



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.02.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

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W.P. (MD)No.13292 of 2012

and

M.P. (MD) .No.1 of 2012

The Project Director,
Zirconium Project,
Zirconium Complex,
Palayakayal - 628 152,
Tuticorin District.

... Petitioner

vs

1.The Labour Court,
Tirunelveli.

2.The Director,
M/s.Alagu Security Services,
Thoothukudi.

3.T.Kurukkalanji

4.S.Joseph

5.S.Sankaran

6.M.Maheswaran

7.V.Balamurugan

8.P.Vanniaraj

9.K.Balamurugan

10.K.Marimuthu

11.M.K.Pandian

12.A.Selvaraj

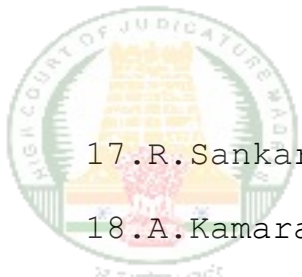
13.V.Kalidoss

14.P.Balakrishnan

15.S.Gunasekar

16.A.Marimuthu

<https://hcservices.ecourts.gov.in/hcservices/>



17.R.Sankaran

18.A.Kamaraaj

19.M.Sooraraja

20.S.Manickam

21.P.Jeyaraj

22.M.Radhakrishnan

23.I.Arockiyam

24.S.Vasikar

25.T.S.Murugan

26.P.Balasubramanian

27.S.Sindan

28.T.Petchiraja

29.M.Dinesh Kumar

30.R.Murugan

31.P.Sundalaimuthu

32.C.Murugan

33.E.Pechiraja

34.P.Selvaganapathy

35.A.Kandakumar

36.J.Mark

37.I.Jeba Raj

38.E.Pooraja

39.P.Gopal

40.C.Ashok Kumar

41.M.Alugu Munishwaran

<https://hcservices.ecourts.gov.in/hcservices/>



42.S.Ananth

43.C.Dinesh

44.P.Samuvel

45.J.Antony Pitchaiah

46.P.Shyamkumar

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to order dated 16.05.2012 in C.P.No.5/2011 passed by the Hon'ble Labour Court, Tirunelveli and quash the same.

For Petitioner : Mr.S.Pillai Monikantan

For R-1 : Labour Court

For R-2 to R-46 : No Appearance

O R D E R

Heard Mr.S.Pillai Monikantan, Learned Counsel for the petitioner.

2.This Petition is filed for Writ of Certiorari to quash the C.P.No.5 of 2011 dated 16.05.2012 by the first respondent.

3. The brief facts of the case are that the respondents 3 to 46 have filed Claim Petition in C.P.No.5 of 2011 on the file of Hon'ble Labour Court, Tuticorin Camp seeking for payment of wages. The petitioner had engaged Private Security Agencies by inviting open tenders, by entering into agreement/contract with a successful bidders for providing security to the Zirconium Complex. From 1991 to 1996 M/s. Topaz Security Services was engaged, then from 1996 to 1999, M/s. Alagu Security Services Private Limited and from 1999 to 2003, M/s. Federal Security Bureau, from 2003 to 2008, again M/s. Topaz Security Services. In the year 2009, M/s. Alagu Security Services Private Limited were engaged, who was a successful bidder in tender notice dated 03.04.2008. An agreement was entered into with the writ petitioner and the second respondent for providing security to the Zirconium Complex at a cost of Rs.40,84,800/- (Forty Lakhs Eighty Four Thousand Eight Hundred only) by employing 63 personnel to work round the clock. The said agreement is for a period of one year or till induction of Central Industrial Security Force, whichever is earlier.



4. Thereafter, the first respondent vide letter dated 30.04.2000 served a conditional notice on the petitioner to increase the contractual amount to the tune of Rs.40,000/- (Rupees Forty Thousand only) per month on the ground that the second respondent was incurring loss of Rs.40,000/- per month or terminating the agreement with effect from 01.08.2009. The petitioner had accepted the termination of contract vide letter dated 25.07.2009 and had expedited to induct CISF. Since the contract was terminated on 25.07.2009, the service of the respondents 3 to 46 would also be automatically terminated from 25.07.2009.

5. A strike notice dated 25.05.2009 was served on the petitioner by the respondents 3 to 46 was not correct and not in conformity with the law applicable. The respondents 3 to 46 were engaged by the private security agencies as per the terms and conditions of the contract. The payment shall be made by the second respondent and the petitioner had not engaged the respondents 3 to 46 on their own, since they were working as a security grade under the control and supervision of the first respondent and the responsibility of engaging the individuals lies with the contractor.

