

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.33804 OF 2019
AND WMP NOS.34311 AND 34313 OF 2019

Industrial Estate's & General Workers Union (CITU)
Reg.No.2700/58
Rep. by its Secretary
No.11, Lawyer Jaganathan Street,
Guindy, Chennai - 600 032. ... Petitioner

Vs.

- 1.Government of Tamil Nadu
Rep. by its Secretary
Labour and Employment Department
Fort St. George,
Chennai - 600 009.
- 2.The Director of Public Libraries
LLA Building
No.737/1, Anna Salai,
Chennai - 600 002.
- 3.Anna Centenary Library
Rep. by its Chief Librarian and
Information Officer
Gandhi Mandapam Road,
Kotturpuram, Chennai - 600 085.
- 4.The Assistant Commissioner of Labour - 3
Kuralagam,
Chennai - 600 108. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the Tender Notification issued by the third respondent dated 11.11.2019 in Tender No.001/2019 in the official website of Anna Centenary Library, quash the same and forbear the third respondent from altering the conditions of service of 56 workmen who are members of the petitioner union and who are already

employed by the third respondent to carry out the same housekeeping work for which the present tender notification is issued and not to dispense with or terminate their services in any manner either by displacing them with new workmen through the new contractor / outsourcing agency or otherwise, till the disputes with regard to charter of demands and bonus which are pending conciliation before the fourth respondent are settled or adjudicated and direct the fourth respondent to complete the conciliation proceedings within a specified time and to bring an amicable settlement and to submit failure report to the first respondent in the event of failure of conciliation and direct the first respondent to refer the disputes to the competent Tribunal / Labour Court for adjudication.

For Petitioner : Mr.N.G.R.Prasad
for Mr.R.Krishnasamy

For Respondents: Mr.M.Venkadeshkumar
1 and 4 Government Advocate

For Respondents : Mr.S.T.S.Murthi
2 and 3 Additional Advocate General (IV)
Assisted by Mr.C.Munusamy
Special Government Pleader

O R D E R

Challenging the action of the third respondent in issuing Tender Notification calling for Contractors to provide Contract Labourers for Housekeeping and maintenance purposes, the petitioner - Union preferred the above writ petition.

2. According to the petitioner, the petitioner - Union was registered under the Trade Unions Act, 1926 on 08.04.1959. The third respondent was started in the year 2010 and directly selected the Members of the petitioner-Union as Housekeeping workers. They were not made permanent. Therefore, through the petitioner - Union, they submitted a Charter of Demands for minimum wages, increment, dearness allowance, house rent allowance, travelling allowance, leave facilities etc., on 08.03.2017. Since the third respondent has not responded to their demands, a dispute under Section 2(k) of the Industrial Disputes Act, 1947, was raised on 19.04.2017 before the Additional Commissioner of Labour, Chennai. The third respondent failed to appear for the conciliation proceedings before the fourth respondent. Therefore, on 24.08.2018, the petitioner - Union raised a dispute with regard to charter of demands before the fourth respondent. However, during the pendency of the proceedings, an outsourcing agency issued appointment orders to the Members of the petitioner - Union in August 2017. On

01.10.2018, the petitioner - Union raised a demand for 20% bonus in the year 2017-2018 and also for difference in bonus for the previous years. Thereafter, the fourth respondent taken up the dispute and fixed the conciliation meeting on 30.11.2018 and 23.07.2019 in respect of bonus demand as well as permanency issue.

3. The learned counsel appearing for the petitioner would rely on the judgments of this Court in V.BASKARAN AND OTHERS VS. INTERNATIONAL AIRPORT AUTHORITY OF INDIA AND OTHERS [W.P.No.1676 of 1996 dated 23.02.2004] and H.DANESH AND OTHERS VS. UNION OF INDIA AND OTHERS [W.P.Nos.7689 of 2003 and 21976 of 2004 dated 07.01.2010] and TAMIL NADU AIRPORT WORKERS UNION AND OTHERS VS. GOVERNMENT OF INDIA AND OTHERS [W.P.Nos.6485 of 2015 and etc., batch, dated 11.06.2019] and sought for reference of the dispute and pending disposal of the same to continue the employment of the workmen.

