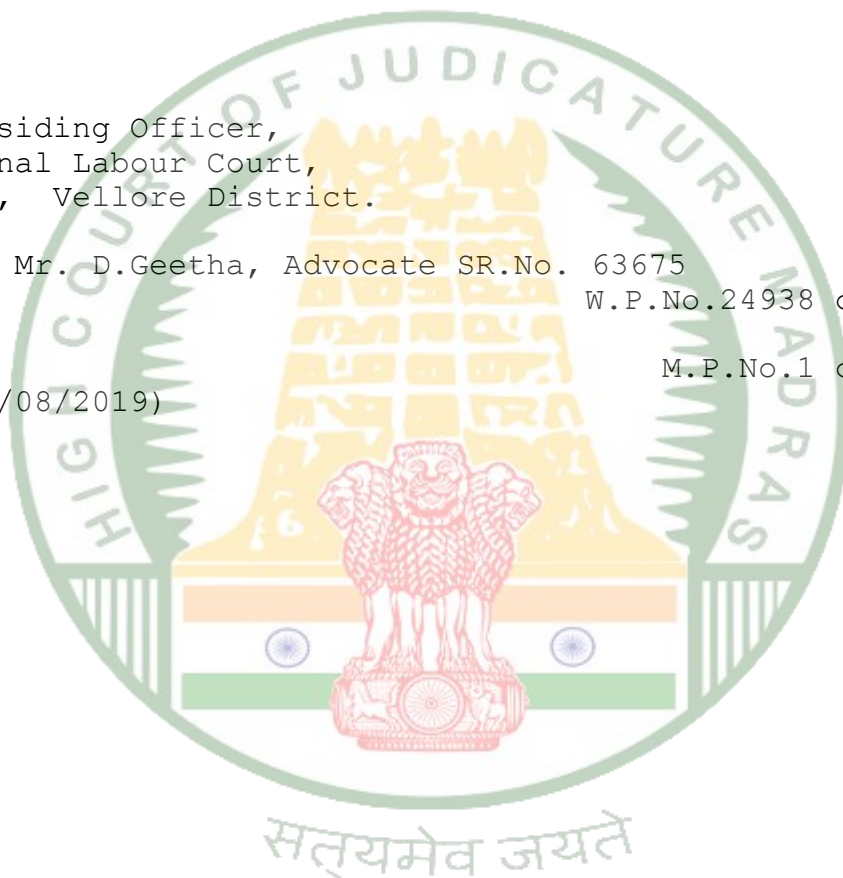
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To

The Presiding Officer,
Additional Labour Court,
Vellore, Vellore District.

+1cc to Mr. D.Geetha, Advocate SR.No. 63675

W.P.No.24938 of 2013
and
M.P.No.1 of 2013

A.SK(08/08/2019)



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