



WEB COPY



W.A. No.424 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

W.A. No. 424 of 2021 and
C.M.P. No. 1681 of 2021

The Management of
Ennore Thermal Power Station,
Tamil Nadu Electricity Board,
Ennore, Chennai – 600057.

... Appellant/ Petitioner

-VS-

1. The Presiding Officer,
Principal labour Court,
Chennai.
2. The Hindustan Security &
Detective Services
727, Ambal Building,
Anna Salai, Chennai – 600 006.
3. The Southern Security Service,
50, 9th Street, Sourashtra Nagar,
Choolaimedu High Road,
Chennai – 600 094
4. The Guardian Security Bureau Ltd.,
33, Nakker New Street
Madurai – 625 001.



W.A. No.424 of 2021

WEB COPY

5. The Security & Detective Bureau Limited,
17, Cathedral Garden Road,
Chennai – 600 034.

6. S. Ravi
7. K. Darnesan
8. V. Chakkramoorthy
9. M. Dasarathn
10. D. Ramamoorthy
11. G. Ravi
12. S. Seshan
13. S. R. Dhanapal
14. T.E. Ekambaram
15. M. Muthuraman
16. D. Anbalagan
17. P. Tamilarasan
18. V.S. Mani
19. C. Manmadan
20. E. Ramalingam
21. T. Gajapathy
22. D. Veeran
23. A.R. Nagappan
24. M. Govindaraj
25. N Ramesh
26. V Elangovan
27. P Dharmalingam
28. V Rajan
29. C M Palani
30. S Desigamani
31. S Tamizhselvan
32. E Ramachandran
33. S Murugesapandian
34. V Doss
35. V R Ravichandran
36. M Devaraj
37. A Sekara
38. V Munuswamy
39. M Munusamy
40. M Thanushkodi
41. K Dharman



W.A. No.424 of 2021

42. T V Nagarajan
43. S Natarajan
44. M Mustafa
45. R Jayakumar
46. R Ulaganathan
47. R Mahalingam
48. E Devan
49. S Karthikeyan
50. N Rathinam
51. G Chokkalingam
52. Y Gurudevan
53. N Gopalakrishnan
54. P Ravichandran
55. V Prabakaran
56. D Loganathan
57. V R Madhavan
58. N Ganesan
59. L Murugesan
60. R P Thulukkanam
61. V Mayilvaganan
62. R Chellaiah
63. S Ramaiah
64. M Selvam
65. S Lakshmanan
66. E Anandan
67. K Dharman
68. S Venu
69. K Chandrasekar
70. G Dayalan
71. T Murugesan
72. M Thulukkanam
73. M Palani
74. M Palaniswamy

... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the Order passed by this Court dated 07.06.2010 made in W.P.No.12284 of 2005.



W.A. No.424 of 2021

For Appellant : Mr. Anand Gopalan
For Mr.T.S.Gopalan and Co.,
For R1 : Labour Court
For R2 : NA
For R3 : NA
For R4 : NA
For R5 : NA
For RR 6 to 74 : Mr. K. Shanmugakani

J U D G M E N T

(By K.Rajasekar,J.,)

This Writ appeal has been filed by the Management to set aside the common award passed in I.D. Nos.73 to 140 and 227 of 2001, dated 20.10.2004 passed by the Principal Labour Court, Chennai and confirmed by the learned Single Judge in the Writ Petition in the W.P. No.12284 of 2005, dated 07.06.2010.

2. For the sake of convenience, the parties viz., The Management of Ennore Thermal Power Station and the workmen, who raised industrial disputes, are hereinafter referred to as 'the Management' and 'the workmen' respectively.



W.A. No.424 of 2021

3. The facts leading to filing of this Writ Appeal are as follows:

WEB COPY

3.1 The workmen concerned are being engaged under the Management of Ennore Thermal Power Station as security guards under the control and supervision of the Management through various contractors from the year 1985 to 1990. They have worked for more than 480 continuous days in 24 calendar months and their service are to be regularised. They have also filed writ petitions in W.P.No.11348 of 1988 seeking regularisation of their services and in W.P.No.314 of 1989 for abolition of the contract labour system but their case was not considered by the Management and their names were not placed before the Hon'ble Justice Khalid Commission for regularisation. At this juncture, the Management has terminated the 69 workmen, respondents (6 to 74 herein) from their services on 31.03.1990 without giving any prior intimation or notice, hence they raised industrial disputes and after failure of conciliation proceedings, 06.09.2000 in their individual capacity by invoking section – 2A of Industrial Dispute Act (ID Act hereafter). The workmen have raised the dispute on the ground that even though they are termed as a contract labourers, the contract labour system is sham and nominal and they have been engaged, by the Management continuously as security guards and worked under the control of the Management, through various contractors



