



W.P. Nos. 10946 to 10961 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. Nos. 10946 to 10961 of 2018

and

W.M.P. Nos. 12855 to 12870 of 2018

and

W.M.P. Nos. 5808, 5809, 5811 to 5817, 5819 to 5824 of 2019

and

W.M.P. No. 27370 of 2021

W.P. No. 10946 of 2018:-

K.R.Kaliyaperumal

... Petitioner

-VS-

1. The Airport Authority of India,
Rep. by its Director,
Chennai Airport,
Chennai – 600 027.
 2. The Assistant General Manager (HR),
Airport Authority of India,
Chennai Airport,
Chennai – 600 027.
 3. Union of India,
Rep. by its Secretary,
Ministry of Labour,
Shramsakthi Bhawan,
New Delhi.
- Respondents
(R3 is impleaded vide order dated 13.04.2022
in W.M.P. No. 5440 of 2022)

...



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the Second Respondent No. AAM/HRM/102-G/2016-17/28568 dated 20.12.2017 and quash the same and directing the First Respondent to absorb the Petitioner for regularization forthwith.

For Petitioner : Mrs. AL.Ganthimathi
(in all W.P.s)

For Respondents : Mr. S.Venkatesan (for R1 & R2)
(in all W.P.s)

Mr. C.Kulanthaivel,
Senior Panel Counsel (for R3)

ORDER

Heard Mrs. AL.Ganthimathi, Learned Counsel for the Petitioners, Mr. S.Venkatesan, Learned Counsel for the First and Second Respondents and Mr. C.Kulanthaivel, Learned Senior Panel Counsel appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioners in these of Writ Petitions claim to have worked as casual labour from November 1985 to July 1986 in Air Cargo Complex in Chennai Airport. Subsequently, on formation of Airport Industrial Co-operative Service



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Society Limited (hereinafter referred to as 'AICSSL' for short), an agreement

was entered by International Airport Authority of India (hereinafter referred to as 'IAAI' for short) with AICSSL on 14.07.1986 to provide services of manpower for unloading, shifting, stacking, marking, unpacking, packing, stitching, strapping and counting of cargo and other miscellaneous operations that are required to be maintained round the clock in Chennai Airport. According to the Petitioners, they had become members of AICSSL through whom their services were engaged in Chennai Airport and the conditions of their employment were governed by the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as 'the CLRA Act' for short). At that stage, International Air Cargo Workers Union (hereinafter referred to as 'IACWU' for short), which is a Trade Union said to be representing the Petitioners, had raised an industrial dispute in I.D. No. 65 of 1991 before the Industrial Tribunal, Tamil Nadu, in which an award dated 23.12.1994 was passed for absorbing the Petitioners in service in Chennai Airport. The Writ Petition in W.P. No. 6126 of 1995 was filed by IAAI challenging the said award before this Court in which it has been held in the order dated 15.12.1997 passed therein as follows:-

“47. Though the impugned award passed by the Tribunal is required to be set aside, and is set aside nevertheless, having



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*regard to the facts of this case and the fact that the workmen, have been repeatedly knocked at the doors of this Court, the Writ Petition as a public sector undertaking, is required to at least approximate to be a model employer and also having regard to the observations of the Supreme Court in the case of **Gujarat Electricity Board, UKAI -vs- Hindu Mazdoor Sabha** (AIR 1995 SC 1893), **Madhura Refinery Mazdoor Sangh -vs- Indian Oil Corporation Ltd.**, [(1991) 2 SCC 176] and **R.K.Panda -vs- Steel Authority of India** [(1994) 5 SCC 304], I consider the following directions as being just and necessary:-*

- (i) The Central Government and the Advisory Board constituted under the provisions of the Act 37/70 are directed to consider the question of abolition of contract labour in the task of packing and loading and works incidental thereto if such question is not already engaging their attention, the examination of the question and appropriate decision thereon shall be taken within a period of twelve months from today.*



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- (ii) *Until such time of the Central Government takes a decision, the workmen concerned in this dispute shall continue notwithstanding the interruption and their employment as contract labourers on the terms and conditions that were part of the agreement between the society and I.A.A.I. prior to 1994, subject to the further consideration that the wages paid to the workmen shall not be less than what is paid to the contract labourers who had been engaged between 1994 and 1997.*
- (iii) *The engagement of the workmen as contract labourers will be subject to their good behaviour conduct and discipline and efficient performance of the duties which they are required to discharge in the cargo complex.*
- (iv) *The workmen shall be engaged in the cargo complex with effect from week of January, 1998.*
- (v) *In the event of Central Government issuing a notification under Section 10 prohibiting contract labour in these occupations, all who had worked as contract labourers*



