



DATED: 05.09.2024

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.23503 of 2015

- ... Petitioners

$$V_S$$

1. The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
TANGEDCO,
Maharajanagar,
Tirunelveli 627 011.
2. S.P.Construction,,
28 A, Sundaravinayagar Koil Street,
Palaya Pettai, Tirunelveli 627 008.



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3. The Presiding Officer,
Labour Court, Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Common Award passed in I.D.Nos.7,8,9,10,11,12,19 and 20 of 2015 by the third respondent, dated 07.10.2015, quash the same and consequently direct the first respondent to reinstate the petitioners in service with back wages, continuity of service and all other attendant benefits.

For Petitioners : Mrs.S.Iswarya
For Mrs.D.Geetha

For R1 : Mrs.P.Malini
For T.S.Gopalan & Co.

For R2 : Mr.M.Jerin Mathew

For R3 & R4 : No Appearance

ORDER

This writ petition is filed by the workmen as against the common award passed by the Labour Court, Tirunelveli in I.D.Nos.7, 8, 9, 10, 11, 12, 19 and 20 of 2015, dated 07.10.2015.



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2. These industrial disputes were raised under Section 2(A)2 of the Industrial Disputes Act as against the order of the second respondent discontinuing their services in the call center. The petitioners were employed as operators in the fuse of call center at Samathanapuram of the first respondent Corporation from 21.03.2008. The petitioners claim that they have been continuously doing the service, however, in the name of the second respondent. They have been provided a daily wage of Rs. 250/-. The petitioners were employed in the fuse of call center of the first respondent and this center will receive the complaints from the customers over phone. The petitioners are expected to register the same in a computer, which is maintained for this purpose and to intimate the same to the concerned wireman. Accordingly, the wireman would attend the complaints of the customer and this report will be sent to the fuse call centre. The petitioners are also expected to inform the compliance to the customers. Thus, according to the petitioners, the nature of work done by the petitioners is the process of attending the fuse call for the first respondent Corporation/Electricity Board. Some of the petitioners have been inducted from the year 2011. However, they have been engaged in the services in the name of the second respondent. The second



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respondent contractor was changed, however, they continued as the call attendants in the fuse call centre of the first respondent. When the petitioners raised the issue for regularization and for increase of wages, they have been removed by the second respondent and therefore, they have raised these industrial disputes before the Labour Court, Tirunelveli.

3.The learned Counsel for the petitioners submits that they have been working continuously in the fuse call center of the first respondent for more than seven years, however, in the name of the second respondent. Since they have attended the duty of the first respondent, they have to be treated as the workers of the first respondent. The Labour Court, Tirunelveli, has failed to consider that the second respondent is not a registered contractor under the Contract Labour (Regulation and Abolition) Act. However, in different names of the contractors, the services of the petitioners were availed by the first respondent and then, they have been terminated from service without any notice and without conducting any enquiry. Therefore, the petitioners have to be reinstated by the first respondent, since the contract between the first and second respondents was not a registered contract under the



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said Act and it is non-est in law.

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4.The learned Counsel for the petitioners has also referred to the Government Order in G.O.(Ms).No.950, Labour and Employment Department, dated 08.08.1990 and submits that the Government of Tamil Nadu has abolished the contractor labour system in Tamil Nadu Electricity Board with effect from 08.08.1990 and the process of attending the fuse call is also one of the works, which has been abolished for engaging the contract labours. Therefore, in view of this Government order, the first respondent cannot engage any contract labour for attending fuse calls and it is the first respondent, who has engaged the services for attending the fuse calls. Therefore, they need to be addressed. Though they have been registered in the name of contractors and the contractors have been changed, the petitioners have been in continuous service in the fuse call centre for more than seven years and therefore, they need to be regularized. However, the Labour Court without considering the same has erroneously passed the award which needs to be interfered .

5.The learned Counsel for the petitioner also referred to the



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judgment rendered by the Hon'ble Supreme Court in the case of **Gujarat Electricity Board** reported in **1995 II LLN 59** and submitted that in the event, if the Government abolishes the contract labour system in respect of an establishment, the industrial adjudicator shall decide the issue after giving opportunity to the parties to place materials before it, whether the work can be observed by the Principal employer or not and therefore, the industrial disputes are maintainable before the Labour Court.

6.The learned Counsel for the first respondent submits that the first respondent has never engaged the petitioners for the services. It is only a contract for attending the calls from the customers and they have been engaged by the second respondent. The second respondent is a call centre, which has rendered the services of attending the calls of the customers and intimating the same to the Department about any repair works and therefore, according to the learned Counsel for the first respondent, these petitioners have never been engaged by the first respondent. She further submits that the first respondent is a Government Undertaking Institution, which is guided by certain regulations and any employment even as a daily wage, can only be made by following the regulations and therefore, the contention of the



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petitioners is wrong and it cannot be considered for regularization of service.

