



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 26.11.2021

Pronounced on: 09.12.2021

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)Nos.457 and 7018 of 2014

and

M.P.(MD)No.1 of 2014

W.P. (MD)No.457 of 2014

V.Chinnathambi

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Management,
Coats Viyella India Limited,
New Jail Road, Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the Labour Court, Madurai, in I.D.No.225 of 1996, dated 08.12.2011 and quash the same and consequently to direct the Presiding Officer, Labour Court, Madurai, to take on file the above Industrial dispute and pass appropriate orders on merits at an early date fixed by this Court.

For Petitioner	: Mr.P.Saravakumar
For R-1	: Labour Court
For R-2	: Mr.T.Ravichandran

W.P. (MD)No.7018 of 2014

The Management,
Madura Coats Private Limited
(Formerly known as Coats Viyella
India Limited),
New Jail Road, Madurai - 625 001,
represented by its Group Industrial
Relations Manager.

... Petitioner



vs.

1.The Presiding Officer,
Labour Court,
District Court Complex,
Melur Road, Madurai 625 020.

2.The General Secretary,
Madurai Panchalai Thozhilalar Sangam,
6, Bharathiayar Road, Madurai - 16.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the first respondent in I.D.225 of 1996 and quash the portion of the award, dated 08.12.2011, passed therein as far as the first three issues.

For Petitioner: Mr.T.Ravichandran

For R-1 : Labour Court

COMMON ORDER

The petitioner, namely, Chinnathambi, has preferred a Writ Petition in W.P.(MD)No.457 of 2014, praying for issuance of a Writ of Certiorarified Mandamus, to quash the award passed in I.D.No.225 of 1996, dated 08.12.2011 and consequently, to direct the Presiding Officer, Labour Court, to take on file the above Industrial dispute to pass appropriate orders on merits within a stipulated time.

2.The management of Madura Coats Private Limited, formerly known as Coats Viyella India Limited, has preferred a Writ Petition in W.P.(MD)No.7018 of 2014, against the same I.D.No.225 of 1996, praying to quash that portion of the award, dated 08.12.2011, wherein, three issues were raised and that was held against the management.

3.The basic facts in I.D.No.225 of 1996 is that the said petition was filed by the General Secretary, Madurai, Panchalai Thozhilalar Sangam (C.I.T.U), on behalf of the petitioner employee under Section 10(1)(c) read with 10(1)(d) of Industrial Disputes Act. As per G.O.Ms. No. 571 dated 28.06.1996, to decide the issue as to whether the Coats Viyella India Limited is the employer of the petitioner in the present Writ Petition. The petitioner also raised another question whether they are entitled to regularization and also to determine the fixation of pay and other reliefs.

4.The respondent employer contended the respondent is a club and is not having much activities. That the job performed by the



petitioner is not a full-time job and the dispute is not an industrial dispute as defined under Section 2(k) of the Act and the nature of work is not continuous and visitors do not come regularly to the club.

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5.The issue of *locus standi* was discussed by the Labour Court and it decided it in favour of the petitioner/employee. The issue as to whether it is an industrial dispute or not was discussed in detail by the Labour Court and that issue was also decided in favour of the petitioner/employee but, the Labour Court has declined regularization, which is against the petitioner/employee. The reason stated by the respondent management was that the petitioner is a contract labour and that the post is not a permanent sanctioned post.

6.The petitioner claims that the very fact that he was paid monthly salary on a regular basis would prove that he is in regular and continuous employment. The salary slips proves that the petitioner was in employment for not less than 240 days in a year. The contention of the employer that the club is not having any activities is not true. All the members come on a regular basis for recreational activities. Apart from this, the club and its equipment are constantly maintained by the petitioner. The exhibits will prove that even teams from outside are accommodated in the club building and various sports kits are also supplied to various other clubs. The ground is also maintained and this again serves as venue to recreational and sports activities of its members and even outsiders. The periodical written instructions from the management directing the petitioner to carry out works relating to the club would prove that the management respondent is the master of the petitioner.

