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W.A.No.1169/2020



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 01-11-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

**W.A.No.1169 of 2020**

Thalaivar,  
Tamil Nadu Kudisai Matru Varia Thuppuravu  
Paniyalargal Sangam (AITUC).... Appellant

-VS-

1.Tamil Nadu Slum Clearance Board,  
rep.by its Chairman,  
No.5, Kamaraj Salai,  
Chennai – 600 005.

2.The Presiding Officer,  
Industrial Tribunal,  
Tamil Nadu,  
High Court Campus,  
Chennai – 600 104.

3.The Commissioner,  
Corporation of Chennai,  
Ripon Building, Periyamet,  
Chennai – 600 003.

...

Respondents

Appeal under Clause 15 of the Letters Patent against the order, dated  
25.10.2019, passed in W.P.No.32652 of 2013.



For Appellant : Mr.V.Prakash,  
Senior Advocate,  
for Mrs.K.Nithyashree.

For Respondent 1 : Mr.R.Neelakandan,  
Addl.Advocate General,  
assisted by Mr.S.Karthikeyan,  
Standing Counsel.

For Respondents 3 : Mr.S.Silambanan,  
Addl.Advocate General,  
assisted by Mrs.K.Aswini Devi,  
Standing Counsel.

**JUDGMENT**

(By *S.Vaidyanathan,J.*)

This intra-court appeal has been preferred against the order, dated 25.10.2019, passed in W.P.No.32652 of 2013.

2. Government of Tamil Nadu, vide G.O.(D).No.154, Labour & Employment (H1) Department, dated 11.02.2005, has referred the following issues to the Industrial Tribunal, Chennai, for adjudication :

*(1) Whether the contract of employment of the workers employed by the Slum Clearance Board in Annexure-II is genuine or sham and nominal?*

*(2) Whether they are the direct employees of the Slum Clearance Board ?*



Subsequently, by G.O.(D).No.22, Labour & Employment (H1) Department, dated 17.01.2006, a Corrigendum was issued, including the following issue for adjudication :

*If the answer on Issue No.2 in G.O.(D).No.154, Labour and Employment Department, dated 11.02.2005, is in the affirmative in favour of the workers of the Tamil Nadu Slum Clearance Board Sanitary Workers Union, are they not entitled to be regularized and made permanent and, if so, from what date ?*

The total number of workmen concerned in the dispute has been given in Annexure-II to the order of Reference.

3. The contentions of the appellant Union are as follows :

There are more than 400 employees employed by Slum Clearance Board in various places and they joined duty in the year 1985 on daily wages. Their services were transferred to Chennai Corporation by an order, dated 01.04.2005. Even though they have been regularly employed on daily rate basis, their nomenclature has been stated as Contract Labourers and no benefits are extended to them. The services of these employees have been taken over by Chennai Corporation and, as the contract system is sham and nominal, the employees have demanded that their services should be regularised, as they are entitled for regularisation in service. By no stretch of imagination, the employees can be called as Contract Labourers and that the daily rated



sanitary workers were asked to work only through contractors with effect from 01.02.1994. The contract itself is a camouflage. The Government, by G.O.Ms.No.2082, Labour and Employment Department, dated 19.09.1988, has prohibited contract labour in the process of sweeping and scavenging in establishments/factories. Since Slum Clearance Board has transferred approximately 400 employees to Chennai Corporation, Chennai Corporation has to count the services rendered under Slum Clearance Board and grant all benefits as if their services have been regularised under Slum Clearance Board. The Government has ordered for transfer of conservancy work and by that the so called contract sanitary workers have been transferred to Chennai Corporation vide order, dated 31.08.2005. Management Witness – M.W.1 has admitted that members of the Union have been working under six divisions of Tamil Nadu Slum Clearance Board with effect from 01.01.1986, but, however, on contract basis. After the contract period is over, they have no right to continue in service. By means of G.O.Ms.No.41, Municipal Administration and Water Supply (MCI) Department, dated 28.03.2005, which was marked as Ex.M-4, the Government has approved the proposal of transferring the conservancy staff and transferred all workmen from Tamil Nadu Slum Clearance Board to Chennai Corporation. Since their request for continuation of services did not yield any result, they had to make a demand for permanency and other benefits, which was referred to by the Government vide G.Os., mentioned supra, after the conciliation failed. The job that was performed by the employees was perennial in nature and the contract



