



W.A.Nos.1696 of 2021, etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
01.08.2023	31.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE K. RAJASEKAR

W.A.Nos.1696, 1697, 1714, 1716, 1718, 1719, 1722, 1723, 1724, 1725,
1726, 1727, 1729, 1730, 1731, 1734, 1736, 1737, 1746, 1747,
1779, 1780, 1782, 1784, 1786, 1787, 1788 and 1789 of 2021

and

C.M.P.Nos.10791, 10803, 10823, 10828, 10832, 10836, 10841, 10943,
10844, 10845, 10848, 10855, 10857, 10862, 10863, 10867, 10874,
10877, 10879, 10951, 11111, 11113, 11123, 11136, 11144, 11148,
11152, 11158, of 2021

and

C.M.P.Nos.7881, 7911, 7913, 7916, 7919, 7932, 7935, 7940, 7941,
7944, 7946, 7948, 7949, 7950, 7952, 7973, 7977, 7979, 7988,
7990, 7992, 7994, 8002, 8023 of 2021

W.A.No.1696 of 2021:

The Superintending Engineer,
Kadamaparai Generation Circle

Tamil Nadu Electricity Board Minparai – 642 101.

Coimbatore District.

... Appellant / Petitioner in all W.As

-VS-

1. M. Murugan

2. Karupa Thaver,
Labour Contractor, TNEB,
TNEB Quarters, Kadamaparai,
Valparai Taluk, Coimbatore District.



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3. The Presiding Officer,
Labour Court,
Coimbatore.

... Respondents/Respondents in all W.As.

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the Order passed by this Court dated 24.07.2019 made in W.P.No.18110 of 2011.

For Appellant in all W.As	: Mr.Anand Gopalan For Mr.T.S.Gopalan and Co.,
For R1 in all W.As	: Mr.V.Ajay Khose
For R2 in all W.As	: Labour Court
For R3 in all W.As	: Not ready in notice
For R7 in W.A.No.1782/2021	: Labour Court

COMMON JUDGMENT

(By K.Rajasekar,J.,)

By consent, all these Writ Appeals are taken up and disposed of by this Common judgment, as the issues involved and to be adjudicated in these Writ Appeals are one and the same.

2. This batch of Writ Appeals has been filed by the Management to set aside two Awards dated 27.06.2008 and 24.07.2009 passed in Two Batch of Industrial Disputes in I.D.Nos.60/2003 to 80/2003 and I.D.Nos.502/2004 to 508/2004, respectively, raised by the workmen, wherein, the Labour Court had directed the Management to reinstate the workmen without continuity of service, back wages and other attendant charges, and the same was



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confirmed by the learned Single Judge vide Common Order dated 24.07.2019 in the batch of Writ Petitions, confirming the Order of the Labour Court.

3. For the sake of convenience, the parties viz., erstwhile Tamil Nadu Electricity Board and the workmen, who raised industrial disputes, are hereinafter referred to as 'the Board' and 'the workmen' respectively.

4. The facts leading to filing of these Writ Appeals are as follows:

4.1 The workmen concerned in both batches of the Industrial disputes were engaged as helpers, and other capacities on various dates from 1985 onwards and their services were orally terminated between 1995 to 1997. Originally, the workmen concerned were employed to carry out various works of the Board and they were treated as contract workers for the purpose of denying the regular benefits. They were orally terminated from service of Board between the years 1995 and 1997. The contractual nature of the employment was only a sham and nominal and the Board was neither the principal employer recognized by the Contract Labour (Regularisation and Abolition) Act, 1970, nor the middlemen engaged, designated as contractors were registered contractors under the said Act. All the workers completed



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their work continuously for nearly 240 days in a year and 480 days in 24 calendar months and they were not granted permanency under Section 3(1) of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, (hereinafter referred as 'the Act 1981'). Due to various disputes raised by the labourers engaged by the Board, the Hon'ble Supreme Court of India has appointed Justice Khalid Commission, to identify several thousands of employees, employed on contractual basis in order to absorb them as regular employees in the Board. After identification, several thousands of employees were brought into the regular services of the Board in the year 1999. The Board proceedings were also issued for the benefit of employees to accommodate them as regular employees.

