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W.P.Nos.31352 to 31355 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.31352 to 31355 of 2017

and

W.M.P.Nos.34450 to 34453 of 2017

W.P.No.31352 of 2017:

- 1.The Superintending Engineer (North)
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
(Formerly Known as
Tamil Nadu Electricity Board)
791 Anna Salai
Chennai 600 002.
- 2.The Divisional Engineer
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
(Formerly Known as
Tamil Nadu Electricity Board)
Ponneri (North)
Ponneri 601 202.
- 3.The Junior Engineer
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
(Formerly Known as
Tamil Nadu Electricity Board)
Town Division
Gummudipoondi 601 201.

... Petitioners



Vs.

1.The Presiding Officer
III Additional Labour Court
Chennai.

2.K.S.Pullaiah

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the First Respondent in I.D.No.336/2009, quash the Award dated 17.03.2016.

W.P.No.31353 of 2017:

- 1.The Superintending Engineer (North)
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
(Formerly Known as
Tamil Nadu Electricity Board)
791 Anna Salai
Chennai 600 002.
- 2.The Divisional Engineer
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
(Formerly Known as
Tamil Nadu Electricity Board)
Ponneri (North)
Ponneri 601 202.
- 3.The Junior Engineer
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
(Formerly Known as Tamil Nadu Electricity Board)
Town Division
Gummudipoondi 601 201.

... Petitioners



Vs.

1.The Presiding Officer
III Additional Labour Court
Chennai.

2.T.R.Sathyanarayanan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the First Respondent in I.D.No.337/2009, quash the Award dated 17.03.2016.

W.P.No.31354 of 2017:

1.The Superintending Engineer (North)
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
(Formerly Known as
Tamil Nadu Electricity Board)
791 Anna Salai
Chennai 600 002.

2.The Divisional Engineer
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
(Formerly Known as
Tamil Nadu Electricity Board)
Ponneri (North)
Ponneri 601 202.

3.The Junior Engineer
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
(Formerly Known as Tamil Nadu Electricity Board)
Town Division
Gummudipoondi 601 201.

... Petitioners



Vs.

1.The Presiding Officer
III Additional Labour Court
Chennai.

2.J.Chidambaram

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the First Respondent in I.D.No.338/2009, quash the Award dated 17.03.2016.

W.P.No.31355 of 2017:

- 1.The Superintending Engineer (North)
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
(Formerly Known as
Tamil Nadu Electricity Board)
791 Anna Salai
Chennai 600 002.
- 2.The Divisional Engineer
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
(Formerly Known as
Tamil Nadu Electricity Board)
Ponneri (North)
Ponneri 601 202.
- 3.The Junior Engineer
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
(Formerly Known as Tamil Nadu Electricity Board)
Town Division
Gummudipoondi 601 201.

... Petitioners



Vs.

1. The Presiding Officer
III Additional Labour Court
Chennai.

2. T.K.Angaiyan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the First Respondent in I.D.No.339/2009, quash the Award dated 17.03.2016.

For Petitioners	: Mr.Anand Gopalan For M/s.T.S.Gopalan and Co. [in all W.Ps]
For R1	: Labour Court [in all W.Ps]
For R2	: Mr.S.Ravi [in all W.Ps]

COMMON ORDER

The issues involved in all the writ petitions are one and the same and hence they are disposed of by this common order.

2. The Awards of the Labour Court dated 17.03.2016 passed in I.D.Nos.336, 337, 338 and 339 of 2009 are under challenge in the present writ petition.



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3. The Tamil Nadu Generation and Distribution Corporation (TANGEDCO) is the writ petitioner in all writ petitions.

4. The 2nd respondents/workmen in all these writ petitions are contract labourers, raised disputes under Section 2A(2) of the Industrial Disputes Act, 1947 before the Labour Court, seeking the relief of continuous employment along with backwages and other consequential service benefits.

5. The respondents/workmen in all these writ petitions have stated that they were working as contract labourers from the year 1996 in TANGEDCO. They have completed 240 days of service in every year and the similarly placed contract labourers were brought under the regular establishment in the sanctioned post. However, the case of the respondents/workmen was not considered on the ground that they had not received ex-gratia payment. However, the respondents/workmen claimed the ex-gratia payment from the petitioner/Board, which was not granted to them. Therefore, the respondents/workmen cannot be deprived of their right



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of regularisation, merely on the ground that they had not received ex-gratia from the petitioner/Board. The respondents/workmen submitted several representations to reinstate them and to regularise their services. However, their claim was not considered. Thus, they raised Industrial Disputes before the Labour Court based on the failure report submitted by the Conciliation Officer on 21.12.2009.