4. The learned counsel for the petitioner would also rely on the judgment of the Hon'ble Supreme Court in MATHURA REFINERY MAZDOOR SANGH VS. INDIAN OIL CORPORATION LTD., AND ANOTHER [1991 (2) SCC 176] for the purpose of phased absorption of the contract labourers even though they did not have direct connection for the purpose of enforcement of fundamental rights.

5. The learned counsel for the petitioner would also rely on the judgment of the Hon'ble Supreme Court in R.K.PANDA AND OTHERS VS. STEEL AUTHORITY OF INDIA AND OTHERS [1994 (5) SCC 304] wherein it is held as under:

"5. Of late a trend amongst the contract labourers is discernible that after having worked for some years, they make a claim that they should be absorbed by the principal employer and be treated as the employees of the principal employer especially when the principal employer is the Central Government or the State Government or an authority which can be held to be State within the meaning of Article 12 of the Constitution, although no right flows from the provisions of the Act for the contract labourers to be absorbed or to become the employees of the principal employer. This Court in the case of Gammon India Ltd. v. Union of India', pointed out the object and scope of the Act as follows: (SCC pp. 600-0 1, para 14)

"The Act was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, wherever possible and practicable, and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. That is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act." "

Therefore, he would contend that a reference can be made for deciding whether the engagement is sham and nominal and whether the action of the third respondent amounts to alteration of conditions of service and till such time, to maintain status quo.

6. While the matter stood thus, on 11.11.2019, the third respondent issued the impugned tender notification calling for tenders to carry out the housekeeping works and for supply of 7 Supervisors and 70 workmen fixing 25.11.2019 as the date for opening the tenders. Since the tender notification issued by the third respondent would displace the 56 existing housekeeping workers, the petitioner addressed a letter to the third respondent not to proceed with the tender. In spite of the same, the third respondent proceeded with the tender process and selected a Contractor. सत्यमेव जयते

7. As per Section 33 of the Industrial Disputes Act, 1947, once the conciliation proceedings have commenced, the Management is supposed to maintain status quo. Since the third respondent has not obtained any permission from the fourth respondent, he filed a complaint before the fourth respondent on 25.11.2019. Subsequently, notice was ordered to the third respondent for filing reply. If the tender process continues, that will result in non-employment of the existing housekeeping workers who are Members of the petitioner - Union. Therefore, the present writ petition came to be filed.

8. Per contra, the third respondent filed a detailed counter and pleaded that the Government has decided to start a Modern Library with all facilities and passed an order in G.O. (Ms) No.195, School Education (K2) Department, dated 06.08.2007. By G.O.Ms.No.184, School Education (K2) Department, dated 20.05.2009, it was named as "Anna Centenary Library". Further, the Government has taken a policy decision to appoint an outsourcing agency for maintaining the Library in good and hygienic condition. The Director of Public Libraries called for a tender on 31.08.2010 in Tender No.DIPR 2159/Tender/2010 from the experienced and reputed and financially sound tenderers for providing mechanised housekeeping service for a period of twelve months. The tender notification inter alia contained various conditions that the firm should have office at Chennai with at least 3000 people on its rolls and at least 500 people on the permanent rolls with ten years experience. They should also possess ESI, EPF and Service Tax Registration and should be an income tax assessee with valid ISO Certification for housekeeping service etc. Another condition is that they shall act in conformity with the Labour Laws. Three companies have submitted the tenders. Among them, one IL & FS Property Management Service, had become successful bidder having quoted a minimum value of Rs.74,94,000/- plus service tax. On 21.12.2010, a negotiation meeting was held and the successful bidder wherein it was finalised to outsource the housekeeping service at Rs.74,00,000/- per annum and work order in Ref.No.RC.No.10435/ACL/2010, dated 23.12.2010 was issued. In effect, the second respondent who is an independent entity has awarded a contract to an outsourcing agency as 80% of the cost of construction and maintenance is borne by the second respondent and 20% was borne by the Government. All these Members of the petitioner - Union are not the employees of the third respondent as contended by the petitioner. They have never been engaged by the third respondent directly. The civil and criminal liabilities, in cases of fatal accidents, harm, suffocation, etc., and also the liabilities under the relevant statutes of ESI and EPF are the responsibilities of the bidder. The third respondent has no liability in respect of the same.