4.2 The workmen herein were engaged like the other workmen who have been absorbed as regular employees of the Board, have not been absorbed since they have been orally terminated, prior to 1999. Later, they have come forward to raise industrial disputes contending that they were also entitled to be absorbed and that their oral termination was illegal and contrary to the provisions of the Act, 1981. They were orally terminated only with a view to deny them absorption. After failure to the conciliation proceedings, the same were referred for adjudication before the Labour



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Court. After proper enquiry and based on the materials placed by both sides, the Labour Court passed the Award, directing the respondent for reinstatement of the terminated workmen without back wages, continuity of service, etc.

5. Aggrieved over the denial of back wages, continuity of service and other attendant benefits, the workmen in I.D.Nos.60/2003 to 80/2003 have separately filed batch of Writ Petitions in W.P.No.21654 of 2011 and I.D.Nos. 502/2004 to 508/2004 have filed batch of Writ Petitions in W.P.No.23526 of 2011 and the Management has also filed separate batch of Writ Petitions in W.P. No.17935 to 17941, 18095 to 18114, 21654 and 13526 of 2011 challenging the Order of reinstatement passed by the Labour Court.

6. All the Writ Petitions referred above have been heard together and Common Order was passed by the learned Single Judge of this Court, dated 24.07.2019, which is being Impugned Order herein.

7. The Management has taken a stand that the Board has not appointed the workmen and that they have not been paid any wage directly. There was



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no employer-employee relationship between the Board and the workmen.

They have not been engaged by the officers of the Board and the work was allotted by the contractor accordingly, wages were also paid by them. The Board has carried out the process of identification of contract workmen and the names of workmen herein were not included as on 05.01.1998. Since, the workmen were not engaged by the Board as contract workmen, during identification, no notices were given to them. Based on the identification done, some of the contract workmen were absorbed in the year 2001.

8. The contractors have also made as a party in the Industrial Disputes and they have taken a stand that they are not contractors and they had acted only as a brokers and the contract is also a sham and nominal. The names of the contractors were used only to avoid employer-employee relationship between the Board and the workmen.

9. Based on the pleadings the Labour Court has framed the following issues in both the Batch of Industrial Disputes and two separate trials were conducted.

Whether the workmen who were alleged that they have been terminated are entitled to continuity of service, back wages and other reliefs?



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10. Based on the issue framed, the workmen on their side in I.D.Nos.60/2003 to 80/2003, W.W.1 was examined and Exs.W1 to W23 were marked and on the side of the Management, A.W.1 was examined and no witnesses marked. In I.D.Nos.502/2004 to 508/2004, W.W.1 was examined and Exs.W1 to W12 were marked in the Batch of Industrial Disputes and on the side of the Management, M.W.1 was examined and no documents marked. On the side of the contractors in both the trial, no witnesses were examined.

11. After analysing the evidences placed on record, the Labour Court has passed Two Separate Awards, dated 27.06.2008 and 24.07.2009 respectively and held that I.D.Nos.60/2003 to 80/2003 that the first respondent, TamilNadu Electricity Board, from the said date of their termination from work, to provide work with continuity of service. But, back wages and other concessions are not awarded. In I.D.No.71/2003 is concerned, the petitioner is not entitled for the relief and the same was dismissed. In I.D.Nos.502/2004 to 508/2004, the Labour Court has held that the workmen are entitled for reinstatement and continuity of service and other attendant benefits without back wages.



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12. Mr. Anand Gopalan, learned counsel for the appellant/Board would submit that the Industrial Disputes raised by the workmen is suffered by delay and laches and there is an enormous delay in raising the dispute and before raising the dispute several developments have taken place. More particularly, as a genuine employer, the Management has appointed and absorbed thousands of contract employees as per the directions of Justice Khalid Commission and also as per the Board proceedings issued in this regard. The workmen herein have denied employment in the year 1993 onwards and they have raised industrial disputes with delay ranging from 7 to 9 years in two batches in I.D.Nos.60 to 80 of 2003 and I.D.Nos.502 to 508 of 2004, before the Labour Court, Coimbatore.

