



W.A.Nos.515 & 619 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	27.04.2023
DELIVERED ON	15.06.2023

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MRS.JUSTICE R.KALAIMATHI

W.A.Nos.515 and 619 of 2023
and C.M.P.Nos.4880 & 6052 of 2023

W.A.No.515 of 2023

The General Manager,
Tamil Nadu Grama Bank,
Hasthampatti, Yercaud Road,
Salem-636 007

... Appellant

vs.

1. Vangi Vaniga Thodarbalargal Sangam
Rep. by its General Secretary,
Regn.No.SRG/Tenkasi/22/2021,
1-1-120, Pillaiyarkovil Street,
Kodikurruchi, Kadayanallur,
Tenkasi District-627 804.

2. Government of India
Rep. by its Secretary,
Ministry of Labour,
Shram Mantralaya,
New Delhi-110 001.

3. The Assistant Labour Commissioner (Central),
Office of the Deputy Chief Labour Commissioner (Central),
4, Haddows Road, Shastri Bhavan,
Chennai-600 006.

... Respondents



W.A.Nos.515 & 619 of 2023

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order dated 27.01.2023 in W.P.No.21077 of 2022.

For Appellant	: Mr.P.Raghunathan
	For M/s.T.S.Gopalan and Co.
For R1	: Mr.Balan Haridas
For R2 & R3	: Mr.K.Subbu Ranga Bharathi

W.A.No.619 of 2023

Vangi Vaniga Thodarbargal Sangam
Rep. by its General Secretary,
Regn.No.SRG/Tenkasi/22/2021,
1-1-120, Pillaiyarkovil Street,
Kodikurruchi, Kadayanallur,
Tenkasi District-627 804.

... Appellant / Petitioner

vs.

1. Government of India
Rep. by its Secretary,
Ministry of Labour,
Shram Mantralaya,
New Delhi-110 001.
2. The Assistant Labour Commissioner (Central),
Office of the Deputy Chief Labour Commissioner (Central),
4, Haddows Road, Shastri Bhavan,
Chennai-600 006.
3. The General Manager,
Tamil Nadu Grama Bank,
Hasthampatti, Yercaud Road,
Salem-636 007

... Respondents / Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order dated 27.01.2023 in W.P.No.21077 of 2022 in so far as not



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directing the 2nd respondent to submit the failure report to the 1st respondent and further not directing the 1st respondent to refer the dispute for adjudication and restricting the order of status quo protecting the employment only till the conciliation is over before the 2nd respondent, instead of extending the status quo till the dispute is finally adjudicated by the Industrial Adjudicator and consequently direct the 1st respondent to refer the dispute regarding the regularization before the competent Industrial adjudicator and further direct the respondent no.3 to maintain status quo with regard to the employment of the 359 members of the appellant till the dispute is finally adjudicated by the competent Industrial adjudicator.

For Appellant	: Mr.Balan Haridas
For R1 & R2	: Mr.K.Srinivasamurthy, SPCCG
For R3	: Mr.P.Raghunathan
	For M/s.T.S.Gopalan and Co.

COMMON JUDGMENT

(Common Judgment of the Court was made by S.Vaidyanathan,J.)

Before going into the depth of the issue, we are reminded of the dictum laid down by the Hon'ble Supreme Court in the case of **Padmasundara Rao (Dead) & others vs. State of Tamil Nadu and others**, reported in **(2002) 3 SCC 533**, holding as under:

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of speech or judgment as



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though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington vs. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

2. These Writ Appeals have been filed against the order dated

25.09.2019 made in W.P.No.21077 of 2022.

2a . For the sake of brevity, the parties would be referred to as per the nomenclature referred to in the Writ Petition as the "Writ Petitioner/Sangam", "3rd respondent/Bank" and the "respondents 1 & 2".

3. The 3rd respondent / Bank has come up with W.A.No.515 of 2023, seeking to quash the order dated 27.01.2023 passed by the learned Single Judge, wherein a direction was issued to the 2nd respondent to conclude the conciliation proceedings within three months, by ordering status quo till then. In W.A.No.619 of 2013, the Writ Petitioner/Sangam has sought to quash the order, inasmuch as status quo was ordered to be maintained only till the conclusion of the proceedings without any specific direction to the 2nd respondent to submit the conciliation failure report to the 1st respondent and also to refer the dispute for adjudication before the competent Industrial Adjudicator.