9. While the matter stood thus, a writ petition came to be filed in W.P.No.25676 of 2011 before this Court against poor maintenance. Pursuant to the same, a Two Member Commission was appointed to inspect the third respondent - Anna Centenary Library with regard to general hygienic conditions of toilets / rest rooms and wash rooms etc. According to the Two Member Commission's report, a strong bad odour emanated from all toilets and it required attention. Therefore, the third respondent issued show cause notice dated 22.06.2014 to the bidder and also called for explanation, with regard to strike

made by their workers on various occasions. During inspection, no sanitary workers or Supervisors of the bidder's firm were found and therefore, another notice was issued. Since the terms and conditions of the contract was breached by the bidder, it was decided to cancel the tender and issue fresh notification calling for contract to provide housekeeping workers. This tender is challenged by the petitioner on the ground that it will alter the conditions of service of 56 workmen and prayed for not to dispense with or terminate the services of the members of the petitioner - Union from service and obtained interim injunction. The writ petition by itself is not maintainable as the third respondent has not engaged the Members of the petitioner - Union directly and they are the employees of the Contractor. The Contractor has not been impleaded as a party. The respondents have paid all the dues to the Contractor and whatever dispute with regard to the salary, bonus and other statutory benefits, the petitioner can claim only against the immediate employer and not against the respondents.

10. The learned Additional Advocate General would contend that the writ petition is not maintainable as the Members of the petitioner - Union are not employees of the third respondent and that they were not directly engaged by them at any point of time. Without impleading the immediate employer, the writ petition is not maintainable. In support of his contention, he would rely on the following judgments: -

(i) GRIDCO LIMITED AND ANOTHER VS. SADANADA DOLOI AND OTHERS [2011 (15) SCC 16]

(ii) YOGESH MAHAJAN VS. PROFESSOR R.C.DEKA, DIRECTOR, ALL INDIA INSTITUTE OF MEDICAL SCIENCES [2018 (3) SCC 218]

(iii) BALWANT RAI SALUJA ANOTHER VS. AIR INDIA LIMITED AND OTHERS [2014 (9) SCC 407]

(iv) V.THANGAMANI VS. EMPLOYEES STATE INSURANCE CORPORATION [2017 SCC ONLINE MAD 6758]

(v) TAMIL NADU GOVERNMENT PRESS GENERAL WORKERS UNION VS. STATE OF TAMIL NADU [2013 SCC ONLINE MAD 2148]

(vi) THE MANAGER (ADMINISTRATION AND PERSONNEL) FOOTWEAR DESIGN AND DEVELOPMENT AND ANOTHER VS. DR.KAUSHIK GHOSH [2020 - 1 - LW - 97]

11. I have considered the rival submissions.

12. From the perusal of the materials produced before this Court, it is seen that the third respondent was established in the year 2010 by virtue of Government Order. The Government contributed 20% of the cost of the construction and other expenses, whereas the Local Library Committee contributed 80% for the same. For the purpose of maintaining the Public Library, in good hygienic condition, a tender was called for providing mechanised housekeeping service by the second respondent on 31.08.2010. Three bidders had participated in the tender and one IL & FS Property Management Service, Chennai, had become the successful bidder for a bid of Rs.74,00,000/-. Even though the petitioner claims that its members were directly employed by the third respondent they would categorically admit in their affidavit that they were paid by the independent Contractor. Even though it is claimed that their services were shifted under the independent Contractor somewhere in the year 2010, they have not chosen to agitate the same before the concerned authorities at the relevant point of time. In fact, they have continued in the pay roll of the Contractor for a period of seven or more years. They have also not produced any order with regard to their engagement or appointment by the third respondent. Therefore, it is clear that the Members of the petitioner - Union are all employees of the Contractor. They were not directly engaged by the third respondent. The terms of contract also provides for specific conditions that the Contractor shall maintain EPF, ESI Registration for its employees as well as they shall be responsible for all the benefits under labour legislation. When the employees are under the direct control and supervision of the individual Contractor and they cannot claim any benefit which is available to them as per the labour welfare legislation from the principal employer other than payment of wages. If wages were not paid, it is the duty of the principal employer to step into the shoes of the Contractor and pay directly to the employees and adjust the same in the payment made to the immediate employer. But it will not entitle them to seek permanency under the Principal employer. When the Contractor breaches the terms and conditions of the contract, it is terminable as found in the contract. When the contract is terminated, the action of the Principal employer cannot be found fault with by the employees of the Contractor. It is pertinent to note that as contended by the learned Additional Advocate General, the Contractor shall have 3000 contract labourers and at least 500 of them shall be permanent employees. If the members of the petitioner - Union are the permanent employees of the Contractor, they are entitled to have an Union in the immediate employers establishment. Out of all the contract labourers, only 56 cannot form an Union against the third respondent. Such a piecemeal unionisation is alien to Trade Unions Act.

