



W.P.Nos.15694/2020, 27929,3310, 3308/2021, 2320,2307,2510, 2516/2022 & 4292/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 28.03.2024
ORDER PRONOUNCED ON : 11.07.2024

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

**W.P.Nos.15694/2020, 27929,3310, 3308/2021, 2320,2307,2510,
2516 & 4298 of 2022 and**

**W.M.P.Nos.2653,2654,4420,2473,2474,2656, 2657,2484, 2486 of 2022, 3766,
3767, 29489 of 2021, 19535 of 2020**

W.P.No.15694 of 2020

- 1.S.Sasikumar
- 2.A.Thangaraju
- 3.P.Subash
- 4.D.Senthil
- 5.G.Ramu
- 6.V.Chinnadurai
- 7.A.Vinothkumar
- 8.C.Poongodi
- 9.K.Kuppan
- 10.R.Iyyappan
- 11.E.Pachaiyappan
- 12.V.Gajendran
- 13.S.Siva
- 14.B.Giridharan
- 15.S.Murugan
- 16.A.Palanivel

...Petitioners

Vs.

- 1.The Managaging Director,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Salai,



W.P.Nos.15694/2020, 27929,3310, 3308/2021, 2320,2307,2510, 2516/2022 & 4292/2013

Chepauk,
Chennai 600 005.

2.The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Maintenance Division,
Thendral Nagar,
Thiruvannamalai.

3.The Assistant Commissioner of Labour,
Enforcing Authority under
Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workmen)
Act, 1981,
Thiruvannamalai.

...Respondents

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to implement the orders passed by the Assistant Commissioner of Labour, Thiruvannamalai vide his proceedings No.E/4341/2016, dated 23.12.2019, within the time frame as may be fixed by this Court.

For Petitioners : Mr.Balan Haridas
for M/s. Law Square
For Respondents : Mr.S.Ravindran, Senior Counsel
Assisted by M/s.Mekhala

COMMON ORDER

The above writ petitions arise out of the order passed by the first respondent empowered under the Tamil Nadu Industrial Establishments (Conferment to Permanent Status to Workmen) Act 1981 (Tamil Nadu Act 46 of 1981).

2.As all the writ petitions arise out of the order of the third respondent, the writ petitions are taken up together and disposed by this Common order.



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3.The writ petition in W.P.No.15694 of 2020 is filed for a writ of Mandamus directing the 1st respondent to implement the orders passed by the Assistant Commissioner of Labour, Thiruvannamalai, vide his proceeding No.E/4341/2016 dated 23.12.2019 within the time frame as may be fixed by this Court.

4.The writ petition in W.P.No.2320 of 2022 is filed for a writ of Certiorari to call for the records made in the impugned award in Na.Ka.No.3489/2016 dated 21.10.2020 passed by the first respondent herein (Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act 1981 and quash the same.

5.The writ petition in W.P.No.2516 of 2022 is filed for a writ of Certiorari, to call for the records made in the impugned Award in Na.Ka.No.6131/11 dated 25.04.2014 passed by the Inspector of Labour, Tiruvarur (Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act 1981, the first respondent herein and to quash the same.

6.The writ petition in W.P.No.4298 of 2022 is filed for a writ of Certiorari to call for the records made in the impugned award in Na.Ka.No.3047/2016, dated 23.12.2019, passed by the Inspector of Labour, Thiruvannamalai, (Authority under



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the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, the first respondent and quash the same.

7.The writ petition in W.P.No.3308 of 2021 is filed for a writ of Mandamus directing the 2nd respondent to implement the orders passed by the 3rd respondent vide his proceeding Na.Ka.No.A61/2014 dated 21.10.2020 within the time frame as may be fixed by this Court.

8.The writ petition in W.P.No.2307 of 2022 is filed for a writ of Certiorari, to call for the records made in the impugned award in Na.Ka.No.A61/2014/dated 21.10.2020 passed by the Inspector of Labour, Tiruvarur (Authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, the first respondent herein and to quash the same.

9.The writ petition in W.P.No.2510 of 2022 is filed for a writ of Certiorari to call for the records made in the impugned award in Na.Ka.No.7167/2011/dated 11.02.2014 passed by the Inspector of Labour, Tiruvarur (Authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, the first respondent herein and to quash the same.



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10.The writ petition in W.P.No.3310 of 2021 is filed for a writ of Mandamus directing the 2nd respondent to implement the orders passed by the 3rd respondent vide his proceeding Na.Ka.No.3489/2016 dated 21.10.2020 within the time frame as may be fixed by this Court.

