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W.P.Nos.17379 of 2006 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.09.2023

PRONOUNCED ON : 19.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos. 17379, 17380, 17381, 17384, 17391,
17403 & 43563 of 2006 and 10575 of 2007

W.P.No. 17379 of 2006 :-

The General Manager
The Handicrafts and Handlooms
Exports Corporation of India Ltd.,
No.76, Greaves Road,
Thousand Lights,
Chennai – 600 006.

...Petitioner

-Vs-

1. The Presiding Officer,
Central Government Industrial Tribunal,
cum Labour Court,
1st Floor, B Wing,
26, Haddows Road,
Shastri Bhavan,
Chennai – 600 006.

2. A. Raju

3. M.Balaraman
Proprietor,
Sri Rajeswari Apparels,
Chennai – 600 017.

... Respondents



W.P.Nos.17379 of 2006 etc.

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the proceedings relating to the order dated 08.11.2005 passed by the first respondent in ID.No.64 of 2000 and to quash the same.

In W.P.Nos.17379, 17380, 17381, 17384, 17391 & 17403 of 2006

For Petitioner : Mr.Vijaya Narayana, Senior Counsel
For Mr.R.Parthiban
For Respondents
R1 : Tribunal
For R2 : Ms.D.Geetha
For M/s.P.V.S.Gridhar Associates
For R3 : No appearance

In W.P.Nos.43563 of 2006 and 10575 of 2007

For Petitioners : Ms.D.Geetha
For M/s.P.V.S.Gridhar Associates
For Respondents
For R1 : Mr.Vijaya Narayana, Senior Counsel
For Mr.R.Parthiban
For R2 : No appearance
For R3 : Tribunal

COMMON ORDER

The Writ Petitions in W.P.Nos.17379, 17380, 17381, 17384, 17391 & 17403 of 2006 have been filed challenging the common award dated 08.11.2005 passed by the first respondent in I.D.Nos.61 to 66 of 2000, thereby directing the petitioner to reinstate the workmen into



W.P.Nos.17379 of 2006 etc.

service without any back wages. The workmen filed the writ petitions in W.P.Nos.43563 of 2006 and 10575 of 2007, challenging the common award dated 08.11.2005 passed by the first respondent in I.D.Nos.61 to 66 of 2000, insofar as it relates to denial of back wages.

2. The petitioner in W.P.Nos.17379, 17380, 17381, 17384, 17391 & 17403 of 2006 is called and “management” and the petitioners in W.P.Nos.43563 of 2006 and 10575 of 2007 are called as “the workmen”. The workmen had entered into service under the management as helper on daily wages basis and they were paid monthly salary. They were continuously working in the management as such they made representation to regularize their service and to grant service available to other workmen. However, their services were orally terminated by the management on 26.04.1997 without any reason and without any prior notice. After terminating them, new persons were recruited in their post.

3. Therefore, the workmen raised industrial dispute under Section 2A of the Industrial Dispute Act, 1947 (hereinafter called as “the I.D. Act”) against the termination of their service before the Assistant



W.P.Nos.17379 of 2006 etc.

Labour Commissioner, Central. However, the conciliation ended in failure and therefore, the workmen raised industrial dispute before the first respondent, challenging the order of termination and seeking reinstatement, regularization, continuity of service, back wages and other benefits. The first respondent viz., the Labour Court by the common award directed the management to reinstate the workmen without back wages. Therefore, the management challenged the common award passed by the first respondent and the workmen also challenged the said award insofar as its denial of their back wages.

4. The learned Senior counsel appearing for the management submitted that the management is a Government of India undertaking engaged in export of handicrafts and textiles, garments, carpets, jewellery etc. The export orders were fluctuating and therefore they have after inviting tenders by the advertisement in newspapers entrusted certain works on contract to the third respondent herein who was already carrying on business. Accordingly, the management entered into an agreement on 01.01.1993 with the third respondent herein for a period of one year and subsequently fresh agreements were entered on 01.01.1994,



W.P.Nos.17379 of 2006 etc.