7.The respondent management has stated that the management is a Spinning Mill, functioning at Madurai, Ambasamudram and Thoothukudi, etc. In Madurai, the management was running two units, namely, Madurai Industrial Textiles and Centenary Mill. The mill was established nearly 13 decades back and it is a pioneer to establish various welfare measures to their employees and now the labour force is reduced to 260 only at Madurai. The management before ten years was providing non-statutory welfare measures but, the management sold out all due to drastic reduction in labour force and following list are some of the them

- i) Vikasa Higher Secondary and Matriculation School
- ii) Madura Labour Welfare Higher Secondary School
- iii) Madura Labour Welfare Primary School
- iv) Middle School at Harveypatti
- v) Kochadai Club
- vi) Harvey Nagar Sports Club
- vii) Community Hall for marriage purpose



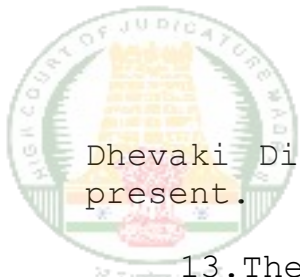
8.The employees engaged at these welfare places are not employees of the textile mills. The workers in the manufacturing units have separate certified standing orders governing their service conditions, whereas, when the School was running, the salary for the teaching and non teaching staffs were paid as fixed by the Government and the wages, service conditions, etc., for workers in welfare places are different.

9.As a welfare measure, the management established Harvey Nagar Colony and for that colony, sports club was established, namely, Harvey Nagar Sports Club and Kochadai Club. There was no need for permanent and full time employees to run the clubs. So the persons were engaged on contract basis to maintain the club and the contractor engaged their workers as Marker, Sweeper and Scavenger, etc. The service conditions for those persons were entirely different from the workers in textile units. In the sports club, only three persons were engaged through that contractor. They were Mr.Chinnathambi engaged as Marker, Mrs.Mary, engaged as Sweeper and Mrs.Pandiammal, engaged as Scavenger.

10.Actually, the club was used only by the employees of the second respondent namely, Madurai Panchalai Thozilalar Sangam and outsiders residing in Harvey Nagar would also come and play. The object of the sports club was to give space for various games both indoor and outdoor. The job performed by the said three employees were not full time job. The Marker was having two hours work in the morning and two hours work in the evening. Totally, he was working four hours a day. That too, his work was not a routine work and he will come only when players come and the Marker will not have any work, if players did not come due to their personal reasons or climate.

11.The work of the Sweeper was to clean the building and open the ground which will be only for two hours a day and the duty of the Scavenger was to clean the toilet situated in the building and this would not last even for an hour per day. Their wages are fixed according to the work. The management also claims that the players did not come regularly to the club and they are not providing any sports kits or materials like ball, bat, etc., for the games. The players bring their own articles and take them back. Thus, there was no work to take care of the articles.

12.Since number of players were reduced drastically, the contract for maintaining the sports club was terminated on 27.02.2004. Thereafter, no contract amount was paid to the contractor and he also did not engage any person. After sometime, the site used for sports club was sold out during November 2010 to



Dhevaki Diagnostic Private Limited and there is no club at all at present.

13.The Panchalai Thozhilalar Sangam raised a collective dispute under Section 2(k) of Industrial Disputes Act, praying to regularize the service and make permanent the service of the said Chinnathambi, Mary and Pandiammal and pay full wages to them. The Government of Tamil Nadu referred the dispute in G.O.(D)No.571, dated 28.06.1996, for adjudication before the Labour Court. Thereafter, it was taken on file as I.D.No.225 of 1996. While the trial was going on, all the witnesses of the petitioner/union side were over, the said Chinnathambi, one of the person for whom the dispute was raised, filed a Writ Petition to implead him as a party in I.D.No.225 of 1996, which was in SR stage, in W.P.S.R.No.16433 of 2006, which was dismissed on the ground to move the Labour Court. Thereafter, the union had withdrawn the support to the said Chinnathambi. Thereafter, the said Chinnathambi filed an Interlocutory Petition before the Labour Court in I.A.49 of 2006, alleging that the Secretary of the Union, who deposed before the Labour Court stated only a lesser number of members were there in the Union and so he had no confidence in the Union and from the letter, dated 30.03.2005, it is clear that the Union was not prepared to conduct the case any further and the learned Counsel appearing on behalf of the Union did not appear for the case and so prayed to permit the petitioner to conduct the case in I.D.No.225 of 1996.

