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W.A. Nos. 3138 of 2023 & 3160 to 3164 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. Nos. 3138 of 2023 & 3160 to 3164 of 2023

&

C.M.P. Nos.25902, 25904, 25954, 25955, 25956, 25958, 25959, 25960,

25961, 25962, 25963 of 2023

W.A. No. 3138 of 2023

1. The Managing Director,
Tamil Nadu 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 2nd petitioner already addressed
as office of the Executive Urban
Project Division, Kangayam has been
closed and records were handed over to
TWAD Board RWS Division, Erode is
the present. (Address of the 2nd petitioner)



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No.10, G.L. Bungalow, Muthusamy Street,
Sathi Salai, Erode – 638 001.

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3. The Executive Engineer,
Tamil Nadu Water Supply and Drainage
Board, Maintenance Division,
Muthiah Complex, 3rd Floor, 1171,
Mettur Road, Erode – 638 011.
4. The Assistant Executive Engineer,
Tamil Nadu Water Supply and Drainage
Board, Maintenance Sub Division,
Karumayal Extension -3,
Gobichettipalayam – 638 456. ..Appellants

Vs.

1. The Presiding Officer,
Labour Court, Salem.
2. R. Balamurugan ..Respondents

Prayer: Writ Appeal as against the order dated 27.07.2023 passed in
W.P. No. 34670 of 2014.

For Appellants	::	Mr.S. Ravindran, Senior Counsel for Mr.S. Mekhala
For Respondents	::	Mr.V. Ajoy Khose for Mr. M.Muthupandian for R2

COMMON JUDGMENT



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*(Delivered by **S. Vaidyanathan, J.**)*

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The present intra court appeals have been filed by the Tamil Nadu Water Supply and Drainage Board as against the order of the learned Single Judge dated 27.07.2023 passed in W.P. Nos. 34670, 34673, 34672, 34671, 34686 & 34667 of 2014 respectively insofar as it was held that the workmen therein were entitled to payment of wages under Section 17B of Industrial Disputes Act, 1947 (“I.D. Act”, in short) from the date of the award till the date of disposal of the writ petitions and the appellant Board was directed to withdraw the deposit made by them before the Labour Court pursuant to the interim orders passed in the writ petitions after deducting the wages under Section 17B of I.D. Act, 1947 payable by the appellant Board to the workmen and permitted the workmen to withdraw the same.

2. The facts, in a nutshell, which resulted in the filing of the writ appeals, are stated thus:

The employees concerned in the respective writ appeals, who had joined the appellant Board in various posts as Valve Operator, Fitter and Electrician, as the case may be, between 1998 to 2000, aggrieved by their



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oral termination, along with other similarly placed workmen, raised I.D. Nos.63/2004, 23/2003, 49/2004, 14/2003, 7/2003 & 2/2003 before the Labour Court, Salem and on considering the rival contentions, the Labour Court, by award dated 10.10.2023, directed the Board to reinstate the workmen with 25% backwages and continuity of service. Questioning the said award, the Board preferred writ petitions in W.P.Nos. 34667 to 34687 of 2014 and by common order dated 27.07.2023, the learned Single Judge, set aside the award passed by the Labour Court and allowed the writ petitions. However, while doing so, held that the workmen therein were entitled to wages as contemplated under Section 17B of the I.D.Act, 1947 from the date of the award till then and permitted them to withdraw the same from the deposit made by the Board pursuant to the interim orders passed by this Court during the pendency of the writ petitions. Challenging the same, as stated supra, the present writ appeals have been filed by the Board.

3. The appellant Management contended that these employees



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were engaged as NMRs and they were paid by the local bodies from its funds. During the year 1996, for maintaining various schemes, several employees were employed. After 1995, no NMRs were engaged by the Board. There was a settlement under Section 12(3) of Industrial Disputes Act, 1947 dated 08.08.1996 and it binds both sides and applicable to those who were in employment of the Board at the relevant point of time. According to the appellant, the 2nd respondent in the respective writ appeals were not employees of the Board at any point of time and they cannot raise any industrial dispute. It is the case of the appellant Board that it used to engage contractors for specific works and for specific periods and these contractors, in turn, would engage their own force to complete the works entrusted to them in terms of the requirement of the Board. Further, the contractors were selected through public tender for maintenance. The appellant Management's contention is that the workmen were engaged through contractors and not directly by the Board. There was no employer-employee relationship at any point of time and the workmen are not entitled to relief. Therefore, the learned Single Judge, while setting aside the award passed by the Labour Court, ought not to have granted the relief in terms of



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Section 17B of I.D.Act, 1947.

