



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.01.2022

Pronounced on : 15.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)Nos.15692, 18202 to 18206 of 2013

and 9085 of 2015

and

M.P.(MD)Nos.1,1,1,1,1 and 1 of 2013

and 2 of 2015

P.Anbazhagan

... Petitioner

Sri. Ravikumar & Co.,

Rep by its Proprietor

K. Palanisamy, No.4, Vadivel Street,

Velayudhampalaym Post, Karur.

... Petitioner in WP(MD)

No.18202 ,18203 & 18205/ 2013

K.S.Kannan,

Sri. Sakthi Vinayagar & Co.,

Tnpl Contractor,

Rama Madam,

Kandi Street, Bheema Nagar,

Trichy- 001.

... Petitioner in WP(MD)

No.18204,18206/ 2013

P. Selvaraj

R.Pavalayee

V.Manoharan

C.Kanagaraj

R.Kumaravel

... Petitioner in WP(MD)

No.9085/ 2015

vs.

1.M.Selvam

2.The Management,

Tamil Nadu Newsprint and Papers Limited,

Kagithapuram, Karur.

3.The Management,

Tamil Nadu Newsprint and Papers Contractors'

Association Registration. No.49 of 1987,

Kagithapuram, Karur.

4.The Labour Court,

Tiruchirapalli.

... Respondents



2. The Management,
Tamil Nadu Newsprint and Papers Ltd.,
Kagithapuram, Karur.

3. The Management,
Tamil Nadu Newsprint and Papers Contractors ,
Association Redg. No.49 of 1987, Kagithapuram,
Karur.

4. The Presiding Officer,
The Labour Court, Thiruchirapalli.
... Respondents in WP(MD)No.18202/ 2013

1. P. Periyasamy

2. The Management,
Tamil Nadu Newsprint and Papers Ltd.,
Kagithapuram, Karur.

3. The Management,
Tamil Nadu Newsprint and Papers Contractors ,
Association Redg. No.49 of 1987, Kagithapuram,
Karur.

4. The Presiding Officer,
The Labour Court, Thiruchirapalli.
... Respondents in WP(MD)No.18203/ 2013

1. P.V.Paramasivam,

2. The Management,
Tamil Nadu Newsprint and Papers Ltd.,
Kagithapuram, Karur.

3. The Management,
Tamil Nadu Newsprint and Papers Contractors ,
Association Redg. No.49 of 1987, Kagithapuram,
Karur.

4. The Presiding Officer,
The Labour Court, Thiruchirapalli.
... Respondent) in WP(MD).No.18204/ 2013

1. R. Poongodi

2. The Management,
Tamil Nadu Newsprint and Papers Ltd.,

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



Kagithapuram, Karur.

3. The Management,
Tamil Nadu Newsprint and Papers Contractors ,
Association Redg. No.49 of 1987, Kagithapuram,
Karur.

4. The Presiding Officer,
The Labour Court, Thiruchirapalli.

... Respondents in WP(MD)No.18205/ 2013

1. P. Annadurai

2. The Management,
Tamil Nadu Newsprint and Papers Ltd.,
Kagithapuram, Karur.

3. The Management,
Tamil Nadu Newsprint and Papers Contractors ,
Association Redg. No.49 of 1987, Kagithapuram,
Karur.

4. The Presiding Officer,
The Labour Court, Thiruchirapalli.

... Respondents in WP(MD)No.18206/ 2013

1. The Prsiding Officer,
Labour Court, Thiruchirappalli.

2. The Management,
Tamil Nadu Newsprint and Papers Ltd.,
Kagithapuram, Karur.

3. The Management,
Tamil Nadu Newsprint and Papers Contractors ,
Association Redg. No.49 of 1987, Kagithapuram,
Karur.

4. T.A.R. Ramachandran

5. K. Rajasekar

6. K.Pushparaj

7. R.Mani

... Respondents in WP(MD)No. 9085/ 2015

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the orders passed by the 4th respondent herein, the

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



Learned Labour Court, Tiruchirappalli, dated 03.04.2013, in Industrial Dispute No.127 of 2002 with respect to the 1st respondent herein, to quash the impugned order.