13. This Court in TAMIL NADU GOVERNMENT PRESS GENERAL WORKERS UNION VS. STATE OF TAMIL NADU [2013 SCC ONLINE MAD 2148] has held as under:

"24. The main aim of 'Outsourcing' is the process of contracting a job or function to some other person. No wonder, it is just opposite to 'Insourcing'. Ordinarily, 'Outsourcing' is resorted to in regard to 'non-core to the business'. To put it differently, 'Outsourcing' is entering into a contract with other person/company to undertake the performance of a specified work. Also that, 'Outsourcing' is the use of extraneous business relationship to fulfil necessary business activities and processes instead of internal capabilities. The persons who provide the 'Outsourcing' facilities are described as Outsourcing Partners, Outsourcing Suppliers and Providers. Those who go to purchase Outsourcing services are described as "Buyer" and "Users" in ordinary language. Indeed, in Outsourcing work, the Buyer generally does not issue instructions to the Supplier how to turn out its work. However, the Buyer concentrates on communicating what results it desires to purchase/buy. The Supplier is to produce the results in regard to the work that he is entrusted to perform. "

When a particular job is outsourced, it is the responsibility of the service provider to complete the job awarded to them. The employees of the Contractor will not have any privity of contract with the vendor or the principal employer. They are under the direct control in supervision of the immediate employer himself. The petitioner - Union shall not take advantage of the employment for in sourcing its members. It will amount to back door entry and opposed to the law laid down by the Hon'ble Supreme Court in various judgments.

14. The Hon'ble Supreme Court in BALWANT RAI SALUJA AND ANOTHER VS. AIR INDIA LIMITED AND OTHERS [2014 (9) SCC 407] has observed the relationship between the employer and the employee as under:

"59. In Ram Singh v. Union Territory, Chandigarh, (2004) 1 SCC 126, as regards the concept of control in an employer-employee relationship, observed as follows:

"15. In determining the

relationship of employer and employee, no doubt, "control" is one of the important tests but is not to be taken as the sole test. In determining the relationship of employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole "test of control". An integrated approach is needed. "Integration" test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are — who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organize the work, supply tools and materials and what are the "mutual obligations" between them. (See Industrial Law, 3rd Edn., by I.T. Smith and J.C. Wood, at pp. 8 to 10.)"

60. In the case of Bengal Nagpur Cotton Mills case (supra), this Court observed that:

"9. In this case, the industrial adjudicator has granted relief to the first respondent in view of its finding that he should be deemed to be a direct employee of the appellant. The question for consideration is whether the said finding was justified.

10. It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can grant relief to

the employee by holding that the workman is the direct employee of the principal employer. Two of the well-recognized tests to find out whether the contract labourers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first respondent is a direct employee of the appellant."

63. The NALCO case (supra) further made reference to the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N., (2004) 3 SCC 514, wherein this Court had observed as follows:

"27. 37. The control test and the organization test, therefore, are not the only factors which can be said to be decisive. With a view to elicit the answer, the Court is required to consider several factors which would have a bearing on the result: (a) who is the appointing authority; (b) who is the paymaster; (c) who can dismiss; (d) how long alternative service lasts;

(e) the extent of control and supervision; (f) the nature of the job e.g. whether it is professional or skilled work; (g) nature of establishment;

(h) the right to reject.

38. With a view to find out reasonable solution in a problematic case of this nature, what is needed is an integrated approach meaning thereby integration of the relevant tests wherefor it may be necessary to examine as to whether the workman concerned was fully integrated into the employer's concern meaning thereby independent of the concern although

attached therewith to some extent." "

In that view of the matter, there is no employer - employee relationship between the Members of the petitioner - Union and the third respondent.