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4. Brief facts of the case as put forth by the 3rd respondent / Bank:

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i) The members of the Writ Petitioner/Sangam, having an occupation with income, were engaged as Freelance Business Correspondents as per the earlier circular of the Reserve Bank of India and subsequently, yet another system was approved by the Reserve Bank of India to hire Corporate Business Correspondents in the place of Freelance Business Correspondents;

ii) The decision to change over the nomenclature was taken on 01.02.2022 by the Reserve Bank of India, with an advice to individual branches to put an end to the engagement of the Business Correspondents. The erstwhile Business Correspondents, who had formed a Society/Sangam under the Tamil Nadu Societies Registration Act, 1975, raised an Industrial Dispute on 01.03.2022, in which, the Conciliation Officer, while issuing conciliation notice, directed the Bank to maintain status quo, on the ground that the cessation of engagement would be in violation of Section 33 of the Industrial Disputes Act, 1947 (in short I.D.Act, 1947);

iii) The Sangam filed a Writ Petition for a direction not to alter service conditions of 359 members, including discontinuing their services without



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permission under Section 33 of the I.D.Act, 1947. In the said Writ Petition, learned Single Judge erroneously passed an order on 27.01.2023, observing that Section 33 of the I.D.Act, 1947 is duly attracted and issued a time bound direction to conclude the conciliation proceedings within three months;

iv) The order of the learned Single Judge has created a delicate position for the Bank and is prejudicial to the operation of the Bank. Since one set of Business Correspondents had accepted the cessation of engagement, anomalous situation prevails between Corporate Business Correspondents and Business Correspondents. Aggrieved by the order of the learned Single Judge and seeking to restore normalcy in the business operations of the Bank, the Bank is before this Court by filing this appeal.

5. Factual Matrix of the Writ Petitioner / Sangam:

i) There are 359 members in the Sangam, who were engaged as Business Correspondents in the 3rd respondent / Bank owned by Central and State Governments with the sponsorship of Indian Bank. The Bank is a 'State' within the meaning of Article 12 of the Constitution of India with the



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share capital of 50% held by the Government of India, 15% with the Government of Tamil Nadu and the Indian Bank having 3% share;

ii) The members of the Sangam, who were provided with a handheld device for carrying out all transactions, are paid remuneration of Rs.2000/- and the commission charges will vary according to the transactions made in a day and the work of Business Correspondents is perennial in nature, who are also doing the clerical work of the Bank. Business Correspondents play the role of an intermediary between rural area customers and the Bank and provide services at the door step of customers, by getting a meagre amount of Rs.10,000/- as commission;

iii) The 3rd respondent Bank, in order to evade law, enters into an agreement with the members of the Sangam every year without any authority of law, so as to deny legitimate benefits to them. The Bank has the overall supervisory control over Business Correspondents and they were permitted to avail leave after prior intimation, in addition to subjecting them to disciplinary proceedings;

iv) Though Business Correspondents have been demanding for their regularization and for extension of all the benefits of a regular employee, the



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Bank, without adhering to their requests, decided to bring a 3rd party to supply Business Correspondents and one such organization is M/s.Grama Tarang Inclusive Development Services Private Limited, Vishakapattinam. The Bank insisted the members of the Sangam to work under the new Contractor and coerced to sign the agreement by posing a threat of termination;

v) In such circumstances, the Sangam had raised a dispute on 01.03.2022 before the 2nd Respondent with a demand of regularization and extension of all benefits of a permanent employee. The dispute was taken on file as No.M.7/12/2022 B3 and there was initiation of conciliation proceedings with a direction to maintain status quo as mandated under Sections 22(2)(d) and 33 of the I.D.Act, 1947. Even during the pendency of the conciliation proceedings, the Bank issued a circular No.207/2021-22 dated 31.03.2022 for engaging Business Correspondents through private agencies and pressurized the members to take up the employment under the newly inducted agencies.

vi) The Bank also issued yet another Circular No.46/2022-23 dated 14.06.2022 for reduction of commission charges and when all these acts



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were brought to the attention of the 2nd respondent, the Bank filed an additional reply dated 25.07.2022 in addition to the one filed earlier dated 03.03.2022 making reckless and untenable contentions. The Bank wanted to discontinue the services of the members of the Sangam by hook or crook. The Bank cannot alter the service conditions without approval of the 2nd respondent under Section 33 of the I.D.Act, 1947. Being enraged by the act of the 3rd respondent / Bank, the Sangam filed the Writ Petition to espouse the cause of its members, in which learned Single Judge passed an order as aforestated.

vii) The grievance of the Sangam was that since the learned Single Judge granted status quo till the conclusion of the conciliation proceedings, the services of the members of the Sangam will come to a halt, as the conciliation proceedings are at the verge of its conclusion at any time. Aggrieved by the said order, the Writ Petitioner/Sangam has filed W.A.No.619 of 2023.

6. Mr.Balan Haridas, learned counsel for the Sangam has submitted that during the pendency of the conciliation proceedings, the Bank cannot



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alter the service conditions of the members of the Sangam without obtaining prior permission from the authority concerned in writing before whom the matter is pending and the Bank has violated the provisions of Section 33(1)(a) of the I.D.Act, 1947 and the Circular dated 31.03.2022 issued for engagement of Business Correspondents through a third party is illegal. He has further submitted that the Apex Court in the case of **Jaipur Zila Shankari Bhoomi Vikas Bank Ltd., vs. Ram Gopal Sharma**, reported in **2002 (2) SCC 244** held that it is for the employer to file an application, seeking approval of their action and there is no need for the employee to approach the Labour Court to seek redressal. Though the Apex Court considered the issue pertaining to Section 33(2)(b) of the I.D.Act, 1947, the same principle will apply for the non-compliance of Section 33(1) of the I.D.Act, 1947.

