



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016
and W.M.P.Nos.16106, 16286, 16287, 16288, 16289, 16290, 16291 of 2016
and W.M.P.Nos.38898, 38901, 38902, 38905 & 38909 of 2018
and W.M.P.No.970 of 2019

W.P.No.18407 of 2017

ABI Showatech (India) Limited,
(LAP Division)
Rep. by its Ocupier – S.Ravindran,
Pulivalam Village & Post,
Banavaram Via, Walaja Taluk,
Vellore District – 632 505.

...Petitioner

Vs.

1.The Joint Director of Industrial Safety and Health – I,
Tamil Nadu Housing Board Office Campus,
Sathuvachari,
Vellore – 600 009.

2.Five Men Committee,
Affiliated to CITU,
78/516, Pilliyar Kovil Street,
Puliyakannu, Ranipet Via,
Walaja Taluk,
Vellore District – 632 405.

..Respondents



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

WEB COPY

Prayer in W.P.No.18407 of 2017: Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Case No.E/1343/2015 and quash its order dated 13.05.2016.

For Petitioner : Mr.S.Ravichandran
in all W.Ps Senior Counsel for
Mr.S.Bazeer Ahamed

For Respondents : No Appearance for R1
in all W.Ps

Mr.V.Ajay Ghouse for R2
in W.P.No.18407 of 2016

Mr.V.Ajay Ghouse for R2 to R7
in W.P.Nos.18581 &18582 of 2016

Mr.V.Ajay Ghouse for R2 & R3
in W.P.Nos.18583 &18584 of 2016

Mr.V.Ajay Ghouse for R2 to R9
in W.P.Nos.18585 &18586 of 2016



WEB COPY



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

ORDER

The writ petitions on hand has been instituted challenging the order dated 17.05.2016 passed by the Joint Director of Industrial Safety and Health under the Provision of Conferment of Permanent Status Act.

2.The petitioner is Brakes India Private Limited. The petitioner is engaged in the manufacture of Grey Iron Castings for Automobile Brake Assembly. The petitioner has a registered itself as a principal employer under the provisions of the Contract Labour (Regulation and Abolition) Act. The petitioner has engaged contractors who have obtained license under the provisions of Contract Labour (Regulation and Abolition) Act. These contractors supply labourers to the petitioner.

3.The 1st respondent issued summons as an authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. The petitioner Company filed its preliminary objection on



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

15.03.2016 and an additional preliminary objection on 24.03.2016 & 07.04.2016 respectively, contending that the respondents workmen were never in the role of employment of the petitioner Company and they were employees of the licensed contractors and therefore, the petition under the Provision of Conferment of Permanent Status Act is not maintainable. The respondents workmen raised industrial disputes alleging non-employment and that Failure Reports have been received. The petitioner Company prayed that the preliminary objection regarding their maintainability of the petition under the Provision of Conferment of Permanent Status Act is to be decided.

4.The 1st respondent was not inclined to take the maintainability as a preliminary issue and thereafter, the petitioner filed W.P.No.13552 to 13554 of 2016 for a direction. This Court passed an order on 12.04.2016, directing the 1st respondent to decide the preliminary issue as first among the other issues. Despite the directions issued, the 1st respondent has not decided the preliminary issue as raised by the petitioner Company, but decided the issue along with other issues and passed final orders on 17.05.2016. In other words, the 1st



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

respondent has not decided the preliminary issue on merits. The learned Senior Counsel appearing on behalf of the petitioner Company contended that the final order was passed by the 1st respondent without any further notice to the petitioner with reference to the preliminary objection petition filed by them. Thus, the order is perverse and is to be set aside.

5. The learned Senior Counsel appearing on behalf of the petitioner Company contended that the 1st respondent has no jurisdiction to decide the issues in the absence of any adjudication and crystallization of the rights of the workmen in the manner known to law. It is not as if the 1st respondent Company can entertain a petition filed by the workmen and order for permanent status without elaborate adjudication regarding the rights conferred on them. In the present case, the petitioner Company has raised a preliminary objection stating that the petition itself is not maintainable as the respondent workmen were not directly engaged by the petitioner Company. The petitioner have contended that these workmen were engaged by the licensed contractors with whom the petitioner Company executed contract for providing labourers for execution of



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

certain works. Therefore, it was the contention of the petitioner that the respondent workmen are not directly engaged by the petitioner Company for the purpose of entertaining an application under the Provision of Conferment of Permanent Status Act.

