



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.04.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)Nos.5972, 5974 & 5975 of 2021

and

W.M.P (MD)No.4693 of 2021

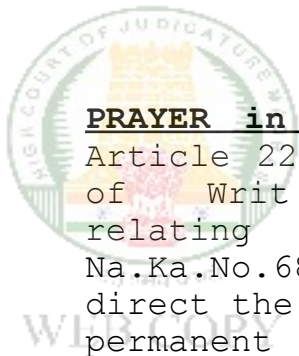
in

W.P (MD)No.5972 of 2021

M.Sasikumar	...Petitioners in W.P. (MD)No.5972 of 2021
A.Thangaraja	...Petitioners in W.P. (MD)No.5974 of 2021
A.Raja	...Petitioners in W.P. (MD)No.5975 of 2021

/Vs./

1. The Superintending Engineer,
Theni Town Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Theni-625 531.
...Respondents 1 in all Writ Petitions
2. The Assistant Engineer,
Theni West Electrical Section,
(Tamil Nadu Electricity Board)
Now changed as TANGEDGO
Theni District.
...2nd Respondent in W.P (MD)No.5972 of 2021
3. The Assistant Engineer,
Aundipatty East Electrical Section,
(Tamil Nadu Electricity Board)
Now changed as TANGEDGO,
Theni District.
...2nd Respondent in WP (MD)No.5974 of 2021
4. The Assistant Engineer,
Madurapuri Electrical Section,
(Tamil Nadu Electricity Board)
Now changed as TANGEDGO,
Theni District.
...2nd Respondent in WP (MD)No.5975 of 2021
5. The Inspector of Labour/
Assistant Commissioner (Implementation)
under the Tamil Nadu Industrial Establishments
(Conferment of Permanent Status to Workmen) Act, 1981
Theni District.
....Respondents 3 in all Writ Petitions



PRAYER in W.P. (MD)No.5972 of 2021:- Writ Petitions- filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 3rd respondent in Na.Ka.No.686/2010 dated 20/03/2020, quash the same and consequently direct the respondents herein to absorb the petitioner herein giving permanent status under Sec.3(1) (2) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to workmen) At , 1981 and as per conditions in paras 3 and 5 of the Per.B.P.(Chairman) No.9 dated 09/01/2008 issued by the Chief Engineer / Personnel (I/C), Tamil Nadu Electricity Board.

PRAYER in W.P. (MD)No.5974 of 2021:- Writ Petitions- filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 3rd respondent in Na.Ka.No.686/2010 dated 20/03/2020, quash the same and consequently direct the respondents herein to absorb the petitioner herein giving permanent status under Sec.3(1) (2) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to workmen) At , 1981 and as per conditions in paras 3 and 5 of the Per.B.P.(Chairman) No.9 dated 09/01/2008 issued by the Chief Engineer / Personnel (I/C), Tamil Nadu Electricity Board.

PRAYER in W.P. (MD)No.5975 of 2021:- Writ Petitions- filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 3rd respondent in Na.Ka.No.686/2010 dated 20/03/2020, quash the same and consequently direct the respondents herein to absorb the petitioner herein giving permanent status under Sec.3(1) (2) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to workmen) At , 1981 and as per conditions in paras 3 and 5 of the Per.B.P.(Chairman) No.9 dated 09/01/2008 issued by the Chief Engineer / Personnel (I/C), Tamil Nadu Electricity Board.

For Petitioners	: Mr.K.Appadurai
For R1 & R2	: Mrs.P.Malini for M/s.T.S.Gopalan & Co
For R3	: No Appearance (In all cases)

COMMON ORDER

The learned counsel appearing on behalf of the petitioners fairly made a submission that the Hon'ble First Bench of this Court in W.P.(MD) No.4061 of 2013 etc., batch, dated 07.03.2022, allowed the writ petitions filed by the Tamil Nadu Electricity Board setting aside the orders passed by the Labour Inspector. The relevant portion of the order reads as follows:-

"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 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 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 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 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 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 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 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 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 W.P.No.4061 of 2013 etc. batch 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 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."

2. In view of the judgment of the Hon'ble First Bench of this Court, there is no infirmity as such in respect of the orders passed by the Inspector of Labour declining the claim of the writ petitioners for grant of permanent status under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

3. Accordingly, all the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



To

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Theni District.

+3 CC to M/s.K. APPADURAI, Advocate (SR-19487[F] dated 19/04/2022)

+1 CC to M/s.T.S. GOPALAN & CO, Advocate (SR-20184[F] dated 21/04/2022)

W.P.(MD)Nos.5972, 5974 & 5975 of 2021

and

W.M.P(MD)No.4693 of 2021

in

W.P(MD)No.5972 of 2021

Dated:

19.04.2022

RK(16/05/2022) 11P 10C