13. The learned counsel further placed on the following facts to show that various steps taken by the Board to abolish the Contract Labour System and to avoid the contract workmen engaged by them. The absorption of the contract labourers as per Justice Khalid Commission, Report was completed and the injunction restraining, fresh recruitment lifted by the Hon'ble Supreme Court as early as on 15.02.1999. On 30.04.1999, the Board has decided not to engage the contract labour in this generation circles and decided to absorb the contract labourers subject to the following criteria:



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1. The contract labourer should have been identified as of 05.01.1998.
2. The contract labourer should have completed 480 days in 24 calendar months preceding 30.04.1999.
3. The contract labourer should be in engagement as on 30.04.1999.

14. Thereafter, on 14.05.1999, Board proceedings No.22 for absorption of contract labourers working in four Hydro Generation Projects as helpers was also issued. However, since no records pertaining to engagement was available in the Hydro Generation Power Projects and no study was done on the man power requirement, no direct labourers from the Hydro Generation Power Projects were absorbed and they were engaged on daily wages basis as per need and requirement from 01.05.1999. Subsequently, yet another Board proceedings were issued stating that in the Hydro Generation Power stations, persons who have worked for 480 days between 01.05.1999 to 30.01.2000 could be eligible for absorption of four Hydro Generation Power Projects. Accordingly, 499 persons were absorbed as per Kadamparai Hydro Generation Power Projects was concerned, 120 persons were absorbed with effect from 29.01.2001 and remaining 48 persons were absorbed with effect from 05.08.2005.



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15. He further contended that the workmen herein were also not sure when they were disengaged by the Board herein. Hence, considering the various developments, on the ground of delay and laches, the Industrial Disputes raised by the workmen herein should have been rejected. He has also relied on the Judgment of the Hon'ble Apex Court in ***Nedungadi Bank Limited vs. K.P Madhavan Kutty and Others* [2000 (2) SCC 455]; U.P SRTC vs. Ram Singh [2008 (17) SCC 627; and Prabhakar vs. Sericulture Department [2015 (15) SCC 1]**.

16. The Board has relied on delay and laches made on the part of the workmen in raising the industrial dispute and to support their case, the Management has relied on the Catena of Judgments and contended that since there is a delay in raising the dispute, the Labour Court ought not to have granted any relief to the workmen.

17. In ***Prabhakar vs. Sericulture Department [2015 (15) SCC 1]*** has considered the importance of raising industrial dispute at the earliest point of time and after discussing various earlier judgments of the Hon'ble Apex Court such as ***the Nedungadi Bank Limited vs. K.P. Madhavan Kutty and Others [2000 (2) SCC 455]*** ; ***Shalimar Works Limited vs. Workmen [AIR 1959 SC 1217]***.



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“42. To summarise, although there is no limitation prescribed under the Act for making a reference Under Section 10(1) of the Act, yet it is for the 'appropriate Government' to consider whether it is expedient or not to make the reference. The words 'at any time' used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the Act. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers' financial arrangement and to avoid dislocation of an industry.

43. On the application of the aforesaid principle to the facts of the present case, we are of the view that High Court correctly decided the issue holding that the reference at such a belated stage i.e. after fourteen years of termination without any justifiable explanation for delay, the appropriate Government had not jurisdiction or power to make reference of a non-existing dispute.”

18. It is the case of the workmen herein that they have been terminated between the period from the year 1995 - 1997 and in 2001, they have raised industrial dispute before the Labour Commissioner and the Board has also filed their reply before the Labour Commissioner in 2001 itself. Those documents have been marked in both the industrial disputes as exhibits. However, it shows that there was a delay nearly of 4 to 6 years in raising the industrial dispute.