system itself is a ruse to deprive the permanent status to the employees. The employees have been discharging the work to protect the environment and incidentally the disposal of solid waste. Work was extracted from them directly for nearly a decade and thereafter third parties were introduced as contractors and engaging them through contractors itself is a sham. The Industrial Tribunal, on reference, considered the totality of the circumstances and held that the employees concerned would have to be regularised in services. The Tribunal also held that there was no contract system at all and that the period of services rendered in Slum Clearance Board was to be taken into consideration for the purpose of granting all terminal benefits. However, no other monetary benefits were extended by the Tribunal. If at all, anyone, who is aggrieved, it is the members of the Union, as other benefits have been deprived, of course, it is based on the reference that has been made by the Government, which has not been tested by the association/Union. Once the Tribunal comes to the conclusion that the contract labour system is sham and nominal, consequential benefits should have been ordered.

4. Mr.R.Neelakandan, learned Additional Advocate General, appearing for first respondent - Slum Clearance Board, would submit that pursuant to the award of the Tribunal, the employees concerned have been directed to be granted regularisation, which will take effect from the date of their entry into service after completion of 480 days of continuous service in a period of 24 calendar months in Slum Clearance Board; the Tribunal has awarded the grant of retiral benefits alone and that they have no



objection for the retiral benefits being extended to the employees. It is also his contention that there are no amounts due to the employees payable by Slum Clearance Board to be remitted to Chennai Corporation, as the terminal benefits will be paid only when there is a cessation of employer – employee relationship.

5. Mr.S.Silambanan, learned Additional Advocate General, appearing for third respondent - Chennai Corporation, would vehemently contend that pursuant to the orders of the Government, the employees have been transferred from Slum Clearance Board to Chennai Corporation and only on and from the date of their entry into service in the Corporation, their services will be taken into account for the purpose of grant of benefits and that there are other employees who have been appointed on and after the date of entry of these employees into service of the Corporation. He would further contend that the employees will have to get the benefits for the services rendered from the Slum Clearance Board and not from Chennai Corporation and, unless the monies payable to the employees are remitted by Slum Clearance Board, it would be difficult for Chennai Corporation to extend the monetary benefits to the employees. It is his further contention that this is without prejudice to the contention that there was a cessation of employer-employee relationship between the Slum Clearance Board and the employees and transfer was effected pursuant to the G.Os. mentioned supra and that the services will have to be counted only from the date of entry into Chennai Corporation. Finally,



he would contend that in order to avoid two sets of service conditions under one roof, the services under Chennai Corporation alone will have to be taken into account.

According to him, though the Government has approved the proposal for transferring the conservancy work and transfer of employees from Board to Corporation, it does not mean that the services rendered under the Board will have to be taken into account for the purpose of extending monetary benefits.

6. We have heard the parties and also gone through the records.

7. Pursuant to the reference made by the Government, the Industrial Tribunal rendered a finding of fact holding that the employees concerned in the industrial dispute were working under Slum Clearance Board and, pursuant to the Government Order, their services have been taken up by Chennai Corporation. There is no break in service in terms of the G.O. Even otherwise, the Tribunal has not rendered that the services rendered under Slum Clearance Board will have to be ignored for the purpose of counting/including the services under Chennai Corporation. Considering the pleadings and the evidence, the Tribunal held that the work performed under Slum Clearance Board is of perennial nature and an integral part of the work of Slum Clearance Board. Since Slum Clearance Board and Chennai Corporation come under the wing of the State Government, there is no harm in the Government transferring the employees from Slum Clearance Board to Chennai Corporation. When services are transferred, naturally, the earlier services rendered by the employees will have to be



taken into account for the purpose of counting the entire service for extending the terminal benefits. That apart, the employees have been directly employed under Slum Clearance Board and the contract system has been introduced only in the year 1994, after a period of eight years.