15. In yet another judgment in GRIDCO LIMITED AND ANOTHER VS. SADANANDA DOLOI AND OTHERS [2011 (15) SCC 16] the Hon'ble Supreme Court has held as under:

"31. Taking note of the decision of this Court in Shrilekha Vidyarthi's case (supra), this court held that (Issac Peter Case, SCC p.125, para 26) there was

"no room for invoking the doctrine of fairness and reasonableness against one party to the contract, for the purpose of altering or adding to the terms and conditions of the contract merely because it happens to be the State".

The Court said :

"26.....It was a case of termination from a post involving public element. It was a case of non-government servant holding a public office, on account of which it was held to be a matter within the public law field. This decision too does not affirm the principle now canvassed by the learned Counsel (that being of incorporating the doctrine of fairness in contracts where State is a party). We are, therefore, of the opinion that in case of contracts freely entered into with the State, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State. In such cases, the mutual rights and liabilities of the parties are governed by the terms of the contracts (which may be statutory in some cases) and the laws relating to contracts. It must be remembered that these contracts are entered into pursuant to

public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides."

(emphasis supplied)

16. A Division Bench of this Court in V.THANGAMANI AND OTHERS VS. THE EMPLOYEES STATE INSURANCE CORPORATION [2017 SCC ONLINE MADRAS 6758] while answering the question whether the Contract Labourers are entitled to regularisation, the Contract Labourers who have been engaged through a Contractor are entitled to be regularised is answered as under:

"8. The core question is whether the petitioners, who have been engaged through a contractor, are entitled to be regularized against the sanctioned posts.

9. There is no dispute that initial engagement of the petitioners were not through a transparent process. There was no recruitment made by E.S.I. Corporation to appoint employees against sanctioned posts. E.S.I. Corporation appointed a contractor to supply manpower. The petitioners were engaged only by the contractor. There was absolutely no privity of contract or employer-employee relationship between ESI Corporation and the petitioners. The contractor entered into an agreement with E.S.I. Corporation. The agreement contained the terms and conditions of contract regarding engagement of personnel. Since the quotation given by the fourth respondent was found to be the lowest, contract was awarded, to supply manpower. Wages were paid by ESI Corporation to the contractor. The contractor in turn paid wages to the petitioners.

10. The contract in question was not a statutory one. It was a regular contract to supply manpower.

11. The petitioners have not produced even a scrap of paper to show that they were engaged only by the E.S.I. Corporation. The argument of the petitioners proceed as if they were engaged by the Corporation through a contractor. There are no materials to support the said plea. In fact, the subsequent contract given to

M/s.Exservicemen Security and Intelligent Services, clearly shows that by way of advertisement only, quotations were received by E.S.I. Corporation and ultimately, it was given to the lowest tenderer.

12. The Hon'ble Supreme Court in State of Karnataka and ors. vs. Uma Devi and others, 2006(4) SCC 1, clearly held that merely because a temporary employee or a casual wage worker worked continuously for more than 240 days in a year, he would not be entitled to be absorbed in regular service or made permanent on the strength of such continuance, if the original appointment was made without following the due process of selection as envisaged by the relevant rules.

13. The view expressed in Uma Devi was reiterated by the Hon'ble Supreme Court in Vice Chancellor, Lucknow University vs. Akhilesh Kumar Khare, 2015(9) Scale 625.

14. The petitioners have no case that their appointments were made by issuing selection notification by the ESI Corporation. Their engagement was through a contractor. The contract came to an end by efflux of time. Subsequently, on account of the fresh contract given by the ESI Corporation in favour of M/s.Ex.Servicemen Security and Intelligent Services, the petitioners were not engaged. Such being the factual position, the petitioners have no justifiable claim for regularization. The Central Administrative Tribunal was therefore perfectly correct in dismissing the original applications. We do not find any error or illegality in the order, warranting interference, by exercising the power of judicial review. "

17. The Hon'ble Supreme Court has also held that no contract employee has a right to have the contract renewed from time to time in YOGESH MAHAJAN VS. PROFESSOR R.C.DEKA, DIRECTOR, ALL INDIA INSTITUTE OF MEDICAL SCIENCES [2018 (3) SCC 218] has held as under:

"6. It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative

Tribunal and the High Court that the petitioner was unable to show any statutory or other right to have his contract extended beyond 30th June, 2010. At best, the petitioner could claim that the concerned authorities should consider extending his contract. We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the concerned authorities and therefore reject this contention of the petitioner. "

18. The First Bench of this Court in THE MANAGER (ADMINISTRATION AND PERSONNEL) FOOTWEAR DESIGN AND DEVELOPMENT , U.P AND ANOTHER VS. DR.KAUSHIK GHOSH [2020 - 1 - LW - 97] has observed as under:

"49. We are unable to agree with this submission as well, inasmuch as once the General Service Rules make a provision for contractual appointment, then the period of probation is only to ensure that if the services of the employee are not satisfactory, even during the period of contract, they can still be terminated. The confirmation of a contractual employment cannot travel beyond the nature of the employment, which is essentially contractual and not on permanent basis. There is nothing on record to indicate that the respondent/ petitioner was appointed or continued on a permanent or substantive basis and was confirmed as such. To draw an inference that the continuance will amount to a regular engagement having a flavour of a regular appointment is an erroneous approach. In our opinion, the learned Single Judge was not justified in construing the nature of employment as a regular engagement. The said conclusion drawn by the learned Single Judge is against the terms and conditions of the General Service Rules as well as the Service Agreement and the letter of continuance extending the services of the respondent/petitioner.

51. A faint argument was also advanced that the respondent/ petitioner was being victimized and hunted only in order to accommodate another

person. Such an argument is unsupported by any facts and a Court cannot proceed on the strength of unaccounted prejudices and unalleged malafides.

54. We are, therefore, of the opinion that the relief of further continuity in service beyond the period of contract could not have been granted by the learned Single Judge directing his reinstatement with all consequential benefits. To that extent, the appeal deserves to be allowed. "

19. Therefore, as per the above judgments, the contractual employees cannot travel beyond the nature of the employment which is essentially contractual and not on permanent basis. Even in the cases where the employer engages a person on contract basis, he is not entitled to substantive appointment when there is no indication with regard to his regularisation. Therefore, I am of the considered opinion that the Contract Labourers engaged through an independent Contractor cannot claim permanency, bonus and other benefits against the principal employer, in the instant case, the third respondent. The petitioner - Union all the more can raise all these issues only with the employer namely the independent Contractor. Without raising any disputes or demands against the employer, they cannot complain that during the pendency of the conciliation proceedings, the conditions of service were sought to be altered. There is no employer employee relationship between the third respondent and the Members of the Petitioner - Union.

20. The judgment relied on by the learned counsel for the petitioner in R.K.PANDA's case (cited supra) would deal with that while change of Contractors, the same set of workers were employed by the principal employer. In that event, it was observed that the contracts are sham and nominal. In such circumstances, the references made resolving the dispute will not apply to the present case on hand. In the instant case, the second respondent has awarded contract to only one person namely IL & FS Property Management Service now called as A 2 Z Infraservices Limited. Therefore, it cannot be construed that in spite of change of Contractors, the petitioner continue to be the contract workers for the services provided to the third respondent. Therefore, it is crystal clear that the Members of the petitioner - Union are directly employed by an independent Contractor, who is not a party before this Court. That independent Contractor has the power to engage, pay salary, dismiss and has the liability to comply with the statutory requirements. In the absence of any direct relationship or privity of contract or employer-employee relationship with the

third respondent, the prayer sought for by the petitioner is not at all sustainable. Therefore, I do not find any merit in the writ petition and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary
Government of Tamil Nadu
Labour and Employment Department
Fort St. George, Chennai - 600 009.
- 2.The Director of Public Libraries
LLA Building
No.737/1, Anna Salai,
Chennai - 600 002.
- 3.The Chief Librarian and Information Officer
Anna Centenary Library
Gandhi Mandapam Road,
Kotturpuram, Chennai - 600 085.
- 4.The Assistant Commissioner of Labour - 3
Kuralagam,
Chennai - 600 108.

+1cc to M/s.V.Ajoy Khose, Advocate Sr.24530

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