



W.P. Nos.29860/2022, Batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
20.09.2023	12.10.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NOS.29860, 30464,30469, 30468, 30470 , 30467, 30633, 30635, 30637 ,
30638 , 30639, 30641, 30643 , 30645 , 30647, 30650, 30672 , 30673 , 30674 ,
30675 , 30677, 30700, 30707 ,30709, 30711, 30713, 31872,31877 ,31879,
32078, 32086, 32094 , 32096, 32097, 32099, 32101, 32103, 32492, 32496 ,
32500 ,32503, 32680, 32692, 32694 & 32699 OF 2022**

AND

**W.M.P. NOS. 29247, 29893, 29899, 29898, 29900, 29897, 30073, 30075,
30079, 30080, 30083, 30085, 30088, 30089, 30090, 30091, 30110, 30111,
30112, 30114, 30116, 30133, 30137, 30140, 30142, 30146, 31313, 31317,
31321, 31505, 31513, 31521, 31525, 31526, 31529, 31531, 31912, 31913,
31914, 31915, 32069, 32076, 32079 & 32083 OF 2022**

W.P. NO. 29860 OF 2022

The Management of
Caterpillar India Pvt. Ltd.
Melnallathur Village & Post
Thiruvallur 602 002
Rep. By its Authorised Signatory

.. Petitioner

- Vs -

1. R.Babu
2. Mr. Ramachandran
Proprietor, C.R.Caterers India Pvt. Ltd.



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No.48/39, Rajaji Salai

Wavoo Mansions, 4th Floor

Chennai 600 001.

.. Respondents

W.P. No.29860 of 2022 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the II Addl. Labour Court, Chennai in I.D. No.281 of 2015 and quash its award dated 16.08.2022.

For Petitioners : Mr. G.Anand, for
M/s. T.S.Gopalan & Co.

For Respondents : Mr. V.Prakash, SC, for
(in all WPs) Mr. P.Vellaipandi for R-1
Mr. S.Sai Prakash for R-2

COMMON ORDER

Assailing the order passed by the II Addl. Labour Court directing the petitioner to reinstate the respective 1st respondent with continuity of service with 50% backwages, but without any attendant benefits, the present writ petitions have been preferred.



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2. For brevity, the petitioner would be referred to as the Management and the respective 1st respondent/workmen would be referred to as workmen.

3. The brief facts of the case of the Management is that they had purchased the Earth Moving Division from Hindustan Motors Ltd by business transfer agreement in the year 2001 and the agreement also lists the workmen, who were employed in the division, who would be transferred to the Management. The premises is registered as a Factory under the Factories Act, 1948 and the workmen are represented by Caterpillar India Workers Union, which has been recognized by the Management and more than 6 settlements have been signed with the said Union till date with regard to wages and service conditions of the workmen, who are on the rolls of the Management.

4. It is the further case of the Management that Section 46 of the Factories Act envisages provision of a canteen to provide food and space to take the food and the Management had been engaging contractors, who specialize in catering to operate the canteen and the said contract is in



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consonance with the requirements of the Contract Labour (Regulation & Abolition) Act, 1970. It is the further case of the Management that it holds a Certificate of Registration as principal employer under the provisions of the Contract Labour (Regulation & Abolition) Act and one of the contractors mentioned in the Certificate of Registration is the 2nd respondent, who has taken the license to run the canteen within the premises of the petitioner's factory on the arrangement that the 2nd respondent would engage its own men to provide materials, prepare food and serve it to all the employees of the petitioners' factory.

5. It is the further case of the Management that other contractors, apart from the 2nd respondent was also engaged by the Management for the purpose of various other activities like Housekeeping, etc. Some contract labourers of the factory formed a Union called the Caterpillar Contract Labour Union and the contract labourers working under the 2nd respondent were members of the said Union. The 2nd respondent had entered into settlements with regard to the wages and conditions of service of all contract workmen



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and such settlements were entered in 2007 and 2007 between the contract labour union and the concerned contractors.

6. It is the further case of the Management that due to operational difficulties in running the canteen within the premises for preparing the food and as the 2nd respondent was not able to bring food prepared from outside and provide the same to the employees in the factory, the arrangement between the Management and the 2nd respondent was severed and the 2nd respondent also agreed to shift all his workmen in the canteen elsewhere.

7. Due to recession in the business and minimal production, the Management declared paid leave to its employees and notice was also displayed and parallel discussion was being held between the Management and the 2nd respondent for termination of the contract. However, the Contract Labour Union raised a dispute on 27.12.2013 seeking absorption of the workmen of the 2nd respondent with the Management.