6. The writ petitioners/Board herein disputed the contentions raised by the respondents/workmen before the Labour Court. The writ petitioners have stated that pursuant to the recommendations of Justice Khalid's Commission, the Board also issued proceedings and the eligible contract labourers were regularised in a phased manner in a sanctioned post in the time scale of pay. The contract labourers, who have complied with the terms and condition stipulated in the Board proceedings, were considered for regular absorption. Since the respondents/workmen had not received any ex-gratia, which is a condition for regularisation, the case of the respondents/workmen was not considered. The contract labourers identified were paid ex-gratia payment and the left out contract labourers were also considered in the year 2007 by providing an opportunity. Therefore, the



respondents/workmen had not at all served as contract labourers during the relevant point of time and therefore, the writ petitions are liable to be rejected.

7. The learned counsel appearing on behalf of the petitioner/TANGEDCO made a submission that the Petitioner/Board has to follow the provisions of the Tamil Nadu Electricity Board Service Regulations for the purpose of appointments, regularisation, permanent absorption etc. The Regulation was framed in exercise of powers conferred by Section 79C and K of the Electricity Supply Act, 1943. The posts are created and to be filled up by following the procedures as contemplated under the Service Regulations. Justice Khalid's Commission submitted a report in the year 1991 and accordingly, the contract labourers were regularised in a phased manner based on the availability of vacancies in the time scale of pay. As far as the case of the respondents/workmen is concerned, they had not complied with the terms and conditions stipulated for regularisation and permanent absorption and they had not received any ex-gratia amount as per the documents available and thus, the case of the respondents/workmen was not considered.



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8. The Labour Court has not considered the fact that the permanent absorption is to be granted based on the report of Justice Khalid's Commission and the Board proceedings and the Settlement entered between the Management and the Union subsequently. The respondents/workmen, who have not fulfilled the conditions, were not absorbed permanently and therefore, the claim of the respondents/workmen is untenable and the Labour Court has erroneously formed an opinion without any evidence.

9. The learned counsel for the petitioners state that the respondents/workmen were working under a private contractor Mr.S.Seshaian and the said contractor Mr.S.Seshaian has not even impleaded before the Labour Court. The said contractor alone will be competent to say that whether the respondents/workmen were employed as contract labourers and terminated or otherwise. When the respondents/workmen had not even impleaded the contractor, who engaged them and not established the fact that they served and terminated by the contractor, there is no reason for the Labour Court to grant relief of regularisation and thus, the Awards are perverse.



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10. The learned counsel for the petitioners relied on the judgment of this Court in the case of ***Management of Ford India Private Limited Vs. Presiding Officer, Principal Labour Court, Chennai***, reported in ***[2020-III-LLJ-491 (Mad)]***, held as follows:

“7. The similar issue was already considered by this Court in W.P.Nos.25207 & 25208 of 2003 dated 18.09.2018 and the relevant paragraphs are extracted hereunder:

“14. However, the learned counsel for both sides would submit that, since some obligation is there to pay the wages, if ultimately the employee succeeded before the Industrial Tribunal, that obligation has to be fulfilled, not by a contractor but only by the principal employer. In this context, Section 21 of the Contract Labour Act provides the following:

"21. Responsibility for payment of wages.- (1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the



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disbursement of wages in the presence of the authorized representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."

15. Probably, having this legal position in mind, the first respondent might have issued notices, with reference to the impugned reference, also to the petitioner bank and pursuant to which, the second respondent, Industrial Tribunal also has issued notice to the petitioner bank to appear before the Tribunal as one of the party.

