

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.08.2020  
Delivered on : 20.08.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE  
and  
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

W.A.No.4008 of 2019  
and  
CMP.No.25129 of 2019

TNCSC Employees Union,  
Regn. No.325/CPT  
Affiliated with Labour Progressive Federation  
Rep. by its State President  
No.42, Thambuswamy Road,  
Kilpaik, Chennai. ... Appellant

..vs..

- 1.Tamil Nadu Civil Supplies Corporation  
Rep. by its Managing Director,  
No.42, Thambuswamy Road,  
Kilpaik, Chennai - 10.
- 2.The Senior Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Satchitrananda Moopannar Road,  
Near Membalam,  
Thanjavur - 613 001.
- 3.The Senior Regional Manager  
Tamil Nadu Civil Supplies Corporation,  
Master Plan Complex,  
Collectorate, Nagapattinam - 611 001.
- 4.The Senior Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Mannargudi Road, Velamal,  
Thiruvaruru - 610 001.
- 5.The Senior Regional Managher (north)  
Tamil Nadu Civil Supplies Corporation,  
No.7, Conrad Smith Road,  
Gopalapuram, Chennai - 86.

- 6.The Senior Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Goundampalayam,  
Coimbatore - 641 030.
- 7.The Regional Manager(South)  
Tamil Nadu Civil Supplies Corporation,  
No.7, Conrad Smith Road,  
Gopalapuram, Chennai-86.
- 8.The Regional Manager  
Tamil Nasdu Civil Supplies Corporation,  
Raghavan Commercial Complex,  
2<sup>nd</sup> Floor, 36 Vellala Street,  
Ariyalur - 621 704.
- 9.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Nellikuppam Road, Semmandalam,  
Cuddalore - 607 001.
- 10.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
No.1, Salem Main Road,  
Dharmapuri - 636 705.
- 11.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Near Collector Office,  
District Sports Ground Backside,  
Dindigul - 624 001.
- 12.The Regional Manager  
Tamil Nadu Civil Supplies Corporation,  
No.38-A,/10, Housing Unit,  
Nasiyanur Road, Manickampalayam,  
Erode - 638 011.
- 13.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Vandavasi Road,  
Pallavan Nagar(Housing Board),  
Kanchipuram 631 501.
- 14.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Konam, Nagercoil,  
Kanniyakumari - 629 004.
- 15.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Collectorate Complex,  
Karur - 639 562.

- 16.The Regional Manager  
Tamil Nadu Civil Supplies Corporation,  
TNSCE Complex,  
By Pass Road, Krishnagiri - 635 001.
- 17.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Ward No.10, Kuruvikaran Salai,  
Aringnar Anna Nagar,  
Madurai - 625 020.
- 18.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Namakkal Collector Office Back Side,  
Siluvampatti Post,  
Namakkal - 637 003.
- 19.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
198/a, Goodshed Road, Nilgiris - 643 001.
- 20.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Thurai Mangalam,  
Perambalur 621 220.
- 21.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Kalyanapuram first Street,  
Trichy Bye-Pass road,  
Pudukottai - 622 002.
- 22.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Collectorate Master Plan Complex,  
Ramanathapuram - 625 525.
- 23.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
No.528, Trichy Main Road,  
Dasanaikenpatti (Post),  
Salem - 636 201.
- 24.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Collectorate Complex,  
Phase-ii,  
Sivagangai-630 562.
- 25.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
No.3-112, RMTTC Colony,  
Bodi Main Road, Theni - 625 531.

26.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Court Complex, Trichy - 628 008.

27.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
No.91, St. Thomas Road,  
Maharajah Nagar,  
Thirunelveli - 627 001.

28.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
No.6, Lalbagadur Street,  
Periyakumam, Thiruvallur- 602 001.

29.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Sidco Complex, Vellore Road,  
Vengikal,  
Thiruvannamalai - 606 604.

30.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
No.C-42, 43, 44 Sipcot Complex,  
Tuticorin - 628 008.

31.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Pallavasathukuppam,  
Vellore - 632 002.

32.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Chennai Road, Villupuram -605 602.

33.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
Collectorate Complex,  
Virudhunagar - 626 001.

34.The Regional Manager,  
Tamil Nadu Civil Supplies Corporation,  
No.48, NGR Nagar Main Road,  
SRC Mill Compound, Uthukuli Main Road,  
Tirupur - 641601.