8. It is the further case of the Management that the canteen was put an end to on 31.12.2013, which was followed by the issuance of a letter dated



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2.1.2014 directing the respective 1st respondent to report for work at their office. In view of the aforesaid letter, the respective 1st respondent raised industrial disputes, which were taken on file. It is the further case of the Management that all the statutory dues like PF, ESI, etc., were remitted by the 2nd respondent and there was no privity of contract between the Management and the respective 1st respondents. It is the further case of the Management that the respective 1st respondent were on the rolls of the 2nd respondent and the 2nd respondent was paying the salary and all other statutory payments with regard to the workmen. It is the further case of the petitioner that the 2nd respondent, in its counter in the disputes, also accepted the engagement of the workmen.

9. Taking up the issue for consideration in which oral and documentary evidence were adduced and the documentary evidence, though conclusively proved that the workmen were under the engagement of the 2nd respondent, however, erroneously and under a misconceived appreciation of evidence held that the workmen were employees of the Management vide its award and ordered reinstatement with continuity of service and 50% backwages, but



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without attendant benefits. Aggrieved by the said order, the present writ petitions have been filed.

10. Learned counsel appearing for the Management submitted that the Labour Court failed to appreciate the scope of Section 2-A of the Act, as the workmen had admitted that they were employed with the 2nd respondent and, therefore, the considering the Management as the employer is wholly unsustainable. It is the further submission of the learned counsel that a contract labour cannot be termed as an employee of the principal by holding the contract to be sham and nominal as the scope of the dispute is restricted to adjudicate the legality of the termination.

11. It is the further submission of the learned counsel that the mere running of a canteen on the basis of a statutory mandate under the Factories Act cannot be termed to mean that the said canteen is run by the Management and that the labourers employed therein are the employees of the Management. Learned counsel, to impress upon the said point, placed reliance on the decision of the Apex Court in **Balwant Ray Saluja & Anr. – Vs –**



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Air India Ltd., & Ors. (2014 (9) SCC 407) and Haldia Refinery Canteen Employees Union & Ors. – Vs – Indian Oil Corporation Ltd. & Ors. (2005 (5) SCC 51).

12. It is the further submission of the learned counsel that the finding of the Labour Court that the Management supervised the work of the workmen and, therefore, they would have to be construed as employees of the Management is wholly incorrect and perverse, as it is against the dictum of the Supreme Court in ***International Airports Authority Employees Union – Vs – Airport Authority of India Ltd. (1997 (10) SCC 754)*** and ***Director, Steel Authority of India Ltd. – Vs – Ispat Khadan Janta Mazdoor Union (2019 (7) SCC 440)***, wherein it has been clearly held that supervision would not *per se* make the employees of the contractor to be the employees of the principal.

13. It is the further submission of the learned counsel that the employer-employee relationship between the Management and the workmen have not been established and without there being any material to prove the same, except for the payment of PF and ESI, which has been paid by the 2nd



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respondent, the finding rendered by the Labour Court is wholly unreasonable and unjustified. It is the further submission of the learned counsel that it has been admitted by the 2nd respondent that it was paying the wages to the workmen and also paying the contribution towards ESI and PF.

14. It is the further submission of the learned counsel that the appreciation of the contract between the Management and the 2nd respondent as one being sham and nominal in a petition u/s 2-A of the Act is wholly erroneous and in the absence of any conclusive material to prove the same, the finding recorded by the Labour Court that there was conclusive proof of nexus between the Management and the 2nd respondent is bereft of materials. Therefore, the findings being perverse, arbitrary, unreasonable and against the settled ratio laid down by the Apex Court in a catena of decisions, the award passed by the Labour Court deserves to be set aside.

15. Per contra, learned senior counsel appearing for the workmen vehemently contended that the Labour Court has analysed all the materials and has come to the conclusion that the contract, which has been projected to



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have been entered into between the Management and the 2nd respondent is a sham and nominal document, inasmuch as it subverts to deny the workmen of their rightful employment with the Management, irrespective of their long association in the canteen run by the Management.

16. It is the further submission of the learned senior counsel that Section 46 of the Factories Act mandates that any factory, which has in excess of 100 employees is bound to run a canteen within its premises, which clearly shows that the statutory prescription for the Management is to run a canteen, which would only mean that the canteen ought to be run by the Management and not outsourced. However, to defeat Section 46 of the Factories Act, the Management has entered into a fictitious contract with the 2nd respondent and under the guise of the said contract, the Management is employing the workmen through the 2nd respondent, though in actuality, the workmen are employed by the Management and not by the 2nd respondent. Thereby the very purpose of the statutory prescription is sought to be made nugatory by the Management and defeats the legitimate rights of the workmen.