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19. It is also the case of the Management that they were under the process of absorbing the contract labourers engaged by them that at the time of processing identification, as on 05.01.1998, the names of the contract labourers herein were not find place in the list. It is also admitted case that on 23.05.1986, the TamilNadu Electricity Board has issued B.P.No.38 for absorbing the contract labourers and accordingly, the Hon'ble Supreme Court has constituted Justice Khalid Commission and the said Commission has recommended 18,006 contract labourers to be appointed in the post of helper in the TamilNadu Electricity Board as a phased manner. Thereafter, in the year 1999, the Board has issued proceedings on 14.05.1999, The TamilNadu Electricity Board has issued the Board Proceedings No.22, for absorption, contract labourers working in four Hydro Generation Power Projects. It is also admitted by them that they are not having records pertaining to engagement of the workers in the Hydro Generation Projects and the absorption process of Hydro Generation Power Projects were completed only in the year 2005. This shows that as on date of raising industrial dispute by the workmen herein, there was an existence of industrial dispute regarding the contract workmen and the issue relating to absorption of contract workmen was not resolved till the year 2005.



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20. It is also held by the Judgment of the Hon'ble Apex Court in

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Paragraph 43 in ***Prabhakar vs. Joint Director, Sericulture Department and others [2015 SCC 1]*** cited supra, the Court finds that the dispute still existed, though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In this case, the Labour Court has specifically considered the aspect of delay in raising the Industrial Dispute, had moulded the relief and ordered reinstatement with continuity of service without granting back wages and other benefits. This restricted relief granted by the Labour Court is based on the contention that after taking note of the delay and since the relief granted is based on the reasons and this Court finds there is no need for interference in moulding the relief. In I.D.Nos.502/2004 to 508/2004 is concerned, the learned Single Judge has granted continuity of service for the purpose of awarding terminal benefits by modifying the Award. Hence this Court is of the view that this delay in raising the industrial dispute shall not dis-entitled the workmen from approaching the Labour Court and this Court is of the view that the industrial disputes raised by the workmen are maintainable.

21. It is contended by the learned counsel for the Management that, as per the Board proceedings issued by them, the respondents are not entitled



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for absorption. Since, they were not in employment as on 01.05.1999, which is the relevant period. The Labour Court has failed to consider the scheme prescribed under the Board proceedings. The Hon'ble Apex Court in ***Oil and Natural Gas Corporation vs. Krishnan Gopal and Others*** reported in **2020 (2) LLN 17 (SC)**, it is reiterated that, at the time of absorption and regularisation, the contract workers shall be in employment and this absorption and regularisation shall be done only as per the terms of the scheme. The learned counsel for the Management would further submit that the supervision of the contract labour by the principal employer was inevitable and the supervision of the contract employer alone which is not the ground of order of absorption. He also relied on the Judgment of the Hon'ble Apex Court in ***Balwant Rai Saluja vs. Air India Limited [2014 (9) SCC 407]*** and contended that no materials placed on record to show that the contract labour system was sham and nominal.

22. The learned counsel for the workmen Mr. V. Ajay Khose, has submitted that the workmen have produced various documentary evidences to show that they were engaged by the Board for their perennial move and their engagement is only through the intermediary, eventhough, they have been termed as contractors. The Board has not produced any iota of evidence



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to dispute the case of the workmen that their engagement as contract workmen is not genuine and only figurative. He has also relied on the Judgment of the Hon'ble Apex Court in ***Indian Farmers Fertilizer Co-operative Limited vs. Industrial Tribunal, Allahabad and Others [2002 (3) SCC 544]***. He has also relied on the Judgment of the Hon'ble Apex Court in ***General Manager, Oil and Natural Gas Commission, Silchar vs. Oil and Natural Gas Commission Contractual Workers Union [2008 (12) SCC 275]*** and contended that, factual aspects shall not be re-appreciated unless there is perversity and patent illegality.

23. It is contended by Management that the workmen have failed to prove the fact that they have been terminated between the years 1993 and 1997. The date of termination or mode of termination have not been discussed by the Labour Court. Hence, the Award passed by the Labour Court was without any basis and the same is perverse.