14.Based on these facts, the Labour Court has raised the following issues in W.P.(MD)No.7018 of 2014. The relevant portion of the affidavit is extracted below:

"7.It is submitted that the first respondent after hearing both side, arrayed the following beliefs-

a) Whether the petitioner can be permitted to conduct the case on behalf of petitioner union?

b) Whether the union has raised valid industrial dispute?

c) Whether the Management of Coats Viyella India Limited, is the employer of the three employees Chinnathambi, Mary and Pandiyammal?

d) Whether the workers Chinnathambi, Mary and Pandiammal are entitled to regularization and how fixation of pay to be determined?

e) To what other relief the petitioner is entitled to?

8.It is submitted that this petitioner filed I.A.137 of 2008 and raised preliminary issues, which



were also taken for disposal and the issues arrayed thereon are -

a) Whether the dispute raised by the trade union as per I.A.275/1996 is an industrial dispute as defined under Section 2(k) of act.

b) Whether the petitioner as per I.A.49/2006 is entitled to represent the independent of trade union?"

15. Heard Mr. P. Saravakumar, learned Counsel appearing for the petitioner/employee and Mr. T. Ravichandran, learned Counsel appearing for the respondent/management.

16. Even though the Labour Court has not granted regularization to the said Chinnathambi and two others, the management prayed to taken up three issues as a preliminary issue, but this Court is considering that has academic purpose only. Therefore, the issue of whether the said Chinnathambi and two others are entitled to regularization which is raised in W.P.(MD)No.457 of 2014 can be taken first.

17. The petitioner worker Chinnathambi seeks to regularize the service and has claimed that he has put in service for 240 days per year. The Labour Court has recorded that the petitioner workers have marked exhibits W-1 to W-46 and the respondent management has marked exhibits M-1 to M-10 and the petitioner/workers were examined and also the respondent management was examined. The Labour Court has said that it is for the petitioner/workers to establish that they are entitled to regularization. The petitioner/workers have filed several documents to prove that they were working in the respondent management. It was not denied by the respondent management that the petitioner/workers were working in the sports club. But the petitioner/workers have not filed any documents to show that they were appointed on regular post. There was no sanctioned post to appoint the petitioner/workers.

18. The contention of the respondent management is that they were employed on contract basis and on temporary basis and they have not completed 240 days of service in a year. It is true that the workers cannot claim regularization as a matter of right on the ground of mere continuous working. The petitioner workers in their claim statement have stated that they joined the service, but have not furnished any actual date, month or year of joining and they have simply stated that Chinnathambi, Mary and Pandiammal were working for about 11, 20, and 30 years respectively.

19. The petitioner ought to prove that he has put in 480 days of service in two years as an employee. Admittedly, an employee cannot claim regularization on the ground of long rendering service. The



claim for regularization on the ground of working for a continuous period of ten years, depends upon the completion of 480 days in the existence of permanent post.

20. The learned Counsel appearing for the management submitted that the said workers were initially engaged through contractors and they were not in continuous service for more than one year. Within the meaning of Section 25(b) of Industrial Disputes Act, the said workers might have worked as part time employees. If part time employees are seeking any regularization, the same cannot be considered, since part time employees will not be engaged under any sanctioned post. The relevant portion awarded in the order of the Labour Court is extracted below:

"The workers are aware of the consequences of appointment being temporary contractual such a person cannot invoke the theory of legitimate expectation for being confirmed in the post. Hence the regularization of service can be granted only in accordance with law. In the absence of any provisions of law or rule, such a prayer cannot be granted. The regularization is not a mode of appointment. The court cannot direct regularization of service on mere long rendering of service. It is well settled that a person appointed temporarily on adhoc basis or casual do not have any right to hold any post. When there is no permanent post no direction can be issued to the authorities to absorb the daily wager even by creating a post. Long service put in by the workman itself may not be a ground of regularization the service of adhoc temporary employee. Workers working on unsanctioned post have no right of regularization. The petitioner has filed several documents. The documents would not reveal that the worker had been appointed on a sanctioned post. The document would not indicate that cadre strength was fixed for the employees of the respondent. Ex.w.25 is the judgment of the Honourable High Court Madras. In W.P.5/88 Tamil Nadu Market Sangam rep by its Secretary Vs. Government of Tamil Nadu and others) wherein Honourable High Court Madras was held in para 12 of the Judgment that with reference to regularization of service, the members of the petitioner's association, the relief cannot be granted since there was no sanctioned post. Ex.W.33 and 34 are not sufficient to claim for regularization. In Ex.W. 36 it was mentioned as exgratia payment. Ex.W. 13 shows that markers, sweeper, sewage were engaged on contract basis. The petitioner in the claim statement have not stated that they have