16. In this context, the judgment referred by the learned counsel appearing for the petitioner can be usefully pressed into service. In 1990 SCC Online Madras (9) in the matter of Ashok Leyland, Ltd., case, the following has been stated:

"3.Sri Sanjay Mohan, the learned counsel for the petitioner, strongly argues that the dispute against the petitioner-company cannot be referred to under the Industrial



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Disputes Act when the petitioner company is not an employer and the fourth respondent are not the workers under sec 2(s) of the Industrial Disputes Act, i.e., the sum and substance of the arguments of Sri Sanjay Mohan is that the workmen of the third respondent are not the employee so far as the fourth respondent is concerned. The learned counsel further argues that the petitioner's liability is only under S.21 of the Contract Labour (Regulation and Abolition) Act, 1970 (Act 37 of 1970). The learned counsel refers me to rule 27(V)(a) of the Tamil Nadu Labour (Regulation and Abolition) Act, 1970, i.e., that if there is dispute, it has to be decided by the authority as prescribed under S. 10 of the Act and as matters stand, the petitioner is not an employer as far as the workers who were working under the third respondent. The learned counsel refers to the decision of the Supreme Court in Workmen of Food Corporation of India V. Food Corporation of India [1985-II L.L.N. 20]. The Supreme Court in that case has categorically held that when the contract system is in vogue the workmen employed by the contractor, certainly are not the workmen of the corporation in that case. In my view, the principle enunciated by the Supreme court in this decision fully applies to the facts of this case.

4. The learned counsel also refers to another decision in Employers in relation to Punjab National Bank V. Ghulam Dastagir [1978-I L.L.J. 312,] to show that when a person is riot a workman, the reference to the industrial dispute was without



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jurisdiction. In that case, Justice Sri Krishna Iyer observed as follows:

“The reference assumes what really is 12 the most contested point in the case as to whether Sri Ghulam Dastagir was the driver of the said bank. By definition, a workman means any person employed in any industry and so the basic jurisdictional issue is as to whether the respondent-workman was a person employed by the bank. If he was, his termination was illegal. If he was not, the reference to the industrial dispute was without jurisdiction. The Industrial Tribunal examined the matter at some length and came to the conclusion that the driver was employed by the bank. Consequently, a direction for reinstatement together with back-wages was made.”

5.Sri Fenn Walter, the learned counsel for the fourth respondent, does not dispute the legal contentions raised by Sri Sanjay Mohan, the learned counsel for the petitioner. The law is settled on this aspect and as such the impugned order with regard to the petitioner alone is bad and will stand quashed. The reference in other respects will stand against the third respondent.”

17. In 2000 SCC Online Madras 811 in Britannia Industries, Ltd., Madras case, similar view has been taken by a learned Judge, where the learned Judge has held as follows:

“4.Sri Sanjay Mohan, the learned counsel for the



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petitioner, contends that the petitioner is not a relevant or necessary part in the above I.D.No.1996 of 1992, as the petitioner is neither the employer of the second respondent nor the second respondent was appointed or terminated by the petitioner.

5.Sri.D.Govinda Reddy, the learned counsel appearing for the second respondent fairly accepts that the second respondent, was appointed and terminate only by the third respondent co-operative canteen, formed under rules 70(6) of the Rules.

6.Rule 70(6) of the Rules, reads as follows:

“Whether the workers of a factory in which a canteen has been provide by the occupier in accordance with rules 65 to 67 for the use of the workers, desire to run the canteen by themselves on a co-operative basis with share capital contributed by themselves, the management may permit them to run the canteen in accordance with the bye-laws of the co-operative canteen, the Madras Co-operative Societies Act, 1932 (now the Tamil Nadu Co-operative Societies Act, 1998), and the rules framed thereunder, subject to such conditions as the Chief Inspector may, in consultation with the Registrar of Cooperative Societies, Madras, impose.”

7.If that be so, I am unable to understand how the petitioner -management is a necessary and relevant party to the



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impugned I.D.No.1996 of 1992 and, therefore, I do not find any justification to permit the first respondent to adjudicate the I.D.No.1996 of 1992 against the petitioner management, as the second respondent was neither appointed nor terminated by the petitioner management.

8.That apart, in view of the admitted fact the second respondent was appointed and terminated only by the third respondent co-operative canteen which is a separate entity in the eye of law registered under the co-operative societies for running a canteen.”

18. In both the aforesaid decisions it has been held that if there is no employer employee relationship available between the employee and the principal employer and everything was done by the immediate employer or the contractor, then the reference roping the main employer was unnecessary. In view of the obligation on the part that the principal employer (like the petitioner herein) especially in the context of Section 21 of the Contract Labour Act, if ultimately the third respondent employees succeeded in the Industrial dispute, in order to execute the award to be passed in this regard, during the contract period between the petitioner bank and the fourth respondent, certainly the role of the petitioner bank would become inevitable.