WEB COPY

Prayer in WP(MD). 18202/ 2013 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari to call for the records relating to the orders passed by the 4th respondent herein, the learned labour court, Trichirappalli, dated 3.4.2013 in industrial dispute no.115/2002 with respect to the 1st respondent herein, quash the impugned order and pass.

Prayer in WP(MD). 18203/ 2013 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records relating to the orders passed by the 4th respondent herein, the Learned Labour Court, Tiruchirappalli, dated 03.04.2013 in Industrial Dispute No.128/2002 with respect to the 1st respondent herein, quash the impugned order.

Prayer in WP(MD). 18204/ 2013 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue an order or direction more particularly in the nature of a writ of Certiorari or any other any other appropriate writ to call for the records relating to the orders passed by the 4th Respondent herein, the Learned Labour Court, Tiruchirappalli, dated 03.04.2013 in Industrial Dispute No. 117/2002 with respect to the 1st Respondent herein, quash the impugned order.

Prayer in WP(MD). 18205/ 2013 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari to call for the records relating to the orders passed by the 4th respondent herein, the learned labour court, Trichirappalli, dated 3.4.2013 in industrial dispute no.129/2002 with respect to the 1st respondent herein, quash the impugned order and pass.

Prayer in WP(MD). 18206/ 2013 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records relating to the orders passed by the 4th respondent herein, the Learned Labour Court, Tiruchirappalli, dated 03.04.2013 in Industrial Dispute No.130/2002 with respect to the 1st respondent herein, quash the impugned order.

Prayer in WP(MD). 9085/ 2015 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ

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



of Certiorarified Mandamus calling for the records of the impugned common partial award passed by the 1st respondent dated 03.04.2013 In I.D.Nos.115 to 130 of 2002 in so far relates to petitioners case in I.D.Nos. 126 of 2002, 119 of 2002, 116 of 2002, 120 of 2002 and 122 of 2002 and quash the same as illegal, arbitrary and against equity and consequently to direct the 2nd respondent to reinstate the petitioners into service with permanent status with continuity of service along with accrued attended benefits including pension as applicable within stipulated time prescribed by this Honourable Court.

In all cases:

For Petitioner : Mr.Mr.S.Ravindran
Senior Counsel
for Mr.R.Balakrishnan

In W.P. (MD)Nos.18202 to 18206 and 15692 of 2013:

For R1 : Mr.T.Sakthi Kumaran
for Victory Associates
For R2 : Mr.Shivakumar
For R3 : Mr.M.P.Senthil

In W.P. (MD)Nos.18202 to 18206 of 2013:

For R4 : Labour Court

In W.P. (MD)No.9085 of 2015:

For R1 : Labour Court
For R2 : Mr.Shivakumar
For R3 : Mr.M.P.Senthil
For R4 to R7 : No appearance

COMMON ORDER

The Writ Petition in W.P.(MD)No.15692 of 2015, is filed for issuance of a Writ of Certiorari, to quash the impugned orders passed by the 4th respondent, the Labour Court, Tiruchirappalli, dated 03.04.2013, in Industrial Dispute No.127 of 2002 with respect to the 1st respondent herein.

2. In the said order, the fourth respondent directed the petitioner to pay one month salary in lieu of notice and 15 days average salary for each completed calendar year of service for the period from the date of denial of employment to the date of this order i.e. 03.04.2013 to the first respondent and 15 days salary for each completed calendar year of service towards gratuity from the



date of joining till the date of the order i.e. 03.04.2013 to the first respondent and also directed to pay Rs.5,000/- as cost.

WEB COPY

3. The brief facts of the case are that the petitioner is a Contractor in the second respondent company, namely Tamil Nadu Newsprint and Papers Limited, Kakidhapuram, Karur, from 01.01.1988 to 31.12.1988. Then, from 01.01.1989 to 31.12.1989 and from 01.01.1992 to 31.12.1992. The petitioner has taken a license under the applicable laws and engaged the labourers to work under the second respondent company and paid wages to the employees. The petitioner also taken insurance policy and remitted the PF contributions and other benefits for the welfare of his employees.

