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W.P.Nos.34667 to 34687 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.07.2023

Pronounced on : 27.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.34667 to 34687 of 2014 and WMP Nos.16955, 16956, 16957, 16958, 16959, 16960, 16961, 16962, 16963, 16964, 16965 & 16966 of 2016 and MP.Nos.1,1,1,1,1,1,1,1,1,1,1,1,1,1,1,1 & 1 of 2014 and 2,2,2,2,2,2,2,2,2,2,2,2,2,2,2,2 & 2 of 2014

WP.No.34667 of 2014

- 1.The Managing Director,
Tamilnadu Water Supply and
Drainage Board,
No.31, Kamarajar Salai,
Chennai 600 005
- 2.The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Rural Water Supply Division,
(The second petitioner already addressed as Office
of the Executive Urban Project Division, Kangayam
has been closed and records were handover to
TWAD Board RWS Division, Erode is the present
address of the second petitioner)
No.10, G.L. Bungalow, Muthusamy Street,
Sathi Salai, Erode 638 001
- 3.The Executive Engineer,
Tamilnadu Water Supply and Drainage Board,
Maintenance Sub Division,
Muthiah Complex, 3rd Floor,
1171, Mettur Road, Erode 638 011



W.P.Nos.34667 to 34687 of 2014

4.The Assistant Executive Engineer,
Tamilnadu Water Supply and Drainage Board,
Maintenance Sub Division,
Karumayal Extension-3,
Gobichettipalayam 638 456 ... Petitioners

Vs.

1.The Presiding Officer,
Labour Court,
Salem
2.N.Sasikumar ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari calling for the records relating to award dated 10.10.2013 made in ID.No.2 of 2003 by the first respondent herein and quash the same.

For Petitioners
in all WP's : Mr.S.Ravindran,
Senior Counsel
for Mrs.S.Mekhala

For Respondents
R1
in all WP's : Court

For R2
in all WP's : Mr.M.Muthupandian

COMMON ORDER

These writ petitions have been filed challenging the common award passed by the first respondent in ID.Nos.2 of 2003, 4 of 2003, 5 of 2003, 7 of 2003, 8 of 2003, 13 of 2003, 14 of 2003, 17 of



W.P.Nos.34667 to 34687 of 2014

2003, 18 of 2003, 20 of 2003, 23 of 2003, 323 of 2003, 47 of 2004, 48 of 2004, 49 of 2004, 50 of 2004, 59 of 2004, 60 of 2004, 61 of 2004, 62 of 2004 and 63 of 2004, thereby ordered to reinstate the second respondent in all the writ petitions within a period of two weeks with 25% of backwages.

2. The case of the second respondent (hereinafter called as workmen) in all the writ petitions is that they had joined in the petitioners Board in various posts as Fitter, Valve Operator, Electrician, Maintenance Assistant, Pump Operator in the year 1997, 1998, 1999 and 2000. While being so, all were orally terminated from their respective services from 01.08.2002. They were not issued any notice and their termination is against the principles of Industrial Disputes Act and amount to unfair labour practice. The petitioners Board engaged more than 15000 workmen in all over Tamilnadu for distribution of water supply, installation of pipelines and maintenance. Out of 15000 workmen, services of the 10000 workmen only were made permanent. Other employees were not made permanent and they were also not



W.P.Nos.34667 to 34687 of 2014

provided with all benefits as contemplated under law established for welfare of labourers. They were working from their date of appointment and till the date of their oral termination continuously without any break. They were not working under any contractor and they were appointed by the Board directly and they were working under the Board. All the workmen's place and the machineries which were used in the course of their employment are belong to the petitioners Board. Therefore, the oral termination of the workmen is contravention of the provisions under Sections 25 F, G, H, N of ID Act. They were continuously working for 480 days in the given two years. They were paid salary under consolidation, schedule operate, N.M.Roll and hand receipt and First and Final Bill. Their employment was also recorded in the measurement book and log book.

3. The petitioners Board filed their counter before the first respondent and stated that the petitioners Board engaged NMR's for the work involved for the establishment of combined work supply system. Those people were paid by the local bodies from its fund. In the year



W.P.Nos.34667 to 34687 of 2014

WEB COPY

1995, the State Government handed over the combined schemes to Tamilnadu Water Supply and Drainage Board for maintenance without any staff. In the year 1996, for maintaining various schemes, it appointed several persons as its employees in several categories. After 1995, no NMR's were engaged by the Board. Those were made several claims and there was settlement under Section 12(3) of Industrial Disputes Act on 08.08.1996. Accordingly, it binds both sides and applicable to those who were in employment of the Board as on the year 1996. Therefore, the workmen were not the employees at any point of time and they cannot raise any industrial dispute. The Board will utilise its own work force whenever the work requires technical knowledge and continuous labour is necessary. In case other than the above nature, the Board will engage the contractors for specific works and for specific periods. The contractors will engage their own force to complete the works entrusted to them in terms of the requirement of the Board. Accordingly, the contractors were selected through public tender for maintenance. The workmen were engaged by their respective contractors and not employed by the petitioners Board. They were not paid any salary by the Board and



W.P.Nos.34667 to 34687 of 2014

they were paid by their respective contractors. Therefore, there was no employer and employee relationship at any point of time. Without considering the same, the first respondent allowed the petitions and ordered to reinstate them with continuity of their service and 25% of backwages.