8. We are of the view that the Industrial Tribunal has rightly held that using the intermediary, direct employees cannot be converted into one of contract employment. Court will have to see whether it is contract of service or contract for service. In the case on hand, viewed at the evidence tendered by the parties, more-so the management, it is clear that there is a contract of service and that the employees will have to be regularised. Tribunal is right in granting the benefit of regularisation and holding that the very contract itself was a ruse. Once the Tribunal has rendered a finding of fact that the contract system is sham and nominal, it is empowered to grant all the reliefs. We had an occasion to consider whether contract labour system was sham and nominal in W.A.No.1696 of 2021 and other connected matters on 31.10.2023.

9. The learned single Judge has upset the award of the Industrial Tribunal after discussing the facts, based on the decision of the Supreme Court in *State of Karnataka v. Umadevi*, 2006 (4) SCC 1. In our opinion, the said decision is not applicable to the facts of this case. The said case pertains to employees approaching High Court directly and it is a service matter, not arising under Industrial Disputes Act, 1947. The scope of Industrial Disputes Act, 1947, is wide and the Industrial



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Tribunal/Labour Court is empowered to create a new contract or modify the existing contract. The power of Industrial Tribunal is also wider than that of Civil Court, as the Civil Court can decide the issue based on a contract between the parties, whereas the Industrial Tribunal/Labour Court is empowered to create a new contract. The learned single Judge has also rendered a finding in favour of the workmen in Paragraph 27 of the order, holding that the contract entered into between the Board and the employees is sham and nominal; that it is very unbecoming of the Board to enter into such a contract; that the intention obviously is to circumvent the various labour law legislations; and that such action by the Board is deprecated. This finding can be rendered in an industrial dispute and the same has been made. Hence, we are of the considered opinion that the employees are entitled to be regularised and the finding of the learned single Judge in upsetting the award of the Industrial Tribunal, holding that regularisation cannot not relate back to the respective dates on which each of the employees completed 480 days of work in a period of 24 calendar months, cannot be correct. Once there is a valid transfer from Slum Clearance Board to Chennai Corporation, the employees mentioned in Annexure-II are entitled for regularisation on their completion of 480 days of service in a period of 24 calendar months and the period of service rendered under Slum Clearance Board will have to be taken into account by Chennai Corporation for the purpose of extending terminal benefits. Whether Slum Clearance Board has to pay any amount to Chennai Corporation or not for the services rendered by the employees is not



gone into by us. It is an internal dispute or only an arrangement, which has got to be looked into between the Board and the Corporation.

10. For the foregoing reasons, we interfere with the order of the learned single Judge and restore the award of the Industrial Tribunal. Chennai Corporation is expected to extend gratuity and pensionary benefits to the employees mentioned in Annexure-II within a period of four months from the date of receipt of this order. We make it clear that in case the amounts are not paid within the stipulated period as above, the employees are entitled to demand interest as per the provisions of Payment of Gratuity Act, 1972. Employees, who have already retired, would be entitled to gratuity and pension without interest. Similarly, the employees, who are no more, would be entitled to gratuity and pension up to the date of their death and Family Pension shall be extended to the eligible dependants. We further make it clear that this order is confined only to the employees, who were members of the Union at the time of raising of the industrial dispute, and not to others. If others have any grievance, it is open for them to redress their grievance in an industrial dispute that may be raised by the Union, as the disputed questions of facts and extension of the benefits granted in this order cannot be gone into in a writ.



11. Writ Appeal is allowed. No costs. Consequently, the connected

C.M.P.No.14453 of 2020 is closed.

Index : Yes/No  
Internet : Yes/No  
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(S.V.N.,J.) (K.R.S.,J.)  
01-11-2023

To

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rep.by its Chairman,  
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