4. The contention of the petitioner is that the first respondent was employed by different Contractors of the second respondent including the petitioner. The first respondent was engaged as Worker on casual and daily wage basis for some time by the petitioner. The first respondent's employment did not continue after 31.01.1992 and he did not work continuously for more than two years. Since the engagement was on casual basis, the relationship of employer and employee was only for those days. The first respondent was working under the petitioner, whenever the petitioner was awarded with a contract. After the end of the contract period, the first respondent on his own volition had joined another contractor of the second respondent. The TNPL contract Thozilalar Sangam has originally filed W.P.No.3178 of 1994, before the Principal Bench seeking a direction to the Secretary to the Government of Tamil Nadu, Labour Court and Employment to refer the issue of non-employment of 25 Workmen for adjudication. The above Writ Petition was dismissed on 13.10.1998 and an appeal in W.A.No.159 of 1999, was filed and the same was dismissed, giving liberty to individual workers to raise individual disputes under Section 2 A of the Industrial Disputes Act.

5. Thereafter, out of 25 workmen, 15 workmen had filed separate Industrial Disputes. The first respondent had filed I.D.No.127 of 2002, stating that the petitioner had illegally terminated from service on 31.01.1992 when they went on strike and had sought reinstatement with continuity of service and backwages. The fourth respondent herein, vide order, dated 03.04.2013, had dismissed the I.D.s against the second and third respondents but, partially allowed the I.D. against the petitioner. Aggrieved over the same, the present Writ Petition is filed.

6. The second and third respondents have filed a counter affidavit. The second respondent has stated in his counter affidavit that there is no employee employer relationship between the first respondent and the second respondent. Since there is no



order against the second respondent, the petitioner ought to establish his own case.

WEB COPY

7. Heard Mr. S. Ravindran, the Senior Counsel for the writ petitioner, Mr. T. Sakthi Kumaran, the Learned Counsel for the 1st respondent, Mr. Shivakumar the Learned Counsel for the 2nd respondent and Mr. M.P. Senthil the Learned Counsel for the 3rd respondent.

8. The contention of the petitioner is that the petitioner was a contractor under the second respondent for the periods 01.01.1988 - 31.12.1988, 01.01.1989 - 31.12.1989 and 01.01.1992 to 31.12.1992. For the year 1990 and 1991 the petitioner was not a contractor, consequently, the first respondent was not employed by the petitioner during 1990 and 1991. In the year 1992, the petitioner was awarded the contract and the first respondent had worked with the petitioner only from 01.01.1992 to 31.01.1992 i.e., one month period. Thereafter the first respondent went on strike. Hence, the first respondent did not work continuously for a period of five years. Therefore, the payment of gratuity act is not applicable to the first respondent. The payment of gratuity to an employee is available if he has rendered continuous service for not less than five years. In the present instance, the first respondent has rendered service for the years 1988, 1989 and one month in the year 1992 only and hence he is not eligible for the gratuity.

9. The Labour Court has held that the first respondent is entitled to retrenchment benefit from the petitioner under Section 25F. The contention of the petitioner is that the first respondent has worked only for one month with this petitioner for the year 1992 and then went on strike with a demand to abolish the contractor labour system. Since the 1st respondent on his own volition has left the job, is not entitled to the same. Even if it is considered as retrenchment, under the provisions of Section 25F the first respondent is entitled to one month salary and compensation for 15 days average pay for every completed year of continuous service or part thereof in excess of six months. But the Labour Court has erroneously taken the period from the date of retrenchment till the date of the order, when there was no contract awarded to the petitioner for the rest of the period. Moreover, the payment is on the higher side.

10. The relevant section is extracted hereunder:

"25F. 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

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



WEB COPY

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]."

The provision states to pay one month salary and to pay compensation. While calculating the compensation, "15 days average pay for every completed year of continuous service or part thereof in excess of six months" ought to be taken. In the present case the first respondent was engaged in the year 1988, 1989 and 1992 (one month). Since the first respondent has not worked in the year 1990 and 1991 then there is no continuous service and has worked for one month in the year 1992. In the year 1992 because of strike the first respondent did not come to work. The first respondent has voluntarily left the service and he is not entitled to the benefits. The first respondent has not raised any pleadings or evidence that the petitioner has terminated the first respondent illegally and it is an admitted fact that the petitioner at no point of time has terminated the service of the first respondent.

