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W.P.(MD)Nos.10456 to 10465 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.11.2022

PRONOUNCED ON : 15.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.10456 to 10465 of 2012

and

M.P.(MD)Nos.1, 1, 2, 2, 2, 2, 2, 2 and 2 of 2012

W.P.(MD)No.10456 of 2012:

1.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai-600 005.

2.The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Maintenance Division,
Tirunelveli.

... Petitioners

vs.

1.T.Mahesh
2.P.Selvasankar

3.The Labour Inspector,
Tirunelveli.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call the proceedings of the 3rd respondent, dated 30.04.2012, made in Pa.Ni.Sa.18/09 to 20/09, 25/09, 28/09, 30/09, 33/09, 34/09, 36/09 and 53/09 and to quash the same.

In all cases:

For Petitioner	: Mr.AR.L.Sundaresan Senior Counsel for Mr.B.Vijay Karthikeyan
For R1	: Mr.S.M.Mohan Gandhi
For R2	: No appearance

In W.P.(MD)Nos.10456 to 10460 of 2012:

For R3	: Mr.P.T.Thambidurai Government Advocate
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In W.P.(MD)Nos.10461 to 10465 of 2012:

For R3	: Mr.C.Baskaran Government Advocate *****
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COMMON ORDER

The writ petitions in W.P.(MD)Nos.10456 to 10465 of 2012, are filed for issuance of a Writ of Certiorari, to quash the impugned proceeding of the 3rd



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respondent dated 30.04.2012.

2. The petitioner in all the writ petitions is TWAD Board which was established by the Government of Tamil Nadu on 14.04.1971 for the purpose of providing and maintaining proper drinking water and drainage system throughout Tamil Nadu except Chennai. The TWAD Board is having its own employer strength about 8653, which includes technicians and operators also. As per the policy of the Government, all the Local Bodies ought to have engaged the petitioner for developing drinking water and drainage system. The cost towards such work will be borne by the concern Local Bodies and Government Agencies. The TWAD Board will implement the scheme through its employees and also through contract by inviting tenders for construction and certain maintenance work for a short period. One such scheme was developed the name of “Sengottai Combined Drinking Water Scheme, 2004”. Under the scheme, large number of pipelines and pumping stations are developed. In order to maintain the scheme, the Board will utilize its own work force. Further, while maintaining water supply scheme, it requires short time work force at various places. For the same, the



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Board after proper authorization from the Board of Directors, issued tenders for such minimal works. In tender invitation, the period of tender as well as requirement of maintenance will be clearly mentioned. The Board will utilize its own work force where ever the work requires technical knowledge and continuous necessity. In cases other than the above nature, the Board will engage contractors for certain specific works and for specific periods. The contractors alone engage their own work force to complete the work in terms of the requirement of the Board. The 2nd respondent is the contractor selected through public tender system for maintenance of “Sengottai Combined Drinking Water System” for the period of one year up to 31.03.2010. The 1st respondent worked as a “Pump Operator” under the 2nd respondent and this fact is not known to the petitioner Board. The 2nd respondent alone is answerable to the Board and required to do operation maintenance work for the period of one year. It is up to the 2nd respondent to employ anybody for his work and the petitioner Board is not responsible for the same. Even the wages to the 1st respondent were paid only by the 2nd respondent. There is no employer-employee relation at any point of time



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between the petitioner and the 1st respondent. When the fact is being so, the 1st respondent with vexatious averments approached the 3rd respondent to make his employment as a permanent one under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

3. The claim of the 1st respondent in all the writ petitions is that they had worked continuously for 480 days for the past 2 years and hence, they are entitled to get the benefit under the Conferment of Permanent Status Act. The TWAD Board filed a detailed counter and denied the averments made by the 1st respondent and also specifically stated that there is no employer-employee relationship between the petitioner and 1st respondent. Admittedly, the 1st respondent except the mere statement has not produce any documents to prove they had worked continuously for 480 days in past 2 years. Apart from that, the contractor namely the 2nd respondent is not the person employed the 1st respondent during the year 2009, since every year different contractor would be



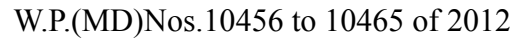
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engaged. Also, the said Act (Tamil Nadu Act 46 of 1981) is not at all applicable to the petitioner Board. Without considering all these facts, the impugned order was passed.