W.A. No.424 of 2021

namely Hindustan Security & Detective Services, Southern Security Service, Guardian Security Bureau Ltd., and Security & Detective Bureau Limited.

But, all the security service contractors are only intermediaries and they are not registered contractors.

3.2. Based on the evidence placed on record on both sides, the Principle Labour Court, Chennai has held that the contract labour system was only a sham and nominal and the persons, who were engaged as contractors are only intermediaries and there is no proper contract labour system, hence, the Labour Court has accepted the case of the workmen that the Management is the employer of the workmen/ petitioners and held that the unemployment of the workmen is not justified and ordered reinstatement and absorption in the regular service with continuity of service.

4. Aggrieved over the award passed by the Principle Labour Court, Chennai, the Management has filed a single writ petition in W.P.No.12284 of 2005 to set aside the common award passed by the Labour Court and the same was dismissed by the learned Single Judge, which is being impugned herein.



W.A. No.424 of 2021

5. The Management has taken a stand that the Management has not appointed the workmen and that they have not been paid any wages directly. There was no employer-employee relationship between the Management and the workmen. They have not been engaged by the officers of the Management and the work was allotted by the contractor accordingly, wages were also paid by them. The Management has carried out the process of identification of contract workmen for absorption and the names of workmen herein were not found in the list on 05.01.1998. Since, the workmen were not engaged by the Management, during identification, no notices were given to them. The workmen have raised dispute for absorption in Ennore Thermal Power Station of Tamil Nadu Electricity Board on regular basis after lapse of 10 years, hence, there is no merit on the claim of the workmen.

6. The contractors have also made as a party in the Industrial Disputes and they have taken a stand that they are not contractors and they had acted only as a brokers and the contract is also a sham and nominal. The names of the contractors were used only to avoid employer-employee relationship between the Management and the workmen.



W.A. No.424 of 2021

7. Based on the pleadings the Labour Court has framed the following issue in the Batch of Industrial Disputes.

Whether the unemployment of the petitioners is justified; if not to what relief they are entitled?

8. Based on the issue framed, on behalf of the petitioners one Mr.Elangovan was examined as WW.1 and on behalf of the first respondent Tmt. C.R. Hemalatha, Asst. Administrative Officer was examined as M.W.1. Exs.W.1 to W.23 and M.1 to M.5 were marked on both sides.

9. After analysing the evidences placed on record, the Labour Court has passed a Common Award, dated 20.10.2004 and held that the workmen are entitled for reinstatement, absorption, continuity of service and other attendant benefits with back wages.

10. Mr. Anand Gopalan, learned counsel for the appellant/Management would submit that the Industrial Disputes raised by the workmen is suffered by delay and laches and there is an enormous delay in raising the dispute and before raising the dispute several developments have taken place. More particularly, as a genuine employer, the Management has appointed and absorbed thousands of contract employees as per the



W.A. No.424 of 2021

directions of Justice Khalid Commission and also as per the Management proceedings issued in this regard. The workmen herein have denied employment in the year 1990 and they have raised industrial disputes with delay of 10 years, before the Principle Labour Court, Chennai.

11. The learned counsel further placed on the following facts to show that various steps taken by the Management to abolish the Contract Labour System and to avoid the contract workmen engaged by them. The absorption of the contract labourers as per Justice Khalid Commission Report, was completed and the injunction restraining, fresh recruitment lifted by the Hon'ble Supreme Court as early as on 15.02.1999. On 30.04.1999, the Management has decided not to engage the contract labour in this generation circles and decided to absorb the contract labourers vide Board Proceedings No.17, dated 28.09.1999 subject to the following criteria:

1. The contract labourer should have been identified as of 05.01.1998.
2. The contract labourer should have completed 480 days in 24 calendar months preceding 30.04.1999.
3. The contract labourer should be in engagement as on 30.04.1999, i.e., date of issuance of Board Proceedings.