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*under the contracts between the society and I.A.A.I. upto the number specified in the contract, shall be absorbed by the order of the Apex Court in the case of **Air India Statutory Corporation -vs- United Labour Union [(1997) 9 SCC 377].***

Though that order had been set aside in appeal by the Division Bench of this Court by order dated 12.11.2001 in W.A. No. 544 of 1998, it was restored by the Hon'ble Supreme Court of India by order dated 13.04.2009 in Civil Appeal No. 2244 of 2002 with the following observations:-

*“30. In the light of our findings on the two questions the order of the Division Bench cannot be sustained and is liable to be set aside and the order of the Learned Single Judge has to be restored. We may however note that the last direction given by the learned Single Judge that in the event of the Central Government issuing a notification under section 10 of CLRA Act, all those who had worked as contract labour under the contract between IAAI and society should be absorbed in the same manner as was directed by this Court in **Air India Statutory Corporation -vs- United Labour Union [(1997) 9 SCC 377]** is a*



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direction which is bad in law, as subsequent to the said decision of the learned Single Judge, this Court in **Steel Authority of India Ltd., -vs- National Union Waterfront Workers** [(2001) 7 SCC 1], reversed the decision in **Air India Statutory Corporation -vs- United Labour Union** [(1997) 9 SCC 377]. IAAI did not challenge the said direction. **Steel Authority of India Ltd., -vs- National Union Waterfront Workers** [(2001) 7 SCC 1] has also made it clear that the decision in **Air India Statutory Corporation -vs- United Labour Union** [(1997) 9 SCC 377] is overruled prospectively and any declaration or direction issued by industrial adjudicator or High Court for absorption of contract labour following the judgment in **Air India Statutory Corporation -vs- United Labour Union** [(1997) 9 SCC 377] shall hold good and shall not be set aside, altered or modified on the basis of the decision in **Steel Authority of India Ltd., -vs- National Union Waterfront Workers** [(2001) 7 SCC 1]. Therefore, the said direction of the learned single Judge which has attained finality, as IAAI did not challenge the same, is not disturbed. In view of the above, the appeal is allowed in part, the



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order of the Division Bench is set aside and the order of the Learned Single Judge is restored.

31. *We are informed that during the pendency of the Writ Petition, in pursuance of an interim order, the workers were being paid Rs.1,000/- per month without extracting any work. In the Writ Appeal, the Division Bench modified the said interim order on 01.09.1998. While continuing the direction for the monthly payment of Rs.1,000/-, it directed that the workers who reported for work and worked under the current contractor should be paid Rs. 1,281/- per month and those who did not report to work, but awaited the result of litigation, should continue to receive Rs. 1,000/- per month. In pursuance of it, seven workers apparently reported to work and worked up to 15.04.2002 and were paid Rs. 1,281 per month; the remaining 70 chose not to report to work and continued to receive Rs. 1,000/- per month. Apparently those 70 were otherwise engaged or employed and therefore did not choose to report to work. The judgment of the Division Bench dated 12.11.2001 which restored the award of the Tribunal, was stayed*



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by this Court. When IAAI challenged the judgment of the Division Bench restoring the award of the Tribunal, this Court on 15.3.2002 directed that status quo as on the date of the judgment of the High Court be maintained. By a subsequent interim order dated 21.2.2003, this Court observed that it will be difficult for this Court to issue any direction in terms of the interim order granted by the High Court would be a bad precedent in labour law, as that would mean directing payment for not doing any work. This Court therefore directed IAAI to extract appropriate work from the workers and to pay them Rs. 1,000/- to such of them who worked. It was clarified that payment of Rs. 1,000/- would be without prejudice to the rights of the parties as may be finally determined. In view of our final decision, the only further direction we propose to make is that in regard to the period subsequent to 21.02.2003, if any of the workers had worked and had been paid only Rs. 1,000/- per month, IAAI shall pay for the said period by way of monthly salary a sum equivalent to the minimum wages. The difference between the minimum wage and Rs. 1,000 shall be paid by the



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IAAI to the said workers who have worked, within 3 months from

today. Parties to bear their respective costs."