6.1. He has also submitted that the action of the Bank is in violation of the dictum laid down by the Supreme Court in the case of **Workmen of the Food Corporation of India vs. Food Corporation of India**, reported in **(1985) 2 SCC 136**, wherein it was held as under:

“19. It is at this stage necessary to examine the implication of Section 9A of the I.D. Act, 1947. As hereinbefore pointed out, Section 9A makes it obligatory upon an employer who proposes to



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effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workmen likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Section 9A which has no relevance here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent-Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item 1 in the Fourth Schedule provides: 'wages, including the period and mode of payment'. By cancelling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Section 31(2) of the I.D. Act, 1947. Such a change which is punishable 'as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.'

6.2. He has also referred to a judgment of the Supreme Court in the



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case of **Bhavnagar Municipality vs. Alibhai Karimbhai and others,**

reported in **1997 (2) SCC 350** to state that the Bank had contravened the provisions of Section 33(1)(a) of the I.D.Act, 1947 and decided to engage Business Correspondents through a third party Contractor, which is *per se* illegal. For the sake of reference, the relevant paragraphs of the judgment are extracted below

“13. Retrenchment may not, ordinarily, under all circumstances, amount to alteration of the conditions of service. For instance, when a wage dispute is pending before a Tribunal and on account of the abolition of a particular department the workers therein have to be retrenched by the employer, such a retrenchment cannot amount to alteration of the conditions of service. In this particular case, however, the subject matter being directly connected with the conversion of the temporary employment into permanent, tampering with the status quo ante of these workers is a clear alteration of the conditions of their service. They were entitled during the pendency of the proceeding before the Tribunal to continue as temporary employees hoping for a better dispensation in the pending adjudication. And if the appellant wanted to effect a change of their system in getting the work done through a contractor instead of by these temporary workers, it was incumbent upon the appellant to obtain prior permission of the Tribunal to change the conditions of their employment leading to retrenchment of their services. The alteration of the method of work culminating in termination of the services by way of retrenchment in this case has a direct impact on the adjudication proceeding. The alteration effected in the temporary employment of the respondent which was their condition of service immediately before the commencement of the proceeding before the Tribunal, is in regard to a matter connected with the pending industrial dispute.



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14. The character of the temporary employment of the respondent being a direct issue before the Tribunal, that condition of employment, however insecure, must subsist during the pendency of the dispute before the Tribunal and cannot be altered to their prejudice by putting an end to that temporary condition. This could have been done only with the express permission of the Tribunal. It goes without saying that the respondents were directly concerned in the pending industrial dispute. No one can also deny that snapping of the temporary employment of the respondents is not to their prejudice. All the five features adverted to above are present in the instant case. To permit rupture in employment, in this case, without the prior sanction of the Tribunal will be to set at naught the avowed object of Section 33 which is principally directed to preserve the status quo under specified circumstances in the interest of industrial peace during the adjudication. We are, therefore, clearly of opinion that the appellant has contravened the provisions of Section 33(1)(a) of the Act and the complaint under Section 33A, at the instance of the respondents, is maintainable. The submission of Mr. Parekh to the contrary cannot be accepted.

15. That, however, does not conclude the matter. The Tribunal was clearly in error in not adjudicating the complaint on the merits. It is well settled that in a complaint under Section 33A, even if the employer is found to have contravened the provisions of Section 33, the Tribunal has to pronounce upon the merits of the dispute between the parties. The order passed in an application under Section 33A is an award similar to one passed in a reference under Section 10 of the Act. The award passed has to be submitted to the Government and the same has to be published under Section 17 of the Act. For the purposes of the Act the complaint under Section 33A takes, as it were, the form of a reference of an industrial dispute by the appropriate authority and the same has to be disposed of in a like manner. The Tribunal has committed an error of jurisdiction in declining to adjudicate the matter and to make its award on the merits as required under the law. The High Court, was, therefore, not right in dismissing the writ application of the appellant in limine. We should also observe that, in the absence



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of adjudication on the merits by the Tribunal, the High Court was not right in holding that the retrenchment by the appellant was "a gross act of victimisation".

16. In the result the order of the High Court is set aside. It follows that the award of the Tribunal ordering reinstatement of the respondents falls and is set aside. We should also and that the observations of Tribunal with regard to the question of prosecution of the appellant under Sections 31 and 32 of the Act were not at all pertinent in an enquiry under Section 33A and ought not to have been made. The writ application in the High Court stands allowed to the extent indicated. The appeal is allowed as directed in this order. The complaint under Section 33A stands restored to the file of the Tribunal for disposal on the merits in accordance with law and in the light of this judgment. The appellant, however, shall pay the costs of the respondents as ordered at the time of granting of the Special Leave.”

