



WP(MD)Nos.3213 to 3218 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)Nos.3213 to 3218 of 2016
and
WMP(MD)Nos.2805 to 2810 of 2016**

WP(MD)No.3213/2016:-

The Superintending Engineer,
General Construction Circle,
Tamil Nadu Electricity Board,
(Now called as TANTRANSCO),
K.Pudur, Madurai – 625 007.

: Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Madurai.

2.S.M.Mohan

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari calling for the records relating to the impugned award passed by the first respondent in I.D.No. 51 of 2011, dated 12.02.2014 and quash the same.



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For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.,

For Respondents: Mr.R.Thangasamy for R.2

[In all WPs]

COMMON ORDER

The second respondents in all these writ petitions are the workmen and they have raised the disputes in I.D.Nos.51 , 52, 77, 78, 79, 80 of 2011, u/s.2A(2) of the Industrial Disputes Act, before the Labour Court, Madurai, challenging the order of termination passed by the petitioner / Board, dated 04.09.2010. They have also sought for reinstatement with continuity of service and backwages. The Labour Court, by awards dated 12.02.2014, ordered for reinstatement and continuity of service, with 50% backwages and other attendant benefits. Challenging the same, the petitioner / Board has preferred these writ petitions.

2.The case of the workmen before the Labour Court is that they have been engaged by the Board as contract labourers from the year 1997, 1998 and they were subsequently engaged through one



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M/s.Guruvayurappan Security Services from the year 1998, 2001, 2002.

Thereafter, they have been absorbed and regularized with effect from 25.03.2008 under the Board's scheme of regularization of contract labours. From the date of regularization, they have been continuously working for more than two years and all of a sudden, they have been terminated by orders dated 04.09.2010. The dismissal orders dated 04.09.2010 were challenged before this Court in WP(MD)No.12219 of 2010, etc., batch and this Court, by order dated 28.09.2010, disposed those writ petitions with a direction to approach the appropriate forum. Accordingly, they have raised the dispute before the Labour Officer and before the Labour Court.

3.The case of the petitioner Board is that the second respondents / workmen are contract workers engaged for security services through a security agency. There is no position as Watch and Ward in the services of the petitioner Board and therefore, on a K2 agreement, the persons for security services were availed in accordance with certain terms. There is no brevity of contract between the Board and the workmen and that the



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workmen are the employees of the security agency. Therefore, the workmen are not entitled for any relief with the Board. However, the Board admitted that pursuant to a settlement u/s.12(3) of the Industrial Disputes Act, dated 10.08.2007, they have absorbed 21,600 contract labourers, throughout the State, as daily wage permanent employees and during such period, the names of the second respondents / workmen have been wrongly entered in the list. This wrong has been corrected by the orders of termination.

4.Learned Counsel appearing for the petitioner Board submitted that there is no position as Watch and Ward in the services of the Board and therefore, the second respondents / workmen and similarly placed others cannot be regularized. They have been engaged only by the security agency and their services were outsourced based on a K2 agreement entered into with the security agency. The second respondents / workmen have worked only as outsourced personnel, based on the contract with the security agency and therefore, they cannot be regularized. However, while regularizing certain contract labourers,



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pursuant to a settlement u/s.12(3) of the Industrial Disputes Act, dated 10.08.2007, the second respondents / workmen, security service personnel, have also been wrongly added in Madurai Division alone. It was verified and they have been removed by the orders of termination dated 04.09.2010.

5.He further submitted that since there is some mistake on the part of the petitioner Board in bringing the second respondents / workmen into daily wage in the year 2008, the petitioner Board is willing to pay some compensation to them. In the absence of any service regulation and the specified service, the second respondents / workmen cannot be inducted in the Board.

6.In support of his contention, the learned Counsel for the petitioner has relied on the following decisions of the Hon'ble Supreme Court:-

i) *State of Madhya Pradesh and Another v. Vinod Kumar Tiwari*
[(2016) 16 SCC 610];



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ii) *State of Uttar Pradesh and Others v. Vinod Kumar* [(2016) 11

SCC 279];

iii) *Deputy Executive Engineer v. Kuberbhai Kanjibhai* [(2019) 4

SCC 307]; and

iv) *State of Uttarakhand and Another v. Raj Kumar* [(2019) 14 SCC

353].

7.Learned Counsel appearing for the second respondents / workmen submitted that these workers have been engaged by the petitioner Board as contract labourers from the years 1990, 1994, 1997 and subsequently, they were engaged through a security service agency. 11 such contract labourers, including the second respondents, were absorbed and regularized in the Board with effect from 25.03.2008 and they have been continuously working upto 04.09.2010 for more than 240 days. He has also furnished the details with regard to the date of those 11 workers' engagement and regularization, which is extracted as under:-