6.The learned Senior Counsel to substantiate the principles relied on the judgment of the Division Bench of this Court in batch of writ petitions in the case of ***The Superintending Engineer, Erode Electricity Distribution Circle vs. Inspector of Labour and another*** reported in **2022(2) LLN 750**. The relevant portions in the order are extracted hereunder:

“4. Learned counsel for the petitioner Tamil Nadu Electricity Board, now Tamil Nadu Generation and Distribution Corporation Limited, submits that the Labour Inspector has passed the impugned orders exceeding his jurisdiction, while adjudicating the issue in reference to the Act of 1970. A dispute in reference to the Act of 1970 can be adjudicated only by the Industrial Adjudicator, which can be the Labour Court or the Industrial Tribunal under the Industrial Disputes Act, 1947 [for brevity, “the Act of 1947”]. However, ignoring the aforesaid, the Labour Inspector has recorded finding on the engagement of the respondent employees to be camouflage under the Act of 1970, so as to issue a direction for permanency of the employees. It was even ignoring the fact that the employees were not falling within



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

WEB COPY

the definition of “workman” and otherwise the Act of 1981 cannot override the Tamil Nadu Electricity Board Service Regulations framed pursuant to Sections 79(c) and (k) of the Electricity (Supply) Act, 1948 [for brevity, “the Act of 1948“]. In case of conflict between the Act of 1981 and the statutory Regulations, the Tamil Nadu Electricity Board Service Regulations framed under the Act of 1948 would prevail.

5. It is further submitted that the Labour Inspector even ignored the settlement arrived between the parties on 10.8.2007 under Section 12(3) of the Act of 1947, despite being upheld by the Division Bench of this court by its judgment dated 24.10.2008. He added that the directions given under the impugned orders are going beyond the terms of the settlement and, thus, deserve to be interfered.

6. Coming to the facts of this case, it is stated that the petitioner Corporation has stopped engagement of contract labour in the year 2008 itself, i.e., after the settlement, and whoever were covered by the settlement had been extended the benefit and thereupon the employment was only on the basis of daily wages. The employees failed to produce any document to prove their engagement and continuous working for 480 days in 24 calendar months, yet based on surmises and conjectures, the impugned orders were passed by the Labour Inspector. It is also by ignoring the fact that a relationship between the employer and employee was required to extend the benefit of permanency under the Act of 1981. The members of the association and the employees were not in service at the time of enquiry and passing the orders by the Labour Inspector, yet a direction for grant of permanency has been given from the date of completion of 480 days service.

7. It is even ignoring the fact that even if the members of the association and employees were engaged by the petitioner corporation, it was for temporary work like digging, poles



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

WEB COPY

erection, stretching wires, transformer erection, cutting trees, loading and unloading of electric goods etc. Those works cannot be said to be of continuous nature, but without referring to the nature of the work, the impugned orders for grant of permanency have been passed. It is by shifting the burden of proof from employees to employer, though burden of proof was on the employees to prove their continuous service of 480 days in 24 calendar months to seek the benefit under Section 3 of the Act of 1981.

8. In view of the above, the prayer is to set aside the orders of Labour Inspector and if the interference therein is not made, then at least to modify the directions given therein to be in terms of the settlement dated 10.8.2007, which was approved by the Division Bench of this court. The prayer is, accordingly, to allow the writ petitions in terms of the prayer aforesaid.

9. Learned counsel for the petitioner made reference of several judgments to support his arguments and would be considered at the time of discussion of the rival submission of the parties.

10. The writ petition has been contested by learned counsel appearing for the side opposite on the ground that none of the issues raised by the petitioner corporation are made out on facts as well as law. The Labour Inspector had rightly directed grant of permanent status to the members of the petitioner association and employees who approached him. It is by exercising his power under Sections 3 and 5 of the Act of 1981 read with Rule 6(4) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to workmen) Rules, 1981. The Labour Inspector has recorded finding on being satisfied that the employees worked for a period of 480 days in 24 calendar months and thereby interference with the order may not be made.