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19. However, in this context, the learned counsel for the petitioner has very much relied upon the Chennai Petroleum Corporation Ltd., case, of the Hon'ble Supreme Court (cited supra), where also a similar situation was under consideration, where their Lordships held as follows:

“It is evident from the above that the respondent employees are seeking no relief against the corporation. It is also evident that the respondent employees admit that the appropriate authority to reinstate them in service and to pay back wages is the society by whom they have been employed. That the proposed addition of the Corporation is entirely based on an apprehension which the employees have expressed about the efficacy of the award of the Labour Court is also evident from the averments extracted above. Mr.Vishwanathan was, therefore, justified in arguing that an apprehension which by itself has no basis could not provide a reasonable ground for the Labour Court or the High Court to add the Corporation as a party respondent. Having said that Mr.Viswanathan submitted on the instructions of the appellant-Corporation that if the respondent employees eventually succeeded in getting their dismissal order set aside by the Labour Court with a direction that they should be reinstated back in service of the society, and if the society upon such reinstatement deploys the employees to work with the Corporation in terms of the



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subsisting contract with the society, the appellant-corporation shall have no objection to such deployment. That statement should in our opinion, sufficiently allay the apprehension of the employees that even if they succeed before the Labour Court, they may be able to go back to the place of work from where they were removed pursuant to the complaint of theft made against them. The statement should in our opinion also obviate the necessity of adding the Corporation as a party respondent especially when no relief is being claimed against it by the employees. In the result, we allow these appeals set aside the order passed by the High Court, quash the order passed by the Labour Court adding the Corporation as a party respondent and direct that I.D.Nos. 531 of 2003 and 82 of 2004 pending before the Labour Court be disposed of expeditiously on their merit uninfluenced by any observations made by the Labour Court or the High Court in their proceedings. We make it clear that in case the employees succeed in getting their dismissal set aside from the Labour Court and the society reinstates them pursuant to such an award and deploys them to work with the appellant-Corporation, the corporation shall not object to any such deployment and shall allow them to work on conditions as are otherwise applicable to workman deployed under the terms of the contract between the Corporation and the Society. No costs”



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20. From the reading of the aforesaid judgment of the Apex Court, it is to be noted that, in that case also, there was an apprehension and in order to allay the said apprehension, it was submitted on behalf of the employer corporation that ultimately if the employee succeeded in the I.D between the employee and his immediate employer and in order to execute the same, the appellant corporation therein had to fulfil its obligation and the corporation was ready and willing to fulfil during the contract period between the appellant corporation and the immediate employer of the employee. That position accepted by the appellant corporation in that case was recorded by the Hon'ble Apex Court, in the order referred to above, and accordingly the impleading or roping of the appellant corporation therein was considered to be unnecessary and therefore, the said SLP was allowed.

21. If the same logic is applied to the facts of the present case also, such kind of statement or undertaking has to be given by the petitioner bank. In this context, Mr.Sanjay Mohan, learned counsel for the petitioner has, in unequivocal term, made submissions during the argument that, in case if ultimately the I.D raised by the third respondents in both the cases against the first respondent ended in favour of the employees and pursuant to which, in order to comply with the award to be passed by the second respondent, the role of the



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petitioner bank would become necessitated only for the contract period between the petitioner bank and the fourth respondent and in that case, certainly the petitioner would not have any objection for such liability only to the extend of the contract period between the petitioner and the fourth respondent.

23. For all these reasons stated and the discussions made above, this Court is inclined to pass the following order :

i) The impugned reference insofar as implicating the petitioner bank is concerned, is here by quashed. However the remaining portion of the reference are to be sustained intact.

ii) If ultimately, the third respondent employees in each case succeeded in the proposed Industrial dispute before the second respondent Industrial Tribunal and in order to execute such award to be passed in this regard during the contract period between the petitioner bank and the fourth respondent, certainly the liability of the petitioner bank would be ensured and in that case, the petitioner bank shall not shirk its responsibility as a principal employer.”