24. In *Catena* of Judgments, it is held that, once termination of temporary employer or casual labourers is in violation of Section 25(F) of the I.D Act, such remedy is available to the workmen to seek compensation for alleged breach of Section 25(F) of I.D Act, 1947. Hence, the



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reinstatement is not mandatory. He has also relied on the Judgments of the

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25. It is contended by the learned counsel for the workmen that, it is a clear violation of Section 25(F) of the I.D Act, by the Board and this was taken note by the Labour Court, after analysing the evidences of both sides that there was an employer-employee relationship between the workmen and the Management. These findings of facts could not be interfered with the writ proceedings and this Court has no power to re-appreciate the evidence placed on record. In support of his contention, he has also relied on the Judgments of the Hon'ble Apex Court in *Secretary, Haryana Electricity Board Vs. Suresh and Ors.* [1999 (1) LLJ 1086] and the Division Bench Judgment of this Court between *R. Lakshmi vs. The Chief Engineer, Tamil Nadu Electricity Board and another* [2012 (3) LLN 681 (DB)] in *W.P.No.5980/2004*.

26. To prove the employer-employee relationship, the workmen concerned in I.D.Nos.60/2003 to 80/2003, common evidences were recorded



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and they have marked as Exs.W.W.1 to W.W.23 before the Labour Court.

These documents have been marked by W.W.1-K.Mahalingam, who is the petitioner in I.D.No.60 of 2003, the Labour Court has considered each and every documents marked as Exs.W.1 to W.12. While interpreting Exs.W.1, dated 29.07.1996, the Labour Court has held that the Junior Engineer of the Kadamparai Power Station has issued the Certificate stating that the petitioner-Mahalingam had worked under the Board as a contractor labour for past four years.

27. Similarly, the petitioner in I.D.No.62 of 2003, namely Selvi, issued with Service Certificate issued by the Junior Engineer of Kadamparai Power Station, dated 25.07.1999. She had worked as a Sweeper of Sub Division Office from March-1995 till September 1996. Ex.W3 related to one K.Nagamani, who is the petitioner in I.D.No.63 of 2003, engaged as a contract worker from the year 1989 to 1995. Ex.W4 is the another Certificate related to A.Geetha, petitioner in I.D.No.64 of 2003, wherein, it is certified that the said Geetha was worked from the Month of August-1993 to January-1995. Ex.W5 was issued in favour of Thirumoorthy, petitioner in I.D.No.65 of 2003, wherein, it is certified that the said Thirumoorthy was worked from 05.10.1994 to 28.04.1995. Ex.W6 was issued in favour of S.Ramesh, petitioner in I.D.No.66 of 2003, wherein, it is recorded that he was worked



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as a contract labourer from July-1994 to 25.03.1995 and again from 06.07.1995 to 03.03.1997 at Kadamparai electrical line.

28. Ex.W.7 issued in favour of Thiru.K.Sivakumar, petitioner in I.D.No.67 of 2003, wherein, it is certified that he was worked from February 1996 to 31.12.1996 as a contract workmen under various project areas. While Ex.W8 issued in favour of one Venugopal, who is the petitioner in I.D.No.68 of 2003, wherein, it is recorded that he had worked as a contract labour at Kadamparai area from November 1988 to 25.01.1995. Likewise, Exs.W6 to W19, the Experience Certificates were also discussed in detail by the Labour Court. Ex.W1 to Ex.W9, it is held that these Certificates were issued by the higher officers of the Board and were discussed elaborately by the Labour Court. The Management were also disputed Exs.W1 to W19 at the time of cross examination, by stating that it is a false certificate. It is also recorded by the Labour Court, that the workmen concerned in I.D.No.71 of 2003, namely N.Babu has not submitted any proof for his engagement as a contract workmen.

28.1. Similarly in I.D.Nos.502/2004 to 508/2004, Service Records and Conduct Certificates of the workmen were marked and those documentary proof have not been disputed by the Board.