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

WEB COPY

11. Section 3 of the Act of 1981 provides for grant of permanent status to the employees who has completed 480 days of continuous service in a period of 24 calendar months. The obligation to grant benefit under the Act of 1981 was on the petitioner corporation, but when they ignored, the Labour Inspector exercising jurisdiction under the Act of 1981 passed appropriate orders as all the employees were covered by the definition of “worker” given under the Factories Act, 1948. The finding has been recorded after proper consideration of the documents and evidence produced by both the sides. Thus, it is incorrect to state that the order passed by the Labour Inspector is based on surmises and conjectures. The documents were considered to arrive at the finding of working for continuous 480 days in a period of 24 calendar months. It was after framing the issues. Thus, a contest on the factual issue has also been made and, accordingly, referring to several judgments of this High Court, the prayer was made to dismiss the writ petitions.

12. We have considered the rival submissions of the parties and scanned the records carefully.

13. For convenience, we would be referring to the facts in the case of W.P.No.4061 of 2013, which was referred by both the parties during the course of arguments.

14. A perusal of the order passed by the Labour Inspector reveals it to be in exercise of the powers conferred on him under the Act of 1981. The Act of 1981 provides for grant of permanent status to those who have completed 480 days continuous service in 24 calendar months and for ready reference Section 3 of the Act of 1981 is quoted hereunder:

“3. Conferment of permanent status to workmen.?

(1) Notwithstanding anything contained in any law for



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty four calendar months in an industrial establishment shall be made permanent.

(2) A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike, which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.

Explanation I.-- For the purposes of computing the continuous service referred to in sub-sections (1) and (2), a workman shall be deemed to be continuous service during the days on which --;

- (i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (Central Act XX of 1946) or under any other law applicable to the industrial establishment ;*
- (ii) he has been on leave with full wages, earned in the previous years;*
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment ; and*
- (iv) in the case of a female, she has been on maternity leave ; so, however, that the total period of such maternity leave does not exceed twelve weeks.*

Explanation II. ? For the purposes of this



WEB COPY



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

section, 'law' includes any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of this Act."

15. A further reference to Section 5 of the Act of 1981 would also be relevant, as the said provision stipulates the powers and duties on the Labour Inspector. Section 5 of the Act of 1981 reads as under:

"5. Power and duties of Inspectors. ? Subject to any rules made by the Government in this behalf, the Inspector may, within the local limits for which he is appointed,--

(a) enter at all reasonable times and with such assistants, if any, who are persons in the service of the Government or of any local authority as he thinks fit to take with him, any industrial establishment;

(b) make such examination of the industrial establishment and of any registers, records and notices and take on the spot or elsewhere the evidence of such person as he may deem necessary, for carrying out the purposes of this Act: and

(c) exercise such other powers as may be necessary for carrying out the purpose of this Act."

16. The provisions quoted above would be considered along with Rule 6(4) of the Rules of 1981 for adjudication of the issues raised by both the parties.

"6. Maintenance of registers by employers.--

(1) to (3)

(4) Any employee who finds his name not entered in the list referred to in sub-rule (2) or finds that the entries have not been made correctly or finds that



WEB COPY



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

though entries regarding his service have been made correctly but he has not attested the entries in the register of workmen in Form 1 may make a representation to the Inspector concerned. The Inspector after examining the representation or after making enquiries may issue suitable directions to the employer for the rectification of the register in Form 1 or for the issue of orders conferring permanent status to the workman concerned.”

17. Learned counsel for the petitioner corporation submits that the Act of 1981 could not have been applied in ignorance of the Tamil Nadu Electricity Board Service Regulations framed under the Electricity (Supply) Act of 1948. It was submitted that the Regulations provides the mode of selection, the minimum educational qualification and appointment only against the sanctioned post. However, the Labour Inspector ignoring the Regulations issued directions for grant of permanent status even in favour of those who were not engaged by the petitioner corporation, but by others not known to the petitioner corporation.