11.The writ petition in W.P.No.27929 of 2021 is filed for a writ of Certiorari to call for the records made in the impugned award in Na.Ka.No.Ee/4341/2016/dated 23.12.2019 passed by the Inspector of Labour, Tiruvanamalai (Authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, the first respondent and to quash the same.

12.The workmen, who filed the writ petitions in W.P.Nos.3308, 3310 of 2021 and 15694 of 2020 will be referred to as the petitioners and the Tamil Nadu Water Supply and Drainage Board, which filed the writ petitions in W.P.Nos.27929 of 21, 2510, 2307, 4298, 2516 and 2320 of 2022 will be referred to as the respondent.

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

The petitioners in WP. Nos. 15694 of 2020, 3310 and 3308 of 2021 were



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initially appointed in various positions on consolidated pay on various dates under the respondent for the operation and maintenance of Combined Water Supply Schemes to various Districts. The petitioners have been working continuously under the direct supervision of the respondent and to the satisfaction of superior officers. The services of the petitioners were not regularized, even though they completed the required service of 480 days within 24 calendar months as required under the provisions of Section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. The petitioners requested the respondent to regularize their services on multiple occasions but as the respondent did not respond they filed applications before the Assistant Commissioner of Labour (the enforcing authority), on 21.09.2016, 15.11.2016 and 20.01.2014 respectively. Some of the petitioners did not conduct the case. After conducting detailed inquiry, the Assistant Commissioner of Labour issued a common order dated 23.12.2019, 21.10.2020 and 21.10.2020 respectively, directing the respondent to regularize the service of the petitioners, who conducted the cases. Thereafter, the petitioners submitted a representation dated 18.02.2020, 18.12.2020 and 18.12.2020 respectively to the first and second respondents requesting to implement the order of the 1st respondent, but the respondent did not take any action. The petitioner's state that similarly placed workmen filed SLP.Nos.35106 and 35107 of 2012 before the Hon'ble Supreme Court and the



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Hon'ble Supreme Court, vide order dated 07.05.2013 confirmed the orders of this Court. In pursuance thereof, the respondent in its proceeding dated 13.06.2013, conferred permanent status to 17 workmen. According to the Petitioners, even though the Hon'ble Apex Court decided the said issue in favour of the Petitioners, the respondent failed to implement the awards dated 23.12.2019, 21.10.2020 and 21.10.2020. As the respondent wantonly delayed the implementation of the award of the Assistant Commissioner of Labour, Thiruvannamalai, the petitioners filed the above writ petitions for the aforesaid reliefs.

14.The first respondent Tamil Nadu Water Supply and Drainage Board, as a counter-blast, filed W.P.Nos.27929 of 2021, 2510, 2307, 4298, 2516 and 2320 of 2022 challenging the orders of the third respondent. According to the respondent, the Tamil Nadu Water Supply and Drainage Board (TWAD Board) is a Government organization and not an establishment as defined under the Tamil Nadu Shops and Establishments Act or the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act. Further, the TWAD Board developed many Combined Water Supply Schemes (CWSS) for the supply of potable drinking water in the State. The Government, vide G.O(D)No.84, Municipal Administration and Water Supply Department, dated 10.03.1994, decided that the CWSS involving more than one local body will be maintained by



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TWAD Board, after obtaining necessary resolutions from the Local Body.

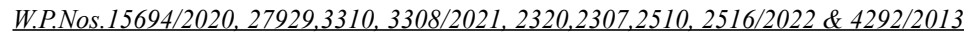
Pursuant to the said G.O., the respondent was permitted to take over CWSS for further maintenance. According to the respondent, based on the proposal of the respondent, the Government passed G.O.Ms.No.261/MA & WS Dept., (WS) dated 14.10.1996, permitting the respondent to appoint workmen on consolidated pay with annual increment of 10% of their pay for five years in respect of each categories, to maintain CWSS. The respondent states that the respondent Board is maintaining the CWSS by engaging the workmen through employment exchange on consolidated pay as per the G.O. The number of CWSS are increasing year by year and the number of maintenance staff required are also increasing day by day. Therefore, the respondent Board contracted out for operation and maintenance of CWSS through outsourced agencies. According to the respondent board the licensed contractors alone engage and pay the workmen for the purpose of carrying out their contractual obligations. The workmen who were engaged by the contractors, were not the workmen of the respondent Board and hence the Assistant Commissioner of Labour had no jurisdiction to direct the respondent Board to regularize the engagement of the petitioners. Under the said circumstances the respondent Board was constrained to file the writ petitions for the aforesaid relief.