7. Per contra, learned Standing Counsel for the Bank has contended that the guidelines have been issued by the Reserve Bank of India for engaging Business Correspondents and that the guidelines have got to be strictly adhered to, as it is binding on the individual Bank. There is an agreement between the Bank and the Business Correspondents, which does not contemplate any regularization and therefore, it cannot, by any stretch of imagination, be said that those Business Correspondents should be treated as a regular employee of the Bank. He has further contended that the services of Business Correspondents have been terminated by giving one



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month notice in February, 2022 even before initiation of conciliation proceedings, which was in consonance with the terms of the contract.

7.1. He has further contended that the petition under Section 2(k) of the I.D.Act, 1947 had been filed only as a counterblast to the contractual termination, which, at the first blush, is not maintainable, as it was filed by the Sangam and the Sangam was also not a registered Trade Union as defined under Section 2(qq) of the I.D.Act, 1947. The remedy, if any, was to file individual petitions under Section 2A of the I.D.Act, 1947, as the Sangam cannot espouse the cause of Business Correspondents, that too, after termination of the contract and there was no mandate requirement on the part of the Bank to obtain permission / approval on the date of termination of the members of the Sangam under Section 33(2) of the I.D.Act, 1947 in February, 2022.

7.2. The following judgments were quoted by the learned Standing Counsel for the Bank to persuade that there is no statutory obligation on the part of the Bank to compulsorily absorb casual workers, merely because they had been engaged beyond the period of their employment for

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compulsion, as their original appointment was not in terms of the relevant rules:

i) **Secretary, State of Karnataka and others vs. Umadevi and others**, reported in **(2006) 4 SCC 1**;

“45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.”

ii) **Union of India and others vs. Vartak Labour Union**, reported in **(2011) 4 SCC 200**;

“17. We are of the opinion that the Respondent Union's claim for regularization of its members merely because they have been working for BRO for a considerable period of time cannot be granted in light of several decisions of this Court, wherein it has been consistently held that casual employment terminates when the same is discontinued, and merely because a temporary or casual worker has been engaged beyond the period of his employment, he would not be entitled to be absorbed in regular service or made



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permanent, if the original appointment was not in terms of the process envisaged by the relevant rules.....”

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7.3. Learned Standing Counsel for the Bank strenuously contended that once there is a cessation of contract between the Bank and temporary employees before initiation of proceedings under the I.D.Act, 1947, had the dispute for regularization been entertained or maintainable? He has referred to the following judgments of the Hon'ble Supreme Court to that effect:

i) Sharad Kumar vs. Govt. of NCT of Delhi and Others, reported in

2002 II LLJ 275:

"31. Testing the case in hand on the touchstone of the principle laid down in the decided cases we have no hesitation to hold that the High Court was clearly in error in confirming the order of rejection of reference passed by the State Government merely taking note of the designation of the post held by the respondent i.e. Area Sales Executive. As noted earlier determination of this question depends on the types of duties assigned to or discharged by the employee and not merely on the designation of the post held by him. We do not find that the State Government or even High Court has made any attempt to go into the different types of duties discharged by the respondent with a view to ascertain whether he came within the meaning of Section 2(s) of the Act. The State Government, as noted earlier, merely considered the designation of the post held by him which is extraneous to the matters relevant for the purpose. From the appointment order dated 21/22 April 1983 in which are enumerated certain duties which the appellant may be required to discharge it cannot be held therefrom that he did not come within the first portion of the Section 2(s) of the Act. We are of the view that determination of the question requires examination of factual



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matters for which materials including oral evidence will have to be considered. In such a matter the State Government could not arrogate on to itself the power to adjudicate on the question and hold that the respondent was not a workman within the meaning of Section 2(s) of the Act, thereby terminating the proceedings prematurely. Such a matter should be decided by the Industrial Tribunal or Labour Court on the basis of the materials to be placed before it by the parties. Thus the rejection order passed by the State Government is clearly erroneous and the order passed by the High Court maintaining the same is unsustainable.

32. Accordingly, the appeal is allowed. The order dated 10th July, 2000 of the High Court in Civil Writ Petition No. 3561/2000 is set aside. The Government of National Capital Territory of Delhi, respondent No. 1 herein, is directed to refer the dispute raised by the appellant including the question whether the appellant is a workman under the Act, to the Industrial Tribunal/Labour Court for adjudication. The appellant shall be entitled to receive from the respondents a sum of Rs. 20,000/- (Rupees twenty thousand only) towards cost and hearing fee of the case."

ii) *Rahman Industries Co. vs. State of U.P.*, reported in (2016) 12

SCC 420:

"9. The High Court has, in the impugned order, denied the jurisdiction vested in the Government in the scheme of the Act to examine a case for the purpose of satisfying itself as to whether there exists a dispute for referring to the Labour Court/Industrial Tribunal for adjudication. The High Court has issued a mandatory direction in the very first instance to refer the dispute, if any, raised by the workmen for adjudication before the Labour Court. That is against the scheme of the Act as we have seen from the legal position settled by this Court.