W.A. No.424 of 2021

12. As per the above Board proceeding, based on the list of contract labourers prepared as on 05.01.1998, totally 9095 workmen were identified as contract labourers and were Ordered to be absorbed and the absorption of Contract Labourers had taken effect from 01.05.1999.

13. He further contended that considering the various developments, on the ground of delay and laches, the Industrial Disputes raised by the workmen herein should have been rejected. He has also relied on the Judgment of the Hon'ble Apex Court in ***Nedungadi Bank Limited vs. K.P Madhavan Kutty and Others* [2000 (2) SCC 455]; U.P SRTC vs. Ram Singh [2008 (17) SCC 627; and Prabhakar vs. Sericulture Department [2015 (15) SCC 1]**.

14. In ***Prabhakar vs. Sericulture Department [2015 (15) SCC 1]*** has considered the importance of raising industrial dispute at the earliest point of time and after discussing various earlier judgments of the Hon'ble Apex Court such as ***the Nedungadi Bank Limited vs. K.P. Madhavan Kutty and Others [2000 (2) SCC 455]*** ; ***Shalimar Works Limited vs. Workmen [AIR 1959 SC 1217]***, held as,

“42. To summarise, although there is no limitation prescribed under the Act for making a



WEB COPY



W.A. No.424 of 2021

reference Under Section 10(1) of the Act, yet it is for the 'appropriate Government' to consider whether it is expedient or not to make the reference. The words 'at any time' used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the Act. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers' financial arrangement and to avoid dislocation of an industry.

43. On the application of the aforesaid principle to the facts of the present case, we are of the view that High Court correctly decided the issue holding that the reference at such a belated stage i.e. after fourteen years of termination without any justifiable explanation for delay, the appropriate Government had not jurisdiction or power to make reference of a non-existing dispute."

15. The case of the workmen herein that they have been dismissed on 31.03.1990 and they have raised industrial dispute before the Labour Commissioner on 05.01.2000 and the Management had also filed their reply before the Labour Commissioner. Those documents have been marked in both the industrial disputes as exhibits. It shows that there was a delay of nearly 10 years in raising the industrial dispute.



W.A. No.424 of 2021

16. Admittedly in the year 1988 and 1989, the workmen have approached this Court by way of writ petition in W.P.Nos.11348 of 1988 and 314 of 1989 seeking direction to the Tamil Nadu Electricity Board and the Management of Ennore Thermal Power Station herein to regularise their services and also for abolition of Contract Labour system under section 10 of the Contract Labour (Regulation and Abolition Act, 1970). This Writ petition reached finality only on 28.02.1996. The Board Proceedings of absorbing the contract labourers was issued only in the year 1999. It is the specific case of the workmen that the Tamil Nadu Electricity Board has not placed their names before the Hon'ble Justice Khalid Commission, while it had taken decision to abolish the Contract Labourer system and absorb them in the Electricity Board. But, the filing of Writ petition and subsequent disposal of the same shows that the workers have continued their dispute by way of writ petition till the year 1996. The Management has also stated, due to the Interim Order passed by the Hon'ble Apex Court, no fresh recruitment was taken place till the year 1999 and the Hon'ble Supreme Court has allowed the Electricity Board to fill up the posts, only in the year 1999. This shows that, till the year 1999, the process of absorption is not completed. Only after the issuance of above Board proceeding, the workmen raised industrial disputes invoking the section-2A of the I.D. Act.



W.A. No.424 of 2021

17. It is also held by the Judgment of the Hon'ble Apex Court in

WEB COM

Paragraph 43 in ***Prabhakar vs. Joint Director, Sericulture Department and others [2015 SCC 1]*** cited supra, if the Court finds that the dispute still existed, though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. This Court is of the view that since there is a valid reason projected by the workmen that they have continuously agitating their grievance of seeking absorption and they have never given up their claim and the fact that the Board Proceeding, the process of absorbing the Contract Labourers was held only in the year 1999, approach of workmen that after waiting and ensuring that their names were not considered for absorption in the year 1999, raising industrial disputes supports their case to condone the delay or laches on the part of the workmen.