4. Mr.S.Ravindran, learned Senior Counsel appearing for the petitioners Board submitted that when the petitioners raised specific plea that they were orally terminated by the petitioners, the first respondent ought to have framed issue with regard to their employment whether they were engaged by the petitioners or by the Contractors. The first respondent mainly relied upon the order passed in ID.No.57 of 2000 29.09.2008, in which the Industrial Tribunal held that the Union represented by the workmen and ordered for their regularisation. Therefore, the petitioners Board cannot say that the workmen were not engaged by them and they were engaged by their respective contractors. In fact, the order passed in ID.No.57 of 2000 has been challenged before this Court and it has been stayed in WP.No.2966 of 2010 by order dated



W.P.Nos.34667 to 34687 of 2014

09.02.2011 and it is pending. Further, the first respondent relied upon the order passed by the Deputy Chief Inspector of Labour, Erode dated 30.06.2009 and concluded that the claimants were engaged by the petitioner Board and their services were regularised. The said order also was challenged by the petitioner Board in WP.No.16510 of 2009. By order dated 21.08.2009 though it was dismissed for default and now the petitioners Board is taking appropriate steps to restore the writ petition. Therefore the finding of the Labour Court itself is perverse and cannot be sustained. The first respondent mentioned that the workmen are also the members of the Union in ID.No.57 of 2000 as per the annexure. However, there was no annexure in ID.No.57 of 2000 and the Union only raised Industrial Dispute and the workmen were not the members of the said Union. The workmen were also failed to prove their employment and as such the first respondent wrongly concluded that the burden of proof shifted to the employer and ordered to reinstate the workmen.



W.P.Nos.34667 to 34687 of 2014

WEB COPY

5. Mr.M.Muthupandian, the learned counsel for workmen submitted that though this Court granted interim stay of the award passed by the first respondent, immediately they filed petition to vacate the interim stay and also filed petition for direction directing the petitioners Board to reinstate the workmen or to pay last drawn wages as contemplated under Section 17B of Industrial Disputes Act. The workmen were already proved that they were engaged by the petitioners Board and they have completed 480 days in the given two years continuously and as such in the said Industrial Dispute, their services were directed to be regularised. Therefore, the petitioners Board is being the employer, they cannot orally terminate the workmen and it is contravention of the provisions under Sections 25 F, G, H, N of ID Act. Therefore, the Labour Court rightly ordered to reinstate with 25% backwages and it does not require any interference by this Court.

6. Heard, Mr.S.Ravindran, learned Senior Counsel appearing for the petitioners Board and Mr.M.Muthupandian, the learned counsel for the second respondent, in all the writ petitions.



W.P.Nos.34667 to 34687 of 2014

WEB COPY

7. The first respondent by common award dated 10.10.2013, directed the petitioners Board to reinstate them with 25% backwages with service continuity. The points for consideration in these writ petitions are as follows:

(a) Whether the claimants proved that they were orally terminated by the petitioners Board?

(b) Whether the workmen names were annexed in the Ex.W20 and W21?

(c) Whether the burden of proof shifted on the petitioners Board is right?

(d) Whether the claimants are the workmen of the petitioners Board?

8. The case of the workmen was that they were engaged by the petitioners Board in the year 1997, 1998, 1999 and 2000 and thereafter they were orally terminated on 01.08.2002 by the petitioners Board. When it was being so, the first respondent ought to have framed issue as first that whether the oral termination was right? Whereas the first respondent framed the first issue as whether there was employer



W.P.Nos.34667 to 34687 of 2014

employee relationship between the petitioners Board and the workmen?

Therefore, the workmen failed to prove that they were orally terminated by the petitioners Board. That apart, they were not produced any material to show that they were engaged by the petitioners Board as NMR. They also failed to prove that they were worked continuously for 480 days in that given two years. Therefore, the findings of the first respondent is perverse and against the evidence.