18. The argument aforesaid has been contested by the side opposite and we find that the Act of 1981 is not in conflict with the Tamil Nadu Electricity Board Service Regulations, rather both the legislations are occupying different fields of operation. The Regulations provides for the mode of selection, apart from the qualification, etc., but other than the mode provided therein when employees are engaged by the petitioner corporation, then he cannot be denied the benefit of the Act of 1981. It is more so when both the legislations are not in conflict with each other and otherwise the similar benefit, as claimed by the employees in this case, has been given in the past. The petitioner corporation entered into settlement on 10.8.2007, which would not have been required if the Act of 1981 could not have been applicable. The settlement aforesaid has already been upheld by the Division



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

WEB COPY

Bench of this court by its judgment dated 24.10.2008. In view of the above, we are unable to accept the first argument raised by learned counsel for the petitioner corporation.

19. *The other issue raised is as to whether the Labour Inspector is having power to determine the controversy in reference to the Act of 1970. It is submitted that the nature of engagement and as to whether it was a genuine contract or camouflage could not have been adjudicated by the Labour Inspector. The adjudicatory authority does not exist with him under the Act of 1981. It remains with the Labour Court or Industrial Tribunal. A reference of the judgment of the Apex Court in the case of **Steel Authority of India Limited and others v. National Union Waterfront Workers and others (2001) 7 SCC 1** has been given.*

20. *The argument aforesaid has been contested by learned counsel for the respondents by referring to the judgment of this court in the case of **Superintending Engineer, Vellore Electricity Distribution Circle, Vellore and others v. Inspector of Labour, Perambalur and others, 2004 (3) LLN 598**. It is submitted that a claim to seek the benefit under the Act of 1981 cannot be sent for adjudication under the Act of 1947. This High Court in the case *supra*, held that the Labour Inspector has power to cause summary enquiry for passing appropriate order and, accordingly, the argument that adjudication can be made only under the Act of 1947 was not accepted. The issue is no more *res integra* in the facts aforesaid.*

21. *We have considered the submission aforesaid and for appreciation of the arguments we have perused the order passed by the Labour Inspector and the provisions of the Act of 1981. The Act of 1981 was brought to extend certain benefits to the employees who work for a continuous period of 480 days in 24 calendar months and for that purpose, the employer has to*



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

WEB COPY

*maintain records. The power has been conferred on the Labour Inspector to issue directions for maintenance of record and to grant permanency. In view of the above, we find that the Labour Inspector is empowered to issue order to grant permanency to the employee. However, it cannot be after addressing the complicated issue on facts and law. Whenever a serious dispute on facts and law is raised, the adjudication thereupon is permissible only by the Industrial Adjudicator, i.e., the Labour Court or Industrial Tribunal. The reference of the judgment of the Apex Court in the case of **Steel Authority of India Limited and others**, supra, would be relevant for the aforesaid and paragraphs 125 and 126 are quoted hereunder to show that the issues of the nature referred to above can be determined only by the “industrial adjudicator”. Referring to the word “industrial adjudicator”, it was defined to be an Industrial tribunal or Labour Court. Paragraphs 125 and 126 are reproduced hereunder:*

“125. The upshot of the above discussion is outlined thus:

(1)(a) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression “appropriate Government” as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

the establishment was situated, would be the appropriate Government;

(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Section 2 of the Industrial Disputes Act; if (i) the Central Government company/undertaking concerned or any undertaking concerned is included therein eo nomine, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by a railway company; or (c) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)(a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:

(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and

(2) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question, and

(ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(b) Inasmuch as the impugned notification issued by the Central Government on 9-12-1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

(4) We overrule the judgment of this Court in Air India case [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

126. We have used the expression 'industrial adjudicator' by design as determination of the



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

questions aforementioned requires enquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be the Industrial Tribunal/Court whose determination will be amenable to judicial review.”

22. *In view of the above, while we are of the view that the Labour Inspector has the power to issue appropriate order to grant permanency to the workmen, it cannot be by adjudicating the complicated questions of fact and law. A perusal of the Act of 1981 does not provide power in Labour Inspector of the nature given to the Industrial Adjudicator, i.e., the Industrial Tribunal or Labour Court, as complete framework with procedure for it has been given under the Act of 1947. Certain provisions of the Civil Procedure Code have been made applicable therein for proper adjudication which does not exist under the Act of 1981.*