... Respondents

PRAYER : Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order dated 05.09.2019, passed in W.P.No.19899 of 2017.

Prayer in W.P.No.19899 of 2017:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Mandamus directing the respondents corporation to abide by Clause 3 of Settlement of 19.9.1991 and clause 5 and 6 of the settlement of 30.1.1997 unless the same is substituted by another settlement or an award award and issue such further or other appropriate orders.

For Appellant : Mr.V.Prakash, Senior Counsel  
for M/s Gowtham S.Raman

For Respondents : Mr.Vijay Narayanan,  
Advocate General  
Asst. by Mr.C.Munusamy, Spl.GP.

JUDGMENT

SENTHILKUMAR RAMAMOORTHY J.,

This intra court appeal arises out of a writ petition filed by the Appellant for a writ of mandamus to direct the Tamil Nadu Civil Supplies Corporation (the TNCSC) to adhere to Clause 3 of the settlement dated 19.09.1991 and Clause 5 and 6 of the settlement dated 30.01.1997 until the same is substituted by an other settlement or award.

2. The Appellant, TNCSC Employees' Union (the Trade Union), is a trade union which represents member employees of the TNCSC. These employees were recruited through the Employment Exchange as packers, bill clerks and watch men. Such recruitment was either on permanent or seasonal basis. The Trade Union entered into a settlement on 19.09.1991 (the First Settlement) with the TNCSC as per Section 12(3) of the Industrial Disputes Act, 1947 (the ID Act). By the First Settlement, the wages of three categories of workers, namely, bill clerks, helpers and watchmen were fixed for the years 1991-1992, 1992 - 1993 and 1993 - 1994. In addition, clause 3 of the First Settlement provided for preference to seasonal employees while filling regular vacancies. Such preference was, however, subject to the seasonal employee concerned fulfilling all qualification requirements, albeit age relaxation was to be provided by obtaining the concurrence of the Government. The First Settlement was valid for a period of three years.

3. On 30.01.1997, another settlement was executed by the TNCSC and the workmen through their unions (the Second Settlement). Once again, the wages of the three categories of workmen were revised and fixed with effect from 15.09.1994. The said wage revision was also for a period of three years and subject to the condition that basic pay and D.A. would

stand revised as and when the Government revised the relevant G.O. It also dealt with other aspects such as arrears of wages and dearness allowance; allowances to graduate employees; handling charges to load men; employment opportunities in procurement regions; the family benefit fund; and, most importantly for the present purposes, preference in employment. Preference in employment is dealt with in Clause 5 and the same is as under:

"(5) PREFERENCE IN EMPLOYMENT:

As regards the demands of the workmen for giving preference to the qualified seasonal employee in the D.P.Cs while filling the regular vacancies, it is agreed that the Clause 3 in the settlement dated 19.09.1991 (regarding wage revision to D.P.C. employees) will continue for another three years i.e. whenever the TNCSC has to go to the Employment Exchange for direct recruitment of any class III or class IV services, after exhausting the eligible candidates among the existing regular employees in the feeder categories, the qualified seasonal employees who are initially recruited through employment exchange will be given preference relaxing only the age qualification but not relaxing any other qualification, subject to the policy of reservation. In the event of absorbing the seasonal employees in the vacancies that arise in any region throughout the State of Tamil Nadu, the qualified hands will be selected by drawing the centralised seniority list in the Head Office level according to total of broken periods of service and they might be allotted to the needy regions wherever vacancies arise, on their requisition. Where age relaxation becomes necessary, the Management will get appropriate concurrence of the Government."

Clause 8 of the Second Settlement is as under:

"It is agreed that the settlement will be valid for three years."

4. After the Second Settlement, no further settlements or awards relating to the subject matter thereof and, in particular, the preference given to seasonal employees was executed or pronounced. In these facts and circumstances, there are about 1000 vacancies in the TNCSC. For the purpose of filling up vacancies that arise from time to time, panels are prepared periodically. The last panel was prepared in the year 2011 and is said to have been prepared on the basis of the Second Settlement. Thereafter, the TNCSC has not drawn up a panel on the basis of the Second Settlement or otherwise. Instead, the TNCSC issued a notice of termination on 10.05.2010, whereby it purported to terminate the Second

Settlement. This resulted in an industrial dispute which is pending before the Conciliation Officer. Meanwhile, the TNCSC addressed a communication on 18.07.2017 to the Regional Manager to publish an advertisement to call for applications in respect of the available vacancies. The writ petition was filed in the said facts and circumstances. By impugned order dated 05.09.2019, the writ petition was dismissed on the ground that the Trade Union should approach the Appellate Authority to redress the grievances, including in relation to the alleged violation of the Second Settlement. In effect, the writ petition was rejected on the basis that an effective alternative remedy is available to the Appellant. The said order is impugned by way of this appeal.