10. We, hence, set aside the impugned order to the extent



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that there is a mandatory direction for referring the issues raised by the workman for adjudication. However, we make it clear that the Government must examine whether a dispute exists or not, and in case it is so satisfied, it should refer the same for adjudication before the Labour Court. Needful should be done within a period of three months from the date on which the issue is raised by the workmen."

7.4. Stating that Business Correspondents cannot, by any stretch of imagination, be termed as Workmen under the provisions of the I.D.Act, 1947, it was pleaded by the Bank that the order of the learned Single Judge warrants interference by this Court.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. The Bank had engaged Business Correspondents to discharge various activities of the Bank in terms of the guidelines issued by the Reserve Bank of India. Though their appointments were based on the agreement / contract, which had already expired, they were allowed to work beyond the period of contract. The foremost contention raised by the Bank was that Business Correspondents can at the most be called as "Contract Workers", which is admittedly a question of fact and such question cannot



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be gone into in these Writ Appeals. According to the Sangam, its members have been working for more than 7 to 8 years, which has not been disputed by the Bank.

10. The fact remains that the services of the members of the Sangam were admittedly discontinued in February, 2022 and the provisions of Section 33(1) of the I.D.Act, 1947 will be attracted, provided an Industrial Dispute was already pending. In this case, after receipt of the termination notice, an Industrial Dispute has been raised and if the stand of the Sangam is accepted, no employer will terminate the services of an employee pursuant to the existence of a clause either in the contract or agreement or standing orders or bipartite settlement that before divesting of the services of its employees, notice of disengagement should be given. Therefore, Section 33(1) of the I.D.Act, 1947 cannot be pressed into service in the present set of facts. If it is the case of the Sangam that during pendency of industrial dispute, the Bank had attempted to alter the service conditions of the members of the Sangam, this could have definitely extended its helping hands and granted the relief to them, taking note of Article 21 of the Constitution of India.



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11. The decision quoted by the learned counsel for the Sangam in the case of **Bhavnagar Municipality vs. Alibhai Karimbhai and others** (supra) may not be applicable to the facts of this case. In that case, industrial dispute was raised, questioning the retrenchment of temporary daily rated employees of Municipality and those employees were demanding permanent status and the work was entrusted to a Contractor. The Apex Court in that situation heavily came down that the character of the temporary employment was a direct issue before the Tribunal and that condition of employment cannot be altered to their prejudice by putting an end to that temporary employment. In this case, as stated supra, if the members of the Sangam had already raised the dispute, prior to the receipt of notice of termination and that there was an issue pending in respect of regularization of those members concerned, certainly, this Court would have given positive direction in their favour, but that is not case herein. If the contention of the members of the Sangam is accepted, even a probationer cannot be terminated, as the Union or employee can raise a dispute on receipt of the intimation in advance (for example 15 or 30 days) as per the Standing Order, Rules or Regulations and in that event, an employer cannot disengage a probationer on account of unsatisfactory



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work that will put the employer in an disadvantageous position.

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12. The next judgment relied upon by the Sangam in the case of **Jaipur Zila Shankari Bhoomi Vikas Bank Ltd., vs. Ram Gopal Sharma,** (supra) will not inure to the benefit of the members of the Sangam for the simple reason that in that case, the Supreme Court held that the employer will have to obtain approval of the action after dismissing an employee during pendency of an industrial dispute and if no application is filed or the one filed is withdrawn, the dismissal will become *non-est* in the eye of law and the employee is deemed to be in service. Of course, as rightly pointed out by the Sangam, that was the case falling under Section 33(2)(b) of the I.D.Act, 1947, but, however, the said yardstick is applicable to cases falling under Section 33(1) of the I.D.Act, 1947. Moreover, in that case, there was a non-compliance of Section 33(2)(b) of the I.D.Act, 1947 on the part post action of employer therein and that is absent in this case. As stated above, when the Bank issued the notice, there was no dispute. By raising a dispute later, after notice, the Sangam cannot say that there is non compliance of Section 33(1)(a) of I.D.Act, 1947.



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13. The case cited by the Sangam in the case of **Workmen of the Food Corporation of India vs. Food Corporation of India**, (supra) is not advantageous to the members of the Sangam on the reasoning that an industrial dispute was already pending therein and the issue was as to whether disengagement of employment of workers by the Management of FCI is justified or not? The Apex Court, while setting aside the order of the High Court and Tribunal held that the employees have to be treated as employees of FCI. The Apex Court further went on to add that unilateral discontinuance of the direct payment system without workmen's consent and reintroduction of contract labour system treating the workmen as workmen of the contractor would amount to termination of their services, which, in absence of compliance with law in force would be illegal and void. In the present case, there was no industrial dispute pending, while issuing notice of termination to the members of the Sangam.