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15. The learned counsel for the petitioner 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 petitioner submitted that the findings of the 3rd respondent on fact is based on the materials placed before him and therefore this Court exercising its jurisdiction under Article 226 should not interfere with the same, unless and until perversity is established. The learned counsel for the petitioners relied on several orders of this Court as well as Hon'ble Supreme Court confirming the order of the Assistant Commissioner of Labour passed under Tamil Nadu Act 46 of 1981 conferring permanent status to several workers of the respondent Board.

16. The learned counsel for the respondents submitted that the petitioners were engaged as contract labour and therefore there was no employer employee relationship between the petitioners and the respondent. In view of the same, the burden was on the employees to establish the employer employee relationship between the petitioners and the respondents. The learned counsel further submitted that the 3rd respondent erred in relying on the log book, for returning a finding that petitioners were employed under the respondent. Learned counsel further submitted that the reliance placed on the log book for concluding that the petitioners had worked for 480 days in a 24 calendar months was erroneous.



19. In the present case, the respondent contends that the petitioners were all contract labourers and that they were engaged by licensed contractors for the



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purpose of carrying out the contractual obligations relating to operation of maintenance of the combined water supply schemes. The respondent therefore contends that all the petitioners were engaged by the licensed contractors and therefore they were not entitled to claim permanency in the respondent Board. The 3rd respondent while considering the said submission factually found that the respondent Board had not filed any documentary evidence to sustain the said plea. The 3rd respondent found that a mere statement denying the petitioners contentions was made in the counter affidavit without any supporting materials. Even in the affidavit in support of the writ petitions, the respondent Board except for stating that the petitioners were engaged by licensed contractors did not even aver that the Board had obtained the certificate of registration as required under the Contract Labour (Regulation and Abolition) Act, 1970 for engaging contract labour. There is neither any plea nor evidence to show that during the relevant period the respondent Board had obtained certificate of Registration under Contract Labour (Regulation and Abolition) Act, 1970, to engage contract labour. Therefore the 3rd respondent was justified in rejecting the respondent's claim that the petitioner's were not its employees, but that of the contractors engaged by it.

20. The learned counsel for the petitioner submitted that once the objection was taken that the respondents were only contract employees engaged by the



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contractor, the 3rd respondent had no jurisdiction to adjudicate the issue and the appropriate authority to adjudicate the issue would only be the industrial adjudicator i.e. Industrial Tribunal or Labour Court. The aforesaid legal proposition is not disputed, the question is whether on the mere *ipse dixit* of the respondent that the petitioners were contract labour without any supporting material will oust the jurisdiction of the 3rd respondent. In my view, unless and until there is some material to show that the respondent was entitled to engage contract labour, the jurisdiction of the 3rd respondent cannot be ousted. If the respondents contention is accepted, then it would lead to a situation where all that the employer will have to do is to raise an objection that the workmen is a contract labour and the Assistant Commissioner of Labour would be ousted out of his jurisdiction. Therefore, in my view unless a *prima facie* case is made out by the employer by producing relevant statutory documents under the Contract Labour (Regulation and Abolition) Act, 1970, the hands of the Assistant Commissioner of Labour cannot be tied. Once the supporting documents are produced in support of the plea that the employees were contract labour, the Authority under Act 1981 is precluded from delving into the sham and nominal nature of the contract and the matter will have to be adjudicated only by the industrial adjudicator or the authority under the Contract Labour (Regulation and Abolition) Act, 1970. I am fortified in my view by the Division Bench of this Court in W.A.Nos. 771 to 775



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of 2019, the Hon'ble Division Bench held as follows:

“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.”

21. The learned counsel for the petitioner referred to several judgments in support of his case. It is undisputed that after the judgment of the First Bench in the case of *The Superintending Engineer, Erode Electricity Distribution Circle, Tamilnadu Electricity Board Vs. Inspector of Labour and others* reported in (2022) SCC OnLine Mad 1003, there has been a significant legal shift which is evident from the subsequent judgments of this Court filed by the respondent's counsel in the typed set of papers. In my view for application of the Judgments relied on by the respondents counsel, a *prima facie* case has to be made out by the respondent to oust the jurisdiction of the authority. In the present case as the respondent failed to produce the statutorily required materials to sustain its plea of contractual labour, the said Judgments will not apply.



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22. The learned counsel for the petitioners relied on the Judgment of the Hon'ble Supreme Court in the case of *Dena Nath and Others Versus National Fertilisers Ltd. and Others* reported in 1992 (1) SCC 695 in support of his contention that violation of Sections 7 and 12 of the Contract Labour (Regulation and Abolition) Act, 1970 would not result in the contract employees becoming the direct employees of the principal employer. In my view, the said legal proposition enunciated in the Judgment cannot be disputed, but the said Judgment has to be read in the back drops of the facts of the case.

