



W.P.No.33635 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.33635 of 2016
and W.M.P.No.29006 of 2016

The Superintending Engineer,
Tiruvannamalai Electricity Distribution Circle,
TNEB (TANGEDCO),
Tiruvannamalai.

... Petitioner

Vs.

1. Inspector of Labour,
Tiruvannamalai.

2. P. Munusami

3. M. Kannan

4. Venkatesan

5. T. Gnanamurthy

6. S. Balaji

Respondents 2 to 6 Represented by Secretary,
Tamil Nadu Electricity Board Retired Labourers Union,
5/7, Chairman Govindrajulu Street,
Villupuram – 605 602.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the first Respondent, in relation to his proceedings in Na.Ka.No.E/987 of 2014 dated 02.02.2015 and quash the same as illegal.

For Petitioner : Mr. Anand Gopalan
for M/s. T.S. Gopalan & Co.



WEB COPY



W.P.No.33635 of 2016

For Respondents : Mr.M.S.Prem Kumar
Government Advocate [R1]
Mrs.S.Suseela Devi
for M/s.Yes S Associates [R2]
No appearance [R3, R5 & R6]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records of the first Respondent, in relation to his proceedings in Na.Ka.No.E/987 of 2014 dated 02.02.2015 and quash the same as illegal.

2. The case of the petitioner is that, the private respondents/workmen filed claim petitions under Section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 (in short 'the Act') before the first respondent/Labour Court. The private respondents are contract labourers and they are hired by independent contractors and the said contract is registered contract as per the provisions of Contract Labour (Regulation and Abolition) Act, 1970. The first respondent/Labour Court, inadvertently adjudicated the issue and passed award in favour of the private respondents/workmen that their claim can be entertained in terms of Section 3 of the Act. Challenging the same, the above writ petition has been filed.



W.P.No.33635 of 2016

3. The learned counsel for the petitioner submits that, the private respondents/workmen were engaged through contractor and their claim can be adjudicated either under the Contract Labour (Regulation and Abolition) Act, 1970 or under the Industrial Disputes Act, 1947. In the present case, the first respondent/Labour Court, without jurisdiction, adjudicated the issue under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, which is not sustainable. In support of his contention, he relied upon the judgment of this Court in W.A.Nos.273 & 275 of 2020, dated 20.01.2023. Accordingly, he prays for allowing the above writ petition.

4. The learned counsel appearing for the second respondent did not dispute the facts submitted by the learned counsel appearing for the petitioner.

5. Heard the learned counsel for the petitioner, learned Government Advocate appearing for the first respondent and the learned counsel appearing for the second respondent and perused the materials available on records.

6. The Division Bench of this Court, in W.A.Nos.273 & 275 of 2020, has passed the following judgment on 20.01.2023 :



W.P.No.33635 of 2016

WEB COPY

“Learned counsel appearing for the appellants-workmen would submit that the issue involved in these appeals is squarely covered by a Division Bench decision of this Court in W.P.No.4061 of 2013 and Batch, dated 07.03.2022.

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

“34. We have considered the submission aforesaid and find that the order passed by the Labour Inspector needs to be interfered with remand of the case. It is, however, to be made clear that the Labour Inspector would not cause enquiry beyond the powers given under the Act of 1981 and thereby would not be having jurisdiction to adjudicate the complicated questions of fact and law in reference to any other statute than the Act of 1981. The Labour Inspector may, for the purpose of conducting summary enquiry, allow the parties to produce documents and if any of the workmen has completed 480 days of continuous service in 24 calendar months, appropriate directions can be issued for granting permanency. However, even if such an order is issued, it should be with a clear finding about each workman and the number of working days by referring to the period of 24 calendar months. The benefit as to the consequences thereupon would be only for the period of employment and if any of the workmen is discontinued or not in service, he would be entitled to the benefit only for the period of service and not beyond that and, that too, after the completion of continuous service of 480 days in 24 calendar months, and not for a prior period. The direction aforesaid is not driven by the settlement for the



WEB COPY



W.P.No.33635 of 2016

reason that the workmen herein are those who were not extended the benefit of settlement and, therefore, sought claims by maintaining claim separately. However, it would not preclude both the sides from entering into settlement, if they so choose, during the period of summary enquiry by the Labour Inspector. The issue as to whether the respondents fall within the definition of “workman” is however decided against the petitioner Corporation, as not only a settlement was entered, but adjudication about claim to seek permanency has been decided earlier in reference to similarly placed.”

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

7. In view of the above said decision of this Court, the impugned order passed by the first respondent/Labour Court, dated 02.02.2015 is set aside.



W.P.No.33635 of 2016

The private respondents/workmen are at liberty to raise a dispute either under Section 2(k) of the Industrial Disputes Act, 1947 or under the Contract Labour (Regulation and Abolition) Act, 1970 before the Industrial Tribunal in the manner known to law.

8. Accordingly, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

24.07.2023
(2/2)

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To
The Inspector of Labour,
Tiruvannamalai.



WEB COPY



W.P.No.33635 of 2016

M.DHANDAPANI, J.

sp

W.P.No.33635 of 2016

24.07.2023
(2/2)



WEB COPY



W.P.No.33635 of 2016

W.M.P.No.29005 of 2016

in

W.P.No.33635 of 2016

M.DHANDAPANI, J.

Dispensed with for the present.

sp

24.07.2023

(¹/₂)