18. It is contended by the learned counsel for the Management that, as per the Management proceedings issued by them, the respondents are not entitled for absorption. Workmen were not in employment as on the date of issuance of Board proceeding No.17, dated 28.04.1999, which is the relevant period and the Labour Court has failed to consider the scheme prescribed under the Board proceedings, hence reinstatement could not be ordered. The



W.A. No.424 of 2021

Hon'ble Apex Court in ***Oil and Natural Gas Corporation vs. Krishnan***

WEB.COM

Gopal and Others reported in ***2020 (2) LLN 17 (SC)***, it is reiterated that, at the time of absorption and regularisation, the contract workers shall be in employment and this absorption and regularisation shall be done only as per the terms of the scheme. The learned counsel for the Management would further submit that the supervision of the contract labour by the principal employer was inevitable and the supervision of the contract employer alone which is not the ground of order of absorption. He also relied on the Judgment of the Hon'ble Apex Court in ***Balwant Rai Saluja vs. Air India Limited [2014 (9) SCC 407]*** and contended that no materials placed on record to show that the contract labour system was sham and nominal.

19. Mr. Anand Gopalan further contended that the workmen have failed to prove the fact that they have been terminated on 31.03.1990. The date of termination or mode of termination have not been discussed by the Labour Court. Hence, the Award passed by the Labour Court was without any basis and the same is perverse.

20. In *Catena* of Judgments, it is held that, once termination of temporary employer or casual labourers is in violation of Section 25(F) of



W.A. No.424 of 2021

the I.D Act, such remedy is available to the workmen to seek compensation for alleged breach of Section 25(F) of I.D Act, 1947. Hence, the reinstatement is not mandatory. He has also relied on the Judgments of the Hon'ble Apex Court in *J.K.Synthetics Limited vs. K.P.Agrawal and another* [2007 (2) SCC 433]; *Sita Ram vs. Moti lal Nehru Farmers Training Institute* [2008 (5) SCC 75]; and *Bharat Sanchar Nigam Limited vs. Bhurumal* [2014 (7) SCC 177].

21. The learned counsel for the workmen Mr. K. Shanmugakani, has submitted that the workmen have produced various documentary evidences to show that they were engaged by the Management for their perennial work and their engagement is only through the intermediary, eventhough, they have been termed as contractors. The Management has not produced any iota of evidence to dispute the case of the workmen that their engagement as contract workmen is not genuine and only figurative. He has also relied on the Judgment of the Hon'ble Apex Court in *Indian Farmers Fertilizer Co-operative Limited vs. Industrial Tribunal, Allahabad and Others* [2002 (3) SCC 544]. He has also relied on the Judgment of the Hon'ble Apex Court in *General Manager, Oil and Natural Gas Commission, Silchar vs. Oil and Natural Gas Commission Contractual*



W.A. No.424 of 2021

WEB CO

Workers Union [2008 (12) SCC 275] and contended that, factual aspects shall not be re-appreciated unless there is perversity and patent illegality.

22. It is contended by the learned counsel for the workmen that, there is clear violation of Section 25(F) of the I.D Act, by the Management and this was taken note by the Labour Court, after analysing the evidences of both sides that there was an employer-employee relationship between the workmen and the Management. These findings of facts could not be interfered with the writ proceedings and this Court has no power to re-appreciate the evidence placed on record. In support of his contention, he has also relied on the Judgments of the Hon'ble Apex Court in **Secretary, Haryana Electricity Management Vs. Suresh and Ors. [1999 (1) LLJ 1086]** and the Division Bench Judgment of this Court between **R. Lakshmi vs. The Chief Engineer, Tamil Nadu Electricity Management and another [2012 (3) LLN 681 (DB)] in W.P.No.5980/2004.**

23. To prove the employer-employee relationship, the workmen concerned in all the I.D.Nos.73 to 140 of 2001 and 227 of 2001, common evidence is recorded and they have marked as Exs.W.W.1 to W.W.23 before the Labour Court. These documents have been marked by examining



W.A. No.424 of 2021

W.W.1-V. Elangovan, who is the petitioner in I.D.No.98 of 2001, the Labour Court has considered each and every documents marked on the side of the workmen.