23. *If the facts of this case are taken into consideration, we find that the Labour Inspector has recorded his finding in reference to the Act of 1970 while adjudicating the issue. Such powers have not been conferred on him, rather he can pass appropriate order after summary enquiry. The view expressed by the Single Judge of this court in the case of **Superintending Engineer, Vellore Electricity Distribution Circle, Vellore and others**, supra, is not in conflict with the view aforesaid, rather in paragraph 35 of the said judgment, the difference between the power of Labour Inspector and Labour Court or Industrial Tribunal under the Act of 1947 has been made. Paragraph (35) of judgment, referred supra, is extracted hereunder:*

“35. Therefore, I am unable to accept the submission made on behalf of the Board that the exercise of the power by the Inspector of Labour in conferring



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

permanent status after holding necessary enquiries contemplated under S. 5 read along with rule 6(4) should be construed as arrogating to himself the powers available to the other adjudicatory forums created under the provisions of the Industrial Disputes Act, 1947. It will have to be stated that while the exercise of powers vested with the Inspector under the provisions of the Act is summary in nature, the one under the provisions of the Industrial Disputes Act may be an elaborate one. Nevertheless the same does not mean that by exercising the power under the provisions of the Act the Inspector of Labour would be trespassing into the adjudication process contemplated under the provisions of the Industrial Disputes Act. In this context, if the judgment of the Supreme Court in Nirchiliya case [1990 (2) L.L.N. 4] (vide supra) is applied, it can be safely held that where there is no prohibition under the provisions of either the Industrial Disputes Act or the Act, exercise of the power in the manner in which it can be done by the Inspector of Labour under the Act cannot be found fault with. It will have to be stated that such an exercise would be well within the statutory limitations provided under the Act. In fact, in the above-referred to judgment of the Hon'ble Supreme Court, the question for consideration was whether the workmen who initially raised an industrial dispute under the Industrial Disputes Act and who did not pursue it till its logical end when chose to move the authority under the then Madras Shops and Commercial Establishment Act, the Hon'ble Supreme Court held that in the absence of any prohibition under either of the enactments, such a course adopted by the workmen cannot be faulted. Therefore, applying the said ratio to the case on hand, it can be safely held that the concerned workmen here



WEB COPY



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

were placed in a better footing when they chose to straightaway move the Inspector of Labour under the Act, inasmuch as according to the workmen, having regard to the facts prevailing as on date, they were entitled for the conferment of permanent status as provided under the Act. If such a claim of the workmen was not factually maintainable, it was for the Board to have resisted the said claim with all available materials and could have convinced the Inspector of Labour as the claim ought not to have been countenanced. The Board having miserably failed to perform its duties in the manner expected of it, it cannot be now allowed to contend or complain against the powers exercised by the Inspector of Labour which was within the provisions of the Act. In this context, if the judgment of the Division Bench of this Court in Metal Powder Company, Ltd. case [1985 (2) L.L.N. 738] (vide supra), is applied, then also it can be safely held that the Inspector of Labour was well within his jurisdiction in holding the proceedings in the manner it was held and in passing the order by directing the petitioner/Board to confer permanent status on the workmen.”

[emphasis supplied]

24. The Labour Inspector vested with the power under the Act of 1981 is said to be having a summary power of enquiry, while an elaborate adjudication of questions of fact and law can be only under the Act of 1947.

25. In view of the above, we can safely hold that the Labour Inspector can exercise jurisdiction only in the nature of summary enquiry, while a case involving complicated question of fact and law to be left for its adjudication under the Act of 1947. The Labour Inspector can exercise his power under the framework of the Act of 1981. He has no power to adjudicate the issue in



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

WEB COPY

reference to other statutes, which includes the Act of 1970.

26. Since we have analyzed the issue aforesaid, we would like to refer to the impugned order of the Labour Inspector to find out as to whether he has caused a summary enquiry or has travelled beyond his jurisdiction to adjudicate the questions of fact and law pertaining to the other statute.

27. A perusal of the order passed by the Labour Inspector in the case on hand shows an adjudication of the issue in reference to the Act of 1970 also, though it was not within his competence. He is not having powers to comment on the nature of employment and the policy adopted by the petitioner corporation. He was required to simply see whether the workman has rendered continuous service for 480 days in 24 calendar months. Thus, on the aforesaid issue, the interference therein may require to be made.