5. We heard Mr.V.Prakash, the learned senior counsel for the Appellant, assisted by Mr.Gowtham S.Raman, for the Appellant; and Mr.Vijay Narayan, the learned Advocate General, assisted by Mr.C.Munusamy, learned Special Government Pleader for the Tamil Nadu Civil Supplies Corporation.

6. Mr.V.Prakash submitted that the TNCSC recruited watchmen, helpers/packers and bill clerks either on regular or seasonal basis. All these persons were recruited through the Employment Exchange. They have been in employment for several decades. Therefore, pursuant to negotiations between the trade unions and the management, the First and Second Settlements were entered into on 19.09.1991 and 30.01.1997, respectively. The Settlements provided for a preference to such seasonal employees, while filling up regular vacancies, provided they fulfill the requisite qualifications except for age relaxation in their favour. The principal contention of Mr.Prakash was that the Second Settlement continues to be in force notwithstanding either its expiry by efflux of time or its purported termination by the notice of termination dated 10.05.2010. He further contends that a settlement continues in force until it is substituted either by another settlement or by an award. In support of this contention, he referred to and relied upon the judgment of the Hon'ble Supreme Court in Life Insurance Corporation of India (LIC) v. D.J.Bahadur and Others (D.J. Bahadur) (1981) 1 SCC 315. In this case, the Hon'ble Supreme Court dealt with the settlement of the year 1974 as between the LIC and its employees. A notice of termination had been issued under Section 19(2) of the ID Act. In that context, the Hon'ble Supreme Court examined the question as to the effect of expiry of a settlement as also the effect of a purported termination of the settlement. By relying on this judgment, Mr.V.Prakash contended that the award or settlement does not become non est after the contractual period and continues to be binding. He also pointed out that the Hon'ble Supreme Court rejected the contention that a settlement can be made inoperative by a termination notice and held that it merely opens the door for negotiations for purposes of arriving at a new settlement. In

particular, he relied upon paragraphs 34, 45 to 47, which are as under.

"34. The core question that first falls for consideration is as to whether the Settlements of 1974 are still in force. There are three stages or phases with different legal effects in the life of an award or settlement. There is a specific period contractually or statutorily fixed as the period of operation. Thereafter, the award or settlement does not become non est but continues to be binding. This is the second chapter of legal efficacy but qualitatively different as we will presently show. Then comes the last phase. If notice of intention to terminate is given under Section 19(2) or 19(6) then the third stage opens where the award or the settlement does survive and is in force between the parties as a contract which has superseded the earlier contract and subsists until a new award or negotiated settlement takes its place. Like nature, law abhors a vacuum and even on the notice of termination under Section 19(2) or (6) the sequence and consequence cannot be just void but a continuance of the earlier terms, but with liberty to both sides to raise disputes, negotiate settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. Such is the understanding of industrial law at least for 30 years as precedents of the High Courts and of this Court bear testimony. To hold to the contrary is to invite industrial chaos by an interpretation of the ID Act whose primary purpose is to obviate such a situation and to provide for industrial peace. To distil from the provisions of Section 19 a conclusion diametrically opposite of the objective, intendment and effect of the section is an interpretative stultification of the statutory ethos and purpose. Industrial law frowns upon a lawless void and under general law the contract of service created by an award or settlement lives so long as a new lawful contract is brought into being. To argue otherwise is to frustrate the rule of law. If law is a means to an end – order in society – can it commit functional hara-kiri by leaving a conflict situation to lawless void?