31.12.1994, 03.12.1995 and 22.05.1997. The management had obtained licence under the Contract Labour (Regulations and Abolition) Act, 1970 (hereinafter called as “the CLRA Act”). The third respondent viz., the contractor also registered himself under the CLRA Act to carry out the job entrusted to him by employing his own employees.

4.1. Accordingly, the third respondent viz., contractor had employed his own labour force for the purpose of carrying out the jobs entrusted to him. Therefore, it is the sole and absolute responsibility of the third respondent to pay the wages and salary of the workmen employed by him. The third respondent had taken care of the workmen all statutory requirements, regulations and obligations such as Employee State Insurance Act, Employee Provident Fund and the scheme as well as various labour laws applicable to them engaged by the contractor and his establishment, as such no question of termination.

4.2. In fact, prior to the third respondent's contract, the management entered into contract with other persons, who had also registered under the CLRA Act. Though the management produced



W.P.Nos.17379 of 2006 etc.

exhibits M.17 and M.40 viz., the wage register for the year 1995-96 and 1996-97 maintained by the contractor, the first respondent without considering the same ordered to reinstate the workmen. He further submitted that the first respondent without any reason concluded that the contract entered between the management and the third respondent was a camouflage and the third had acted almost a broker or agent for the management. The management never appointed the workmen at any point of time and they were not served with any appointment letter. There is no document to show that the workmen received wages from the petitioner's management. In support of his contention, he relied upon the following judgments :-

- (i) (2019) 13 SCC 82 – Bharat Heave Electrical Ltd., Vs. Mahendra Prasad Jakhmola & ors.***
- (ii) (2023) 1 SCC 463 – Kirloskar Brothers Ltd., Vs. Ramcharan & ors***
- (iii) AIR 1992 SC 457 – Dena Nath & ors Vs. National Fertilizers Ltd., and ors***

5. The learned counsel appearing for the workmen submitted that the workmen had been performing their duties in a competent manner and they have long experience. Their work is integral to the



W.P.Nos.17379 of 2006 etc.

production process and it is in perennial nature. In fact, some of the workmen were regularized by the management. However, terminating the workmen is violative of the provisions of the I.D. Act. Therefore, the Labour Court rightly awarded to reinstate them with continuity of service. However, it denied the back wages without any reasons. Hence, the workmen entitled to get back wages and all other benefits along with reinstatement.

5.1. She further submitted that while pending industrial dispute, the workmen were not employed elsewhere. It was not the case of the management that the workmen had secured alternative employment during the period between termination and the order of reinstatement. The workmen were not employed anywhere even till today. Further, there was no valid contract between the management and the third respondent. Therefore, they are entitled for back wages. In support of her contention, she relied upon the following judgments :-

(i) (1985) 2 SCC 136 – Workmen of the Food Corporation of India Vs. Food Corporation of India.

(ii) Order this Court dated 27.04.2018 in W.A.No.436 of 2014 in the case of the Madhur Farm Rep by its Deputy Director Vs. The Presiding Officer and ors.



W.P.Nos.17379 of 2006 etc.

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6. Heard Mr.Vijay Narayan, learned Senior Counsel appearing for the management, Ms.D.Geetha, learned counsel appearing for the workmen and perused the materials placed before this Court.

7. The petitioner management is a Government of India undertaking management. It engaged in export of handicrafts, textiles, garments, carpets, jewellery etc. The management entered into a contract with the third respondent by the contract agreements dated 01.01.1993, 01.01.1994, 31.12.1994, 03.12.1995 and 22.05.1997. The management also obtained license under the CLRA Act. The management marked exhibits in M2 to M6 the contract agreements entered between the petitioner's management and the third respondent. It was time to time extended for further period. The third respondent also had registered himself under CLRA Act, to carry out the job entrusted to him by employing his own labour service. Accordingly, the third respondent engaged the workmen to carry out the job entrusted to him by the petitioner's management.



W.P.Nos.17379 of 2006 etc.

WEB COPY

8. Further, the workmen were paid wages and salary by the third respondent. The petitioner's management marked wage registers as exhibits from M.18 to M.63, maintained by the third respondent. It revealed that, the third respondent had paid the wages and monthly salary to the workmen. The Provident Fund statements of all workmen were also marked as M.64 to M.68, issued by the Regional Provident Fund Commissioner. It also revealed that the third respondent had paid his contribution for his employees viz., the workmen.

