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W.P.Nos.13152 to 13163 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.13152 to 13163 of 2016

and

W.M.P.Nos.11524 to 11534 of 2016

W.P.No.13152 of 2016:

1.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Salai,
Chennai – 5.

2.Executive Engineer,
Urban Division,
Tamil Nadu Water Supply and Drainage Board,
149, New Vinayagar Koil St,
Kangayam – 638701.

3.Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
No.1171, Muthuya Complex 3rd Floor,
Mettur Road, Erode – 638 011.

4.Assistant Executive Engineer,
Maintenance Division,
Tamil Nadu Water Supply and Drainage Board,
Seenivasa Nagar,
Vasavi College Post,
Bhavani – 638316.

... Petitioners

Vs.



1.N.Anantharasu

2.The Presiding Officer,
Labour Court, Salem.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records made in Award Dated 29.01.2015 in I.D.No.6 of 2003 on the file of Labour Court, Salem and quash the same.

For Petitioners	: Mr.S.Ravindran Senior Counsel For Mrs.S.Mekhala (in all 12 W.Ps)
For R1	: Mr.V.Ajoy Khose For Mr.M.Muthupandian (in all 12 W.Ps)
For R2	: Labour Court (in all 12 W.Ps)

COMMON ORDER

The writ petitions on hand have been instituted challenging the Awards passed in I.D.Nos.6, 9, 10, 11, 12, 15, 19, 322, 324, 325, 326, 367 of 2003 respectively dated 29.01.2015 on the file of the Labour Court, Salem.



2. The writ petitioner is Tamil Nadu Water Supply and Drainage Board. The petitioner / Board is a Statutory authority established under the Tamil Nadu Water Supply and Drainage Board Act, 1970. The respondents / Workmen filed I.D.Nos.6, 9, 10, 11, 12, 15, 19, 322, 324, 325, 326, 367 of 2003 against the petitioner / TWAD Board, under Section 2(A)(2) of the Industrial Disputes Act, 1947. The respondent/workmen served under the petitioner Board as Electrical Assistant from the year 1999 to 2002. The respondents / workmen alleged before the Labour Court that they were orally terminated by the authorities of the petitioner / Board with effect from 01.08.2002. Question the oral termination, the Industrial Disputes were filed before the Labour Court.

3. The petitioner / Board contested the case by filing the counter statement. The petitioner contended that the workmen did not work under the TWAD Board and they were engaged by the private contractor, who have contracted with TWAD Board for execution of certain works. Schemes were maintained through contractors and based on the contracts executed, these workmen were engaged by the private contractors and served in the projects. The employment came to an end soon after the expiry of the contract between the TWAD Board and the private contractors. There was



no employer-employee relationship existed between the workmen and the petitioner / TWAD Board, since the TWAD Board had not appointed these workmen / respondents. The Labour Court allowed the I.Ds and ordered for the reinstatement of the workmen with continuity of services and 25% of back wages. Thus, the petitioner / Board is constrained to move these present writ petitions.

4. The learned Senior Counsel appearing on behalf of the petitioners / Board contended that the very findings in the impugned Awards regarding the burden of proof is legally untenable. The workmen, who filed the petitions before the Labour Court, pleaded that they were appointed by the competent authorities of the TWAD Board and orally terminated by such authorities. Thus, the burden of proof is on the workmen, who made such statements and it for the workmen to establish that the employer-employee relationship between the Board and the workmen existed for establishing the cause of action and to maintain the dispute before the Labour Court. In this regard, the Labour Court also held that the workmen are bound to prove employer-employee relationship. However, erroneously arrived a conclusion that the Management has not produced the documents in this regard and therefore, the workmen could not be blamed.



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5. The learned Senior Counsel appearing on behalf of the petitioners reiterated that the Labour Court erroneously held that since in respect Exhibit P3 notice dated 08.01.2010 calling for records, the respondent did not produce and therefore, it could not be held that the Workmen had not proved the completion of 480 days of service in 24 calendar months, without noticing that the said notice has been given 7 years after the pendency of the dispute. The relevancy of the documents were also not proved by the Workmen before the Labour Court. Exhibits P1 and P2 orders do not relate to the petitioners. Exhibit P1 order is in respect of the demands concerning the NMRs claim. Exhibit order P2 refers to the order of the authority under the Permanent Status Act with regard to some other Workmen. Therefore, reliance on the above two orders of the Labour Court is perverse.

