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W.P.Nos.8352 and 28590 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 13.03.2024
ORDER PRONOUNCED ON : 10.06.2024

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

W.P.Nos.8352 and 28590 of 2022

and

W.M.P.Nos.8322, 8323 and 27881 of 2022

W.P.No.8352 of 2022

- 1.R.Vaithiyanathan
- 2.P.Soundarapandian
- 3.R.Subha
- 4.S.Kavitha
- 5.S.Velvizhi
- 6.R.Umadevi
- 7.G.Rekha
- 8.S.Devisri
- 9.K.Rajalakshmi

...Petitioners

Vs.

- 1.The Assistant Commissioner Labour,
Inspector of Labour Office,
Second Floor, Semmandalam,
Employment Office Bank side,
Nellikuppam Main Road,
Cuddalore District-607 001.
Empowered Under Act 46 of 1981
- 2.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
Thambusamy Street,
Kilpauk, Chennai-600 010.



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3.M/s.The ZIGMA Technologies India Private Limited,
Rep. by its Service Delivery Manager-Operations,
No.17/1, 17/2, Mahalingam Street,
Mahalingapuram,
Nungambakkam, Chennai-600 034.

4.The Tamil Nadu Civil Supplies Corporation,
Rep by its Regional Manager, Cuddalore Zone,
Semmandalam, Nellikuppam Main Road,
Opposite to KNC College, Cuddalore-607 002.
(R4 impleaded vide order dated 12.09.2022 made
in W.M.P.No.20080/2022 in W.P.No.8352 of 2022)

...Respondents

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus, directing the 2nd respondent to comply with the order passed by the Assistant Commissioner Labour, Cuddalore empowered under the Tamil Nadu Industrial Establishments (Conferment to Permanent Status to Workmen) Act, 1981 (Tamil Nadu Act 46 of 1981) having Ref.No.Na.Ka.No.E/1333/2014, dated 12.01.2022 by conferring permanent status on the petitioners in the Tamil Nadu Civil Supplies Corporation, Cuddalore Office and consequently, direct the 3rd respondent or any other contractor to continue to engage the petitioners as Data Entry Operators in the Tamil Nadu Civil Supplies Corporation, Cuddalore office.

For Petitioner	: Mrs.NaliniChidambaram, Senior Counsel
For R1	: Mr.P.Sanjay Gandhi, Government Advocate
For R2	: Mr.C.kathiravan, Spl. Government Pleader
For R3	: No appearance

W.P.No.28590 of 2022

Management of Tamil Nadu Civil



W.P.Nos.8352 and 28590 of 2022

Supplies Corporation,
Rep by its Regional Manager,
Nellikuppam Road, Semmandalam,
Cuddalore-607 001.

...Petitioner

Vs.

1.The Assistant Commissioner Labour,
(Authorised officer under Conferment
of Permanent Status Act, 1981)
Inspector of Labour Office,
Second Floor, Semmandalam,
Employment Office Bank side,
Nellikuppam Main Road,
Cuddalore District-607 001.

2.Tvl.R.Vaithiyanathan
3.P.Soundarapandian
4.R.Subha
5.S.Kavitha
6.S.Velvizhi
7.R.Umadevi
8.G.Rekha
9.S.Devisri
10.K.Rajalakshmi

...Respondents

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent and quash the order dated 12.01.2022 passed in RC.No.C/1333/2014 dated 12.01.2022 by the first respondent.

For Petitioner	: Mr.R.Neelakandan, Addl. Advocate General, assisted by Mr.C.Selvaraj
For R1	: Mr.G.Nanmaran, Spl. Government Pleader
For R2	: M/s.C.Uma

COMMON ORDER

The above writ petitions arise out of the order passed by the first respondent



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empowered under the Tamil Nadu Industrial Establishments (Conferment to Permanent Status to Workmen) Act 1981 (Tamil Nadu Act 46 of 1981), dated 12.01.2022.

2.As both the writ petitions arise out of the order dated 12.01.2022, the writ petitions are taken up together and disposed by this Common order.