45. The catena of cases we have briefly catalogued discloses an unbroken stream of case-law binding on this Court, the ratio whereof, even otherwise, commends itself to us. The award or settlement under the ID Act replaces the earlier contract of service and is given plenary effect as between the parties. It is not a case of the earlier contract being kept under suspended animation but suffering supersession. Once the earlier contract is extinguished and fresh conditions of services are created by the award or the settlement, the inevitable consequence is that even though the period of operation and the span of binding force expire, on the notice to terminate the contract being given, the said contract continues to govern the relations between the parties until a new agreement by way of settlement or statutory contract by the force of an award takes its place. If notice had not been given, the door for raising an industrial dispute and fresh conditions of service would not have been legally open. With action under Section 9-A, Section 19(2) or (6), the door is ajar for disputes being raised and resolved. This, in short, is the legal effect not the lethal effect of invitation to industrial trial of strength with no contract of service or reversion to an obsolete and long ago "dead" contract of service.

46. It is inconceivable that any other alternative subsists. For instance, imagine a case where for 30 years an award or settlement might have given various benefits to employees and at the end of 30 years a notice terminating the settlement were given by the employer. Does industrial law absurdly condemn the parties to a reversion to what prevailed between them 30 years ago? If the employees were given Rs 100 as salary in 1947 and, thereafter, by awards and settlements the salary scale was raised to Rs 1000 could it be the management might, by unilateral yet disastrous action give notice under Section 19 (2) or (6) terminating the settlement or award, tell the workers that they would be paid Rs 100 which was the original contract although in law that contract had been extinguished totally by a later contract of settlement or by force of an award? The horrendous consequences of such an interpretation may best be left to imagination. Moreover, if industrial peace is

the signature tune of industrial law, industrial violence would be the vicious shower of consequences if parties were relegated either to an ancient and obsolete contract or to a state of lawless hiatus. No canon of interpretation of statutes can compel the court to construe a statutory provision in this manner. We have, no doubt, that the precedents on the point, the principles of industrial law, the constitutional sympathy of Part IV and the sound rules of statutory construction converge to the same point that when a notice intimating termination of an award or settlement is issued the legal import is merely that the stage is set for fresh negotiations or industrial adjudication and until either effort ripens into a fresh set of conditions of service the previous award or settlement does regulate the relations between the employer and the employees. The court never holds justice as hostage with law as janitor ! Law, if at all, liberates justice through the judicial process. Fundamental error can be avoided only by remembering fundamental values.

47. At this stage I may record my firm conclusion that for the reasons already given the settlement under the ID Act does not suffer death merely because of the notice issued under Section 19(2). All that is done is a notice "intimating its intention to terminate the award". The award even if it ceases to be operative qua award, continues qua contract. Therefore, if the ID Act regulates the jural relations between the LIC and its employees - an "If" we will presently scan - then the rights under the settlements of 1974 remain until replaced by a later award or settlement."

7. With reference to the existence of an alternative remedy, he submitted that there are no disputed questions of fact in this case. The parties admittedly entered into the Second Settlement and Clause 5 thereof categorically stipulates that preference should be given to seasonal employees subject to fulfillment of requisite qualifications except for age relaxation. While a notice of termination dated 10.05.2010 was issued by the TNCSC, it is the undisputed position that no settlement was arrived at thereafter and no award was pronounced. Such settlements have been held to be valid and binding even after the expiry of the contractual period or the purported termination thereof by the Supreme Court in D.J. Bahadur. Accordingly, in this case, the dispute pertains to the enforcement of a contract in accordance with

the law laid down by the Hon'ble Supreme Court. Therefore, it is a fit case for the exercise of discretion by this Court and the Writ Court patently erred in failing to exercise discretion. On the above basis, Mr.V.Prakash concluded his submissions by stating that the Second Settlement continues to be valid, binding and operational as on date. Consequently, the TNCSC is obligated to give preference to seasonal workers in its employment, while filling up existing vacancies.