4. The 1st respondent has filed common written arguments for all the writ petitions by stating that the TWAD Board is an industrial establishment as per the judgments of this Court and the Honourable Apex Court and it is covered under Tamil Nadu Industrial Establishment (Conferment Permanent Status to Workmen) Act, 1981. The 1st respondent has worked as a Pump Operator in the TWAD Board and completed 480 days that they have right to seek his regularization under the Tamil Nadu Industrial Establishment (Conferment Permanent Status to Workmen) Act, 1981. The main object of the act is as follows:

“Many workers in industrial establishments are being kept under temporary rules and on that pretext are being denied of various statutory as well as non-statutory benefits which are given to permanent workers. Mainly, in many establishments non-permanent workers are given consolidated wages which are far below the occupational wages and do not carry the benefit of dearness allowance paid to permanent employees. Similarly, they are denied various other benefits. In order to curb various unfair labour practices, the Government have decided to undertake a special



The validity of the said Conferment status Act was upheld by the Honourable Apex Court in the case of *State of Tamilnadu vs Nellai Cotton Mills Limited.*, reported in *1990 (2) SCC 518*. The applicability of the Act to the TWAD Board is also decided in the case of *Tamilnadu Water supply and Drainage Board vs The Secretary, Kovilpatti water supply scheme maintenance and others*, reported in *1993(1) LW-283*. The petitioner has no valid license under the sections 7 and 12 of the Contract Labour Act, 1970 and the main purpose of this Act is to abolish the contract labour/bonded labour and to regulate the working condition of contract labour. The issue of license to TWAD Board was already dealt with in W.P.(MD). Nos.17082 to 17084 of 2015 wherein it is held the Board has not obtained any such license during the relevant period of time. Therefore, the private respondents have to be construed only as the direct employees of the Board and not as contract labour. The said order was confirmed in W.A.(MD)No.



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352 to 354 of 2019 and implementing the said judgment, the TWAD Board has regularized the workers. Therefore, the 3rd respondent Labour Inspector is right in granting permanency to the 1st respondent and hence, the 1st respondent prayed to dismiss the writ petitions.

5. Heard Mr.AR.L.Sundaresan, the Learned Senior Advocate for Mr.B.Vijay Karthikeyan appearing for the petitioners TWAD, Mr.S.M.Mohan Gandhi, the Learned Counsel appearing for the 1st respondent, Mr.P.T.Thambidurai, the Learned Government Advocate for 3rd respondent in W.P.(MD)Nos.10456 to 10460 of 2012 and Mr.C.Baskaran, the Learned Government Advocate for 3rd respondent in W.P.(MD)Nos.10461 to 10465 of 2012 and perused the records.

6. The petitioner submitted that the same issue was already considered by another Learned Single Judge in W.P.(MD)Nos.9265 of 2013 and batch, dated 23.11.2020, whereby, the claim of permanency was rejected and the order passed



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by the Labour Inspector was quashed. The relevant portion of the order is extracted here under:

“54. All appointments, permanent absorptions are to be made strictly in accordance with Rules in force. Equal opportunity being the Constitutional mandate, all Citizen, who are all aspiring to secure public employment must be provided with an opportunity to participate in the open competitive process with reference to the Rules of Reservation in force. The equality clause enunciated cannot be diluted at any costs, in view of the fact that there are many back doors kept open even now for entering into public services. All those back door methods are to be closed forthwith and all public appointments are to be made by providing not only equal opportunity but also create an effective and efficient public administration, which is also a Constitutional mandate. The Constitution provides that even while implementing the reservation, the State must ensure efficient Public Administration. Thus, efficient public administration being a concept contemplated under the Constitution, the equal opportunity must go hand-in-hand and then only, the State can achieve the Constitutional goal in this regard. Back door methods are utilized for entering into the public services only by the persons, who are incapable of participating in the competitive process. Thus, such method of appointments otherwise not in accordance with the Rules in force can never be encouraged by the Court nor any orders can be passed for grant of permanent absorption depriving the meritorious candidates to secure public employment by participating in the competitive process under the Constitutional Scheme.”

7. The Learned Counsel appearing for first respondent submitted that a writ appeal has been preferred against the above said order passed by the Learned



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Single Judge and the same is pending. Further submitted that in a similar case another Learned Single Judge allowed the writ petition of the workers, thereby, directed the TWAD Board to implement the order passed by the Labour Inspector granting permanency in W.P.(MD)No.13054 and 1410 of 2014, dated 07.02.2018.

8. The learned Counsel appearing for the petitioner submitted that against the order passed in W.P.(MD)No.13054 and 1410 of 2014, dated 07.02.2018, a writ appeal in W.A.(MD)Nos.567 and 568 of 2018 was preferred and the same was dismissed, vide order, dated 05.11.2019. Against the judgment, the TWAD Board has preferred a Special Leave Petition in SLP Diary No.6598 of 2022 and there is an interim order, dated 09.05.2022, directing not to take coercive steps against the TWAD Board on the basis of the judgment passed by the Honourable Madurai Bench of Madras High Court. In another case filed in Special Leave to Appeal Nos.5051 to 5053 of 2021, the Honourable Supreme Court has granted status quo, vide order, dated 12.04.2021 and the issue is pending before the Honourable Supreme Court. Therefore, the learned Counsels appearing on both



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the sides submitted that the issue raised in this writ petition shall be independently dealt with based on the facts and circumstances of the case.

9. The first contention of the TWAD / writ petitioner is that the first respondent is admittedly a contract labour under the second respondent. Once the contractor name is disclosed / stated in the petition, the Labour Inspector ought to have taken this fact into consideration and directed the first respondent to produce further evidence to substantiate his claim that TWAD is the employer. It is seen in the present case that the first respondent is the contract labourer and has also not objected to the fact that the second respondent is the contractor who has employed him, in such circumstances, the 3rd respondent ought to have directed the first respondent to produce evidence to substantiate his claim that he was engaged by the petitioner TWAD. On perusal of the impugned order, it is seen that the first respondent has not produced any documents or marked any evidence before the 3rd respondent to substantiate his claim that he is employed under the petitioner. Since the 3rd respondent has not scrutinized any evidence, the 3rd



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respondent has terribly failed to exercise the jurisdiction properly. Therefore, this Court is of the considered opinion that the Labour Officer has granted permanent status without any evidence.

10. The next contention that was raised by the writ petitioner is that the petitioner's establishment has already engaged 8653 permanent employees who are serving as Technicians and Operators. The contention of the petitioner is that the petitioner has formulated the scheme "Sengottai Combined Drinking Water Scheme, 2004". After completion of the scheme, the same would be handed over to the Local Authority. The petitioner would invite tender from the contractor in order to do minimum work. If the work requires technical knowledge and continuous necessity, the TWAD would execute the same with its own employees. In other words, the petitioner would outsource some minimal works through tender process. If the contractors engage any employees or workers, the petitioner Board is not responsible for the same. The petitioner has not paid any wages directly to the first respondent Pump Operator. In such circumstances, the claim



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of the petitioner that the first respondent ought to have claimed permanency against the second respondent and not against the TWAD / petitioner. After hearing the rival submissions this Court is of the considered opinion that if the petitioner is engaging contractor to execute certain works, in turn if the contractor engages the labour, then it is incorrect to state that the petitioner is the principal employer. The first respondent has not placed any material to substantiate that there is no tender agreement between the petitioner and the second respondent and has not placed any material that the tender is sham and nominal. The present world is “Global era”, where international tenders are floated globally. All tender works are executed through contractors, if the contractors engage some labourers, the said labourers cannot become direct employee of the person who floated the tender. Therefore, the contention that the first respondent that he is working for the principal employer cannot be accepted.