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4. On the other hand, the employees concerned in the respective writ appeals would state that they were verbally terminated from their respective services with effect from 01.08.2002 without any notice and the action of the employer amounts to unfair labour practice. The employees would further state that the Board had engaged more than 15000 workmen throughout Tamil Nadu for distribution of water supply, installation of pipelines and maintenance. Out of the said 15,000 workmen, only 10,000 workmen were made permanent. According to the employees, they were not working under any contractor and they were appointed by the Board directly and were working under the Board. Therefore, the oral termination is in contravention of the provisions under Sections 25(F), 25(G), 25(H) & 25(N) of I.D.Act, 1947. As they had rendered 480 days of continuous service within a period of less than 2years, they were paid salary under consolidation, N.M. Roll, hand receipt and first and final bill and their employment was also recorded in Measurement Book and Log Book. Therefore, the award of the Labour Court granting the relief was perfectly in



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order and the learned Single Judge ought not to have interfered with the same.

5. Heard both parties.

6. In the industrial dispute raised by respective employees before the Labour Court, Salem, along with other workmen, the Labour Court has granted the relief by award dated 10.10.2013. The Labour Court has relied upon Exs.W20 and W21 in I.D. No. 57 of 2000 wherein award was passed on 29.09.2008 and the order of the Deputy Chief Inspector of Labour, Erode dated 30.06.2009 to grant the relief to the workmen. Taking note of the submissions of both parties, the Labour Court came to the conclusion that the employees would be entitled to reinstatement as there was violation of provisions of I.D. Act, 1947 and that the employees would be entitled to all the benefits and the backwages were restricted to 25%. It is the Management, which questioned the award by way of writ petitions, insofar as it granted reinstatement with continuity of service apart from granting backwages at 25%.

7. Learned Single Judge, after taking into account the totality of circumstances came to the conclusion that the employees did not prove that



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they were appointed by the competent authorities of the Board in consonance with the Rules and they are not entitled to regularisation and permanent absorption. The learned Single Judge also held that the initial burden of proving the existence of employer-employee relationship was on the employees and the same cannot be shifted to the employer stating that if the books of accounts had been produced by the employer, then they would have established the employer-employee relationship. Further, considering the fact that the award runs counter to the documentary evidence, more so, that the employees were not direct employees of the Board, the award of the Labour Court was set aside on the ground that there could not be any violation of Section 25F of I.D. Act, 1947. However, taking note of the fact that some of the employees had filed petitions claiming wages under Section 17B of I.D. Act, 1947, during the pendency of the writ petitions, the same was extended to the employees, more so, in the light of the judgment of the Hon'ble Apex Court 2000 (9) SCC 534 (*Workman V. Hindustan Vegetable Oil Corporation Ltd.*).

8. The contention of Mr.S. Ravindran, learned Senior Counsel



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appearing for the appellant Board that those employees whose applications for payment of 17B wages were numbered alone would be entitled to the relief cannot be accepted. It is suffice if an application is filed and there is no need that it should be numbered. For the sake of convenience, Section 17B of I.D. Act, 1947 is extracted hereunder:

"17B. Payment of full wages to workman pending proceedings in higher courts.- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

Nowhere, it is stated that an application claiming wages will have to be filed and it should be numbered, thereafter which an employee would be



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entitled to payment. However, taking into account the totality of circumstances, that the finding of the Labour Court has been held to be perverse by the learned Single Judge, that no relief has been granted and that so many employees are before this Court, we are of the view that in order to give a quietus to the matter, when the factum of employment is not in dispute, it is suffice that the monetary benefits payable to the employees in these writ appeals under Section 17B of I.D. Act, 1947, which cannot be less than minimum wages, is fixed at Rs.50,000/- insofar as each workman is concerned.

9. Mr.S. Ravindran, learned Senior Counsel for the appellants would submit that during the pendency of the writ petitions, a sum of Rs.37,500/- had already been deposited in respect of each workman concerned in the industrial dispute before the Labour Court. The Labour Court, on production of a copy of this order, is directed to release the amount with accrued interest to each of the workman, who will be identified by the learned counsel for the workmen without insisting for “No Objection” endorsement by the Board. The balance amount of Rs.12,500/- shall be



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released to each of the workman concerned in the industrial dispute within a period of one month from the date of receipt of a copy of this order.

10. While disposing of the writ appeals with the above directions, it is made clear that we have not interfered with the order of the learned Single Judge setting aside the award of the Labour Court, except to the extent of grant of compensation of Rs.50,000/- to each of the workman concerned in the industrial dispute. No costs. Connected C.M.Ps are closed.

(S.V.N.J.) (K.R.S.J.)
15.11.2023

nv

To

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Tamil Nadu Water Supply and
Drainage Board,
No.31, Kamarajar Salai,
Chennai – 600 005.

S. VAIDYANATHAN,J.

AND

K. RAJASEKAR,J.

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