8. The learned Advocate General made submissions in response. His first contention was that the legal position with regard to recruitment has changed drastically since the time of the judgment in D.J.Bahadur. In order to substantiate this contention, he relied on Secretary, State of Karnataka v. Umadevi (Umadevi) (2006) 4 SCC 1, wherein a Constitution Bench of the Hon'ble Supreme Court pronounced authoritatively that recruitment by the Central or State Government and its agencies should be strictly in accordance with the applicable law in respect of such recruitment. As a corollary, persons appointed on contract, ad hoc or part time basis should not be regularised or made permanent because it violates Articles 14 and 16 of the Constitution. He also relied upon the judgment of the Hon'ble Supreme Court in the case of Excise Superintendent Malkapatnam, Krishna District, A.P. State v. K.B.N.Visweshwara Rao and others, (1996) 6 SCC 216 and that of this Court in Madras Labour Union v. Binny Limited (Buckingham Carnatic Mills) 1995(1) CTC 73. He also relied upon the counter affidavit in the writ petition and, in particular, paragraphs 10 to 13 thereof. By drawing reference to the said paragraphs, he contended that it is no longer constitutionally permissible to provide a preference to a particular group such as seasonal employees while making appointments. As a result, clause 5 of the Second Settlement can no longer be implemented as such implementation violates the law laid down by the Constitution Bench in Umadevi. He further pointed out that the Government of India issued G.O.Ms.44, Labour and Employment Department dated 11.03.2015, calling upon its instrumentalities and municipalities to issue public notifications to fill vacancies. By this Government order, it was mandated that vacancies should be filled up by calling for applications both from the open market through advertisement and by sponsorship from the respective employment exchange. In particular, it was notified that selection should be made in a transparent manner by adhering to the service regulations and without giving preference or priority to any particular group.

9. In view of the above-mentioned change in the legal position, he contended that the clause in the First and Second Settlement relating to preference is contrary to the service regulations of the TNCSC and is also contrary to the law laid down by the Hon'ble Supreme Court. In effect, he contended that these clauses violate public policy and are, therefore, void. In these circumstances, notice of termination dated

10.03.2010 was issued by the TNCSC under Section 19(2) of the ID Act. Based on the termination notice, the parties to the settlement were called for conciliation by the Commissioner of Labour. However, the Conciliation Officer could not conclude the conciliation on account of non-cooperation by a few trade unions such as the Appellant.

10. Thus, the learned Advocate General submitted that the Second Settlement is no longer enforceable. He further submitted that any disputes with regard to the enforcement of the Second Settlement should be referred to courts set up under the ID Act and therefore the Writ Court was fully justified in refusing to exercise discretion.

11. By way of rejoinder, the learned senior counsel, Mr.V.Prakash, contended that the TNCSC cannot unilaterally decide that the Second Settlement is void or unenforceable. He pointed out that the Appellant Union represents about 57% of the total workforce and, therefore, does not represent a minority view. As regards the judgment in Umadevi and A.Uma Rani vs. Cooperative Societies (2004) 7 SCC 112, he pointed out that the ratio of the said judgments would not apply to a settlement under Section 12(3) of the ID Act. He also pointed out that the settlement is bilateral and cannot be unilaterally terminated by the TNCSC. He further submitted that the members of the Appellant union accepted seasonal employment on the basis of the Second Settlement, which assured them preference while permanent vacancies are filled up. Thus, they accepted employment on seasonal basis with the legitimate expectation that they would be provided a preference as and when regular vacancies are filled up. After providing services for several years on the basis of the Second Settlement, the TNCSC cannot renege on the settlement terms at this juncture.

12. We considered the submissions of the learned senior counsel for the respective parties and examined the records.

13. The principal question that arises for consideration is whether the Second Settlement continues to be valid and binding notwithstanding the subsequent judgments in cases such as Umadevi. The other question to be decided is whether the Writ Court should have entertained the writ petition notwithstanding the existence of an alternative remedy before the courts/tribunals constituted under the ID Act.

14. In D.J.Bahadur, the Hon'ble Supreme Court categorically concluded that neither the expiry of the settlement by efflux of time nor its purported termination would result in the settlement becoming non-operational, and that such settlement would continue to hold the field until a new settlement is executed or an award is pronounced on such dispute. The said conclusion is evident on examining paragraphs 36 and 45 to 47 of the said judgment. With regard

to the consequence of a notice of termination, the Hon'ble Supreme Court held that it merely opens the door for the management and workers to negotiate with a view to conclude a fresh settlement or, in the event of inability to do so, to have the dispute adjudicated and concluded by way of an award. Until such time, the earlier settlement would continue to operate. The undisputed fact is that the judgment in D.J. Bahadur has not been expressly overruled till date. It is also admitted that the First and Second Settlements were acted upon by the parties concerned and that recruitments were made on the basis of the specific clauses of the Settlements, including the preference clause, until 2011. As correctly contended by Mr.V.Prakash, one party to the Settlement, namely, the TNCSC, cannot unilaterally decide or conclude that the settlements are void as a result of subsequent judgments of the Hon'ble Supreme Court.