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17. It is the further submission of the learned senior counsel that when a statutory prescription is made u/s 46 of the Factories Act, the Management is bound to run the canteen and it cannot claim that it has been given on contract and is being run through a contractor by employing contract labourers. It is therefore the submission of the learned senior counsel that when the Labour Court had exercised its judicial discretion and held that the workmen were in fact employed by the Management, the said finding cannot be said to be either perverse or unreasonable and, therefore, no interference is warranted with the said award.

18. In support of the aforesaid contention, learned senior counsel placed reliance on the decision of this Court in the case of ***The Management of Bata India Ltd. & Hosur Bata Employees Union – Vs – The Presiding Officer, Industrial Tribunal & Ors. (2010 (I) LLJ 175 Mad)***.

19. Learned counsel appearing for the 2nd respondent/contractor, while sailed along with the submissions of the learned counsel for the Management, further submitted that though after cancellation of the contract between the



Management and the 2nd respondent, though the 2nd respondent was willing to provide employment to the workmen and other similarly placed employees and had called upon the workmen herein and other employees to report to its office through a written communication, however, the workmen herein did not report for duty, but raised the dispute. It is the further submission of the learned counsel that though the 2nd respondent was ready and willing to provide employment opportunity to the workmen, yet they had sought for employment only with the Management.

20. It is the further submission of the learned counsel that at no point of time, the 2nd respondent had terminated the employment of the workmen and all along they were ready and willing to provide employment to the workmen, but only the workmen failed to take up the employment.

21. It is the further case of the 2nd respondent that of the entire work force working in the canteen of the Management under the 2nd respondent about 100 persons had settled their dues with the 2nd respondent either at the time of conciliation or during the pendency of the dispute and that the 2nd



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respondent is willing to extend the same monetary benefit as was provided to the similarly placed persons, who were under the employment of the 2nd respondent like the workmen herein.

22. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions relied on by the respective counsel.

23. The pivotal issue that requires determination in this case is *whether the workmen, who were employed in the canteen run within the factory premises of the Management in consonance with Section 46 of the Factories Act could be held to be employees of the Management, merely because the canteen was run within the factory premises.*

24. Though vehement and heated submissions were advanced by the learned counsel appearing on either side on this aspect, however, this issue



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stands clinched and settled by the decision of the Apex Court in *Balwant Rai*

Saluja case (supra), wherein the Apex Court has held as under :-

61. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia, (i) who appoints the workers; (ii) who pays the salary/remuneration; (iii) who has the authority to dismiss; (iv) who can take disciplinary action; (v) whether there is continuity of service; and (vi) extent of control and supervision, i.e. whether there exists complete control and supervision. As regards, extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case (supra), the International Airport Authority of India case (supra) and the NALCO case (supra).

25. In the case on hand, there is overwhelming materials in the form of salary/remuneration/wages being paid by the 2nd respondent to the workmen. Further, ESI, PF, etc., which are the statutory payments to be made by the employer in respect of the workmen have been paid by the 2nd respondent. All the relevant factors, which establish employer-employee relationship is found existent only between the workmen and the 2nd respondent. There is no material even to infer that the workmen have any association with the



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Management, but for their presence within the factory premises of the Management for the purpose of rendering their service in the canteen, which has been taken on by the 2nd respondent from the Management. Therefore, the aforesaid decision would squarely stand attracted to the case on hand.

26. Further, the Apex Court had occasion to consider the factors, which have been laid down in *Balwant Ray Saluka's case (supra)* in the decision in ***Bharat Heavy Electricals Ltd. – Vs – Mahendra Prasad Jakhmola & Ors. (2019 (13) SCC 82)***, wherein the Supreme Court held as under :-

“19. The expression ‘control and supervision’ were further explained with reference to an earlier judgment of this Court as follows:

“12. The expression “control and supervision” in the context of contract labour was explained by this Court in International Airport Authority of India v. International Air Cargo Workers’ Union thus: (SCC p.388, paras 38-39)

“38.... if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if



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the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.”