6. There was no need to engage contract labourers and the standing orders referred to the service conditions of the workmen / Board. There is no provision for engagement of the contract labourers through private contractors. The Labour Court erroneously formed an opinion that Ex R1 to R7 refer to the period of non-employment of the Workmen. However, those



documents were filed to prove that there is prevalence of engagement of contractors. Therefore, the findings of the Labour Court that the employer-employee relationship existed between the Board and the Workmen is perverse and factually incorrect. The Finding of the the Labour Court that the non-employment of the petitioners was in violation of the Sections 25-F, 25-G, 25-N, 25-H is completely baseless. No proof had been given to establish the oral termination allegedly effected by the Board on 01.08.2002. Thus, the Awards of the Labour Court are liable to be set aside.

7. In support of the contentions raised, the learned Senior Counsel appearing on behalf of the petitioners relied on the judgment of Hon'ble Supreme Court of India in the case of ***Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of Tamil Nadu and Others*** reported in ***[(2004) 3 SCC 514]***, wherein, the Apex Court made the following observations:

Burden of proof

“47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

48. In N.C. John v. Secy., Thodupuzha Taluk Shop and Commercial Establishment Workers' Union [1973 Lab IC 398 : (1973) 1 LLJ 366 (Ker)] the Kerala High Court held : (LAB IC



p. 402, para 9)

The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship.

49. *In Swapan Das Gupta v. First Labour Court of W.B. [1976 Lab IC 202 (Cal)] it has been held : (LAB IC para 10)*

Where a person asserts that he was a workman of the company and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person."

8. The learned counsel for the respondents / Workmen objected the said contentions raised on behalf of the petitioners by stating that the Workmen had filed about 16 documents before the Labour Court, which would establish that they were directly engaged by the petitioner / Board. The respondents / Workmen were performing their duties and responsibilities directly under the control of the Board authorities and the schemes were implemented by the petitioner / Board by engaging the respondents / workmen. The respondents / Workmen were illegally terminated orally with effect from 01.08.2002. Thus, the Workmen raised



disputes before the Labour Court. The petitioner / Board has engaged more than 15,000 Workmen for execution of various schemes as per the Government Policies. Near about 10,000 Workmen alone served as permanent employees of the Board. The remaining employees were not brought under the regular establishment nor the benefit of regularisation was granted to the Workmen. Thus, the Board has kept these Workmen as daily wage employees and extracted work, but not extended the benefit of regularisation and permanent absorption, enabling these employees to become the regular employees.

9. The respondents / Workmen served in the Board from the year 1999 to 2002 continuously and for more than 480 days. Therefore, they are entitled to be brought under the regular establishment in the time scale of pay. There is no written order of termination issued to the respondents / Workmen. No enquiry was conducted. Even show cause notice was not issued to the Workmen. The retrenchment compensation was also not granted. The Workmen were not provided with an opportunity to defend their case. Thus, the unilateral decision taken by the petitioner / Board is to be set aside.



10. The Labour Court adjudicated the issues. The findings of the Labour Court reveals that the respondents / Workmen served in-between the years 1999 to 2002 and two employees alone served from the year 1996 and 1998 respectively. The Labour Court found that the respondents / Workmen were terminated orally and there is no written order of termination. The findings reveals that the respondents/workmen served from the year 1999 to 2002 continuously without any break in service and they are not contract labourers. The Workmen were serving under the supervision and control of the authorities of the petitioner / Board. However, the counter statement of the petitioner / Board was also considered by the Labour Court to the extent that the respondents / Workmen were not appointed by the competent authorities of the petitioner / Board. The petitioner / Board has stated that these Workmen were engaged through private contractors, with whom, the petitioner / Board entered into a contract for execution of certain schemes. Therefore, the respondents / Workmen are not the employees of the Board nor appointed by the competent authorities of the Board in accordance with the Recruitment Rules in force. The Board has stated before the Labour Court that no NMRs were engaged in the Board's services after the year 1996. When the Board took a policy decision not to engage NMRs / daily wage employees after the year 1996, the very contention of the Workmen



that they were appointed by the Board is untenable.