8. In another judgment dated 05.06.2012 passed in W.P.Nos.35842 and 35843 of 2007, this Court held as follows:

“12. He also referred to the judgment of the Supreme Court in Bharat Heavy Electricals Ltd., vs. Anil and others reported in 2007 (1) LLJ 619 for contending that the Labour



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Court cannot direct reinstatement of the workmen as against the principal employer that too in a dispute under Section 2-A of the Industrial Disputes Act. In paragraphs 13 and 15, it was held as follows:

"13. An individual dispute which is deemed to be an industrial dispute under Section 2-A concerns discharge, dismissal, retrenchment or termination whereas an industrial dispute under Section 2(l) covers a wider field. It includes even the question of status. This aspect is very relevant for the purposes of deciding this case. In Radhey Shyam v. State of Haryana⁴ it has been held after considering various judgments of the Supreme Court that Section 2-A contemplates nothing more than to declare an individual dispute to be an industrial dispute. It does not amend the definition of industrial dispute set out in Section 2(k) of the Industrial Disputes Act, 1947 [which is similar to Section 2(l) of the said 1947 Act]. Section 2-A does not cover every type of dispute between an individual workman and his employer. Section 2-A enables the individual worker to raise an industrial dispute, notwithstanding, that no other workman or union is a party to the dispute. Section 2-A applies only to disputes relating to discharge, dismissal, retrenchment or termination of service of an individual workman. It does not cover other kinds of disputes such as bonus, wages, leave facilities, etc.

15.We set aside the impugned judgment of the High



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Court by directing BHEL to re-employ Respondents 1 to 14 directly or through its contractor. This order will, however, not preclude the workmen from raising an industrial dispute claiming status of direct workmen of the Company after joining the recognised union/union concerned in the said reference. This order will not prevent the respondents herein from seeking abolition of contract labour in accordance with law. Accordingly, the civil appeal is disposed of. No order as to costs."

14. But, in the present case, the workmen himself were not very clear about the real employer and at the time of raising a dispute, they have impleaded both of them as party respondents and during the trial, the Labour Court had accepted the evidence of M.W.1, namely Contractor and found that the claim against the 2nd respondent was not justified. In doing so, the Court also referred to the oral evidence in which the categorical admission was made by the workmen about their relationship with the Contractor. Such a finding of fact cannot be interfered with by this Court, that too in a dispute raised under Section 2-A of the Industrial Disputes Act."

11. In the case of *K.Manikam Vs. The Management, Tamil Nadu Electricity Board* in W.P.Nos.21278 to 21280 of 2018 dated 14.10.2022,



this Court held as follows:

“13. The dispute has been referred under Section 2-A of the ID Act. The scope of a dispute under Section 2-A is restricted to only to see whether the dismissal, termination or retrenchment is just and valid. The Scope of Section 2-A of the ID Act does not cover regularization and permanent absorption and thus, the dispute itself is not maintainable.”

12. The learned counsel for the respondents/workmen disputed the contentions raised on behalf of the petitioners by stating that the respondents/workmen were directly supervised by the Board authorities. They served for 240 days in a year and they were orally terminated from services. Since the respondents/workmen were orally terminated, they raised dispute for reinstatement and for grant of backwages. The Labour Court passed awards, considering the documents filed by the respondents/workmen. The respondents/workmen marked number of documents to establish that they were engaged as contract labourers during the relevant point of time and served under the control of the Board authorities. Therefore, the Awards are to be confirmed.



13. In support of the said contentions, the learned counsel for the respondents/workmen relied on the judgment of the Hon'ble Supreme Court in the case of ***Harjinder Singh Vs. Punjab State Warehousing Corporation, reported in [2010 (3) SCC 192]*** and the Court held as follows:

“4. The learned Presiding Officer of the Labour Court considered the pleadings of the parties and evidence produced by them and passed an award dated 15-12-1999 for reinstatement of the appellant with 50% back wages. The Labour Court held that even though the appellant was retrenched after complying with Section 25-F of the Act, the principle of equality enshrined in Section 25-G of the Act was violated and persons junior to the appellant were allowed to continue in service.

8. Shri Dhruv Mehta, learned counsel for the appellant referred to the averments contained in the reply filed on behalf of the Corporation before the Labour Court and the writ petition filed before the High Court to show that in the pleadings of the Corporation there was not even a whisper that the appellant's initial engagement/appointment was illegal and argued that the learned Single Judge had no jurisdiction to interfere with the award of reinstatement by assuming that the appellant was appointed in violation of Articles 14 and 16 of the Constitution and the Regulations framed under Section 42 read with Section 23 of the Warehousing Corporations Act,



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1962 (for short “the 1962 Act”).