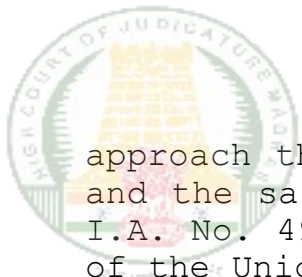
completed 240 days of service in the one year or 480 days in 2 years. The petitioner has not stated in the claim statement that the workers Chinnathambi Mary and Pandiyammal were appointed on a sanctioned post. No cadre strength was fixed by the managements for the sports department. No appointment order was produced. In the absence of any clear evidence court cannot direct the respondent to regularize the service of the workers. It is stated that now the respondent management was not in existence. The documents filed by petitioner are not sufficient to come to the conclusion that workers Chinnathambi, Mary, Pandiyammal are entitled to be regularized. The petitioner has failed to prove the case for regularization."

21. The Labour Court has dealt with the issue of regularization after taking the relevant exhibits and has analyzed the issue and the is legally valid. Moreover it is submitted by the respondent management that the contract was terminated on 27.02.2004 and later on the land was itself sold during November 2010. Therefore, this Court cannot pass any orders for absorption of the petitioner worker. Hence this Court holds that there is no infirmity in the Labour Court award, as far as the issue of regularization of petitioner / workers is concerned.

22. The management has filed writ petition in W.P.(MD)No.7018 of 2014 challenging that portion of the ID award and has raised the following issues:

- i. Whether the individual can conduct the case on behalf of the Union
- ii. Whether the Union has raised any valid industrial dispute.
- iii. Whether the Coats Viyella India Ltd., is the employer of the three employees.

23. The facts of the case are that the general union, namely Madurai Panchalai Thozhilalar Sangam (CITU) raised a collective dispute under section 2(k) of I.D. Act to regularize the services of the said three employees who were engaged in the Sports Club. The government referred the dispute in G.O. (D) No. 571 dated 28.06.1996 for adjudication and was taken on file as I.D. No. 225 / 1996 arraying General Secretary, Madurai Panchalai Thozhilalar Sangam (CITU) as petitioner. When the case was still on the file of the Labour Court and witness of the union side was over, the said Chinnathambi had filed a writ petition in WP SR No. 16433 / 2006 to array him as party in the ID and the same was dismissed directing to



approach the Labour Court. Then the union had withdrawn the support and the said Chinnathambi had filed an interlocutory application in I.A. No. 49 / 2006 in ID No. 225 / 1996 alleging that the Secretary of the Union has deposed the management has lesser number of members and so he had lost confidence in the union and had submitted a letter dated 30.03.2005 with this effect. Thereafter the counsel appeared for union has not appeared and prayed to permit him to appeal in the ID, by engaging his own counsel. Under these circumstances, the management has raised the above stated three issues.

24. As far as the issue of "Whether the individual can conduct the case on behalf of the Union" is concerned the counsel for the management submitted that under section 2(k) which is meant for raising collective dispute by the union and once the union has withdrawn the support then the individual cannot step into the shoes of the union and conduct the case. This issue is considered in Newspapers Ltd. Vs. State Tribunal U.P. reported in 1974 (2) LLJ 1 had held that,

"where the disputes is purely concerning the employer and the individuals concerned and neither separately nor taken together could they be regarded as a dispute between the employer and his workmen and further neither any question of principle was involved nor did any trade union to which the workman or workmen belong take up the dispute before the Industrial Tribunal the disputes do not fall within the definition of term "industrial dispute"

The Hon'ble Supreme Court vide judgment dated 12.09.1996 in the K C P Limited vs The Presiding Officer & Others has held that,