14. In **Steel Authority of India and others vs. National Union Waterfront Workers and others**, reported in **2001 (7) SCC 1**, the Apex Court held that once a contract labour system is abolished, an employee of

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the Contrator will not become the employee of the Principal employer. In the case on hand, as there are several disputed question of facts, this Court cannot grany any relief to the members of the Sangam as such and the learned Single Judge rightly held that the issue has got to be adjudicated by the Industrial Tribunal. Only after the industrial dispute is decided and based on the outcome of the award, the members would be entitled to relief.

15. It was vehemently argued on the side of the Bank that it was clearly informed to the members of the Sangam at the time of written test that they are going to be selected for the post, which is purely on contract basis and perennial in nature. It was further argued that Writ Petition filed against a private management for violation of statutory provisions is not maintainable. This plea taken by the Bank is not appealing to this Court in the light of the judgment of this Court in **Puthiya Jananayaga Thozhilalar. Munnai, Velur District vs. Government of Tamil Nadu, Rep. by its Secretary, Labour and Employment Department, Chennai and Others,** reported in **2019 (2) LLN 236 (Mad.)**, wherein it has been held as follows:

“12...The Employees cannot presume that the Employer is going to violate the provisions and seek for an Injunction restraining the Management from proceeding further or a



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direction not to alter the Service conditions or to direct the Management to comply with the provisions of the Act. If there is no compliance by the Employer, the rights are protected not only in terms of the I.D. Act, but also in view of the Constitution Bench decision in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (cited supra).

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15. As already observed, the issue in this case is a still-born-child. There is no guarantee about the nature of punishment that may be imposed, if the charges are established and it is also not sure as to whether the Disciplinary action would be continued.

16. Apart from the fact that the Writ Petition is against the Private Management, there is no iota of evidence that there is an imminent danger or the situation is monstrous that there is violation of Statutory provisions of the Act driving the Petitioner-Union to invoke the Writ Jurisdiction of this Court under Article 226 of the Constitution of India.

17.....

18...Whether the Management has complied with the mandatory provisions of the Act or not, is a matter to be decided only in the said Industrial Dispute and this aspect of the matter cannot be gone into the Writ Petition under Article 226 of the Constitution of India. As disputed questions of fact are involved in this Writ Petition..., the Writ Petition is liable to be dismissed.

In this case, there is no proof to show that there is a statutory violation on the date of issuance of notice and subsequent events cannot be taken note of.

Even if the reference is made by the Government, if allowed to be adjudicated, the situation prevails as on the date of notice from the date of



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engagement as Business Correspondents and the question of payment of wages on and from that date, payable by the Bank or through third parties alone will be considered by the Court for the purpose of moulding the relief. When a relief of similar nature was sought for in **Puthiya Jananayaga Thozhilalar Munnai Gestamp Sungwoo Hitech Employees Branch vs. Government of Tamil Nadu and others [W.P.Nos.19138 of 2013 and 26553 of 2014]**, this Court had directed to maintain status quo, which was prevalent at the time of passing of the interim order. That apart, in that case, industrial dispute was pending, whereas, in this case, industrial dispute has been raised subsequent to the diengagement intimation.

16. The stand of the Bank that Business Correspondents were hired on contract basis needs to be adjudicated only before the industrial Forum. Similarly, the issue whether the members of the Sangam can raise industrial dispute or a Five Man Committee is entitled to represent them, can be looked into only by the appropriate Industrial Forum. When a plea was raised by the Management that there was no Five Man Committee and there was no authorization that all these members had consented to raise an industrial dispute, the Conciliation Officer should have accepted those papers and if

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such documents are produced now, it can be construed that it has been created only for the purpose of the case and that no plea had been raised at the initial stage and the Industrial Forum can reject the plea of the Sangam. Even if it is referred for adjudication, the Sangam, in the present case cannot raise an industrial dispute and file a Writ Petition, as the concerned members of the Sangam are entitled to raise a dispute, questioning the termination individually on the ground of violation of the provisions of the I.D.Act, 1947. It is open to them to get themselves engaged through third parties and the same will be without prejudice to the rights of the parties in the industrial dispute that is being conciliated by the Conciliation Officer.

17. It is pertinent to mention here that there is no need for sponsorship for the Union to raise a dispute. Individuals collectively can raise a dispute questioning the non employment, termination and retrenchment etc., in the light of the decision of this Court in **Workmen of Brooke Bond India Limited Vs. Industrial Tribunal** reported in **(1989) 2 LLN 699**, wherein the Division Bench of this Court has considered the issue with regard to the espousal of cause of affected workmen, wherein 120 casual workmen out of the total strength of 735 workers demanded permanency and that two



