



W.P.(MD)No.8017 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
22.09.2022	11.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 8017 of 2014

The General Secretary,
Thenmandala Podhu Thozhilalar Sangam,
Devakottai, Sivagangai District,
Tamil Nadu.

... Petitioner

vs.

1. The Central Government Industrial
Tribunal – Cum-Labour Court,
Chennai.

2. The Director,
Central Electro Chemical Research Institute,
Karaikudi – 630006,
Sivagangai District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, to call for the records relating to the order of the Central Government Industrial Tribunal cum Labour Court in I.D.No.85 of 2011 dated 07.06.2011, and quash the same and consequently direct



W.P.(MD)No.8017 of 2014

WEB COPY

the 2nd respondent to regularize the services of the employees, the members of the petitioner union.

For Petitioner : Mr.V.O.S.Kalaiselvam
For R-1 : Court
For R-2 : Mr.K.P.S.Palanivel Rajan

ORDER

This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus, to quash the impugned order passed by the 1st respondent/Central Government Industrial Tribunal cum Labour Court, dated 07.06.2011 in I.D.No. 85 of 2011 and consequential direction to the 2nd respondent to regularize the services of the employees, the members of the Petitioner's union.

2. The brief facts as stated in the affidavit are that the Petitioner namely, Thenmandala Podhu Thozhilalar Sangam is a registered Trade Union, under (AITUC). The petitioner union has membership of number of workmen employed in the name of contract workers in the management of Central Electro Chemical Research Institute (CECRI), Karaikudi, the 2nd respondent herein. There are about 330 acres of land, where trees are grown and gardens are



W.P.(MD)No.8017 of 2014

WEB COPY

maintained by 18 gardeners and most of the gardeners are working ever since from the year 1986. Before absorption of the employees, the respondent had conducted interview for the job at headquarters. Prior to that they were employed on daily wages ever since from the year 1997 onwards.

3. It is further stated that, in the year 1983, the respondent management itself formed a Cooperative Society namely, Alagappapuram Labour Contract Cooperative Society. In that, the Deputy Director of CECRI was nominated as the President and the Scientist was nominated as Secretary and seven other members were appointed as Directors of the Board. These seven members are none other than the permanent employees of the petitioner management on contract basis. The payments were made in the name of the society and that will be divided among the employees for the work done by them. In the year 1996, the petitioner management has nominated one K.Selvaraj, as President. Thereafter, the management has closed the said Alagappapuram Contract Labour Cooperative Society in the year 1998 and directed the employees to form another society and the petitioner management itself took initiative for forming the society namely, Sivagangai District Labour Contractors Society. The



W.P.(MD)No.8017 of 2014

WEB COPY

said society was neither registered under Cooperative Societies Act nor under the Registration Act. In pursuance thereof, the management has engaged them and paid monthly salary in the name of the Cooperative Society. Subsequent to that, another society namely, Sri Ganapathy Oppanthakarargal Nala Sangam was formed, wherein the petitioner management nominated R.K.Muthukumar, as its President who was working for the past 25 years with the petitioner management and this society was also not registered. In the year 2001, at the instance of the Management Sivagangai District Labour Contractors Society was closed. Subsequently, the petitioner management has formed another society namely, Om Sakthi Oppanthakarargal Nala Sangam and Kaliasman Oppanthakarargal Nala Sangam and nominated some of the employees as President, Secretary and Directors of the Board. Even though the societies were dissolved and new societies were formed, same employees continued in the new society as their employees but no order of service confirmation was issued. Hence, the petitioner contended that the employees were worked for more than 20 years under contract labour with the petitioner management.

4. In spite of number of societies were formed and were dissolved,



W.P.(MD)No.8017 of 2014

WEB COPY

same employees continued in the subsequent societies and also all the employees were continuously engaged as Gardeners and Sweepers and thus the employees continue to work with the petitioner management for more than 20 years. The petitioner management has also issued service certificates for their engagement. Thus, the petitioner impliedly agreed their engagement as their employees and admitted the period of service. In order to circumvent, their services were terminated intermittently. The employees were engaged from 1977 till the year 1986 on daily rated basis. Thus, they had worked about 10 years and there are more than 20 employees working therein. Therefore, the employees were entitled to conferment of permanent status as per Workmen Act. The employees had worked for more than 480 days in 24 English calendar months, they are automatically eligible for service confirmation. It is admitted that the respondent has maintained the attendance registers, wages registers and also supervised and controlled the employees of the petitioner. The respondent has also paid annual bonus and salary to the individual employees as fixed by them and the employees are getting training in the campus.