9. As per the contract, the third respondent had undertaken to pay all dues such as statutory requirements, regulations and obligations such as Employee State Insurance Act, Employees Provident Fund etc. Therefore, the petitioner's management never engaged workmen in their service and the petitioner's management did not terminate their service at any point of time. There is no reason to say that the contract entered between the petitioner's management and the third respondent is sham and nominal. As stated supra, the wage registers were maintained by the third respondent and the workmen had affixed their signature in the wage



W.P.Nos.17379 of 2006 etc.

register after receiving their wages and salary. Therefore, the workmen are contract labourers under the third respondent. Therefore, the award of the first respondent is perverse and against the evidence.

10. The learned Senior Counsel appearing for the management relied upon the judgment reported in **(2019) 13 SCC 82** in the case of ***Bharat Heavy Electrical Ltd., Vs. Mahendra Prasad Jakhmola & ors.***, in which the Hon'ble Supreme held that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. Two of the well-recognized tests to find out whether the contract labourers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor and (ii) whether the principal employer controls and supervises the work of the employee.



W.P.Nos.17379 of 2006 etc.

11. In the case on hand, the test number 1 is not met on the fact of the case as the contractor paid the workmen their wages. Further the management cannot be said to control and supervise the work of the workmen merely because, they direct the workmen of the contractor what to do, after the contractor assigns/allots the employee to the petitioner management. Therefore, in order to prove the relationship of employer and employee, the relevant factors have to be taken into consideration as follows :-

- (i) who appoints the workers;
- (ii) who pays the salary/remuneration;
- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity of service; and
- (vi) extent of control and supervision i.e. whether there exists complete control and supervision.

Therefore, the findings of the first respondent is perverse and it is ought to have been set aside in exercise of jurisdiction under Article 226 of Constitution of India.



W.P.Nos.17379 of 2006 etc.

12. The learned counsel appearing for the workmen vehemently contended that the petitioner management is the Central Government undertaking as such, the CLRA Act is not applicable to the case on hand. The so-called license issued in favour of the third respondent is not valid under law. The termination of the workmen is violation of the provisions under Section 25(F), 25(G) and 25(H) of the I.D. Act. They were not issued any notice and they were not paid any compensation. Therefore, their termination itself *void ab initio* and the workmen are deemed to be in service.

13. In support of her contention, she relied upon the Order passed this Court dated **27.04.2018** in **W.A.No.436 of 2014** in the case of the ***Madhur Farm Rep by its Deputy Director Vs. The Presiding Officer and ors.***, which reads as follows :-

“13. Under the given set of facts and circumstances, reasonableness would not permit any Court to expect the workmen to prove anything beyond that. Therefore, the award of the Labour Court and the order of the learned Single Judge are justified in giving a finding that the workmen/employees/petitioners have proved the continuous employment for a period of 240



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W.P.Nos.17379 of 2006 etc.

days. Even otherwise the evidence adduced on the side of the Management itself would go to show that the workmen had been employed for years together regularly and continuously and the contention that they did not work for period of 240 days is false even to the knowledge of the management. The management has gone to the extent of drawing up of seniority list. The service of the contractor were sought to be introduced only to deprive the legitimate claim of regularization by the workmen concerned who had been working for years together.

14. Pointing out the admission made by the Management that it has chosen to engage the services of the contractor and that it is not permissible under the Act, the learned counsel for the workmen relied upon the decision reported in (1985) 2 SCC 136 (referred to supra) where-under the practice of introducing the contract system that would have the effect of affecting the rights of the workmen has been deprecated and the relevant observation reads as under:-

"The submission that it was open to the Corporation to engage a contractor for handling of food grains may be true or legally acceptable; the question, however, is whether once some workmen became the workmen of the Corporation as here in



WEB COPY



W.P.Nos.17379 of 2006 etc.