28. The other ground for challenge to the order of the Labour Inspector is that without any discussion to show continuous service of an employee for 480 days in 24 calendar months, the finding has been recorded. The order under challenge does not refer to the 24 calendar months of each workman to record its finding about his continuous working for 480 days therein by giving details of the days and months.

29. From a perusal of the order of the Labour Inspector, we find that after referring to the testimonies of the parties and the documents, a finding has been recorded, without disclosing the period of 24 calendar months and 480 days working of each workman therein. The finding has been recorded in a superficial manner. The aforesaid could not be contested by learned counsel appearing for the workmen. However, it is submitted that while setting aside the order passed by the Labour inspector, the matter may be remanded with a direction for fresh enquiry with liberty to the workmen to produce the material.



30. After going through the order passed by the Labour Inspector, we find that the Labour Inspector has not recorded his finding in reference to each workman about his continuous service for 480 days in 24 calendar months. Thus, we need to cause interference with the order.

31. As we recorded a finding about the jurisdiction of the Labour Inspector and applicability of the Act of 1981, we accept the argument of learned counsel for the respondents to remand the case for fresh enquiry by the Labour Inspector to find out the continuous working of each employee for continuous period of 480 days in a period of 24 calendar months for passing the appropriate orders.

32. At this stage, learned counsel for the petitioner submitted that even if the matter is remanded, it should be with a clarity of the fact that the benefit under Section 3 of the Act of 1981 be given only if the workman is still in employment and not otherwise. It is also keeping in mind the terms of settlement and thereby the benefit may not be extended beyond what has been provided in the settlement.

33. The argument aforesaid has been contested. It is submitted that even if any of the workman is not in service, though stated to be in service, the benefit of permanency under Section 3 of the Act of 1981 being automatic should not be denied to any of the workman if discontinued, rather it should be with liberty to challenge the discontinuance, but till then and for the intervening period, he remained in service after becoming eligible for permanency, consequential benefits may be allowed.

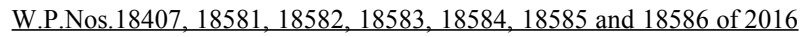
34. We have considered the submission aforesaid and find that the order passed by the Labour Inspector needs to be interfered with remand of the case. It is, however, to be made



WEB COPY

clear that the Labour Inspector would not cause enquiry beyond the powers given under the Act of 1981 and thereby would not be having jurisdiction to adjudicate the complicated questions of fact and law in reference to any other statute than the Act of 1981. The Labour Inspector may, for the purpose of conducting summary enquiry, allow the parties to produce documents and if any of the workmen has completed 480 days of continuous service in 24 calendar months, appropriate directions can be issued for granting permanency. However, even if such an order is issued, it should be with a clear finding about each workman and the number of working days by referring to the period of 24 calendar months. The benefit as to the consequences thereupon would be only for the period of employment and if any of the workman is discontinued or not in service, he would be entitled to the benefit only for the period of service and not beyond that and, that too, after the completion of continuous service of 480 days in 24 calendar months, and not for a prior period. The direction aforesaid is not driven by the settlement for the reason that the workmen herein are those who were not extended the benefit of settlement and, therefore, sought claims by maintaining claim separately. However, it would not preclude both the sides from entering into settlement, if they so choose, during the period of summary enquiry by the Labour Inspector. The issue as to whether the respondents fall within the definition of “workman” is however decided against the petitioner Corporation, as not only a settlement was entered, but adjudication about claim to seek permanency has been decided earlier in reference to similarly placed.

35. With the aforesaid directions, all the writ petitions are disposed of by causing interference with the order passed by the Labour Inspector. The orders passed by the Labour Inspector are set aside with remand of the case to the Labour Inspector for passing orders afresh, after summary enquiry.



7. Following the Division Bench judgment, this Court also passed an order P.No.7278 of 2015, dated 12.08.2022 in the case of *The Superintending Engineer, Namakkal Electricity Distribution Circle, Namakkal vs. Inspector of Labour and another*. The relevant paragraphs in the order are extracted under:

6. Regarding the terms and conditions of settlement for permanent absorption, the respondents-workmen have to approach the competent Labour Court for complete adjudication of facts and the disputed issues. Therefore, the Inspector of Labour cannot entertain an application and pass an order granting permanent status which is otherwise not in consonance with the 12(3) settlement entered into between the Electricity Board and Workers' Union for the purpose of permanent absorption.