3.The writ petition in W.P.No.8352 of 2022 is filed for a writ of Mandamus directing the second respondent to comply with the order dated 12.01.2022 passed by the first respondent conferring the permanent status on the petitioners in the Tamil Nadu Civil Supplies Corporation, Cuddalore Office and consequently, direct the 3rd respondent or any other contractor to continue to engage the petitioners as Data Entry Operators in the Tamil Nadu Civil Supplies Corporation, Cuddalore office.

4.The writ petition in W.P.No.28590 of 2022 is filed by the Tamil Nadu Civil Supplies Corporation, Cuddalore Office, for a writ of Certiorari to call for the records of the first respondent in RC.No.C/1333/2014 dated 12.01.2022 and quash the same.



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5.The Data Entry Operators who filed the writ petition in W.P.No.8352 of 2022 will be referred to as the petitioners and the Tamil Nadu Civil Supplies Corporation, Cuddalore Office, which filed the writ petition in W.P.No.28590 of 2022 will be referred to as the respondent.

6.The gist of the facts necessary for the purpose of deciding the cases are as follows:

The petitioners were working as Data Entry Operators in the Tamil Nadu Civil Supplies Corporation. The petitioners were appointed by ELCOT through the private contractor viz., Peri Software Private Limited and other subcontractors and their services were utilized by the Tamil Nadu Civil Supplies Corporation. The Tamil Nadu Civil Supplies Corporation supplies provisions like rice, pulses, wheat, sugar, palm oil to ration shop/fair price shop for distribution to general public. The petitioners, as Data Entry Operators were entrusted the work of entering the details of provisions sent to the ration shops/fair price shops in the computer and only thereafter, the provisions were distributed through the ration shops/fair price shops to the public.

7.According to the petitioners, the role of the petitioners in making the data entry was very crucial to the conduct of the fair price shops/ration shops. Further,



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though the petitioners were employed through M/s.Peri Software Private Limited and other contractors working as subcontractors of ELCOT, the salary of the petitioners was disbursed only by the Tamil Nadu Civil Supplies Corporation through the contractors. It is the petitioners' case that the contractor engaged the petitioners for short periods and the renewal of the contract from time to time was made only to deny them the benefit permanent status. The act of the Tamil Nadu Civil Supplies Corporation in changing the contractors from time to time amounted to unfair labour practice within the meaning of the V Schedule of the Industrial Disputes Act. As the petitioners worked as data entry operators for more than 7 to 10 years in the Tamil Nadu Civil Supplies Corporation through the contractors engaged by it and further worked for 480 days in 24 months, they were all eligible to be conferred permanent status in the Tamil Nadu Civil Supplies Corporation as per Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. The petitioners therefore filed an application before the Assistant Commissioner Labour, Cuddalore, for conferment of permanent status. The Assistant Commissioner Labour, vide order dated 12.01.2022 allowed the applications of the petitioners' and directed the Tamil Nadu Civil Supplies Corporation, Cuddalore, to confer permanent status on the petitioners on the basis of its finding that the petitioners worked for more than 480 days in 24 calendar months. As the respondent failed to



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comply with the order of the first respondent, dated 12.01.2022, the petitioners were constrained to file the writ petition for the aforesaid relief.

8.The respondent Tamil Nadu Civil Supplies Corporation, as a counter-blast, filed W.P.No.28590 of 2022 challenging the order of the first respondent dated 12.01.2022. The affidavit in W.P.No.28590 of 2022 is also taken as a counter to W.P.No.8352 of 2022 and the affidavit in W.P.No.8352 of 2022 is taken as a counter to W.P.No.28590 of 2022. The respondent admitted that the petitioners were working as Data Entry Operators through subcontractors selected by M/s.ELCOT. One among the subcontractors viz., M/s.PERI Software Solution Private Limited, Chennai, had deployed Technical Supervisors and Data Entry Operators as per the needs of Tamil Nadu Civil Supplies Corporation, to do data entry in computers installed in the year 2010 in godowns of Tamil Nadu Civil Supplies Corporation all over the State. According to the respondent, the agreed rate for data entry operators were paid to the contractors every month for supply of required manpower based on the bills submitted. According to the respondent, at no point of time the salary was paid to the data entry operators directly by the Corporation. The respondent denied that there was any employer and employee relationship between the respondent and the petitioners. According to the respondent, its regular employees were paid salary and other benefits, as per