11. The Labour Court has given the finding that the management of TNPL has not engaged the petitioner and there is no employee employer relationship between TNPL and the petitioner. The contractors who engaged the first respondent have entered into the contract with the management of TNPL. Whenever the contract is awarded to the individual contractors, the employees were engaged by the said Contractors.

12. Now the question to be decided is whether the Labour Court is right in granting the relief and whether the compensation is on the higher side.

13. A peculiar system is being followed, the contract is for only one year from January to December and the contractor would be changing but the labourers are the same. If the contract is not awarded to the contractor during that period, then the labourers would be engaged by another contractor. Then for that period there will not be any contract between the contractor and the labourer. The first respondent has worked with several contractors. Admittedly, the writ petitioner / Contractor in Writ Petition



No.15692 of 2013 was granted contract in the year 1988 and 1989 and then in the year 1992. In the year 1992, the first respondent had worked for only one month. On 31.01.1992, the workmen went on strike. Therefore, 25 contract workers were denied entry in the mill on the next day. The agitation is to abolish the contract labour system.

14. The Labour Court after going into the oral evidence examination and the documents has held that the employees are engaged by the contractors and not by the management. While the negotiation was going on, nine outsiders were engaged by the contractors. So, the petitioner and other workers went on strike. On the request of the labour officials, the workers were taken into service except the 25 persons. The Contractors required an undertaking from the workers, which was not submitted by them. Therefore, the workers were deprived employment by the contractors.

15. The contract is for one year from January to December, the petitioner was awarded the contract in the year 1988,1989 and 1992, the first respondent had worked in the year 1988,1989 and 1992. The Labour Court has granted the compensation from the date of denial of employment till the date of the order i.e. from 1992 to 2013. This Court is of the considered opinion that the award granting 15 days average salary from the date of denial of employment till the date of the order is erroneous, more so when the petitioner was not awarded contract for those period i.e. from 1992 to 2013. The petitioner has denied job to the first respondent only in the year 1992 and the first respondent is entitled to 15 days compensation for the year 1992 along with one month salary. Therefore, this Court is modifying the award and directing the petitioner to pay 15 days average salary from 01.02.1992 to 31.12.1992.

16. As far as the gratuity is concerned, the petitioner has established the contract was granted each and every year and it is not granted every year and there are several contractors working under the second respondent management. Therefore, the first respondent has not established that he had worked under the petitioner continuously for five years. If a person has continuously worked for not less than five years, then only the employee is entitled to gratuity. However, on perusing the records, it is seen that the workers are engaged by various contractors whenever the contract was awarded to them. Admittedly, the first respondent has worked under the petitioner in the year 1988 and 1989 and this Court has also concluded that the petitioner was denied employment for the year 1992, when the petitioner was holding the contract. In that circumstances the labourer would be entitled to gratuity from the contractor or cum employer who engages them. To meet the ends of



justice, this Court is directing the petitioner to pay pro rata gratuity amount for three years, i.e., for 1988, 1989 and 1992. The peculiar system is followed in TNPL under contract labour system where the contractors would keep on changing but the workers would be permanent. Therefore, liberty is granted to the first respondent to identify his contractor for the year 1990 and 1991 and for the subsequent years from 1993 onwards to claim the gratuity from those contractors.

17. For the discussion stated supra the following order is passed:

- a. The impugned order of the Labour Court dated 03.04.2013 is set aside.
- b. The petitioner is directed to pay one month wages.
- c. The petitioner is directed to pay compensation of 15 days salary for the year 1992 alone.
- d. The petitioner is directed to pay pro rata gratuity for the years 1988, 1989 and 1992.
- e. The first respondent is at liberty to collect the gratuity from the contractors who engaged him for the rest of the years.

18. With the above direction, the Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

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 Judge
The Labour Court,
Tiruchirapalli.

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-6334[F] dated
15/02/2022)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-6242[F] dated 15/02/2022)

W.P. (MD) Nos.15692, 18202 to 18206 of 2013
and 9085 of 2015
15.02.2022

KMV (CO)
KB (28.02.2022) 11P 4C