5. The petitioner has filed a petition before the Labour Court, under



W.P.(MD)No.8017 of 2014

WEB COPY

Section 33(c) (2) of the Industrial Disputes Act, claiming wages under the Minimum Wages Act and the batch of the claim petitions are allowed. Against which, the respondent has filed a Writ Petition before this Court in W.P(MD) No.12089 of 2014, wherein, this Court held that the status of the employees has to be decided to claim the minimum wages under the Minimum Wages Act. Hence, the petitioner has raised industrial dispute before the Conciliation Centre, and the same was referred to the Industrial Tribunal cum Labour Court, Madurai.

6. The petitioner submitted before the Labour Court that in the claim petition filed before the Labour Court, the management witnesses during interrogation had admitted that the employees in dispute were absorbed through the interview and after getting confidential report from the concerned Department of Police was engaged as casual employees between 1977 and 1983 for a period of more than 6 years. However, when they have demanded for service regularization, the respondents have denied the same by misleading the employees. The contract is only sham and nominal. The respective name of the society and the contractor are mere paper arrangement and the workmen are directly controlled and supervised by the officials of the respondent management



W.P.(MD)No.8017 of 2014

WEB COPY

and the contractors are only a pretense, nominal and shame and make a believe arrangement. The contract is a mere ruse and camouflage to evade the compliance of the legal norms and also to avoid various beneficial legislation. It is nothing but exploitation of cheap labour by the respondent management. The Labour Court in its Judgment has held that, non-regularizing of the contract labour is legal and justified and the workmen are not entitled to any relief, aggrieved over the same the present writ petition is filed.

7. The respondents have filed a detailed counter, wherein, it is stated that the Council of Scientific and Industrial Research (CSIR) is a Society which was registered under the Registration of Societies Act. It was functioning under the Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India. The entire activity is only research and there is no trade or business involved in a commercial parlance. The 2nd respondent institute is not an industry for the purpose of Industrial Dispute Act. The issue, whether CSIR is an 'industry' or not, is pending before the Hon'ble Supreme Court of India in ***CSIR and Others Vs. Kishore Singh (Civil Appeal No.1342 of 2004)***.



W.P.(MD)No.8017 of 2014

WEB COPY

8. The respondent further submitted that the Hon'ble Supreme Constitution Bench, in the case of **Pradeep Kumar Biswas & Others (2002 SOL Case No.237)** has over ruled the case of *Sabhajit Tewary Vs. Union of India, reported in A.I.R. 1975 SC 1329 (1975) SCC 485*, wherein it is held that CSIR is a State within the meaning of Article 12 of the Indian Constitution. The main activity of the respondent institution is only research and education. The contract labours who were employed for the purpose of gardening / sweeping were not appointed through the employment exchange. The contractor is liable to comply with the statutory provisions of Contract Labour Act and to submit report as and when demanded by the 2nd respondent. The petitioner is a Trade Union under the AITUC. The petitioner is neither a contractor nor its activities are connected with the respondent and hence, the petitioner has no *locus standi* to file this writ petition. The petitioner is not a regular employee and the claim of the petitioner is false, incorrect and misleading. The CECRI has not engaged sweepers and gardeners on daily rated basis from 1977 onwards. It is also incorrect to state that the respondent has formed a cooperative society. The works



W.P.(MD)No.8017 of 2014

WEB COPY

have been contracted to the societies based on the lowest quote tendered by them. Thus, the respondent has no relationship with the President and office bearers of the Petitioner Sangam. The respondent awarded the contract to the Nala Sangam only and not to the petitioner and the respondent never interfered with and intervened in the affairs of the Nala Sangam. The respondent further referred to the Judgment rendered in ***Secretary, State of Karnataka Vs. Uma Devi & Ors [Civil Appeal No.3595-3612/1999]***, wherein, the Hon'ble Supreme Court has held as follows:

“(a) Employment in Govt. or its instrumentality has to be within the scheme of Constitution and unless the appointment is in terms of relevant rules and after following due procedure, the same would not confer any right on the appointee.

(b). In case of contractual appointment, the appointment comes to an end on the end of the contract and if it is an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.

(c) . Absorption in regular employment cannot be made on the strength of long continuance.”