23. It would be appropriate to note here the judgment of the Hon'ble Supreme Court in the case of *Padmausundara Rao & Ors. Vs. State of T.N & Ors.* reported in 2002 (3) SCC 533. In the said Judgment, the Hon'ble Supreme Court held that reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed should not be done. It was further held that the circumstantial flexibility and one additional or different fact may make a world of difference between the conclusions in two cases.

24. In this context, it is relevant to point out here that the petitioner in



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W.P.No.2307 of 2022 has taken a specific stand in the counter that Government of Tamil Nadu issued a Notification in G.O.Ms.No.950, Labour and Employment Department, dated 08.08.1990 under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970, prohibiting the employment of contract labour in 19 processes including water treatment plant and water supplies process. Even the Board, according to the petitioner has passed orders in B.P.Ms.No.31 dated 13.06.2013 prohibiting the employment of contract labours on outsourcing in perennial nature of works of operation and maintenance of all Combined Water Supply Schemes under the control of the Board. It is seen that inspite of the aforesaid submission, the respondent has not filed any rejoinder denying the said submissions.

25. Viewed from this factual aspect, the reliance placed by the petitioner on the Judgment of the Hon'ble Supreme Court reported in *1992 (1) SCC 695* is misplaced, because in the said Judgment, the Hon'ble Supreme Court categorically stated that labour employed by the principal employer through contractor cannot be deemed to be direct employees of the principal employer in absence of any notification under Section 10 prohibiting employment of contract labour in the establishment concerned. The Hon'ble Supreme Court in the context of the facts of that case held that the contract labours would not become direct employees of the principal employer for violation of Section 7 & 12 of the Act. As stated above, in



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the present case there is a prohibition notification under Section 10(1) of the Act and therefore the said Judgment would not apply. According to the petitioner's the respondent was specifically prohibited from employing contract labour. Therefore to allow the respondent to take the plea that the petitioners would not become its direct employees would amount to endorsing the illegality committed by it. The *Maxim Nullus Commodum Capere Potest De Injuria Sua Propria* will directly apply to this case. The respondent having violated the law cannot frustrate the legal rights of the petitioner's by taking advantage of its own wrong. (Juri Ex Injuria Oritur)

26. Therefore in my view, the non compliance of Section 7 and 12 of the Contract Labour (Regulation and Abolition) Act, 1970 will attract penal provisions of Section 23 and 25, only when there is no notification under Section 10 prohibiting employment of contract labour in the establishment concerned. Once there is prohibition notification, the respondent cannot take advantage of its own wrong (Juris Ex Injuria Oritur) and contend that only the penal provisions would be attracted and that the contract workers will not become its direct employees. To countenance the submission will be putting premium on illegality or in other words will amount to incentivizing illegal actions.

27. The learned counsel for the respondents relied on the Judgment of this



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Court in W.P.No. 8262 of 2009, to contend that the log book cannot be relied on to establish that the petitioners were directly employed by the Board, the said contention cannot be accepted as the 3rd respondent has given justifiable and cogent reasons for accepting the same. The learned counsel for the respondents next contended that the petitioners had failed to prove by adducing reliable evidence to prove that they worked for 480 days in 24 calendar months to avail the relief under the permanency Act. In my view, the factual finding of the Tribunal cannot be interfered in writ jurisdiction. The said finding has been rendered after taking into consideration the materials placed on record and hence the finding of the Tribunal is not interfered.

28. Even though the learned counsel for the petitioners submitted voluminous typed set of papers and Judgments, I have not referred to the same in this Judgment, because I do not want to add paper and further the relevant Judgments which in my view are necessary for the decision have been referred to.

In view of all the above discussions, I find no merit in the writ petitions filed by the respondent Board in W.P.Nos. 27929 of 2021, 2510, 2307, 4298, 2516 and 2320 of 2022 and the same are dismissed and the writ petitions filed by the petitioners in 3308, 3310 of 2021 and 15694 of 2020 are allowed. The respondents



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1 and 2 are directed to comply with the order of the 3rd respondent within a period of eight weeks from the date of receipt of copy of this order. No costs.

Consequently connected WMP's are closed.

11.07.2024

(1/2)

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

Ns/dsn

To

1.The Managaging Director,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Salai,
Chepauk,
Chennai600005.

2.The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Maintenance Division,
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3.The Assistant Commissioner of Labour,



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Enforcing Authority under
Tamil Nadu Industrial Establishment,
Thiruvannamalai.

N.MALA,J.

Ns

PRE-DELIVERY ORDER IN

**W.P.Nos.15694/2020, 27929,3310, 3308/2021, 2320,2307,2510,
2516 & 4298 of 2022 and**

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(1/2)