24. The Labour Court has elaborately discussed the evidence produced on the side of the workmen and in paragraph 12,16 and 17 of the award discussed as follows:

“Ex.W.1 is the enquiry intimation given by the Asst. Divisional Engineer to the petitioner Dhanapal, Ex.W.2 is the conduct certificate issued by the first respondent power station to the petitioner Elangovan. It is evident from Ex.W.1 that Dhanapal was working as security guard under the first respondent thermal power station and on the basis of the complaint given by Dhanapal, Security Guard an enquiry was ordered by the Asst. Divisional Engineer. It is also evident from Ex.W.2 that W.W.1 was working under the first respondent thermal power station and the Junior Engineer, Oil Handling Plant (Maintenance), Ennore Thermal Power Station issued a conduct certificate in favour of the petitioner. It is evident from the above that W.W.1 was working under the first respondent power station from February 1984 as a contract labour. It is also evident that W.W.1 was working for more than 2 years and the certificates was issued on 23.12.86.

16. It is also admitted by M.W.1 that the security guards preferred petitions to the Chairman. T.N.E.B. Madras and the copy of the petition is marked as Ex.M.1 through M.W.1. The letter is dated 16.09.89. It is evident from Ex.M.1 that the petitioners were working under the first respondent power station as security guards on 16.09.1989 and the petitioners were working continuously



W.A. No.424 of 2021

for five years. It is evident from the above that the petitioners were working continuously as security guards under the first respondent power station for more than five years. It is also evident from Ex.M.1 at page2 that the first respondent power station is recruiting new persons as security guards and the senior security guards who working under the first respondent have not been allotted security job.

17. It is not the case of the first respondent that the petitioners were not at all working under the first respondent power station as security guards. It is the admitted case of the first respondent and M.W.1 that the petitioners were working as security guards through contractor for a long period. It is evident from Ex.M.1 that the petitioners preferred petition to regularize them even in the year 1989.”

25. After discussing evidences placed on record including evidence adduced by the Management, the Labour Court has given a finding that Service Certificates were issued by the officers of the Management and those documents could not be brushed aside on the ground that those documents are false Certificates. Further, there is no evidence produced on behalf of the Management that those documents were false certificates. Since there was no quarrel that these certificates were issued by the Officials of the Management, the Labour Court has accepted the case of the workmen that they were engaged as contract workmen in various periods, and rejected the contention of management that they were not engaged by the Management is not sustainable. It is also further elicited from the evidence of the



W.A. No.424 of 2021

Management Witnesses that for absorbing the contract workers as per the scheme framed by Justice Khalid Commission, the similar certificates issued by the officers of the Management have been accepted and based on the those certificates, the contract labourers were also absorbed. Under the said circumstances, the Labour Court has held that those documents have to be accepted, and the Management is not entitled to claim those documents as false certificates.

26. Before the Labour Court, the Management has not chosen to produce any of the records to be maintained under section 29 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as 'the Act 1970'). No registers were maintained by the Management and no other documents to prove the contracts entered between the Management and the contractors were produced. Similarly, the alleged contractors were also not licensed contractors and the contract entered between them is not a valid contract.

27. The Hon'ble Apex Court between ***Kanpur Electricity Supplies Company Limited and Shamim Mirsza [2009 (1) LLN 121]***, has held that in an industrial dispute, proving the existence of employer-employee



W.A. No.424 of 2021

relationship lies on the workmen and in Paragraph No.15, it is observed as follows:

“15. It is trite that the burden to prove that a claimant was in the employment of a particular management, primarily lies on the person who claims to be so but the degree of proof, so required, varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer-employee relationship. It is essentially a question of fact to be determined by having regard to the cumulative effect of the entire material placed before the adjudicatory forum by the claimant and the management”.

28. The above observation was made after placing reliance on the Judgments of the Hon'ble Apex Court in ***Ram Singh and Ors. Vs. Union Territory, Chandigarh and Others [2004 (1) LLN 511]***.

29. In this case, common evidences is recorded and the workmen have proved their case of employment by oral and by documentary evidence. After recording evidences of the Management Witnesses and from the admission made thereon by the Management Witnesses, the Labour Court has concluded that the workmen have proved their case that they were engaged by the Management, from 1985 to 1990 and thereafter, they have been orally terminated. This finding is based on the facts placed before the



W.A. No.424 of 2021

WEB COM

Labour Court and this Court finds that there is no perversity in the said findings of the Labour Court.