Despite the aforesaid orders passed, IAAI by Order No. AAM/LA W/1C/2009 dated 30.04.2009 had attempted to disengage 77 ex-loaders in Chennai Airport, which was challenged by IACWU in another Writ Petition in W.P. No. 10383 of 2009 before this Court. In view of the interim order dated 15.06.2009 in M.P. No. 2 of 2009 passed in that Writ Petition, the members of IACWU, who were working in Chennai Airport, were directed to be restored in service and the said order was confirmed in appeal by order dated 26.06.2009 in W.A. No. 866 of 2009 passed by the Division Bench of this Court. The said Writ Petition in W.P. No. 10383 of 2009 was disposed by the Court by order dated 16.06.2014 setting aside the Order No. AAM/LA W/1C/2009 dated 30.04.2009 passed by IAAI, who was directed to continue to employ the contract labour who had joined duty as per the said interim order and allow any other such contract labour who have not joined as per the said interim order to join duty subject to proof of their identity until a decision is taken by the Central Government in terms of Section 10 of the CLRA Act as directed by this Court in W.P. No. 6126 of 1995 which has been confirmed by the Hon'ble Supreme Court of India in Civil Appeal No. 2244 of 2002 and the Central Government was required to comply with the directions issued in the said orders.



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3. It is evident from the aforesaid sequence of events that the Petitioners have been continued to be employed in Chennai Airport in an interim arrangement till a decision on abolition of contract labour is taken by the Central Government under Section 10 of the CLRA Act. In that backdrop, each of the Petitioner in these Writ Petitions had made individual representations dated 30.12.2017 seeking permanent employment in Chennai Airport, but the same was declined by the Second Respondent by separate orders dated 19.12.2017, 20.12.2017 and 16.04.2018 stating that such demand could not be acceded till a decision is taken by the Central Government under Section 10 of the CLRA Act in terms of the earlier orders passed by the Court. Aggrieved thereby, the Petitioners have filed these Writ Petitions challenging the said orders and have sought for consequential direction to the First Respondent to absorb them in service.

4. As already noticed earlier, this Court by order 15.12.1997 in W.P. No. 6126 of 1995 had required the Central Government and the Advisory Board constituted under the provisions of the CLRA Act to consider the question of abolition of the contract labour in the task of packing, loading and works incidental thereto in Chennai Airport within a period of 12 months, which has



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been confirmed by the Hon'ble Supreme Court of India by order dated

13.04.2009 in Civil Appeal No. 2244 of 2002 and the same has attained

finality. Though the said order has been reiterated by this Court by another

order dated 16.06.2004 in W.P. No. 10383 of 2009, there is nothing to show

that the Central Government has so far taken any action in the matter as

required in the earlier orders passed by the Court. At the same time, it is borne

out from the record that the Central Government had not been made as party to

any of the earlier litigation and this Court by order dated 13.04.2022 in these

Writ Petitions has impleaded the Central Government as the Third Respondent

and is represented by Learned Central Government Standing Counsel who has

taken notice on its behalf in the matter. Inasmuch as it has been specifically held

in the earlier orders passed by the Court that the Petitioners would be entitled

for absorption in service only in the event of the Central Government issuing a

notification for abolition of contract labour in Chennai Airport under Section 10

of the CLRA Act, the First and Second Respondents cannot be faulted in

refusing to entertain the claim of the Petitioners for regularization in service till

a decision is taken by the Third Respondent in that regard. Learned Counsel for

the Petitioners has brought to notice that IACWU has now made a

representation dated 20.04.2022 to the Central Government and the Advisory

Board to abolish contract labour in Chennai Airport under the provisions of the



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CLRA Act and to regularize the services of the Petitioners by conferring permanent status to them.

5. In view of the foregoing discussion, the following order is passed:-
- (i) the Third Respondent in consultation with the Advisory Board constituted under the CLRA Act shall consider the representation dated 20.04.2022 made by the IACWU and after affording opportunity of personal hearing to all parties concerned following the prescribed procedure shall take a decision in accordance with law on the demand for abolition of contract labour for packing, loading and works incidental thereto in Chennai Airport and communicate the same by 30.09.2022; and
 - (ii) in the event of Third Respondent issuing the notification for abolition of contract labour in Chennai Airport under Section 10 of the CLRA Act, the First and Second Respondents shall examine the claim made by each of the Petitioners for their regularization in service by conferment of permanent status in terms of the order dated 15.12.1997 in W.P. No. 6126 of 1995 passed by this Court, which has been confirmed by the Hon'ble Supreme Court of India in Civil Appeal No. 2244 of 2002, within a period of 30 days from the date of publication of such notification and



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inform its outcome to the Petitioners under written acknowledgment.

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In the result, these Writ Petitions are disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

28.04.2022

vjt

Index: Yes/No

Note: Issue order copy by 09.05.2022.



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To

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1. The Director,
Airport Authority of India,
Chennai Airport,
Chennai – 600 027.
2. The Assistant General Manager (HR),
Airport Authority of India,
Chennai Airport,
Chennai – 600 027.
3. The Secretary to Government of India,
Ministry of Labour,
Shramsakthi Bhawan,
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P.D. AUDIKESAVALU, J.

vjt

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