15. A contract is void if it is vitiated by any of the factors stipulated in Sections 20 to 30 of the Indian Contract Act, 1872 (the Contract Act). All of these are formation defects that would result in the contract being void from inception. The question as to whether the Second Settlement is void ipso facto as a result of Umadevi and subsequent judgments is on the facts of this case, a pure question of law and is, therefore, examined herein. The only relevant Section of the Contract Act for the present purposes is Section 23, which deals with agreements whose consideration or object is not lawful. Section 23 states that the consideration and object of an agreement is lawful unless, inter alia, it is forbidden by law or the court regards it as opposed to public policy. This provision and, in particular, the question as to whether a partnership to undertake wagering contracts is forbidden by law or against public policy was considered by the Supreme Court in *Gherulal Parakh v. Mahadeodas Maiya*, AIR 1959 SC 781, where the Supreme Court concluded that a wagering contract is void but not illegal because it is not forbidden by law; therefore, a collateral contract is enforceable and is also not against public policy. Paragraphs 20 and 28 of the said judgment are as follows:

"20 The aforesaid discussion yields the following results: (1) Under the common law of England a contract of wager is valid and therefore both the primary contract as well as the collateral agreement in respect thereof are enforceable; (2) after the enactment of the Gaming Act, 1845, a wager is made void but not illegal in the sense of being forbidden by law, and thereafter a primary agreement of wager is void but a collateral agreement is enforceable; (3) there was a conflict on the question whether the second part of Section 18 of the Gaming Act, 1845, would cover a case for the recovery of money or valuable thing alleged

to be won upon any wager under a substituted contract between the same parties: the House of Lords in Hill's Case[(1921) 2 KB 351] had finally resolved the conflict by holding that such a claim was not sustainable whether it was made under the original contract of wager between the parties or under a substituted agreement between them; (4) under the Gaming Act, 1892, in view of its wide and comprehensive phraseology, even collateral contracts, including partnership agreements, are not enforceable; (5) Section 30 of the Indian Contract Act is based upon the provisions of Section 18 of the Gaming Act, 1845, and though a wager is void and unenforceable, it is not forbidden by law and therefore the object of a collateral agreement is not unlawful under Section 23 of the Contract Act; and (6) partnership being an agreement within the meaning of Section 23 of the Indian Contract Act, it is not unlawful, though its object is to carry on wagering transactions. We, therefore, hold that in the present case the partnership is not unlawful within the meaning of Section 23 (A) of the Contract Act.

....

28. To summarize: The common law of England and that of India have never struck down contracts of wager on the ground of public policy; indeed they have always been held to be not illegal notwithstanding the fact that the statute declared them void. Even after the contracts of wager were declared to be void in England, collateral contracts were enforced till the passing of the Gaming Act of 1892, and in India, except in the State of Bombay, they have been enforced even after the passing of the Act 21 of 1848, which was substituted by Section 30 of the Contract Act. The moral prohibitions in Hindu Law texts against gambling were not only not legally enforced but were allowed to fall into desuetude. In practice, though gambling is controlled in specific matters, it has not been declared illegal and there is no law declaring wagering illegal. Indeed, some of the gambling practices are a perennial source of income to the State. In the circumstances it is not possible to hold that there is any definite head or principle of public policy evolved by Courts or laid down by precedents which would directly apply to wagering contracts. Even if it is permissible for

Courts to evolve a new head of public policy under extraordinary circumstances giving rise to incontestable harm to the society, we cannot say that wager is one of such instances of exceptional gravity, for it has been recognized for centuries and has been tolerated by the public and the state alike. If it has any such tendency, it is for the legislature to make a law prohibiting such contracts and declaring them illegal and not for this Court to resort to judicial legislation."