7. Thus, an adjudication under the Industrial Disputes Act became imminent for the purpose of crystallizing the rights of the workmen. Once the right are crystallized, then only they are entitled for the relief of permanent absorption, but not otherwise.



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

WEB COPY

Thus, the respondents-workmen are at liberty to adjudicate the issues in the manner known to law.

8. The learned counsel for the petitioner made a submission that as per Form-1 of the Tamil Nadu Industrial Establishment Conferment of Permanent Status to Workmen) Act, 1981, the register of a workman is to be maintained by the employer concerned. Column 4 in Form-1 stipulates that "whether permanent, temporary, casual, badli, or apprentice other than those covered under the Apprentice Act, 1961".

9. A perusal of the Form reveals that the Contract Labourers are not even included in the statutory form contemplated under the Conferment of Permanent Status Act. When there is no provision for registration of Contract Labourers under the provisions of the Act, the Inspector of Labour is not empowered to pass an order under the provisions of the Act granting permanent status to the workmen. Thus, the very exercise of power is without jurisdiction and therefore, the order passed by the first respondent is liable to be set aside.

8.The learned counsel appearing on behalf of the respondent workmen objected the contentions raised on behalf of the petitioner by stating that the



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

submission made on behalf of the petitioner is beyond the scope of the relief sought for in the writ petitions. The case on hand may be an appropriate one for remanding the matter back to the 1st respondent for fresh adjudication. It is not in dispute that the preliminary objection petition was rejected by the 1st respondent and the said issue was tagged along with the other issues and final order was passed. However, the matter requires re-adjudication before the 1st respondent as the issues pertaining to the rights of the workmen are to be reconsidered. It is contended that the respondents were engaged by the petitioner Company for execution of certain works. When the respondents filed a petition before the 1st respondent under the Provision of Conferment of Permanent Status Act stating that the workmen were engaged by the petitioner Company, then an adjudication was done with reference to the provisions of the Act and the 1st respondent found that the respondent workmen are entitled for the relief under the Provision of Conferment of Permanent Status Act. The 1st respondent formed an opinion that the respondent workmen had completed 480 days of service which is the requisite condition under the provisions of the Act they are entitled for the benefit of permanent status under the Act. Thus, the writ



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

petition is liable to be rejected.

WEB COPY

9.Perusal of the order impugned reveals that the preliminary objection raised by the petitioner Company was rejected. The findings in the order impugned further states that the petitioner Company has submitted the preliminary objection that the respondent workmen were not directly employed by the petitioner Company. However, the 1st respondent arrived at a conclusion that the respondent workmen had completed 480 days of service and their services were under the control of the authorities of the petitioner Management and therefore, they are entitled for the benefit under the Provision of Conferment of Permanent Status Act.

10.Pertinently, there was no adjudication regarding the disputed facts in the order. Absolutely there is no findings with reference to the documents and evidence so as to establish the services rendered by the respondent workmen directly under the control of the petitioner Company. Importantly an order of appointment or an appointment of the workmen by the employer is to be



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

established at the first instance. Only in the event of establishing an appointment, question of consideration of termination if oral or in writing will arise. In the present case, the direct employment of the respondent workmen by the petitioner Company has not been established through an acceptable evidence. There was no adjudication to that effect before the 1st respondent nor any findings are made available. In the absence of any such documents or finding, the Courts cannot form an opinion that the respondent workmen were directly appointed by the petitioner Company or engaged by the licensed contractor with whom the petitioner Company entered into contracts for execution of work. The issues regarding appointment/engagement are vital for the purpose of ascertaining the rights of the workmen. In the absence of any elaborate adjudication in this regard, one cannot simply form an opinion that the workmen were directly employed by the Company or employer and such an observation not based on any documents or evidence is unacceptable. In the present case, perusal of the order impugned reveals that absolutely no adjudication to that effect was made and further this Court has elaborately considered the issue and power of the competent authorities under the Provision



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

of Conferment of Permanent Status Act that an adjudication is mandatory for providing permanent status. In the absence of adjudication mere completion of 480 days of service cannot be a ground for granting permanent status.