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29. After discussing the counter evidence adduced by the Management, the Labour Court has given a finding that Service Certificates were issued by the officers of the Board and those documents could not be brushed aside on the ground that those documents are false Certificates. Further, there is no evidence produced on behalf of the Management that those documents were false certificates. Since there was no quarrel that these certificates were issued by the Officials of the Board. Hence, the Labour Court has accepted the case of the workmen that they were engaged as contract workmen in various periods and the contention that they were not engaged by the Management is not sustainable. It is also further elicited from the evidence of the Management Witnesses that for absorbing the contract workers as per the scheme framed by Justice Khalid Commission, the similar certificates issued by the officers of the Board have been accepted and based on the those certificates, the contract labourers were also absorbed. Under the said circumstances, the Labour Court has held that those documents have to be accepted, and the Board is not entitled to claim those documents as false certificates.

30. After accepting the above documents, the Labour Court has held that as per Section 29 of the Contract Labour (Regulation and Abolition)



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Act, 1970 (hereinafter referred to as 'the Act 1970'), no registers were maintained by the Board and no other documents to prove the contract entered between the Board and the contractors were produced. Similarly, the alleged contractors were also not licensed contractors and the contract entered between them is not a valid contract.

31. The Hon'ble Apex Court between ***Kanpur Electricity Supplies Company Limited and Shamim Mirsza [2009 (1) LLN 121]***, has held that in an industrial dispute, proving the existence of employer-employee relationship lies on the claimant in Paragraph No.15, it is observed as follows:

“15. It is trite that the burden to prove that a claimant was in the employment of a particular management, primarily lies on the person who claims to be so but the degree of proof, so required, varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer-employee relationship. It is essentially a question of fact to be determined by having regard to the cumulative effect of the entire material placed before the adjudicatory forum by the claimant and the management”.

32. The above observation was made after placing reliance on the Judgments of the Hon'ble Apex Court in ***Ram Singh and Ors. Vs. Union Territory, Chandigarh and Others [2004 (1) LLN 511]***.

33. In this case, in both the Batches of Industrial Disputes, common



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evidences were recorded and except the workmen concerned in I.D.No.71/2002 all others have produced their Service Certificates issued by the various officers of the Board. In 1st Batch of Industrial Disputes, I.D.Nos.502/2004 to 508/2004, the workmen have produced not only the Service Certificates, but also, they have produced Conduct Certificates along with receipts for rents for availing the quarters for the workmen. These exhibits have been marked as Exs.W1 to W9. Similarly, the Service Certificates of the workmen in I.D.Nos.60/2003 to 80/2003 except I.D.No.71/2003, exhibits have been marked and the same was subjected to cross examination. After recording evidences of the Management Witnesses and from the admission made thereon by the Management Witnesses, the Labour Court has concluded that the workmen have not proved their case that they were engaged by the Board, till 1995 to 1997 and thereafter, they have been orally terminated. This finding is based on the facts placed before the Labour Court and this Court finds that there is no perversity in the said findings of the Labour Court.

34. The workmen herein have also established the fact that the contractors have been acted only as an intermediaries/brokers. The Management has not adduced any evidence to show that the contractors were



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licensed contractors. They have not produced any documents to show that they have complied with Section 29 of the Act 1970. This factual aspects are also taken into account while passing the award by the Labour Court. Since, the Board has failed to prove that the contractors are the licensed contractors and in the absence of any records to show that the contractors, who have been engaged by the Board, the so called contractors are only name lenders. Factually, there was no genuine contract system prevailing at the relevant time, wherein, the Board could have acted as only the principal employer and the contractors are the contract employees.

35. The Labour Court has rightly come to the conclusion that the contract system was only a camouflages smoke and it is really exhibits that the relationship between the Board and the employees alone and there is only employer-employees relationship between the Board and the workmen herein. Hence, the contention of the Board that there was no employer-employee relationship and the same is liable to be rejected.