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11. In respect of the statements made by the Board and the Workmen, the Labour Court formed an opinion that there was an employer-employee relationship existed between the Board and the respondents / Workmen. Further, the Labour Court formed an opinion that the respondents / Workmen served more than 480 days of service and therefore, they are entitled to be regularised in the Board's services. However, the Labour Court recognised the contract entered into between the private contractor and the petitioner / Board. The Management's documents 1 to 7 revealed that the petitioner/Board executed contracts in favour of the private contractors for execution of various schemes implemented by the Board.

12. Considering the arguments as advanced between the respective parties to the *lis* on hand and considering the findings of the Labour Court in the impugned Awards, this Court has to consider the scope of regularisation and permanent absorption of these contract labourers in the sanctioned post of the petitioner / Board and also the alleged oral termination pleaded by the respondents / Workmen.



13. It is not in dispute that the respondents / Workmen served for execution of certain schemes implemented by the Board, but the nature of engagement or appointment if any made is to be considered for the purpose of granting of regularisation and permanent absorption. Pertinently, the respondents / Workmen had not filed any documents to establish that they were appointed by the competent authorities by the petitioner / Board in accordance with the Recruitment Rules in force.

14. If the Workmen pleads that no appointment order was issued, then oral termination if at all by the authorities also to be taken note of. Question of oral termination would arise only if the workmen is appointed by the Board, which is the 'State' within the meaning of Article 12 of the Constitution of India. Board being a Statutory authority has to follow the provisions of the Statutes and the Rules scrupulously. The documents filed by the respondents / Workmen reveal that no such document regarding order of appointment or any reference to that effect were filed. In the absence of any such valid appointment in accordance with the Recruitment Rules applicable to the petitioner / Board, question of regularisation or permanent absorption would not arise at all.



15. The benefit of regularisation or permanent absorption are to be granted only in accordance with the Service Rules in force. Even illegal and irregular appointments or back door appointments cannot be regularised nor such Workmen can be brought under the regular establishment in the time scale of pay. The persons appointed through back door must be allowed to go out from the door, through which they entered. Thus, the benefit of regularization and permanent absorption cannot be granted in a routine manner.

16. The Conferment of Permanent Status Act would not be applicable to the employees engaged by the Board, since the Board has got its own Service Rules for appointment, governing the service conditions. When the Special Rules governing the service conditions are in force for the petitioner / Board employees, then the General Act is inapplicable. In other words, the Special rules will prevail over the General laws and thus, the service conditions including appointment as far as the Board's service are concerned, it must be made in consonance with the provisions of the Special rules, which is in force as far as the petitioner Board is concerned. Thus, it is not as if the contract labourers, who were engaged by the contractors for execution of certain schemes can be brought under the regular establishment



of the TWAD Board in the time scale of pay, which is to be construed as back door entries.

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17. When the respondents / Workmen could not able to prove that they were appointed by the competent authorities by the Board in consonance with the Rules, then they are not entitled for the regularisation or permanent absorption and in the event of granting the benefit of permanent absorptions, the Fundamental Rights of all other citizen, who all are eligible for such permanent appointment through open competitive process are infringed.

18. That exactly is the reason why Courts have repeatedly held that appointments are to be made strictly in accordance with the rules in force and by providing equal opportunity and by adhering to the principles enunciated in the equality clause under the Indian Constitution.

19. The facts and circumstances established before the Labour Court and the findings of the Labour Court unambiguously reveals that the respondents / workmen were engaged for execution of certain contractual works implemented by the Board through Private contractors. Thus, these



workmen were engaged by the private contractors for execution of scheme related works for the TWAD Board. Thus, they cannot be allowed to take undue advantage of the services rendered for execution of scheme related works through private contractors. If such benefit is extended, then it will result in unconstitutionality.

20. Regarding oral termination, the Court has to consider, whether the person has been appointed by the TWAD Board in the present case. Only if the appointment is proved, then alone, the question of considering the oral termination would arise. In the event of not establishing the appointment by the competent authorities of the Board in accordance with the Rules, question of considering the oral termination would not arise at all. Therefore, the Labour Court has primarily failed to ascertain, whether the respondents / workmen were appointed by the competent authorities of the Board in accordance with the rules in force. The Board has stated in their counter statement that the practice of appointing daily wage employees (NMR) were abolished from the year 1996 onwards. Thus, as per the statement of the respondents / workmen, they were engaged as contract labourers from the year 1999 to 2002. Thus, the burden of proof lies on the workmen to establish that they were appointed by Board authorities. But,