9. On perusal of Ex.W20 and Ex.W21 in ID.No.57 of 2000 dated 29.09.2008 and the order passed by the Deputy Chief Inspector of Labour, Erode dated 30.06.2009 revealed that both were filed by the Union called Tamilnadu Kudineer Vadikal Variya Oozhiyar Madhya Amaippu. It was raised for permanency of daily workers, salary, annual increment and other benefits. The Industrial Tribunal by order dated 29.09.2008 allowed some of the demand made by the workmen through their Union. However, it did not annex any names of workmen. Another Association called Tamilnadu Kudineer Vadikal Variya Oozhiyar Sangam raised dispute before the Deputy Chief Inspector of Factories to



W.P.Nos.34667 to 34687 of 2014

regularise their employment on the ground that they have worked nearly 480 days as contract labourers. It also did not annex employees list. Unfortunately, the first respondent without any annexure to both orders concluded that the workmen are also the members of the said Union and as such their employment were already ordered to regularise and as such the petitioners Board could not have now disputed the employer employee relationship between them. Therefore, it is perverse and the said conclusion cannot be sustained since the names of the workmen were not annexed to Ex.W20 and Ex.W21.

10. Further, the first respondent concluded that the petitioners Board failed to prove that the workmen were not their employees and they were not engaged by them. Except the failure report, the workmen did not even produce any record to show that they were engaged by the petitioners Board and they continuously worked for 480 days in the given two years. Whereas the petitioners Board marked management document 1 to 6 and it revealed that the works were allotted to respective contractors for the respective years. Accordingly, the contractors



W.P.Nos.34667 to 34687 of 2014

engaged workmen and after completion of the work, their engagement were withdrawn by their respective contractors. Therefore, the burden cannot be shifted on the petitioners Board when the workmen failed to prove their employment.

11. In this regard, the learned Senior Counsel for the petitioners Board relied upon the judgment of this Court in the case of ***Managing Director TWAD Board and Others Vs. N.Anantharasu and another*** reported in ***(2023) 1 LLJ 18***, in which this Court held that when the workmen could not able to prove that they were appointed by the competent authorities by the Board in consonance with the Rules, they are not entitled for regularisation or permanent absorption and in the event of granting the benefit of permanent absorptions, the fundamental rights of all other citizen, who all are eligible for such permanent appointment through open competitive process are infringed. It is settled principle that the person sets up a plea of existence of relationship of employer and employee, the burden would be upon him. The burden of proof being on the workmen to establish the employer employee



W.P.Nos.34667 to 34687 of 2014

relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts and they would have proved no employer employee relationship. Therefore, the award passed by the first respondent is perverse and it is not passed on any concrete evidence regarding the appointment of workmen in the petitioners Board. Hence, the workmen are not entitled for any relief as contemplated under Industrial Disputes Act because they were not employees of the petitioners Board and as such they are not entitled to the benefits of Section 25F of the Industrial Disputes Act.

12. In view of the above discussion, the common award passed by the first respondent is liable to be set aside. Accordingly, the common award dated 10.10.2013 passed by the first respondent is set aside and all the writ petitions are allowed. While admitting the writ petitions, this Court granted interim stay. In view of the interim order passed by this Court, the petitioners Board already deposited 25% of backwages of the workmen to the credit of ID.Nos.2 of 2003, 4 of 2003, 5 of 2003, 7 of 2003, 8 of 2003, 13 of 2003, 14 of 2003, 17 of 2003, 18 of 2003, 20 of 2003, 23 of 2003, 323 of 2003, 47 of 2004, 48 of 2004, 49 of 2004, 50 of



W.P.Nos.34667 to 34687 of 2014

2004, 59 of 2004, 60 of 2004, 61 of 2004, 62 of 2004 and 63 of 2004 on the file of the first respondent. However, the workmen filed a petition to vacate the interim order and also filed a petition for wages as contemplated under Section 17B of Industrial Disputes Act. Unfortunately, it was not listed before this Court. Therefore, the workmen are entitled for wages as contemplated under Section 17B of the Industrial Disputes Act till today from the date of the award. Accordingly, the petitioners are permitted to withdraw the deposit which were made in pursuant to the interim order passed by this Court from the first respondent after deducting the wages under Section 17B of Industrial Disputes Act payable by the petitioners / management to the workmen till today in accordance with law. The workmen are also permitted to withdraw the 17B wages from the first respondent. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

27.07.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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W.P.Nos.34667 to 34687 of 2014



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W.P.Nos.34667 to 34687 of 2014

G.K.ILANTHIRAIYAN, J.

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To

- 1.The Presiding Officer,
Labour Court,
Salem
2. The Government Advocate
High Court, Madras.

W.P.Nos.34667 to 34687 of 2014



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W.P.Nos.34667 to 34687 of 2014

27.07.2023