



WP(MD)Nos.19334, 19594, 20828 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

**WP(MD)Nos.19334, 19594, 20828 of 2024**  
**and**  
**WMP(MD)Nos.16400, 16609, 17659 of 2024**

S.Selvaraj : Petitioner in WP(MD)19334/2024  
G.Palpandian : Petitioner in WP(MD)19594/2024  
G.Kalidoss : Petitioner in WP(MD)20828/2024

Vs.

- 1.The Superintending Engineer,  
Theni Electricity Distribution Circle,  
Tamil Nadu Electricity Board,  
Theni – 625 531. : R1 in all WPs
- 2.The Assistant Engineer,  
(Tamil Nadu Electricity Board),  
Now Changed as TANGEDCO,  
Kadamalaikundu,Theni District. : R2 in WP(MD)19334/2024
- 3.The Assistant Engineer,  
(Tamil Nadu Electricity Board),  
Now Changed as TANGEDCO,  
Myladumparai Division,  
Theni District. : R2 in WP(MD)19594, 20828/2024



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4.The Inspector of Labour /  
Assistant Commissioner (Implementation),  
Under the Tamil Nadu Industrial Establishments  
(Conferment of Permanent Status to Workmen) Act, 1981,  
Theni District.

: R3 in all WPs

**COMMON PRAYER:** Writ Petitions filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus calling for the records relating to the proceedings of the third respondent in RC.No.686 of 2010 dated 20.03.2020, quash the same and consequently, directing the respondents to absorb the petitioners giving permanent status u/s.3(1)(2) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and as per conditions in Paragraph nos.3 & 5 of the Per.B.P (Chairman) No.9, dated 09.01.2008 issued by the Chief Engineer / Personnel (i/c), Tamil Nadu Electricity Board.

For Petitioners : Mr.K.Appadurai

For Respondents: Mr.Anandha Gopalan  
for Mr.T.S.Gopalan for R.1, R.2

Mr.A.Baskaran,  
Additional Government Pleader for R.3

[In all WPs]

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## **COMMON ORDER**

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The petitioners, claiming to be contract labours working with the second respondent / TANGEDCO, have filed applications before the third respondent / Inspector of Labour u/s.3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 [hereinafter referred to as 'the Act']. The applications of the petitioners, along with the applications of 46 other similarly placed persons, were rejected by the third respondent by the impugned proceedings dated 20.03.2020, by referring to Section 7 of the Act. Aggrieved over the same, the petitioners have filed the present writ petitions.

2.Learned Counsel for the petitioners submitted that the petitioners have studied Diploma in Electrical Engineering. The second respondent / TANGEDCO, depending upon the requirements, engage contract labours and would pay the salary from the petty cash book. The petitioners have also been engaged as contract labours with the second respondent. Around 63 such workers belonging to recognized Trade Unions were absorbed by the Board in the year 1986. Similarly placed others have approached the



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Hon'ble Supreme Court and the Hon'ble Supreme Court has appointed a Committee headed by Justice Khalid to identify the contract labours, if any, in the respondent Board and to find out the ways for their absorptions. Justice Khalid Committee has submitted its report in the year 1991, followed by which, around 18000 employees were brought into regular service, relaxing the qualifications. Some of the workers were left out and subsequently, they have also been regularized by the 12(3) settlement dated 10.08.2007.

3.He further submitted that the petitioners have completed 480 days of continuous work within 2 years and the Assistant Engineer attached to the second respondent has also issued certificates to that effect. Therefore, the petitioners have filed applications for absorption before the third respondent, however, it was rejected holding that the Act would not apply to the petitioners, who are construction / building workers, as per Section 7 of the Act. By referring to the decision of the First Bench of this Court in *Superintending Engineer, Erode v. Inspector of Labour, Erode and Others* [2022 SCC OnLine Mad 1003], he submitted that the petitioners are



'workman', within the definition of the Act and therefore, the Act would be applicable to them.

4.Learned Counsel for the respondents / TANGEDCO submitted that the issue is no longer *res integra*. In fact, in the decision referred by the petitioners in *Superintending Engineer, Erode* (supra), the First Bench of this Court has held that the Labour Inspector is vested with the power under the Act of 1981 to conduct a summary enquiry and that an elaborate adjudication of questions of facts and law can only be made under the Act of 1947. Two Division Benches have affirmed this legal position in *Selvaraju and Others v. Superintending Engineer and Others* [WA.Nos.273, 275 of 2020, dated 20.01.2023] and in *Superintending Engineer and Others v. Inspector of Labour, Madurai* [WA(MD)Nos.771 to 775 of 2019, dated 21.12.2023]. He has also relied upon the decisions of this Court in *Superintending Engineer v. Inspector of Labour, Tiruvannamalai* [WP.No. 33635 of 2016, dated 24.07.2023] and in *Superintending Engineer v. Assistant Commissioner of Labour and Others* [WP.Nos.1366, 1367, 1369, 326, 431, 558 of 2024, dated 12.03.2024].



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5.This Court considered the rival submissions made on either side and perused the materials placed on record.

6.A consistent view has been taken by this Court that the authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, ie., the third respondent / Inspector of Labour, does not have the authority to go into complicated issues of facts and law, involving sham and nominal nature of a contract. For better appreciation, the relevant portions from the decision in *Selvaraju's* case (supra) are extracted as under:-

*“Learned counsel appearing for the appellants / workmen would submit that the issue involved in these appeals is squarely covered by a Division Bench decision of this Court in W.P.No.4061 of 2013 and Batch, dated 07.03.2022.*

2. Paragraph 34 of the above said decision reads as under :

*“34. We have considered the submission aforesaid and find that the order passed by the Labour Inspector needs to be interfered with remand of the case. It is, however, to be made clear that the*



*Labour Inspector would not cause enquiry beyond the powers given under the Act of 1981 and thereby would not be having jurisdiction to adjudicate the complicated questions of fact and law in reference to any other statute than the Act of 1981. The Labour Inspector may, for the purpose of conducting summary enquiry, allow the parties to produce documents and if any of the workmen has completed 480 days of continuous service in 24 calendar months, appropriate directions can be issued for granting permanency. However, even if such an order is issued, it should be with a clear finding about each workman and the number of working days by referring to the period of 24 calendar months. The benefit as to the consequences thereupon would be only for the period of employment and if any of the workmen 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. The direction aforesaid is not driven by the settlement for the reason that the workmen herein are those who were not extended the benefit of settlement and, therefore, sought claims by maintaining claim separately. However, it would not preclude both the sides from entering into settlement, if they so choose, during the period of summary enquiry by the Labour Inspector. The issue as to whether the respondents fall within the definition of "workman" is however decided against the petitioner Corporation, as not only a*



*settlement was entered, but adjudication about claim to seek permanency has been decided earlier in reference to similarly placed."*

*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 seven working days at any point of time, as the same is pending for more than 25 years. No costs."*

7.The petitioners herein have admitted that they were contract labours. Therefore, they have to work out their remedy by raising a dispute either under Section 2(k) of the Industrial Disputes Act, 1947 or under the Contract Labour (Regulation and Abolition) Act, 1970 before the Industrial Tribunal, in the manner known to law.



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8.In fine, granting liberty as aforesaid, these writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Internet : Yes  
Index : Yes / No  
NCC : Yes / No

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**B.PUGALENDHI, J.**

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