the respondents / workmen could not able to file any document to prove that they were appointed by the authorities of the Board or directly engaged by the Board authorities for execution of scheme related works. While execution of scheme related works, providing instructions to such contract labourers would not confer any right to claim permanent absorption in Board's services. The Board has executed the scheme related works through the private contractors. The private contractors engage labourers. While conducting inspection, the Board's authorities have to give instructions for maintaining the quality of work and other related issues. Therefore, the supervision or providing instructions by the Board authorities, while executing the scheme related works, would not confer any right on the workmen to claim that they were controlled by the Board's authorities and therefore, they are the direct employees of the Board. Thus, the Labour Court has misconstrued the employer-employee relationship and erroneously formed an opinion that such a relationship existed between the petitioner Board and the respondents / workmen. In order to establish the employer-employee relationship, there must be adequate evidence, since the petitioner TWAD Board is a Statutory authority and a 'State' within the meaning of Article 12 of the Constitution of India.



21. In the present cases, the Labour Court has proceeded based on presumptions and assumptions regarding the employer-employee relationship. There is no document to establish that the respondents / workmen were appointed by the competent authorities of the petitioner Board in accordance with the Service Rules.

22. Assuming that contract labourers were supervised or engaged by the Board authorities in violation of the Recruitment Rules in force or any scheme related works for a temporary period, such employees are not entitled for regularisation or permanent absorption in Board's Service. The Board's Services are governed by the Special Rules including the Rules for Recruitment. Thus, the General Statutes are not applicable and thus, the petitions filed under the General Statutes are not entertainable. The Special Rules governing the service conditions of the Board will prevail over the General law and therefore, the Labour Court has committed an error in entertaining the petition for the purpose of granting the relief. Thus, the findings of the Labour Court are perverse and not based on the principles of law.



23. Casual daily wage employees or contract labourers are engaged by the Boards, Government undertaking etc., while implementing the scheme related works or to meet out certain public exigencies. However, those daily rated employees and contract labourers are very much aware of the fact that they were not appointed in accordance with the Recruitment Rules in force, which all are applicable to the respondent / Board. Once these labourers accepted the terms and conditions of their engagement / employment, they are estopped from seeking regularisation or permanent absorption against the sanctioned post, which is to be filled up strictly by following the Rules in force and by providing equal opportunity to all the persons, who all are aspiring to secure public employment. Once the employees accepted the terms and conditions of their services, they cannot turn around and claim permanent absorption in violation of the Service Rules in force, since the initial appointment was back door appointment and thus, the benefit of regularisation if granted would infringe the rights of all the citizen, who all are longing to secure public employment through open competitive process.

24. Granting any relief in violation of the service conditions and rules of the Board would result in unconstitutionality as the initial appointment of these labourers were not made in accordance with the rules applicable to the



Board. Once the initial appointment was not established or found irregular or illegal, then regularisation or permanent absorption cannot be granted. In the present case, the respondents / Workmen have not even established their appointment through documents and evidences. When the appointment made by the competent authority of the Board itself has not been established in the manner known to law, then the question of considering the oral termination and reinstatement would not arise at all.

25. Thus, the awards of the Labour Court are perverse as the awards are not based on any concrete evidence regarding the appointment of the respondents / Workmen in Board's Services in accordance with Rules.

26. The learned Senior counsel appearing on behalf of the petitioner/Board brought to the notice of this Court that a sum of Rs.4,95,000/- (Rupees Four Lakh Ninety Five Thousand only) has already been deposited before the Labour Court, Salem and the respondents / workmen were permitted to withdraw 25% of the deposited amount. If the said amount has already been withdrawn, then the balance amount lying in the deposit along with the accrued interest is directed to be disbursed in favour of the petitioner/Board.



27. In this regard, the petitioner/Board is at liberty to submit an application before the Labour Court, Salem for withdrawal of the deposited amount.

28. In view of the discussion made in the aforementioned paragraphs, this Court has no hesitation in arriving a conclusion that the Awards of the Labour Court are perverse and not in consonance with the established principles of law.

29. Consequently, the Awards passed in I.D.Nos.6, 9, 10, 11, 12, 15, 19, 322, 324, 325, 326, 367 of 2003 respectively dated 29.01.2015 on the file of the Labour Court, Salem are quashed and all the writ petitions stand allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

20.10.2022

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Index : Yes
Speaking order



To

The Presiding Officer,
Labour Court,
Salem.

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S.M.SUBRAMANIAM, J.

Jeni/kak

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