



W.P.No.23803 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.23803 of 2010
and M.P.No.1 of 2010

The Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Maintenance Division,
Thongum Poonga, Sakadevapuram,
Salem – 7.

... Petitioner

Vs.

1.The Deputy Chief Labour Inspector,
51, Gokulam Road,
Near Murugan Temple,
Fairlands,
Salem – 636 016.

2.R.Mohanraj

3.M.Raja

4.C.Santhappan

5.R.Ayyandurai

6.S.Mani

7.P.Venkatachalam

8.K.Ramasamy

9.B.Selvaraj

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10.N.Seerivasan

11.P.Selvakumar

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari calling for the records in Na.Ka.No.A/6547/07 to quash the order dated 28.01.2010 passed by the first respondent.

For Petitioner : Mr.S.Ravindran,
Senior Counsel
for M/s.S.Mekhala

For Respondent 1 : Mr.T.K.Saravanan,
Government Advocate

For Respondents 2 to 4
& 6 to 11 : Mr.C.Kulanthaivel

For Respondent 5 : No appearance

ORDER

This writ petition has been filed to call for the records in Na.Ka.No.A/6547/07 to quash the order dated 28.01.2010 passed by the first respondent.

2. The facts of the case in nutshell is that:

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The respondents 2 – 11 have filed a petition before the first respondent to regularise the employment of 10 persons as if they have worked nearly 480 days as contract labourers under the petitioner board. Hence, the workmen approached the first respondent for regularising their employment and permanent status. The first respondent passed an order in Na.Ka.No.A/6547/07 dated 28.01.2010 directing the petitioner board to grant permanent status to the 10 workmen and regularise their employment. Aggrieved by this order, the petitioner board has come forward with the present writ petition.

3. The learned Senior Counsel appearing for the petitioner board submitted that the first respondent has not impleaded the contractor who engaged 10 persons to prove that they are contract labourers and hence the petition before the first respondent is not maintainable and it has no jurisdiction.

4. The learned Senior Counsel also relied on the judgment of this Court passed in W.A.No.273 and 275 of 2020 dated 20.01.2023 and based on the



Division Bench decision of this Court in W.P.No.4061 of 2013 and batch dated 07.03.2022. The relevant portion of the said judgment is extracted hereunder:

“2. Paragraph 34 of the above said decision reads as under:

“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 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 workmen 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



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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."

3. In view of the above said decision of this Court, these Writ Appeals are also disposed of. However, we make it clear that the authority can go into the question as to whether the contract is sham and nominal and, if it is sham and nominal, he has no authority to decide the issue and the matter has got to be decided either before the Industrial Adjudicator or the authority under the Contract Labour (Regulation and Abolition) Act, 1970. The authority is expected to decide the issue as early as possible on day-to-day basis, without adjourning the matter beyond seven working days at any point of time, as the same is pending for more than 25 years. No costs."

5. The learned counsel appearing for the private respondents submitted that in view of the judgment of the Division Bench of this Court dated 20.01.2023 passed in W.A.No.273 and 275 of 2020, the respondents are inclined to approach the Labour Court for remedy.



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6. Heard both sides and perused the materials available on record.

7. In the instant case, the first respondent has not impleaded the Contractor who has engaged 10 persons to prove that they are employed as contract labourers.

8. In view of the above stated reason and the ratio laid down by the Division Bench of this Court in W.P.No.4061 of 2013 and batch, dated 07.03.2022, followed in W.A.Nos.273 and 275 of 2020, dated 20.01.2023, the order passed by the first respondent in Na.Ka.No.A/6547/07 dated 28.01.2010, is liable to be quashed and the same is hereby quashed.

9. In the result, the writ petition is allowed and the respondents 2 to 11 are at liberty to approach the Labour Court for appropriate relief. No costs. Consequently, connected miscellaneous petition is closed.

15.06.2023 (vm)



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Index : Yes/No
Speaking Order : Yes/No

To:

The Deputy Chief Labour Inspector,
51, Gokulam Road,
Near Murugan Temple,
Fairlands,
Salem – 636 016.

J.SATHYA NARAYANA PRASAD,J.

vm

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