



W.P.No.22672 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.22672 of 2023
and
W.M.P.No.22124 of 2023**

1. The Chairman,
Tamil Nadu Generation and Distribution Corporation,
No.144/800,
Anna Salai, 10th Floor,
Chennai - 600 002.
2. The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution Corporation,
No.144/800,
Anna Salai, 10th Floor,
Chennai - 600 002.
3. The Superintending Engineer,
Chennai North,
Tamil Nadu Generation and Distribution Corporation,
No.144/800,
Anna Salai, 10th Floor,
Chennai - 600 002.

... Petitioners

Vs.



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1. The Assistant Commissioner of Labour (Enforcement)
Authority under the Tamil Nadu Industrial
Establishment (Conferment of Permanent Status to
Workmen) Act, 1981,
Thiruvallur - 602 001.

2. R.Viswanathan
3. E.Loganathan
4. V.Prabhakaran
5. G.Dhanamcheziyan
6. R.Mahendran
7. S.Balaiah
8. K.Babu
9. K.Haribabu
10. G.Venkatesan
11. R.Lakshminarayanan
12. K.Rajeshkumar
13. R.Udhayakumar
14. G.Dillibabu
15. J.Sekar
16. P.Nareshkumar
17. S.Rajkumar
18. P.Thangaraj
19. R.Elumalai
20. R.Gunaseelan
21. K.Ravichandran
22. D.Selvakumar
23. V.Paranthaman
24. J.Rajiv Gandhi
25. N.Tirumalai
26. V.Suresh Babu
27. K.Ramesh
28. K.Nagarathinam
29. So.Santhosam



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30. S.Anbazhagan
31. P.Murugan
32. S.Choku
33. V.Prabhukumar
34. V.Vijayaraj
35. S.Deenadayalan
36. M.Munusamy
37. V.Lakshmanan

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the order of the first respondent in Na.Ka.Nos.729 to 750 and 786 to 809 of 2018 dated 30.01.2023 and quash the same.

For Petitioners	:	Mr.Anand Gopalan for M/s.T.S.Gopalan and Company
For Respondents	:	Mr.M.S.Prem Kumar Government Advocate for R1 Mr.B.Ganeshamoorthy for R2-R37

ORDER

The impugned order in Na.Ka.Nos.729 to 750 and 786 to 809 of 2018 dated 30.01.2023 passed by the first respondent, is under challenge in the present Writ Petition.



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2. The case of the petitioners is that initially 46 persons filed petitions before the first respondent claiming permanency. During the pendency of those petitions, four persons were absorbed into the service of the petitioner Board, five persons did not pursue their cases and one person died, therefore remaining thirty six (36) contract labourers filed applications before the first respondent under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter referred to as 'the Act') claiming permanency into the services of the petitioner Establishment. The said applications were defended by the petitioner Board on the ground that the the provisions of the Act will not apply to the petitioner Board, as it has its own Regulations, and the recruitment can only be done against a sanctioned post and Contract Labour cannot claim permanency as per the Act. The first respondent vide his order dated 30.01.2023 in Na.Ka.Nos.729 to 750 and 786 to 809 of 2018 held that the private respondents herein were engaged as contract labourers contrary to the provisions of law and the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 is



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applicable to the petitioner Establishment. The first respondent vehemently held that the private respondents ought to be considered as direct workmen and directed for the absorption.

3. The learned counsel appearing for the petitioners submitted that even though there was specific denial in the counter filed before the first respondent that there was no employer employee relationship between the petitioner Establishment and the private respondents since they had not worked for 480 days in 24 calender months and the same was not considered by the first respondent. It is further submitted that based on the certificates issued by the Assistant Engineers and by private contractors, the first respondent had erroneously granted the relief to the private respondents. He further submitted that the first respondent has not considered the various judgments in this regard cited by him, especially by the Hon'ble Supreme Court in the case of *A.Umarani Vs. Registrar Co-operative Societies* reported in *2004 (7) SCC 112*, wherein the Hon'ble Supreme Court held that the provisions of the Act 46 of 1981 would not



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override Service Regulations and the judgment of this Court in the case of the *Superintending Engineer, Erode Vs. The Inspector of Labour and others* reported in *2022 SCC OnLine Mad 1003*, wherein this Court had held that, there should be clear fining about 24 calendar months and 480 actual days of working of each workman. Therefore, the learned counsel prays that the impugned order is liable to be set aside.

4. The learned counsel appearing for the petitioners further submitted 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, 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 and 275 of 2020, dated 20.01.2023. Accordingly, he prays for allowing the above writ petition.



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5. The learned counsel appearing for the private respondents did not dispute the facts submitted by the learned counsel appearing for the petitioners.

6. Heard the learned counsel for the petitioners, learned Government Advocate appearing for the first respondent and the learned counsel appearing for the private respondents and perused the materials available on records.

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

“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 :



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“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 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



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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.”

8. In view of the above said decision of this Court, the impugned order passed by the first respondent, dated 30.01.2023 is set aside. The private respondents are at liberty to raise a dispute either under Section 2(k)



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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.

9. Accordingly, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.09.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji



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