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Unions did not expose the cause and the Management wants to throw out the reference. The Division Bench has held that it must be a collective dispute and that alone constitute an industrial dispute. The concept of collective dispute should not be construed to mean that all the workmen of the management or a majority of them should sponsor and support the dispute. It would be sufficient, if the industrial dispute has the support of a substantial body of the workmen concerned in the management. The Industrial dispute could be raised even by a minority union or even by an unrecognized/unregistered union. In **Sri Rajagopal Vs Labour Court, Madurai and Others** reported in **(1980) ILLJ 351 Mad**, by referring to the decision in **National Asphalt Products Constructions Co. Vs. N.M. Kothari and others** reported in **1977-II L.L.J. 377**, this Court has held that after introduction of Section 2-A of the I.D.Act, 1947 in 1965, the role of the Union is unnecessary for espousing the case falling under Section 2-A of the I.D.Act, 1947. The relevant portion of the Judgment in Kothari's case is extracted hereunder:

"8. We are further of the view that even assuming that the dispute was not supported by any of the other workmen, it was still capable of being referred to adjudication under S.10 of the said Act, since it was an industrial dispute within the meaning of S.2A of the said Act. The contention raised by Mr.



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Ramaswami relates more to the form than to the substance of the dispute, because after the amendment of the Industrial Disputes Act by addition of S.2A, which came into force on 1-12-1965, the distinction between a dispute or difference arising out of discharge, dismissal, retrenchment or termination of the services of an individual workman in any other manner, raised by the workman concerned and that raised on his behalf by other workmen, has no significance, so far as its reference and adjudication is concerned. It must be remembered in this connection that neither clause (k) of S.2 nor any other provision in the said Act mentions a union of workmen or other workman in connection with the raising of a dispute. It is only the interpretation placed by the Courts on the definition Industrial Dispute given in the said clause (k) which requires that the dispute to be an industrial dispute should be a collective dispute and not an individual dispute."

18. We feel it appropriate to extract relevant provisions of the I.D.Act, 1947, namely, Section 9-A, 12(4) 33(1) and 33(A) for better understanding:

"9A. Notice of change.- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,--

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change --

(a) where the change is effected in pursuance of any settlement or award; or



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(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply."

12 (4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

"33 (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall --

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending."

33 (A) Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.- Where an employer contravenes the provisions of



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section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal], any employee aggrieved by such contravention may, make a complaint in writing, in the prescribed manner,--

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly."

19. The main contention of the Bank was that the Sangam is registered under the Tamil Nadu Societies Registration Act, 1975 and a Union / Sangam registered under the Tamil Nadu Societies Registration Act, 1975 cannot raise an industrial dispute. We are inclined to align with the said view of the Bank. At the sametime, it does not mean that an unregistered or unorganized Union or individual employees cannot join together to espouse the cause of workmen, as the I.D.Act, 1947 empowers a Five Man Committee or an unregistered / unorganized Union and the individual employees to enter into a settlement under the provisions of either



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under Section 18(1) or 12(3) of the I.D.Act, 1947, depending upon the situation that may be warranted. In **Workmen of Brooke Bond India Limited Vs. Industrial Tribunal**, this Court has recognized the group of employees to raise a dispute by joining together.

20. In this case, it should be established before the Industrial Forum by the members of the Sangam whether there exists "contract of service" or "contract for service". If it is a "contract for service", the employer and employee relationship may not be there and if it is established that there is a "contract of service", there exists employer-employee relationship. It is for the Industrial Forum to decide the issue. The powers of the Civil Court are completely different from the powers of the Industrial Adjudicator. The Civil Court can decide the issue based on the contract, whereas, the Industrial Adjudicator is empowered to create a new contract in the place of existing one.

21. The decision rendered by the High Court of Bombay in the case of **National Organisation of Bank Workers' Federation of Trade Union vs. Union of India and others**, reported in **1993 (II) LLJ 537 & 538**, which



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was relied upon by the Bank has not laid down a correct law in view of the fact that anyone can raise an industrial dispute and even an unregistered union can raise a dispute in the light of the decision of a Three Judges' Bench of the Apex Court in the case of **Newspapers Ltd., Allahabad vs. U.P. State Industrial Tribunal and others (MANU/SC/0329/1960)**, holding as under:

"4. Then it was urged that the association which sponsored the case of respondents 3 to 5 was an unregistered body and that made the reference invalid. Both the courts have held, and rightly, that *it is not necessary that a registered body should sponsor a workman's case to make it an industrial dispute. Once it is shown that a body of workmen, either acting through their union or otherwise had sponsored a workman's case it becomes an industrial dispute.*"

22. The next decision referred to by the Bank in **Mercury Manufacturing Company Limited vs. Joint Commissioner of Labour,** reported in **2001 (1) LLN 326** will not be helpful to the Bank for the reason that it was a case, pertaining to non-termination of service and considering the facts involved therein, the Court held that there cannot be any valid



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industrial dispute, when there was no termination and the dispute under Section 2(A) of the I.D.Act, 1947 was held to be not maintainable. In this case, the members of the Sangam are seeking for regularization of their services and therefore, the dispute falls under the provisions of Section 2(k) of the I.D.Act, 1947 and it is a duty of the Conciliation Officer to conciliate and submit a failure report. Ultimately, it is for the Government to refer the dispute for adjudication. That apart, the Bank had stated that it is a case of termination. Even going by the stand of the Bank that *de hors* the order of termination coming into force, the members of the Sangam are entitled to raise an industrial dispute individually, especially after amendemnt to the I.D.Act, 1947, more so, Section 2(A), as per which, after 45 days, even without failure report, individual employees are entitled to approach the Labour Court directly and it is only for the Industrial Adjudicator to decide the issue about the cases falling under Section 2-A of the I.D.Act, 1947 and not regularization/absorption. After non-employmnt issue is decided, it is open to the Labourt Court / Tribunal to grant consequential relief.