"It is also not in dispute that parties to the settlement were the appellant company on the one hand and respondent No. 2 - union on the other, which acted on behalf of all the 29 dismissed workmen for whom reference was pending in the Labour Court. It was duly signed by both these parties. Under these circumstances, respondent Nos. 3 to 14 also would be ordinarily bound by this settlement entered into by their representative union with the company unless it is shown that the said settlement was ex-facie, unfair, unjust or malafide. No such case could be even alleged much less made out by the dissenting respondent Nos. 3 to 14 before the trial court. It is interesting to note that before the Labour Court the only argument put forward on behalf of the respondent Nos 3 to 14 was that they were not parties to the settlement and therefore, it was not binding on them.



behalf of the union and the issue is in favour of the management. However a question arises whether the said Chinnathambi can raise industrial dispute under section 2(A), for this the counsel appearing for management submitted individual can raise under section 2(A) but in the present case the said Chinnathambi and two others are seeking regularisation and regularisation does not come under section 2(A). The issue of regularisation has been held against the said Chinnathambi and two others in W.P. (MD) No. 457 of 2014 and hence this Court is of the opinion, in the present case the question does not arise. Therefore the question is left open.

26.The 2nd issue is "whether the Union has raised any valid industrial dispute" for which the management relies on the deposition of the said Chinnathambi, wherein it has been stated as under:

“மில் தொழிலாளர்களுக்கு வழங்கப்படும், வருங்கால வைப்பு நிதி, காப்பீட்டுக் கழக வசதி, போனஸ் போன்ற வசதிகள், எங்களுக்கு கிடையாது. எங்களுக்கு வரராந்திர விடுமுறை வருடாந்திர விடுமுறை கிடையாது. எங்களுக்கு வருகை பதிவேடு கிடையாது. எங்களுக்கு வழங்கப்படும், மாதச் சம்பளத்தில் பிடித்தம் செய்யாமல் முழுமையாக கொடுப்பார்கள். நான் கூடுதல் நேரம் வேலை செய்தமைக்காக எதிர்மனுதாரரிடம் சம்பளம் கேட்கவில்லை. எங்கள் கோரிக்கை சம்பந்தமான கூட்டம் சங்கத்தில் நடைபெற்றது. சங்கத்தில் நடைபெற்ற கூட்டம் பற்றி எனக்கு தெரியாது. எக்ஸ்.டபிள்யூ.5 ஆவணத்தில் என்னுடைய கையெழுத்து இல்லை. இதில் மேரி, பாண்டியம்மாள் கையெழுத்தும் இல்லை. எக்ஸ்.டபிள்யூ.25இல் கண்ட உயர்நீதிமன்ற உத்தரவு எங்களுக்கு பொருந்தாது என்று சொன்னால் சரியல்ல. இந்த வழக்கில் நாங்கள் தரப்பினர்களாக இல்லை. உயர் நீதிமன்ற உத்தரவு அமல்படுத்தப்பட்டுள்ளது.”

27.This would prove that the said Chinnathambi and two others have not signed the resolution and no worker under Sports Club have signed the resolution and this Court holds that there is no valid industrial dispute under section 2(k) and hence this issue is held in favour of the management.

28.As far as the 3rd issue is concerned i.e. "whether the Coats Viyella India Ltd., is the employer of the three employees" the management has relied on the cases filed by the said Chinnathambi claiming some other persons as contractor. In O.S. No. 829 of 2002 the said Chinnathambi has arrayed one Durairaj as work contractor under whom the he had worked (Ex.P. 26,45 and 46). In a petition under Payment of Wages Act in P.W. No. 2 / 2004 the said Chinnathambi has arrayed one Balachandran as work contractor. Therefore it would be evident that the said Chinnathambi were contract employees under somebody and the Coats Viyella India Ltd has engaged them through contractor. The 3rd issue is also answered in favour of the management.



29. Since all the three issues raised in the W.P. (MD) No. 7018 of 2014 are answered in favour of the management, the said writ petition is allowed.

30. Therefore, the Writ Petition in W.P.(MD)No.457 of 2014 is dismissed and the W.P. (MD) No. 7018 of 2014 is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Presiding Officer,
Labour Court,
Madurai.

W.P. (MD) Nos. 457 and 7018 of 2014
09.12.2021

RD(17.12.2021) 12P 2C