36. The next contention of the Management that the Hon'ble Apex Court in ***Balwant Rai Saluja vs. Air India Limited [2014 (9) SCC 407]*** case cited above, has laid down certain tests to conclude whether the contract



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labour is a sham or nominal. In this case, admittedly, the Management was not able to produce any contract entered between the contractors and the Management to show that there was a genuine contract entered between the contractors and the Board herein. The Management has also failed to prove that the contractors are registered contractors. Factually the workmen were able to exhibit that they have been receiving payments and other perquisites from the Management and they were involved in perennial job and they were under control and supervision of the Management. Without any materials to show that the workers were engaged only by means of proper contract between the Board and the contractors and their proper accounts maintained between them regarding the payment of salary or remuneration, this Court is of the view that the Board is not entitled to contend that there was a genuine contract labour system followed by them.

37. It is also contended that the Labour Court has not been given any findings with regard to the alleged date of termination of the workmen. It is true that the workmen themselves have not come with a clear case that they have been disengaged from the particular date. However, they were able to prove that they have been engaged by the Management but they have been terminated from service without following the provisions of I.D.Act.

38. The Hon'ble Apex Court in ***Devinder Singh vs. Municipal***



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Council, Sanaur [2011 (6) SCC 584] has considered various provisions of

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held as follows:

“12. Section 2(s) contains an exhaustive definition of the term 'workman'. The definition takes within its ambit any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it is immaterial that the terms of employment are not reduced into writing. The definition also includes a person, who has been dismissed, discharged or retrenched in connection with an industrial dispute or as a consequence of such dispute or whose dismissal, discharge or retrenchment has led to that dispute. The last segment of the definition specifies certain exclusions. A person to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, is applicable or who is employed in the police service as an officer or other employee of a prison or who is employed mainly in managerial or administrative capacity or who is employed in a supervisory capacity and is drawing specified wages per mensem or exercises mainly managerial functions does not fall within the definition of the term 'workman'.

13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act.

14. It is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.....

18. In **L. Robert D'souza v. Executive Engineer MANU/SC/0152/1982 : (1982) 1 SCC 645** the Court held that even a daily rated worker would be entitled to protection of Section 25F of the Act if he had continuously worked for a period of one year or more.”



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39. In this case, there is a clear violation of Section 25(F) and 25(G) of the I.D.Act and once there is a violation proved by adducing evidence before the Labour Court, findings of fact reached arrived at by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings as held by the Constitution Bench in ***Syed Yakoob vs. K.S.Radhakrishnan [AIR 1964 SCC 477]*** .

40. One of the contentions of the Board was that in an industrial dispute under Section 2-A of the I.D.Act, 1947, the issue pertains to whether the contract was sham and nominal and the benefits of regularization cannot be granted. We are not inclined to accept the said contention, as the Labour Court is empowered to grant any relief in a dispute under Section 2-A of the I.D.Act, 1947 and the power of the Labour Court is much wider than that of a Civil Court. Once the non employment is held to be bad, the Labour Court can grant full relief or mould the relief partially. The purpose of I.D.Act, 1947 is to bring about an early settlement to an industrial dispute. Learned counsel for the Board heavily relied upon the judgment of the Apex Court in the case of ***Bharat Heavy Electricals Ltd., vs. Anil and others***, reported in ***2007 (1) SCC 610*** to strengthen his argument.

41. In a case of non employment, certainly all questions have to be gone into. The Apex Court in a decision reported in ***(2001) 7 SCC 1 [Steel]***.



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categorically held that 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 regularize the services of the contract labour in the establishment concerned. It was further held that 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 so-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 conditions 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. The judgment referred to by the Board in **Bharat Heavy Electricals Ltd., vs. Anil and others** (supra), in our considered opinion, will not inure to the benefit of the Board for the simple reason that in this case, Workmen challenged the order of termination and the question of deciding their consequential benefits



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needs to be answered. As discussed supra, the Labour Court in a dispute under Section 2-A of the I.D.Act, 1947 can grant any relief and decide the issue, including the one of contract being sham and nominal, otherwise the purpose of I.D.Act, 1947 will be defeated.