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TNCSC Employees' service Regulations 1989. In the Employees' Service Regulations 1989, there was no post of data entry operators and therefore, there was no question of sanction of post. According to the respondent, though there was no employer and employee relationship between the Corporation and the petitioners, they filed an application before the first respondent, the Assistant Commissioner of Labour, for permanency and the Assistant Commissioner of Labour even without considering that there was no employer employee relationship between the petitioners and the respondent allowed the application. According to the respondent, the application was not maintainable, as the necessary party the sub-contractor viz., M/s.Peri Software Solution Private Limited, was not impleaded. According to the respondent, the Assistant Commissioner of Labour, merely on sympathy passed the impugned order and therefore, the respondent was constrained to file the writ petition for the aforesaid relief.

9.The learned counsel for the petitioners submitted that the respondent is under a legal obligation to comply with the order of the Assistant Commissioner of Labour and confer permanent status to the petitioners. The learned counsel for the petitioners relied on the common order passed in W.P.No.14047 of 2011 and 525 of 2012, dated 19.02.2015 and also W.P.No.7893 of 2021, dated 14.02.2022 in



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support of his case.

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10.The learned counsel for the respondent submitted that the impugned order dated 12.01.2022 was unsustainable in as much as the petitioners were contract employees employed by the subcontractors. The learned counsel further submitted that in spite of a specific plea being raised that the petitioners were only contract employees, the Assistant Commissioner of Labour, without deciding the issue merely on sympathy and without any legal reasons, passed the impugned order directing conferment of permanent status to the petitioners.

11.I have heard both the learned counsels and I have perused the materials placed on record.

12.The main issue raised by the respondent is that the Assistant Commissioner of Labour failed to consider the plea of the respondent that the petitioners were only the contract employees and therefore, they were not entitled to conferment of permanency under the respondent.

13. The admitted facts of the case are that the petitioners worked as Data Entry Operators for more than 7 to 10 years in the Tamil Nadu Civil Supplies



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Corporation, through its contractors. It is not disputed by the respondent that the petitioners worked for more than 480 days in 24 months. The main contention of the respondent is that the petitioners were not its direct employees. The Assistant Commissioner of Labour in his order while discussing the plea of the respondent that the petitioners were not direct employees, found that every month, the number of days of work put in by the petitioners was calculated by the contractors and the same was sent to the respondents and thereafter the petitioners' salary was paid by the respondent through the contractors. The Assistant Commissioner of Labor factually found that as a principal employer it was the respondent who paid the salary to the petitioners and that the contractor did not pay the salary to the Petitioners from his own funds. It is seen from the impugned order that the Assistant Commissioner of Labour found that the petitioners had worked continuously for 10 years and that 132 posts of Assistant and Junior Assistant were vacant and therefore the Assistant Commissioner of labour opined that it was also in the interest of the respondent Corporation to grant permanency to the petitioners. The respondent has challenged the impugned order conferring permanency to the petitioners in its writ petitions.

14.The long and short of the case is whether the petitioners are entitled to conferment of permanency by the respondent. The respondent's objections to it is



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that the petitioners are all employees of the subcontractors engaged by it through Elcot and therefore, there is no master/servant relationship between the petitioners and the respondent. The respondent had not issued any appointment order to the petitioners, there was absolutely no control over the petitioners' service by the respondent and that the salary was paid by the respondent albeit through the contractors on the basis of the bills raised by the contractors.

15.The petitioners counter to the said objections are that they are the direct employees of the respondents and that the Contract labour alleged by the respondents was a camouflage to deprive the petitioners of their legitimate claim to permanency. The petitioners further state that the facts of the case would reveal that the Respondents resorted to unfair Labour practise as stipulated in clause 10, Schedule V of the ID Act, by exploiting the services of the petitioners for years together without conferring permanency. On the facts of the case, the petitioners state that the Assistant Commissioner of Labour on appreciation of facts clearly found that the salary of the petitioners was paid by the respondents only and that the contractors did not pay the salary from out of their own funds. The Assistant Commissioner of Labour further found that the work of the respondents was perennial in nature and that there were 132 vacancies in the respondent board as per document in Rc.No.E2/1180/2013 dated 21.03.2013 and so the Assistant



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Commissioner of Labour opined that it was also in the interest of the respondent to confer permanency to the petitioners. It was lastly submitted that this Court should not interfere with the factual findings of the Assistant Commissioner of Labour as it was based on proper appreciation of the materials on record more so when the respondents failed to prove any perversity in the findings of the Inspector of Labour.