before discussed, was it open to the Corporation to induct a contractor and treat its workmen as workmen of the contractor. The answer is in the negative, for the reasons here in before discussed. The agony consequent upon such submission may be unmasked- While the trend is in the direction of abolition of contract labor, this public sector undertaking appears to be completely oblivious to the trend and the pace-setter as enacted by the Parliament in the Contract Labor (Regulation and Abolition) Act, 1970. An assertion in the Statement of Objects and Reasons accompanying the Bill, which was enacted into the law, may help the Corporation in freeing itself from the traditional master-servant relationship and help it in becoming an ideal employer where exploitation in any form is wholly eschewed. The statement reads as under:

'The system of employment of contract labor lends itself to various abuses. The question of its abolition has been under the consideration of government for a long time. In the Second Five Year Plan, the Planning Commission made certain recommendations, namely, undertaking of studies to ascertain the extent of the problem of contract labor, progressive abolition of system and improvement of service, conditions of contract labor where the



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W.P.Nos.17379 of 2006 etc.

abolition was not possible." The Act was enacted with a view to abolishing wherever possible or practicable, the employment of contract labour. The proposed Bill aimed at abolition of contract labor in respect of such categories as may be notified. The Corporation attempted by its action to reverse that trend which does no credit to it. We say no more save and except saying that where the law helps, such anti labour practices must be thwarted or nipped in the bud.'

15. In the very same decision, the issue as to what relief the workmen are entitled to in case of the discontinuance of employment by the Management has been considered. It has been held that the workmen (of the Food Corporation of the India, who had become the workmen of the Corporation) shall be entitled to all the rights, liabilities, obligations and duties as are prescribed for the workmen of the Corporation."

It is true that CLRA Act was enacted with a view to abolishing wherever possible or practicable, the employment of contract labour. In the case on hand, the workmen were not engaged by the management. They were engaged by the third respondent. Therefore, the above judgment is not applicable to the case on hand.



W.P.Nos.17379 of 2006 etc.

14. The learned counsel appearing for the workmen also contended that the CLRA Act itself is not applicable to the petitioner management. In this regard, the learned Senior Counsel appearing for the management relied upon the judgment reported in **(2023) 1 SCC 463** in the case of **Kirloskar Brothers Ltd., Vs. Ramcharan & ors.**, in which the Hon'ble Supreme Court of India held as follows :-

“4.4 After considering various decisions of this Court on the point, in paragraph 125, it was concluded as under:-

“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



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W.P.Nos.17379 of 2006 etc.

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:



WEB COPY



W.P.Nos.17379 of 2006 etc.

(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



WEB COPY



W.P.Nos.17379 of 2006 etc.

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] 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] 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



W.P.Nos.17379 of 2006 etc.

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.”



W.P.Nos.17379 of 2006 etc.

15. In the case on hand, neither any notification under Section 10(1) of the CLRA Act has been issued prohibiting the contract labour nor there are allegations and/or findings that the contract is sham and nominal or camouflage. Therefore, the first respondent had committed serious error by ordering reinstatement of the workmen. Further there is no notification under under Section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was a sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularise the services of the contract labour does not arise.

16. Further the tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a



W.P.Nos.17379 of 2006 etc.

contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

17. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.

18. In view of the above discussion, the findings of the first respondent is perverse and it is liable to be quashed. Accordingly, the common award dated 08.11.2005 passed by the first respondent viz., the



W.P.Nos.17379 of 2006 etc.

Labour Court, Chennai, in I.D.Nos.61 to 66 of 2000, is hereby set aside and the Writ Petitions in W.P.Nos.17379, 17380, 17381, 17384, 17391 & 17403 of 2006 are allowed. In view of the order passed in the above writ petitions, the Writ Petitions filed by the workmen in W.P.Nos.43563 of 2006 and 10575 of 2007, are dismissed. There shall be no order as to cost.

19.09.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

1. The Presiding Officer,
Central Government Industrial Tribunal,
cum Labour Court,
1st Floor, B Wing,
26, Haddows Road,
Shastri Bhavan,
Chennai – 600 006.

2. The Proprietor,
Sri Rajeswari Apparels,
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W.P.Nos.17379 of 2006 etc.

G.K.ILANTHIRAIYAN. J.

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COMMON ORDER IN
W.P.Nos. 17379, 17380, 17381, 17384, 17391,
17403 & 43563 of 2006 and 10575 of 2007

19.09.2023