42. When a Industrial Adjudicator comes to the conclusion that the contract is genuine, the Court may direct parties to recourse to the 1970 Act for abolition of Contract Labour. When the contract itself is sham and nominal, in the dispute relating to non employment under Section 2-A of the I.D.Act, 1947, the Labour Court is empowered to grant the relief as stated supra.

43. Admittedly, in the present case on hand, there existed relationship of master and servant, whereby the Labour Court held on a finding of fact that contract system is a ruse. There was no document produced by the Board to show that there was a genuine contract system, more so, production of documents under the Act, 1970, if there exists contract labour system. The preamble to the I.D.Act, 1947 is very clear that it is an Act to make provisions for the investigation and the settlement of industrial disputes and for certain other purposes.



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44. If the contention of the Board is accepted, there will be no finality to the litigation. The employees will have to knock at the doors of one Court after another till they exit from the world. That apart, the ground raised in respect of the Labour Court going into the question of sham and nominal was not raised either in the Writ Petition or in the grounds of appeal. Even assuming for the sake of argument that the same has been raised or permitted to be raised as a legal ground, such plea will have to be rejected, as the Labour Court will have to decide the issue based on the finding of fact, which has been done in this case and there are no materials available for this Court to defer from the finding of Labour Court.

45. Normally, the Workmen are entitled to all the benefits as per the Award. In view of what is stated herein-above, the Awards of the Labour Court and the order of the Single Judge in these matters are modified as follows:

i) The Board shall pay a compensation of Rs.2,00,000/- (Rupees Two Lakhs only) each to the Workmen / family members (in case of death) within a period of three months from the date of receipt of a copy of this judgment;

ii) Since there is a violation of Section 25-F of the I.D.Act, 1947, all the Workmen are deemed to be in service. The Workmen are entitled to



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pensionary benefits from the date of joining service till the date of judgment of the learned Single Judge and the salary payable to the last grade servant as on the date of judgment of the learned Single Judge shall be taken into account only for the purpose of terminal benefits of pension and no other terminal benefits shall be paid to them;

iii) In case any of the Workmen had already died or attained superannuation before the date of judgment of the learned Single Judge, workmen or family members, as the case may be, are entitled to pensionary benefits taking into account the date of joining service till the date of their death / retirement and the salary payable to the last grade servant as on the date of death / retirement shall be taken into account only for the purpose of terminal benefits of pension and no other terminal benefits shall be extended to them;

iv) The Board shall extend the benefit of pension / family pension, if any, to the Workmen / family members on and from 01.11.2023 and the same shall be released with effect from December, 2023;

v) As the Award is modified and replaced by this judgment, in case of non-compliance, it is open to the Workmen to invoke Section 29 for



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prosecuting the Officials falling under Section 32. The Government must sanction prosecution. The Criminal Court shall take up the matter in case of sanction of prosecution on a day-to-day basis without adjourning the matter beyond two weeks at any point of time.

47. In the light of the decision of the Apex Court in *The Life Insurance Corporation of India vs. D.J.Bahadur and Others*, reported in *1980 AIR 2181*, the award (modified now) will be in force till such time it is replaced by an another award or settlement. Hence, the question of delay in initiating prosecution under Section 29 of the I.D.Act, 1947 is not available to the Board in case of non-compliance of the modified award.

48. With the above observations and modifications, the Writ Appeals filed by the Board are dismissed. No costs. Consequently, connected miscellaneous petitions stands closed.

[S.V.N., J.] [K.R.S., J.]
31.10.2023

Internet: Yes
Speaking Order: Yes/No
Neutral Citation Case: Yes/No
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To:

WEB COPY

The Presiding Officer,
Labour Court,
Coimbatore.

S.VAIDYANATHAN,J.,
and
K.RAJASEKAR,J.,



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Pre-Delivery Common Judgment in
W.A.Nos.1696, 1697, 1714, 1716, 1718, 1719, 1722, 1723, 1724, 1725,
1726, 1727, 1729, 1730, 1731, 1734, 1736, 1737, 1746, 1747,
1779, 1780, 1782, 1784, 1786, 1787, 1788 and 1789 of 2021

31.10.2023