20. From this judgment, it is clear that test No. 1 is not met on the facts of this case as the contractor pays the workmen their wages. Secondly, the principal employer cannot be said to control and supervise the work of the employee merely because he directs the workmen of the contractor ‘what to do’ after the contractor assigns/ allots the employee to the principal employer. This is precisely what paragraph 12



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explains as being supervision and control of the principal employer that is secondary in nature, as such control is exercised only after such workman has been assigned to the principal employer to do a particular work.

21. We may hasten to add that this view of the law has been reiterated in '[Balwant Rai Saluja and Another v. Air India Limited and Others](#)' [2014(9) SCC 407], as follows:

"65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

- (i) who appoints the workers;*
- (ii) who pays the salary/remuneration;*
- (iii) who has the authority to dismiss;*
- (iv) who can take disciplinary action;*
- (v) whether there is continuity of service; and*
- (vi) extent of control and supervision i.e. whether there exists complete control and supervision.*

As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case [(2011) 1 SCC 635], International Airport Authority of India case [2009 13 SCC 374] and Nalco case [(2014) 6 SCC 756]

27. The aforesaid decisions of the Supreme Court not only clinches the issue in favour of the Management, but renders the claim of the workmen



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beyond the pale of any doubt that the said workmen are not employees under the Management and that there is no relationship of employer-employee existing between them. The Labour Court, without appreciating the above decisions, though had been placed before it for consideration, has come to an erroneous and misconceived opinion, based on sympathy and had granted the relief to the workmen, which cannot be allowed to sustain. ***Therefore, the writ petitions at the behest of the Management deserves to be allowed.***

28. However, one fact which requires the attention of this Court under Article 226 of the Constitution is the fact that the 2nd respondent had, in its counter, categorically accepted that the workmen were working under the 2nd respondent and they were employed in the canteen which was run within the factory premises of the Management and upon severance of the contract, though the workmen were asked to report for work, they did not turn up. It has further been accepted by the 2nd respondent that of the workmen employed in the canteen, more than 100 workmen have taken settlement, which has been settled by the 2nd respondent and insofar as the present



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workmen are concerned, it is fairly submitted in the counter of the 2nd respondent that they would also be compensated.

29. On the above basis, this Court had called for the amounts which, had the workmen herein agreed at the relevant point of time, would have been paid, as has been paid to similarly situated workmen and a tabulated statement has been placed before this Court with regard to the amounts that were settled to the workmen, who were similarly placed like the workmen herein.

30. From the aforesaid tabulated statement, it transpires that the workmen have put in between 1 and 7 years as contract employees, like the workmen, who are concerned with the present petitions. From the statement submitted it is seen that the lower most amount that has been paid to similarly placed workmen is Rs.2.5 Lakhs and the highest amount paid is Rs.3.20 Lakhs. The said amounts were paid in the year 2014-2015 to similarly placed workmen.



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31. In the light of the fact that the 2nd respondent is ready and willing to settle the workmen herein in line with the amounts that have been paid to the workmen similarly placed and has also further submitted that the workmen concerned in the present writ petitions could be grouped into two categories, viz., the persons, who have put in upto four years of service and the persons, who have put in, in excess of four years of service and upto seven years and amount payable towards full quit may be determined by this Court. In the above backdrop, this Court is of the considered view that a lumpsum compensation could be paid by the 2nd respondent to the workmen concerned with the present writ petitions.

32. In view of the above, the compensation that would be payable by the 2nd respondent to the workmen concerned with the present writ petitions would be as under :-

Workmen who have put in upto 4 years of service	:	Rs. 4.00 Lakhs
Workmen who have put in more than 4 years of service	:	Rs.7.50 Lakhs



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33. The aforesaid amount, which is payable to the workmen concerned in the aforesaid writ petitions would be in full and final settlement and they would not be entitled to any further claim over the 2nd respondent.

34. In the result, the following order is passed :-

- i) *The writ petitions are allowed by setting aside the award impugned in the present writ petitions;*
- ii) *The 1st respondent in the said writ petitions would be entitled to receive the sum as prescribed for in paragraphs 32 & 33 of this order towards full quit of all their dues from the 2nd respondent.*
- iii) *It is made clear that since the amount is paid as compensation to the workmen, no TDS shall be deducted by the 2nd respondent;*
- iv) *It also made clear that all other workmen, who have already entered into settlement with the 2nd respondent either as a group or have settled with the 2nd respondent individually, the said workmen would not be entitled to claim any sum as quantified by this Court above and no computation petition shall be entertained by any Labour Court or Tribunal; and*



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v) *Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.*

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Index : Yes / No

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To

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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
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