If these principles are applied to the case at hand, there is no doubt that the law did not proscribe or prohibit 'preference in employment' clauses at the time of execution of the Second Settlement. The clause is part of the Settlement and whether it can be severed is debatable. If viewed in totality, it certainly cannot be said that the object of the Second Settlement was either forbidden by law or opposed to public policy. On the contrary, the Hon'ble Supreme Court concluded in D.J. Bahadur that such settlements continue to be binding until a new settlement is executed or an award pronounced on the dispute. Thus, there is no formation defect of the kind envisaged in Sections 20-30 of the Contract Act. We also note that the effect of declaring a settlement or contract void is to obliterate the contract from inception. As a corollary, if a contract is declared void, as per Section 65 of the Contract Act, to the extent feasible, the parties should be put in the position that they would have been in if such settlement had not been concluded. Consequently, in that event, the settlement and all actions taken in pursuance to such settlement would have to be extinguished to the extent possible. Keeping in mind all of the aforesaid, we conclude that the Second Settlement is not per se void. Nonetheless, the effect of the termination notice in the context of the Umadevi judgment and its impact on the enforceability of the 'preference in employment' clause from the date of the judgment is a separate and distinct matter.

16. On this, it would be apt to note the arguments advanced on behalf of the Corporation by Mr. Vijay Narayan, learned Advocate General, who has invited the attention of the Court to the order of reference passed by the Apex Court in the case of Oil and Natural Gas Corporation v. Krishna Gopal and others, 2020 SCC OnLine SC 150.

17. We have gone through the said judgment and we find that after considering the pronouncements made in the case of UP Power Corporation Limited v. Bijli Mazdoor Sangh, (2007) 5 SCC 755 and the subsequent judgment in the case of Maharashtra State Road Transport Corporation v. Casteribe Rajya Parivahan Karmchari Sanghatana, (2009) 8 SCC 556, there was some conflict, which was noticed and it was sought to be resolved in the case of Hari Nandan Prasad v. Employer I/R to

Management of Food Corporation of India, (2014) 7 SCC 190. However, after having noticed all the three judgments, the Court found that it was necessary to examine the issues raised which also included the question of the impact of the judgment in the case of Umadevi (supra) on matters arising under the Industrial Disputes Act. We are extracting paragraphs (29) to (32) and (34) to demonstrate the same:

"29. The applicability of the decision in Umadevi in the context of labour adjudication was considered in UP Power Corporation Ltd. v. Bijli Mazdoor Sangh (2007) 5 SCC 755 ("Bijli Mazdoor Sangh"). This Court held that the law propounded in Umadevi was applicable also to Industrial Tribunals and Labour Courts. The Court held:

"6. It is true as contended by learned counsel for the respondent that the question as regards the effect of the industrial adjudicators' powers was not directly in issue in Umadevi (3) case [(2006) 4 SCC 1 : 2006 SCC (L&S) 753]. But the foundational logic in Umadevi (3) case [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] is based on Article 14 of the Constitution of India. Though the industrial adjudicator can vary the terms of the contract of the employment, it cannot do something which is violative of Article 14. If the case is one which is covered by the concept of regularisation, the same cannot be viewed differently.

7. The plea of learned counsel for the respondent that at the time the High Court decided the matter, decision in Umadevi (3) case [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] was not rendered is really of no consequence. There cannot be a case for regularisation without there being employee-employer relationship. As noted above the concept of regularisation is clearly linked with Article 14 of the Constitution. However, if in a case the fact situation is covered by what is stated in para 45 of Umadevi (3) case [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] the industrial adjudicator can modify the relief, but that does not dilute the observations made by this Court in Umadevi (3) case [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] about the regularisation."

30. Subsequently, in Maharashtra State Road Transport Corporation v. Casteribe Rajya

Parivahan Karmchari Sanghatana (2009) 8 SCC 556 ("Maharashtra SRTC"), it was held that the Industrial and Labour Courts under Section 30(1)(b) of the MRTU and PULP Act have wide powers to direct the employer to take affirmative action in a case of unfair labour practice including the power to order regularisation or permanency. The decision in Umadevi was held to limit the scope of the powers under Articles 32 and 226 to issue directions for regularisation in a matter of public employment. However, the power to take affirmative action under Section 30(1)(b) was held to be intact even after the judgment of the Constitution Bench. This Court held :

"35. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

36. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."

31. The Court however clarified that there is no doubt that the creation of posts does not lie within the domain of judicial functions "which obviously pertains to the executive" and the status of permanency cannot be granted by the Court where no posts exist. In Maharashtra SRTC, the two judge Bench was construing the provisions of the MRTU and PULP Act 1971. In holding that

the creation of posts could not be directed by courts, the judgment in Maharashtra SRTC relied upon the decisions in Mahatma Phule Agricultural University (supra) and State of Maharashtra v. R S Bhonde (2005) 6 SCC 751.