23. The contention raised by the Bank that the members of the Sangam have got an alternative remedy, which is efficacious may not be



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correct. Learned Single Judge had already rejected the relief only on the ground that facts are in dispute. In many occasions, the remedy under I.D.Act, 1947 is not an efficacious alternative remedy in view of the fact that Industrial Disputes Act does not give powers to the Industrial Adjudicator to grant interim injunction or interim stay. This observation rendered by us does not mean that we have accepted the contention of the members of the Sangam.

24. The Apex Court in an unreported decision (relied upon by the Bank) in **A.P.Grameena Vikas Bank vs. Yellanki Srinivas and others,** **decided on 12.08.2022** directed framing of a scheme for regularization in respect of employees concerned therein, who had not put in 5 to 10 years of service, whereas in the present case, the Bank itself has not disputed about the years of service and the main dispute was that the members of the Sangam were only Contractors and that their nature of work is perennial in nature. Since the facts involved therein are completely different from the one on hand, the judgment of the Apex Court (supra) is a distinguishable one in terms of the judgment of the Supreme Court in the case of **Padmasundara Rao (Dead) & others vs. State of Tamil Nadu and others,** reported in



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(2002) 3 SCC 533, holding that if it is found that the facts of the cited judgment of the Higher Forum totally differs with the one on hand, then there is no compulsion for the subordinate courts to blindly rely on the same to arrive at a conclusion.

25. In this case, the members of the Sangam have been selected after written test and interview and they may be allowed to continue to work, subject to the availability of work and before engaging new hands. It appears that parties are not interested in arriving at an amicable settlement and therefore, the Conciliation Officer shall submit a failure report to the Government within *fifteen days* from the date of receipt of a copy of this judgment, as the industrial disputes take decades before it is concluded without settlement. Since there was an amendment to Section 2(A) of the I.D.Act, 1947, prescribing outer time limit of conciliation period as 45 days, with or without conciliation failure report, individual employees can raise a dispute before the appropriate Labour Forum. There is no such provision under Section 2(k) of the I.D.Act, 1947. In the present case, as the industrial dispute under Section 2(k) of the I.D.Act, 1947 is pending before the Conciliation Officer and that the issue has been dragged on by the members



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of the Sangam to the Court, which is pending for more than a year, in terms of the judgments of the Supreme Court in **M.P.Irrigation Karam-Chari Sangh vs. The State of M.P., reported in [1985] 2 SCR 1019 and Telco Convoy Drivers Mazdoor vs. State Of Bihar & Others, reported in 1989. AIR 1565,** we direct the Government to refer the dispute under Section 2(k) of the I.D.Act, 1947, for adjudication ***within one month*** from the date of receipt of failure report, as either the Conciliation Officer or the Government cannot decide the *lis* between the parties.

26. On such reference, the Tribunal is directed to adjudicate and pass an award without adjourning the matter beyond seven working days at any point of time in terms of Rule 10(B) of The Industrial Disputes (Central) Rules, 1957 and till such time, it is open to the members of the Sangam to get themselves engaged through third party contractors without prejudice to the rights of the parties. If anyone of them is not interested in continuing with the service, they can contest the industrial dispute without joining the work. It does not mean that in case the members of the Sangam succeed, they are entitled for automatic wages. All depend upon the award that may be passed by the Tribunal. Those who want to work can do so without



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prejudice to their rights in the industrial dispute. It is needless to point out that before engaging fresh hands, the members, who have given their consent to work, shall be given preference, subject to the result in the industrial dispute.

27. The contention of the Sangam was that there was a violation of the provisions of Section 9-A of the I.D.Act, 1947, as the members of the Sangam were not put on notice before effecting alterations in the service conditions applicable to them. This Court is not inclined to go into the disputed question of facts, as it is for the Fact Finding Authority to render a finding on that aspect.

28. With the aforesaid observations and directions, these Writ Appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed. Liberty is granted to the members of the Sangam to file their objections available to them before the Industrial Forum. It is made clear that disposal of these appeals does not mean that we have accepted the contention that the Sangam is empowered to maintain the Writ Petition.



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[S.V.N,J.] [R.K.M,J.]
15.06.2023

Index: Yes / No

Speaking Order: Yes / No
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S.VAIDYANATHAN,J.
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Pre-Delivery Common Judgment in
W.A.Nos.515 and 619 of 2023

15.06.2023