9. Shri Mehta further argued that the question whether the appellant's appointment was made in contravention of the Regulations framed under the 1962 Act or the doctrine of equality enshrined in the Constitution, is a pure question of fact which could be decided only on the basis of pleadings and evidence produced before the Labour Court and as no such evidence was produced before the Labour Court, the High Court was not at all justified in entertaining the new plea raised for the first time during the course of hearing of the writ petition.

11. We have considered the respective submissions. In our opinion, the impugned order is liable to be set aside only on the ground that while interfering with the award of the Labour Court, the learned Single Judge did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution —Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477] and Surya Dev Rai v. Chander Rai [(2003) 6 SCC 675].”

14. In the case of **Ramesh Kumar Vs. State of Haryana reported in [2010-I-LLJ-841 (SC)]**, the Court held as follows:

“9. The only point for consideration in this appeal is



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whether the High Court was justified in setting aside the award of the Labour Court when the appellant had established that he was in continuous service for a period of 240 days in a calendar year, particularly, when similarly placed workmen were regularised by the Government.

10. It is not in dispute that the appellant was appointed as a Mali and posted at the residence of the Chief Minister in the year 1991. The materials placed by the appellant before the Labour Court clearly show that he had worked for three years and there was no break during his service tenure. He was issued identity card to work in the residence of the Chief Minister and no reason was given for his termination. It is also his case that there was no show-cause notice and no inquiry was conducted. A perusal of the order of the Labour Court clearly shows that one Shri Nasib Singh, Junior Engineer, who deposed as MW 1 on behalf of the Department has categorically stated that the workman was engaged by the Department on muster rolls as Mali in December 1991 and he worked up to 31-1-1993. He also stated that there was no break from December 1991 to January 1993 during which the workman was engaged. The Labour Court as per the materials placed rightly found that the workman has continuously worked from December 1991 to 31-1-1993. It also found that the workman worked for 240 days with the Department within 12 calendar months preceding his date of termination i.e. 31-1-1993. It is useful to refer to the definition



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of “retrenchment” and “workman” in the Act which reads thus:

“2. (oo) ‘retrenchment’ means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(s) ‘workman’ means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”



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It is not in dispute that the appellant is a “workman” as defined under Section 2(s) and “retrenchment” if any it should be in accordance with Section 25-F of the Act. Admittedly, in the case on hand, the workman was not given any notice or pay in lieu of notice or retrenchment compensation at the time of his retrenchment. In view of the same, the Labour Court has correctly concluded that his termination is in contravention of the provisions of Section 25-F of the Act. Though the Department has relied on a circular, the Labour Court on going through the same rightly concluded that the same is not applicable to the case of the retrenchment.”

15. Relying on the judgments, the learned counsel for the respondents/workmen reiterated that the Labour Court categorically found that the respondents/workmen were engaged by the Contractor S.Seshaian and they were continuously working as contract labourers. However, the Board has not paid Ex-gratia payment, despite the several requests made by the respondents/workmen. The said fact was also considered by the Labour Court and based on the services rendered by the respondents/workmen for more than 240 days in a year, the Labour Court has granted the relief of continuity of service with backwages.



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16. The relief sought for by the respondents/workmen before the Labour Court reveals that the relief of continuity of service with backwages were sought for. However, the respondents/workmen state that they were orally terminated from service. The relief of reinstatement was not sought for by the respondents/workmen before the Labour Court and the Labour Court also has not specifically ordered for reinstatement. However, granted the relief of continuity of service with backwages. Question of grant of continuity of service would arise only if the workman was not terminated. Once, the workman was terminated from service, then the relief of reinstatement would be appropriate.

17. In this context, the learned counsel for the petitioner/Board contended that the 2A Petition under the Industrial Disputes Act is not maintainable. The scope of a dispute under Section 2-A is restricted to only to see, whether the dismissal, termination or retrenchment is just and valid. The scope of Section 2-A of the ID Act does not cover regularization and permanent absorption and therefore, the dispute is not maintainable.