7.The learned Counsel for the first respondent has also raised a preliminary objection that the Labour Court, Tirunelveli is not supposed to have entertained the applications filed by the petitioners under Section 2(A)2 of the ID Act that there is no privity of contract between the petitioners and the first respondent and therefore, there is no workman and employer relationship between them. Hence, this application filed by the the petitioners is not maintainable. The learned Counsel also referred to the G.O.(MS). No.950, dated 08.08.1990 submits that the engagement of a contract labour for fuse of call was already prohibited by the Government w.e.f 1990 and therefore, even assuming that the petitioners have been engaged for the purpose of attending fuse calls, then, it must be an illegality committed by the concerned officer, which cannot be ratified by regularization and therefore, the petitioners' claim is not maintainable. She further submits that admittedly, even according to the petitioners, they have been engaged for the services not only by the second respondent and also by some other contractors and therefore, they cannot claim that they have been continuously engaged by the second



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respondent or by the other contractors.

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8.The second respondent is a call centre and the services of the second respondent were availed for receiving the complaints from the customers over phone and to inform the same to the Board and there is no prohibition for engaging this service of call centres as per G.O. (MS).No.1990.

9.The learned Counsel for the second respondent submits that the second respondent had been given contract from 21.03.2013 to 22.03.2014 and thereafter, from 22.03.2014 to 21.03.2015 and thereafter, the contract was not extended. The second respondent had discharged the services of the petitioners and the same was also held to be valid by the Labour Court. The Labour Court had further held that the petitioners had not completed 240 days and as such, they cannot have the protection under Section 25F of ID Act, 1947. By observing the same, the Labour Court has held the discharge of the petitioners as valid.

10.This Court has considered the rival submissions made.



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11.The petitioners are the employees of the second respondent in a call centre. They have raised these industrial disputes under Section 2(A)2 of the ID Act. The Labour Court has dismissed their claim as under:

"20) Summarizing all the above discussions the following posts emerged.

*i) Admittedly the petitioners employed by the 2nd respondent
?) The contract entered between the 1st respondent and the 2nd respondent is true, genuine contract but against the G.O.*

(iii)The Government already abolished contract labour system in the 1st respondent establishment and in contravention of the G.O. the 1st respondent employed contract labours through 2nd respondent.

iy) As the employment itself is illegal. The services of the petitioners cannot be regularized.

(V) The petitioners claimed relief of reinstatement with the 1st respondent and they did not seek any relief with the 2nd respondent.

*vi) The petitioners worked with the 2nd respondent only for limited period during the **second term of contract** and the contract period already expired.*

As such considering all the above facts this court found that the petitioners are not entitled to any relief much less the relief of reinstatement with 1st respondent as claimed by them in the written argument. Hence this court found all the petitions are liable to be dismissed."



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12. Admittedly, the petitioners are not having any records that they have ever served with the first respondent. Even according to them, their services have been engaged for the purpose of call centres in the name of one AG Engineering Works from the period 21.01.2009 to 20.01.2012 and thereafter, in the name of Mary construction from 21.01.2012 to 20.03.2013 and so on. The main contention of the petitioners is that the process of attending the fuse call is a service to the first respondent and the first respondent was prohibited from engaging any contract labour pursuant to the Government Order G.O.(MS).No.950, Labour and Employment Department, dated 08.08.1990.

13. The learned Counsel for the contractor has also pointed out that these contractors, namely, AG Engineering Works and Mery construction are not the registered contractors under the Contract Labour (Regulation and Abolition) Act. They also claim that they have continuously worked for more than 240 days and therefore, they are entitled for regularization. He has taken a specific stand that the petitioners have never been engaged by the first respondent and they have worked for some time in a call centre conducted by the second respondent. There was an agreement



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between the second respondent with the first respondent for receiving the calls from the customers to communicate the same to the first respondent, which does not mean that they have access with the first respondent. Moreover, the Government vide G.O.(Ms).No.950, dated 08.08.1990 has specifically abolished the engagement of contract labour system in the process of fuse call. Fuse call has been defined in the Government Order is for engaging the wireman or line man and therefore, even if there is any contract engaged by a particular officer, then, it is an illegal act as against the Government Order, which prescribed the contract labour as illegal as early as in the year 1980. Therefore, the petitioners cannot be regularized for the mischief, if any, played by the concerned officer.

14.In view of the above, this Court is not inclined to interfere with the orders of the Labour court. Accordingly, this writ petition is dismissed. No costs.

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



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2. The Presiding Officer,
Labour Court, Tirunelveli.



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