9. The respondent further submitted that the petitioner sangam had



W.P.(MD)No.8017 of 2014

WEB COPY

filed a writ petition in W.P.Nos.11332 of 2005, 9345 of 2006 and 6432 of 2007 and this Court vide order, dated 03.03.2008 has held as follows:

“there is no dispute that the members of these associations were not directly employed by the Respondents-Institute. The respondents appointed contractors to supply labourers. The members of the Petitioner-Associations were employed only by the contractors and not by the Respondents-Institute. Thus, in my considered opinion, there is no direct relationship of Master and servant between the Respondents-Institute and the members of the Petitioners-Associations.”

The petitioner sangam has not preferred any appeal against this judgment and the findings rendered in the aforesaid order is binding on the parties. In the meanwhile the Assistant Labour Commissioner had order status quo, hence the respondent could not continue with the tender process issued vide NIT No.01 of 2008 for sweeping & gardening work. Hence the respondent had preferred a Writ Petition in W.P.No.4358 of 2008 against the *status quo* order and the same was dismissed on 08.10.2008, wherein it was held that if the petitioner / management is not inclined to go by the advice of ALC, they should have insisted the



W.P.(MD)No.8017 of 2014

WEB COPY

Conciliation Officer to send a failure report to the appropriate Government. It is only the Government which can decide as to whether to refer the dispute to the Court or not?. Accordingly, the respondent has attended the Conciliation proceedings and the failure report was filed. Thereafter, the petitioner has filed a petition in I.D.No.85 of 2011 before the 1st Respondent/Central Government Industrial Tribunal cum Labour Court at Chennai, seeking regularization of Sweeping and Gardening contract workers and the same was dismissed, vide Order, dated 07.06.2012. Aggrieved by the said order, the instant Writ Petition is filed. The respondent further stated that there are several litigations, where the Sangam's prayer of regularization was declined and hence, the respondent prays to dismiss the Writ Petition.

10. Heard Mr.V.O.S.Kalaiselvam, learned counsel appearing for the petitioner and Mr.K.P.S. Palanivel Rajan, learned Counsel appearing for the 2nd respondent and perused the material documents available on record.

11. The contention of the 2nd respondent is that the petitioner's Sangam had already filed a Writ Petition in W.P.Nos.11332 of 2005, 9345 of 2006



W.P.(MD)No.8017 of 2014

WEB COPY

and 6432 of 2007, wherein it has been clearly held that the relationship between the labours and the respondent was not established. A specific issue was raised before the Labour Court, the Petitioner's Sangam has accepted that no disciplinary action was taken against any labourers. Based on this fact the Labour Court has held that it clearly indicates that there is no employer and employee relationship at any point of time. Against this finding there is no appeal and hence the finding rendered has attained finality. Therefore, this Court is of the considered opinion that there is no employer and employee relationship between the petitioner sangam members and the respondent.

12. There is another litigation between the parties in W.P.No.8017 of 2014, which was preferred against the order passed in I.A.No.85 of 2011. The Labour Commissioner has held that the petitioner sangam has not established that they exist any employer and employee relationship between the parties. Moreover, no material was placed to show that they were appointed by the respondent. The petitioner has not proved the agreement was entered by the respondent and the Petitioner Sangam as sham and nominal.



W.P.(MD)No.8017 of 2014

WEB COPY

13. Against the aforesaid two findings, the petitioner sangam has not preferred any appeal to set aside the said findings. Without taking any appropriate steps to set aside all these orders and findings, the petitioner has filed a petition before the Conciliation Officer, after failure report the petitioner sangam had raised Industrial Dispute. In the impugned order, the Labour Court has categorically held that there is no employee and employer relationship, since the petitioner has not proved by way of oral and documentary evidence that the appointment order was issued to the petitioner's employment and the respondent has also not initiated disciplinary proceedings against any of the contract labourer. It is also admitted fact that the contract given to the Sangam where the Sangam in turn engages the labourers.

14. In such circumstances, as rightly pointed out by the 1st Respondent/Central Government Industrial Tribunal – Cum-Labour Court, Chennai, the petitioner Sangam has not established through any evidences their employer / employee relationship. Hence the claim of regularization cannot be considered.



W.P.(MD)No.8017 of 2014

WEB COPY

15. In view of the foregoing reasons, this Court is of the considered opinion that the petitioner has not established his case and the order of the Labour Court cannot be interfered. Accordingly, this Writ Petition stands dismissed. No Costs.

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11.10.2022



WEB COPY



W.P.(MD)No.8017 of 2014

To

The Central Government Industrial
Tribunal – Cum-Labour Court,
Chennai.



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W.P.(MD)No.8017 of 2014

S.SRIMATHY, J

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Order made in
W.P.(MD)No. 8017 of 2014

11.10.2022