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W.P.No.33258 of 2019 & W.M.P. No. 33720 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

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1. The Superintending Engineer (Civil)
Tamil Nadu Generation and Distribution
Corporation Limited,
(formerly known as Tamil Nadu Electricity
Board), Emerlad
The Nilgiris District 643 209

2. The Superintending Engineer (Civil)
Hydro Power Project
TANGEDCO, Erode

... Petitioners

Vs.

1. V. Pushpalatha

2. V. Vijayan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the Common Award dated 25.09.2018, passed by the Additional Labour Court, Coimbatore in I.D. No.714/2008 and I.D.No.715/2008 and quash the same.

For Petitioners : Mr. G. Anandakrishnan
For Respondents : No appearance.



The Writ Petition is filed challenging the Common Award dated 25.09.2018 in I.D. No.714/2008 and I.D. No.715/2008 on the file of the Additional Labour Court, Coimbatore. The petitioners are the Superintending Engineers (Civil), Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), Nilgiris District and Erode District, while the two respondents are husband and wife, V.Pushpalatha and V. Vijayan.

Both the respondents were working as warden and helper from 1997 in the Inspection Bungalow attached to the Hydro Power Project, Masanagudi Post, Nilgiris. Subsequently on 01.08.2004 the services of both were terminated. They were infact working under a contractor who was maintaining the Inspection Bungalow. The office of the Superintending Engineer, Hydro Power Project, Masanagudi got merged with Superintending Engineer (Civil), TANGEDCO, Emerald, Nilgiris on 01.01.2006. According to both the respondents, they were under direct employment of the 1st respondent and had worked



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continuously for more than four hundred and eighty days in twenty four calendar months and therefore ought to have been made permanent.

Therefore, they had approached the Additional Labour Court, Coimbatore for adjudication of their Industrial Dispute which were numbered as I.D. No. 714/2008 and I.D. No.715/2008 under Section 2(A)(2) of the Industrial Disputes Act, 1947 (herein after referred to as "the ID Act"). The Additional Labour Court, Coimbatore, concluded that both the respondents are entitled for reinstatement in service under the 1st petitioner and also set aside the oral termination orders dated 01.08.2004. The Common Award dated 25.09.2018, however also made it clear that both the respondents are not entitled for continuity of service, back wages and other attendant benefits. Aggrieved over the same, the present petitioners have come up with the present Writ Petition.

3. Mr. G. Anandakrishnan, learned counsel for the petitioners would contend that the employer-employee relationship between the petitioner Corporation and the respondents never existed at any point of time. He further contended that the maintenance of the Inspection Bungalow attached to the Hydro Power Project, Masanagudi, Nilgiris District, was outsourced to contractors from time to time and



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therefore the question of making the respondents permanent employees of the petitioner Corporation never arises. It was also pointed out by the Learned Counsel that the onus of proving the employer-employee relationship entirely rests with the respondents and merely because they were instructed to perform a particular job it cannot be construed as existence of employer-employee relationship especially when the salaries were paid to them only by the contractors and not by the 1st petitioner. It was also argued by him that the respondents ought to have proved that they were in continuous service of four hundred and eighty days in twenty four calendar months preceding their termination. It is also his contention that there was an inordinate delay on the part of the respondents in raising the disputes before the Labour Court. According to him the Labour Court had erred in its reasoning while concluding that there existed employer-employee relationship between the petitioners and respondents. Therefore, he prayed for allowing the Writ Petition.

4. Though the names of the respondents are printed in the cause list after serving notice to them, there is no representation on their behalf.



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5. This dispute boils down to three important aspects.

- (a) Whether the employer-employee relationship was established and if so how?
- (b) Whether the two respondents were contractual labourers under contractor/contractors engaged by the petitioner Corporation as contended by the latter and whether it has been substantiated?
- (c) Have the two respondents proved that they were in continuous employment for more than four hundred and eighty days in twenty four calendar months whether the same has been substantiated?

6. The Labour Court relied upon the Service Certificates issued by the petitioner Corporation to the respondents that they worked as contract Labourers in the Inspection Bungalow from the period 01.06.1997 to 06.11.1998. According to the Labour Court these certificates adduced by the respondents were not disputed by the petitioner Corporation. In fact one of the officials of the petitioner Corporation who deposed on behalf of them not only acknowledged the Service Certificates but also deposed that both the respondents worked as Contract Labourers from 1997 to 2004. The Labour Court also further relied on the deposition of the same witness that the work performed by



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the respondents was directly supervised by the 1st petitioner and therefore the Court concluded that the employer-employee relationship existed. However in ***Bharat Heavy Electricals Ltd., Vs. Mahendra Prasad Jakhmola and others*** reported in (2019) 13 SCC 82, the Apex Court had observed thus:

"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"

However, it is evident from the impugned order that the Labour Court also went into the aspect of Contract Labour (Regulation and Abolition) Act 1970 (hereinafter referred to as "the Act") and emphasised that Section 12 of the Act mandates a proper licence for every contractor who engages contract Labour and also the provisions of Section 29 of the Act which mandates maintenance of proper Records and Registers regarding the Contract Labour not only by the contractor but also by the principal Employer. In the instant case, the petitioner Corporation failed to adduce any evidence in this regard. In fact neither the affidavit filed in this Court nor the counter filed before the Labour Court had any mention about the name of the contractor and other particulars. According to the



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impugned order, the contention of the petitioner Corporation that the contractors were changed periodically while the workers remained the same was adequate to show that the contract was only sham and nominal.

7. The Labour Court was right in concluding that such 'Contractors' set up by the petitioner Corporation was only to avoid statutory liability. It is pertinent to mention at this juncture, as admitted by the petitioner Corporation in its affidavit, that many of the Contract Labourers who had completed five years of service as on 23.12.2005 were eligible to receive ex-gratia amount and some other Contract Workmen were absorbed as all of them were working in a particular project 'PUSHEP'. In the decision in *the Secretary, Haryana State Electricity Board vs. Suresh & others* reported in (1999) 1 LLJ 1086, the Hon'ble Supreme Court has held thus.

"Once the Board was not a Principal Employer and the so called contractor was not a licensed contractor under the Act, the inevitable conclusion was that the so called contract system was a camouflage, smoke and a screen and disguised in almost a transparent veil which could easily be pierced and the real relationship between the Board and the



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respondent employees could be clearly visualized."

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8. Thus, in my opinion, the Labour Court was right in holding that the employer-employee relationship existed between the petitioners and the respondents especially in the light of the fact that the petitioner Corporation did not come out clean with all material facts and documents to substantiate that the contractor was real and the contract system was not sham and nominal. The Labour Court rightly drew the adverse inference and I do not find any reason to interfere with the same.

9. The 3rd aspect regarding the continuous employment does not require much discussion as the deposition of Madheswari, one of the officials of the petitioner Corporation had clearly spelt out that the respondents were working from 1997-2004. As regards the delay by the respondents in approaching the Court, the Labour Court after thorough scrutiny observed that there was delay and therefore continuity of service or grant of back wages were denied thereby balancing the interests of both the petitioner and the respondents.



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10. In the result, the Writ Petition is dismissed. No costs.

Consequently connected Writ Miscellaneous Petition is closed.

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Index : yes/no

Speaking /Non speaking Order



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R.HEMALATHA, J.

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