16.The Counsel for the petitioners while reiterating the aforesaid objections relying on the first Division bench judgement of this court reported in **2022 (3) CTC 113**, submitted that once the objection of contract employment was raised, the Assistant Commissioner of Labour had no power to adjudicate the same as the power to adjudicate the nature of employment lay only with the labour court or the industrial tribunal only.

17.The Hon'ble Division Bench in the aforesaid judgement at Paras 22 and 23 held as follows.

“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.

23. If the facts of this case are taken into consideration, we find that the Labour Inspector has recorded his finding in reference to the Act of 1970 while adjudicating the issue. Such powers have not been conferred on him, rather he can pass appropriate order after summary enquiry. The view expressed by the Single Judge of this court in the case of Superintending Engineer, Vellore Electricity Distribution Circle, Vellore, supra, is not in conflict with the view aforesaid, rather in paragraph 35 of the said judgment, the difference between the power of Labour Inspector and Labour Court or Industrial Tribunal under the Act of 1947 has been made.

18. There is absolutely no dispute on the said legal proposition. The question is whether on the mere *ipsi dixit* of the respondents that the petitioners were contract labour without any supporting material will oust the jurisdiction of the Assistant Commissioner of Labour. In my view the answer is an Emphatic NO! If that were so all that the employers would have to do is to raise an objection and take the matter out of the jurisdiction of the Assistant Commissioner of Labour. In this regard, the Division Bench judgement of this Court in W.A.Nos. 771 to 775 of 2019 is usefully referred. The Hon'ble Division Bench held that:

"3. In view of the above said decision of this Court, these writ



appeals are also disposed of. However, we make it clear that the authority can go into the question as to whether the contract is sham and nominal and, if it is sham and nominal, he has no authority to decide the issue and the matter has got to be decided either before the Industrial Adjudicator or the authority under the Contract Labour (Regulation and Abolition) Act, 1970. The authority is expected to decide the issue as early as possible on day-to-day basis, without adjourning the matter beyond 7 working days at any point of time, as the same is pending for more than 25 years. No costs."

Therefore, only if a prima facie case is made out by the employer, then only the hands of the Assistant Commissioner of Labour would be tied.

19. On the facts of the present case, it is seen that the petitioners neither averred nor proved that they were covered by the Contract Labour Abolition Act, 1970. The respondent failed to prove that it was registered under Act 1970 and that it had licence to engage contract labour, and also that the contractors were licensed contractors entitled to engage contract labour. Therefore, as per the provisions of the Contract Labour Abolition Act, 1970, the respondent ought not to have engaged contractor to engage contract labour. In my view, in the absence of this basic material, the objections of the respondent cannot be entertained. I am fortified in my view by the Judgement of this Hon'ble Court in WP. Nos.4675 and 3809 of 2004 which was also later confirmed by the Hon'ble Division bench in its judgement in W.A.No.1644 of 2012 dated 24.08.2012.



20. One vital aspect, in my view, which tilts the balance against the respondents is the violation of Clause 10 of Schedule V of the ID Act relating to unfair labour practice. Clause 10 of Schedule V of the Industrial Disputes Act is as under:

"to employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

It is not disputed by the respondent that the petitioners worked for long periods ranging between 7 to 10 years. The very fact that the petitioners worked for such a long periods would prove that their work was perennial in nature. The following facts will add to the unfair labour practise adopted by the respondents to deprive the petitioners permanency. The respondent engaged several subcontractors through ELCOT for the same work of data entry. It is specifically averred by the petitioners that from 2009-2011 Peri Software Private Limited was the subcontractor of ELCOT, who engaged the services of the petitioners. Thereafter, Keltron Software Private Limited was given the contract through ELCOT between 2011 to 2013. Thereafter, from 2013-2019 Peri Software Private Limited was again engaged as the contractor through ELCOT. From 2019-2022 New Life Placement was engaged as the subcontractor through ELCOT. The main contractor



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was ELCOT till February 2022 and all the others were subcontractors of ELCOT.