30. The workmen herein have also established the fact that the contractors have been acted only as an intermediaries/brokers. The Management has not adduced any evidence to show that the contractors were licensed contractors. They have not produced any documents to show that they have complied with Section 29 of the Act 1970. This factual aspects are also taken into account while passing the award by the Labour Court. Since, the Management has failed to prove that the contractors are the licensed contractors and in the absence of any records to show that the contractors, who have been engaged by the Management, the so called contractors are only name lenders. Factually, there was no genuine contract system prevailing at the relevant time, wherein, the Management could have acted as only the employer and the contractors are the intermediaries.

31. The Labour Court has rightly come to the conclusion that the contract system was only a camouflages, smoke and it is really exhibits that the relationship between the Management and the employees alone and there is only employer-employees relationship between the Management and the



W.A. No.424 of 2021

workmen herein. Accordingly, the contention of the Management that there was no employer-employee relationship and the same is liable to be rejected.

32. In *Balwant Rai Saluja vs. Air India Limited* [2014 (9) SCC 407] case cited above, the Apex Court has laid down certain tests to conclude whether the contract labour is a sham or nominal. In this case, admittedly, the Management was not able to produce any contract entered between the contractors and the Management failed to show that there was a genuine contract entered between the contractors and the Management herein. The Management has also failed to prove that the contractors are registered contractors. Factually the workmen were able to exhibit that they have been receiving payments and other perquisites from the Management and they were involved in perennial job and they were under control and supervision of the Management. Without any materials to show that the workers were engaged only by means of proper contract between the Management and the contractors and proper accounts maintained between them regarding the payment of salary or remuneration, this Court is of the view that the Management is not entitled to contend that there was a genuine contract labour system followed by them.



33. The Hon'ble Apex Court in ***Devinder Singh vs. Municipal***

Council, Sanaur [2011 (6) SCC 584] has considered various provisions of

I.D.Act, including Section 2(s), 25(F), 25(oo), 25(G) of the I.D.Act and has

held as follows:

“12. Section 2(s) contains an exhaustive definition of the term 'workman'. The definition takes within its ambit any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it is immaterial that the terms of employment are not reduced into writing. The definition also includes a person, who has been dismissed, discharged or retrenched in connection with an industrial dispute or as a consequence of such dispute or whose dismissal, discharge or retrenchment has led to that dispute. The last segment of the definition specifies certain exclusions. A person to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, is applicable or who is employed in the police service as an officer or other employee of a prison or who is employed mainly in managerial or administrative capacity or who is employed in a supervisory capacity and is drawing specified wages per mensem or exercises mainly managerial functions does not fall within the definition of the term 'workman'.

13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act.

14. It is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.....



W.A. No.424 of 2021

18. In *L. Robert D'souza v. Executive Engineer* MANU/SC/0152/1982 : (1982) 1 SCC 645 the Court held that even a daily rated worker would be entitled to protection of Section 25F of the Act if he had continuously worked for a period of one year or more."

34. In this case, there is a clear violation of Section 25(F) and 25(G) of the I.D.Act and once there is a violation proved by adducing evidence before the Labour Court, findings of fact reached arrived at by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings as held by the Constitution Bench in *Syed Yakoob vs. K.S.Radhakrishnan* [AIR 1964 SCC 477] .

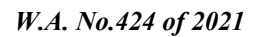
35. One of the contentions of the Management was that in an industrial dispute under Section 2-A of the I.D.Act, 1947, the issue pertains to whether the contract was sham and nominal and the benefits of regularization cannot be granted. We are not inclined to accept the said contention, as the Labour Court is empowered to grant any relief in a dispute under Section 2-A of the I.D.Act, 1947 and the power of the Labour Court is much wider than that of a Civil Court. Once the non employment is held to be bad, the Labour Court can grant full relief or mould the relief partially. The purpose of I.D.Act, 1947 is to bring about an early settlement to an industrial dispute. Learned counsel for the Management heavily relied upon



W.A. No.424 of 2021

the judgment of the Apex Court in the case of **Bharat Heavy Electricals Ltd., vs. Anil and others**, reported in **2007 (1) SCC 610** to strengthen his argument.