11. Question arises, the 480 days of services were rendered with which authority or which employer engaged the workmen. Thus, it is a pre-requisite adjudication which is required for ascertaining the rights of the workmen and in the absence of any such adjudication, if the benefit of permanent status is granted, then anybody appointed under the private contractor may claim the benefit of permanent status, even against the State authorities or under the statutory authorities or under any other employers. This exactly is the reason why, this Court has held that complete adjudication of disputed facts are eminent for the purpose of granting the benefit under the Provision of Conferment of Permanent Status Act. Once, such rights are ascertained, then alone the question of considering the permanent status would arise but not otherwise. In the present case, admittedly there was no adjudication with



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

reference to the appointment or engagement of the respondent workmen in the petitioner Company directly and therefore, the order passed by the 1st respondent granting the benefit of Conferment of Permanent Status Act is in violation of the principles established.

12.The learned counsel appearing on behalf of the respondent workmen made a submission that the matter is to be remanded back to the 1st respondent for re-adjudication of the issues. The learned Senior Counsel for the petitioner raised an objection by stating that the remand would not serve any purpose, since the 1st respondent has no jurisdiction to adjudicate the disputed issues. The respondents have not established their right for permanent status and such an adjudication must be made before the competent Labour Court by raising a dispute.

13.This Court is of the considered opinion that the remanding of cases is an exception. Courts are not expected to remand the matters in a routine manner. Remand is to be made if there is an absolute necessity and in the event



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

of routine remand, the same would cause prejudice to the interest of the parties.

A party cannot be made to adjudicate and re-adjudicate the same issues before the same forum which will result in prolongation of litigation and therefore, the Courts are expected to be cautious while remanding the matter and if there is any absolute necessity for such remand, then alone, it is to be made and not otherwise. Even if certain issues are not considered by the original Courts, the Writ Court or the Appellate Court are empowered to consider those issues and make a finding and give a quietus to the issues. Contrarily, the Courts cannot adopt an easy approach of remanding the matter and such an approach cannot be appreciated by this Court.

14. In the present case, the principles laid down in the cases cited *supra* is to be applied and accordingly, the 1st respondent has no jurisdiction to adjudicate the disputed issues with reference to the rights of the employees and such rights are to be crystallized by approaching the appropriate forum with reference to the documents and evidence made available. Thus, the respondent workmen are at liberty to approach the competent forum for the purpose of



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

adjudication and crystallization of their rights for the purpose of redressal of their grievances in the manner known to law.

WEB COPY

15. Accordingly, the order impugned passed by the 1st respondent in Case Nos.E/211/2015, E/212/2015, E/1304/2015 dated 17.05.2016 are quashed and the writ petitions stand allowed.

16. Writ Petition Nos.18407, 18581, 18583, 18585 of 2016 were filed against the order passed by the 1st respondent rejecting the application filed by the petitioner Company to decide the preliminary issue relating to maintainability of the petition under the Provision of Conferment of Permanent Status Act. In view of the fact that the 1st respondent has subsequently took all the issues together and passed final order, no further adjudication is required in respect of the grounds raised in the above writ petitions and accordingly, all these writ petitions are closed. No Costs. Consequently, connected miscellaneous petitions are closed.



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

18.10.2022

WEB COPY

Index : Yes
Internet : Yes
Speaking order : Yes
ssr

(1/2)



WEB COPY



W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016

S.M.SUBRAMANIAM, J.

SSR

To

1.The Joint Director of Industrial Safety and Health – I,
Tamil Nadu Housing Board Office Campus,
Sathuvachari,
Vellore – 600 009.

2.Five Men Committee,
Affiliated to CITU,
78/516, Pilliyar Kovil Street,
Puliyakannu, Ranipet Via,
Walaja Taluk,
Vellore District – 632 405.

W.P.Nos.18407, 18581, 18582, 18583, 18584, 18585 and 18586 of 2016
and W.M.P.Nos.16106, 16286, 16287, 16288, 16289, 16290, 16291 of 2016
and W.M.P.Nos.38898, 38901, 38902, 38905 & 38909 of 2018
and W.M.P.No.970 of 2019

18.10.2022
(1/2)