6. In the meanwhile, the Assistant Labour Commissioner (Central), Madurai initiated conciliation proceedings on a strike notice, during the course of conciliation proceedings, the Union filed a Writ Petition in W.P. (MD).No.7252 of 2009 for Mandamus and this Court vide order dated 09.11.2009 held that the Union should not alter to the prejudice of the workman concerned in the industrial disputes in respect of their conditions of service as security guards which were applicable to them immediately before the commencement of conciliation proceedings which is pending on the file of the Assistant Labour Commissioner (Central), Madurai. Aggrieved over the Union preferred Writ Appeal No.672 of 2009 and this Court vide order dated 16.02.2010 is held as under:

"The Writ Petitioner union can prosecute its claim for regularization and if the Industrial Tribunal holds in their favour regarding employer-employee relationship, then the writ petitioner can also claim the relief that will follow viz., wages during the period of conciliation when right under Section 33(1) (a) of the Industrial Disputes Act is protected. All these will follow only if they succeed in establishing the proof that the employer-employee relationship exists. Until this basic question of facts is settled, we cannot grant the relief prayed for. On this ground alone, the Writ Appeal is allowed. Connected



Miscellaneous Petitions are closed. No costs. We repeat we have not decided the existence or non-existence of the relationship of employer-employee. The remedy under Section 33(1) (a) of the Act is intact and it can be pursued under the Industrial Disputes Act. The learned counsel for the respondent submitted that even assuming without admitting that the appellant requires CISF for the plant, then the member of the respondent firm may be employed for the residential quarters. This request can also be made before I.D. forum."

7. In the meanwhile, the Union raised I.D.Nos.19, 20, 21, 22, 35 of 2010 and 89, 90, 91, 92 of 2009 before Central Government Industrial Tribunal Cum Labour Court, Chennai. The Tribunal vide order dated 30.04.2013 has held as follows:

"Considering the pros and cons of the contentions on either side and on the scrutiny of the records, documents and evidence, I am led to the conclusion that there is no force in the contentions on behalf of the petitioner. With the commencement of the unit at Palayakayal engagement of some security personnel having become necessary for various purposes connected with the safety and security of the materials there was started engagement of some private men as security guards initially from the locality and thereafter through the independent contractors. The engagement of contract labour through independent contractors is shown to be in accordance with valid contracts specifying the terms and conditions of such engagement. Though there is need of registration and obtaining of license by the independent contractor the specific case of the Respondent is that license has been obtained though not produced. Though there has been no proof of the fact of license having been obtained and for registration made by the Principal Employer to give rise to the commencement of the contract labour system in the establishment, that perse is not to substantiate that system has not commenced there. The Respondent has been able to substantiate that despite the prevalence of the contract labour system under the establishment why it had to switch over to avoiding private contract labour and to engage Government Specialist Security Services. When specialist security



guards are appointed from among CISF personnel no doubt it is not with an object of denying the benefits that might be payable to the private security guards that they were engaged and continued as contract labour. Marginal discrepancies in the versions of witnesses tending to show that there has been some control of First Respondent over the work of the contract labour or such other circumstances are not apt to lead to the conclusion that the contract labour is capable of being considered as directly employed under the First Respondent. Even with an attempt to pierce, the veil, if any, centering round the contract for supply of labour at no stretch of imagination it can be concluded that there is no real contract and that the contract is mere sham or a camouflage. Therefore, I hold that the contract between the Management of Project Director, Zirconium Complex and their contractor with regard to the employment of the contract labour is not sham and bogus. There is no termination of them by R1. The termination of the contract labour by Contractor is a misnomer in that due to absence of employment at the original place of engagement they were being transferred to new stations or Chennai at which they have not joined duty. Hence they kept out of employment of their own volition only and there is no actual termination by the Contractor. Consequently, the workmen are not entitled to any relief."

8. In the Tribunal it has been held that the workmen are not entitled to any relief. Therefore, now the question arises whether the workman is entitled to any payment as held in C.P.No.5 of 2011. The second respondent M/s. Alagu Security Services served a conditional notice on 30.04.2009. Since the petitioner decided to accept the termination notice of the security services, the petitioner vide letter dated 25.07.2009 had accepted the termination of contract. Since the contract was terminated on 25.07.2009, the service of the respondents 3 to 46 would also be automatically be terminated on 25.07.2009.

9. The claim of the respondents 3 to 46 is to disburse the wages for a period from 01.09.2009 to 19.12.2009. Since the ID raised in the Central Government Tribunal where it has been held that the workmen are not entitled to get any relief, then the respondents 3 to 46 are not entitled to any wages for the period from 01.09.2009 to 19.12.2009. Therefore, this Writ Petition is allowed setting aside the impugned order of the Labour Court.



10. With the above observations, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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/ /2022

Sub Assistant Registrar(CS)

Nsr

Note:

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

To

The Labour Court,
Tirunelveli.

W.P. (MD) No.13292 of 2012

08.02.2022

DP(26.02.2022) 7P 2C