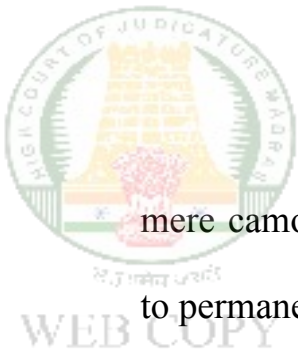
In March 2022, the contract with ELCOT was terminated and in its place, M/s.The ZIGMA Technologies India Private Limited was appointed as the Contractor, which took over the manpower resource support for the respondent. All the contractors continuously engaged the petitioners as data entry operators and therefore, as rightly contended by the petitioners, the change of contractors was deliberately done by the respondent to deny permanent status to the petitioners.

21. When similar issue was raised before this honourable Court, this Court in W.P.Nos.14047 of 2011 & W.P.No. 525 of 2011 held as follows:

“24. As already stated, as per clause – 10 of Part I of the V Schedule, keeping the workmen as casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen amounts to unfair labour practice.”

22. On facts as rightly held by the Assistant Commissioner of Labour, even the salary of the petitioners was paid only by the respondents albeit through bills raised by the contractors and certified by the respondent's employees. I am therefore of the view that both on facts and in law, the contention of the respondent that the petitioners were only contract labour cannot be countenanced.

23. In View of the facts of this case the plea of contract labour is held to be a



mere camouflage, a smokescreen to deprive the petitioners their legitimate Right to permanency.

24. The Assistant Commissioner of Labour factually found that all the petitioners had worked for more than 480 days in 24 months, as mandated by the Act of 1981. The respondent did not lead any contra evidence to deny the same. Admittedly, the petitioners worked for more than 7 to 10 years and therefore I find absolutely no infirmity or impropriety in the factual findings of the Inspector of Labour.

25. For all the above reasons I find no merit in the writ petition.

26. It is seen that petitioners 7,8 and 9 took leave on health grounds and so their services were terminated w.e.f. May 2020, April 2018 and October 2017.

27. The Hon'ble first Division Bench in its Judgement dated 07.03.2022 in 2022 (3) CTC 113 held as follows:

“34. The benefit as to the consequences thereupon would be only for the period of employment and if any of the workman is discontinued or not in service, he would be entitled to the benefit only for the period of service and not beyond that and, that too, after the completion of continuous service of 480 days in 24 calendar months, and not for a prior period”.

28. Following the aforesaid judgement, it is made clear that as the service of



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the petitioners 7, 8 and 9 were terminated with effect from May 2020, April 2018 and October 2017, respectively they would be entitled for permanency only for the period of their employment and not beyond and that too after completion of 480 days in 24 months and not for prior period.

29. As regards the other petitioners, the mandamus prayed for is granted and the respondents are directed to implement the order dated 12.01.2022 of the Assistant Commissioner of Labour within 8 weeks from the date of receipt of this order copy. W.P.No.8352 of 2022 is allowed as regards petitioner 1 to 6 and with regard to the petitioners 7, 8, and 9 with the aforesaid directions WP. No. 28590 of 2022 is dismissed. There shall be no order as to costs. Consequently, connected WMP's are closed.

10.06.2024

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

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To

1. The Assistant Commissioner Labour,
Inspector of Labour Office,
Second Floor, Semmandalam,
Employment Office Bank side,
Nellikuppam Main Road,



W.P.Nos.8352 and 28590 of 2022

Cuddalore District-607 001.
Empowered Under Act 46 of 1981

2.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
Thambusamy Street,
Kilpauk, Chennai-600 010.

N.MALA,J.

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W.P.Nos.8352 and 28590 of 2022

PRE-DELIVERY ORDER IN
W.P.Nos.8352 and 28590 of 2022
and
W.M.P.Nos.8322, 8323 and 27881 of 2022

ORDER DELIVERED ON
10.06.2024