11. The 3rd respondent has held that the 1st respondent has not registered himself under the provisions of Contract Labourers Act and hence, the petitioner



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is the direct employer of the first respondent. This contention cannot be accepted since the petitioner is floating tender for execution of some of the work. Moreover, after completion of the scheme, the petitioner is handing over the water supply scheme for maintenance to the Local Bodies. As stated supra the tender is not sham and nominal. In such circumstances, the claim of the first respondent that the petitioner has not registered under Contract Labourers Act is not sustainable.

12. The claim of the first respondent is that he is the direct employee of the petitioner since the petitioner awarded contract to the second respondent and one of the conditions in the contract is that the contractor is responsible for safe custody, machinery and other equipment under contract till handing over to the employer. Accepting this plea and by relying on this condition, the 3rd respondent has held since the petitioner prescribed conditions to employ any worker, hence the petitioner is the primary employer. This Court is of the considered opinion that the said condition would only indicate that the second respondent should



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handle the equipment and whoever is trained in handling the equipment may be engaged. Moreover, such fact is irrelevant to determine the employer-employee relationship and can never be invoked to come to the conclusion that the first respondent is a contract employee of the petitioner TWAD. Therefore, this Court is of the considered opinion that the Labour Officer has come to erroneous conclusion by taking irrelevant fact and has erred in granting conferment of permanent status.

13. After hearing the rival contentions and scrutiny of records it is seen that the TWAD Board is executing some portion of the scheme work, for which the TWAD Board engages contractor through tender. The contractor engages work force to execute the work. In certain cases, after the execution of the scheme, the project is handed over to the Local Bodies for maintenance and the Local Bodies engages some work force. It is an admitted fact that the first respondent was not through proper recruitment process, there is no permanent vacancy that arises to fill up the post and therefore this Court is of the considered opinion that the claim



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of the first respondent cannot be entertained. Moreover, the first respondent has not marked any evidence to substantiate his claim that he is directly employed by the petitioner Board. More so, the impugned order does not show any list of evidence. In such circumstances, first respondent cannot claim permanency under the petitioner's Board service. Therefore, the impugned order is liable to be quashed.

14. The issue in the present case is not only the permanency, but complicated questions of facts and law. Since the Contract Labourers Act is involved, the Labour Inspector is not the competent authority to deal with the case. Moreover, the water supply scheme was executed through tender process and subsequent maintenance is carried out through Local Bodies. When several complicated issues are involved, then the Labour Inspector is not the competent authority as held by the Hon'ble Division Bench of this Court in the case of Superintending Engineer, Erode Vs. Inspector of Labour and others reported in 2022 SCC Online Mad 1003. The relevant portion of the judgment is extracted



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hereunder:

“22. In view of the above, while we are of the view that the Labour Inspector has the power to issue appropriate order to grant permanency to the workmen, it cannot be by adjudicating the complicated questions of fact and law. A perusal of the Act of 1981 does not provide power in Labour Inspector of the nature given to the Industrial Adjudicator, i.e., the Industrial Tribunal or Labour Court, as complete framework with procedure for it has been given under the Act of 1947. Certain provisions of the Civil Procedure Code have been made applicable therein for proper adjudication which does not exist under the Act of 1981.”

Therefore, this Court is of the considered opinion that the 3rd respondent is not the competent authority to entertain the petition under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and hence the impugned order is quashed.

15. For the aforesaid reasons, the writ petitions are allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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To

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Tirunelveli.



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