32. The divergence between the decisions in Bijli Mazdoor Sangh and Maharashtra SRTC was sought to be reconciled in a two judge Bench decision of this Court in Hari Nandan Prasad v. Employer I/R to Management of Food Corporation of India (2014) 7 SCC 190 ("FCI"). Justice A K Sikri, speaking for the two judge Bench held:

"39. On a harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularisation only because a worker has continued as daily-wage worker/ad hoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularisation would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily-wager, etc. may amount to back door entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the worker concerned does not meet the eligibility requirement of the post in question as per the recruitment rules. However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather

than violating this constitutional provision."

.....

34. The following propositions would emerge upon analyzing the above decisions:

(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen"

18. Learned Advocate General has also urged that the Rules for recruitment are already in vogue and providing employment through the Employment Exchange is now only one of the sources and not the only source. He therefore submits that a mandamus cannot be issued against the Rules or the settled position of law.

19. An ancillary question is whether this question should be decided by this Court or by courts established under the ID Act and we turn to this issue next.

20. On perusal of the two Settlements, we find that the wages of three categories of workmen, namely, watchmen, helper and bill clerks were fixed by the First Settlement. Subsequently, a wage revision was effected under the Second Settlement as regards the aforesaid categories of workmen. In addition, the Second Settlement also dealt with aspects such as payment of arrears and dearness allowance; graduate employees; handling charges of load men; family benefit fund, etc. The preference in employment is only one element in the Second Settlement. Thus, the Second Settlement is a composite package, which contains a clause relating to preference in employment. Consequently, the determination of the effect of the alleged change in law or the purported termination would entail the determination of factual aspects relating to the different issues that the settlement dealt with. Both parties admit that the termination notice has given rise to a dispute which was referred to conciliation. Keeping in mind all the above aspects and the fact that it would entail determination of both factual and legal issues, we are of the view that the Writ Court was fully justified in declining to exercise jurisdiction to issue a writ of mandamus.

21. A Division Bench of this Court (speaking through the Hon'ble Chief Justice), in Royal Enfield Employees Union v. The Government of Tamil Nadu and others, W.A. No.504 of 2020, Judgment dated 13.07.2020, considered the question as to whether discretionary jurisdiction under Article 226 should be exercised to examine the validity of a settlement under Section 12(3) of the ID Act. In that context, this Court referred to the judgment in Rajasthan State Road Transport Corporation v. Krishna Kant (1995) 5 SCC 75, wherein, at paragraph 35, the Supreme Court set out the principles relating to the exercise of jurisdiction over industrial disputes. In addition, this Court referred to the judgment in A.P. Foods v. S. Samuel (2006) 5 SCC 469, wherein the Supreme Court held that unless there is a strong reason not to do so, parties should be directed to avail of the statutory remedy. On the above basis, this Court upheld the conclusion of the learned single Judge that this Court would not exercise discretionary jurisdiction under Article 226 to examine the validity of the Section 12(3) settlement, and that parties should avail of the statutory remedy.

22. Thus, in conclusion, we dispose of this writ appeal as follows:

- (i) The Settlement dated 30.01.1997 is not void;
- (ii) The TNCSC is not entitled to unilaterally proceed on the basis that the Settlement dated 30.01.1997 or the 'preference in employment' clause is inoperative;
- (iii) Subject to the observations made herein, the impact of the termination notice in the context of the alleged change in law on the Settlement dated 30.01.1997 shall be duly determined by the competent Labour court upon reference of a dispute as per the provisions of the ID Act;
- (iv) In the event the parties fail to get it conciliated, it will be open to them to seek an appropriate remedy for the purpose of referring the matter to the Industrial Tribunal and in the event, such reference is made, the Industrial Tribunal shall endeavour to dispose of this long standing dispute as expeditiously as possible; and
- (v) Except to the extent indicated above and subject to the observations in this judgment, we affirm the conclusion of the Writ Court that parties should avail of the alternative statutory remedy. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rrg  
To

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2.The Senior Regional Manager,  
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3.The Senior Regional Manager  
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Collectorate, Nagapattinam - 611 001.

- 4.The Senior Regional Manager,  
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- 5.The Senior Regional Manager (north)  
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- 15.The Regional Manager,  
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W.A.No.4008 of 2019

EV co  
A.SK(06/10/2020)

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