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18. Since the respondents/workmen have not specifically prayed for reinstatement and proceeded on the basis that the continuity of service is to be granted to them along with backwages, the dispute raised under Section 2-A of the Industrial Disputes Act is not maintainable as the Labour Court has committed an error in entertaining the dispute.

19. Regularisation and permanent absorption is to be granted in accordance with the Service Regulations applicable to the Board. As far as the contract labourers are concerned, a Special scheme was framed based on the report submitted by the Justice Khalid's Commission. Accordingly, the Board in implementation of the recommendations, passed Board Proceedings and thereafter, entered into 12 (3) Settlement. Accordingly, the contract labourers, who have complied with the terms and conditions were permanently absorbed and their services were regularized. In this regard, the Board has verified the service particulars and the other records available with the Board for the purpose of granting regularisation. One of the criteria fixed was that the contract labourer should have received ex-gratia amount from the Board during the relevant point of time for the purpose of ascertaining his employment as a contract labourer through private



contractors for the purpose of performing the job in the Board.

WEB COPY

20. Therefore, the contract labourers, who were engaged by the private contractors were considered for permanent absorption, only if they comply with the terms and conditions stipulated in the Board Proceedings and the 12 (3) Settlement.

21. Since the respondents/workmen in the present writ petitions had not even received ex-gratia amount during the relevant point of time, they were not even working as contract labourers during the relevant point of time and thus, the Board was not considered their case for grant of regularisation and permanent absorption. The Labour Court has not considered these aspects. The Labour Court has simply considered the fact that the respondents/workmen had served 240 days as contract labourers and therefore, they are entitled for continuity of service with backwages. Even a contract labourer served for 240 days of service, has to comply with the terms and conditions stipulated for permanent absorption based on the recommendations of Justice Khalid's Commission and the consequential Board Proceedings and the Settlement. Therefore, it is not as if an employee



WEB COPY

has simply completed 240 days of service as a contract labourer with a private contractor. He has to establish that he has fulfilled all the requirements for permanent absorption as per the Board Proceedings and 12 (3) Settlement. In the absence of establishing the same, the respondents/workmen are not entitled for permanent absorption.

22. The contract labourers were not appointed by the competent authorities of the Tamil Nadu Electricity Board in accordance with the Recruitment Rules in force. They were engaged by the Private contractors. Thus, the contract labourers were not issued with an order of appointment by the competent authorities nor procedures were followed for recruitment. Therefore, they are not entitled for permanent absorption as per the Board's Service Regulations. However, the Hon'ble Supreme Court of India considered the plight of the contract labourers and as a concession, extended the benefit of regularisation and accordingly, Justice Khalid's Commission was appointed, who in turn, made recommendations and consequently, the contract labourers, who have complied with the terms and conditions were absorbed as permanent employees. Therefore, the entire scheme of permanent absorption is a concession extended to the contract labourers,



WEB COPY



who all are otherwise not entitled for regularisation or permanent absorption in accordance with the Service Regulations of the Board. That being the case, the contract labourers, who have not established that they have fulfilled the terms and conditions, are not entitled for the relief of regularisation and permanent absorption.

23. In the present case, the Labour Court simply granted the relief by arriving a conclusion that the respondents/workmen worked for more than 240 days alone is insufficient and other terms and conditions stipulated are also to be established. More so, in the present case, the contractor, who engaged the respondents/workmen was not impleaded as respondent in the Industrial Disputes Act and therefore, the respondents/workmen have not established their employment as contract labourers by the private contractor and the respondents/workmen have not established that they were directly appointed by the Board authorities and terminated by the Board authorities. In the absence of any evidence to establish that the respondents/workmen were directly appointed by the Board authorities and terminated by the authorities, the relief of continuity of service along with the backwages cannot be granted.



WEB COPY

24. Thus, the findings of the Labour Court in this regard is perverse and not in consonance with the established principles. Consequently, the Awards dated 17.03.2016 passed in I.D.Nos.336, 337, 338 and 339 of 2009 are quashed and all the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

14.11.2022

Jeni/kak

Index : Yes

Speaking order: Yes

To

1. The Presiding Officer
III Additional Labour Court
Chennai.



WEB COPY



W.P.Nos.31352 to 31355 of 2

S.M.SUBRAMANIAM, J.

jeni/kak

W.P.Nos.31352 to 31355 of 2017

14.11.2022