36. In a case of non employment, certainly all questions have to be gone into. The Apex Court in a decision reported in **(2001) 7 SCC 1 [Steel Authority of India Ltd. vs. National Union Waterfront Workers]** categorically held that if the contract is found to be not genuine, but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer, who shall be directed to regularize the services of the contract labour in the establishment concerned. It was further held that if the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of so-contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and if necessary, by relaxing the conditions as to maximum age appropriately, taking into consideration the age of the workers at the time of



37. When a Industrial Adjudicator comes to the conclusion that the contract is genuine, the Court may direct parties to recourse to the 1970 Act for abolition of Contract Labour. When the contract itself is sham and artificial, in the dispute relating to non employment under Section 2-A of the Contract Act, 1947, the Labour Court is empowered to grant the relief as stated above.

38. Admittedly, in the present case on hand, there existed



W.A. No.424 of 2021

relationship of master and servant, whereby the Labour Court held on a finding of fact that contract system is a ruse. There was no document produced by the Management to show that there was a genuine contract system, more so, production of documents under the Act, 1970, if there exists contract labour system. The preamble to the I.D.Act, 1947 is very clear that it is an Act to make provisions for the investigation and the settlement of industrial disputes and for certain other purposes.

39. If the contention of the Management is accepted, there will be no finality to the litigation. The employees will have to knock at the doors of one Court after another till they exit from the world. That apart, the ground raised in respect of the Labour Court going into the question of sham and nominal was not raised either in the Writ Petition or in the grounds of appeal. Even assuming for the sake of argument that the same has been raised or permitted to be raised as a legal ground, such plea will have to be rejected, as the Labour Court will have to decide the issue based on the finding of fact, which has been done in this case and there are no materials available for this Court to defer from the finding of Labour Court.

40. Normally, the Workmen are entitled to all the benefits as per the



W.A. No.424 of 2021

Award. In view of what is stated herein-above, the Awards of the Labour Court and the order of the Single Judge in these matters are modified as follows:

i) The Management shall pay a compensation of Rs.2,00,000/- (Rupees Two Lakhs only) each to the Workmen / family members (in case of death) within a period of three months from the date of receipt of a copy of this judgment;

ii) Since there is a violation of Section 25-F of the I.D.Act, 1947, all the Workmen are deemed to be in service. The Workmen are entitled to pensionary benefits from the date of joining service till the date of judgment of the learned Single Judge and the salary payable to the last grade servant as on the date of judgment of the learned Single Judge shall be taken into account only for the purpose of terminal benefits of pension and no other terminal benefits shall be paid to them;

iii) In case any of the Workmen had already died or attained superannuation before the date of judgment of the learned Single Judge, workmen or family members, as the case may be, are entitled to pensionary benefits taking into account the date of joining service till the date of their



W.A. No.424 of 2021

death / retirement and the salary payable to the last grade servant as on the date of death / retirement shall be taken into account only for the purpose of terminal benefits of pension and no other terminal benefits shall be extended to them;

iv) The Management shall extend the benefit of pension / family pension, if any, to the Workmen / family members on and from 01.12.2023 and the same shall be released with effect from January, 2024;

v) As the Award is modified and replaced by this judgment, in case of non-compliance, it is open to the Workmen to invoke Section 29 for prosecuting the Officials falling under Section 32. The Government must sanction prosecution. The Criminal Court shall take up the matter in case of sanction of prosecution on a day-to-day basis without adjourning the matter beyond two weeks at any point of time.

41. In the light of the decision of the Apex Court in **The Life Insurance Corporation of India vs. D.J.Bahadur and Others**, reported in **1980 AIR 2181**, the award (modified now) will be in force till such time it is replaced by an another award or settlement. Hence, the question of delay in



W.A. No.424 of 2021

initiating prosecution under Section 29 of the I.D.Act, 1947 is not available to the Management in case of non-compliance of the modified award.

42. With the above observations and modifications, the Writ Appeal filed by the Management is dismissed. Consequently, connected civil miscellaneous petition stands closed. No costs.

[S.V.N., J.] [K.R.S., J.]
10.11.2023

Internet: Yes
Speaking Order: Yes/No
Neutral Citation Case: Yes/No
stn



W.A. No.424 of 2021

To:
WEB COPY

The Presiding Officer,
Labour Court,
Coimbatore.



WEB COPY



W.A. No.424 of 2021

S.VAIDYANATHAN,J.,
and
K.RAJASEKAR,J.,

stn

W.A.No. 424 of 2021

10.11.2023