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S.No.	Writ Petition / Respondent name	Originally engaged by the petitioner	Engaged in M/s.Guruvayurappan Security Agency		Date of Regularization
			From	To	
1	WP(MD). 3213/2016 S.M.Mohan	23.12.1997	18.04.2002	31.03.2008	25.03.2008
2	WP(MD). 3214/2016 A.Dinakaran	23.12.1997	17.01.2001	31.03.2008	25.03.2008
3	WP(MD). 3215/2016 C.Marudasamy	27.12.1990	01.04.1998	31.03.2008	25.03.2008
4	WP(MD). 3216/2016 S.Ganesamoorthy	02.01.1998	26.04.2007	31.03.2008	25.03.2008
5	WP(MD). 3217/2016 V.K.Ratnavel	02.01.1998	14.04.2002	31.03.2008	25.03.2008
6	WP(MD). 3218/2016 S.Joseph Jeyaraj	25.12.1997	01.04.2004	31.03.2008	25.03.2008
7	K.S.Chandra Sekaran	03.01.1998	01.12.2003	31.03.2008	25.03.2008
8	K.Murugesan	30.12.1997	21.01.2005	31.03.2008	25.03.2008
9	P.Pitchaimani	02.01.1998	11.12.2005	31.03.2008	25.03.2008
10	M.Ravichandran	27.12.1990	26.04.2007	31.03.2008	25.03.2008
11	V.Rajasivamaran	28.03.1994	15.02.2008	31.03.2008	25.03.2008



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8.He further submitted that out of these 11 workers, only nine were dismissed and one Ravichandran and one Rajasivamaran were retained by the Board. These two persons are still working as Mazdoor and Accountant. This is an unfair labour practice, showing favoritism to one set of workers and in such cases, reinstatement with full backwages is a matter of rule, as per the various decisions rendered by the Hon'ble Supreme Court. He further submitted that the termination orders were passed in violation of Section 25F of the Industrial Disputes Act, without any notice before termination.

9.In support of his contention, the learned Counsel for the second respondents / workmen has relied on the following decisions of the Hon'ble Supreme Court:-

- i) *M/s.Hindusthan Tin Works Pvt Ltd v. The Employees of M/s.Hindusthan Tin Works Pvt Ltd and Others* [1979 (2) SCC 80];
- ii) *L.Robert D'Souza v. Executive Engineer, Southern Railway and Another* [(1982 (1) SCC 645]; and



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iii) *Harjender Singh v. Punjab State Warehousing Corporation*

[2010 (3) MLJ 127].

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

11.These writ petitions are filed to issue a Writ of Certiorari to quash the awards passed by the Labour Court. The scope of a Writ of Certiorari has been laid down by the Hon'ble Supreme Court in *Yakoob v. K.S.Radhakrishnan and Others* [AIR 1964 SC 477], as follows:-

“7. ... A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction



and the court exercising it is not entitled to act as an appellate court.

This limitation necessarily means that findings of fact reached by the inferior court or tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ court."

Therefore, what can be corrected by a writ would be an error of law and it must be apparent on the face of record.



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12. The main contention of the petitioner Board is that there is no position as Watch and Ward in the services of the Board and the services of the second respondents / workmen were availed only through a security agency, based on a K2 agreement. However, the Board has regularized 21,600 contract labourers as permanent daily wage employees, pursuant to a decision taken in a settlement u/s.12(3) of the Industrial Disputes Act, dated 10.08.2007. During such regularization, the services of the second respondents / workmen were also regularized with effect from 25.03.2008. Though the petitioner claims that these second respondents / workmen would not come under the settlement u/s.12(3) of the Industrial Disputes Act, dated 10.08.2007, the fact remains that they have also been regularized and were appointed on 25.03.2008, with a monthly salary of Rs.3,120/-. The second respondents / workmen have worked continuously for a period of 2.5 years. Only thereafter, the orders of termination dated 04.09.2010 were passed.



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13.The Labour Court has also discussed that the Board has absorbed 13,054 contract labourers, as per the award of Justice Kalidh Commission dated 11.02.1991. The persons, who are left out and the persons, who are engaged at a later point of time, were also absorbed from time to time by the Board, through various other proceedings.

14.The Chief Engineer of the petitioner Board, by proceedings dated 20.02.2008, permitted the Superintending Engineers to engage the contract labourers continuously on need basis on daily wages of Rs.70/-, subject to certain conditions. Based on this proceedings, the Superintending Engineer, Madurai Circle, has brought the second respondents / workmen into regular stream on 25.03.2008, vide Ex.W9. These appointments were also made, pursuant to the permission granted by the Chief Engineer dated 20.02.2008, which was also marked as Ex.W8.

15.The case of the workmen is that they have been continuously



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working in the Board from the year 1997 onwards, through different contractors and thereafter, directly under the Board from 25.03.2008.

Admittedly, they have worked for more than two years continuously, pursuant to the proceedings dated 25.03.2008 [Ex.W9].

16.It is also the case of the workmen that 11 such persons from the security services agency have been regularized on 25.03.2008 in Madurai Circle, out of which, 9 were retrenched and one Ravichandran and one Rajasivamaran were retained. Though the learned Counsel for the petitioner Board claims that those persons have been retained as Accountant based on their qualifications, the fact remains that they have also been engaged as K2 contract workers from the year 1990, 1994 from the security agency and were regularized with effect from 25.03.2008, along with the second respondents / workmen.

17.In *Re Harjinder Singh v. Punjab State Warehousing Corporation* [(2010) 3 SCC 192], the Hon'ble Supreme Court has observed as follows:-



“16. ... it is settled law that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of “last come first go” without any tangible reason.

...

31. ... the approach of the courts must be compatible with the constitutional philosophy of which the directive principles of State policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer – public or private.

...

42. ... it is clearly the duty of the judiciary to promote a social order in which justice, economic and political, informs all the institutions of the national life.

43. ... this Court has a duty to interpret statutes with social welfare benefits in such a way as to further the statutory goal and not to frustrate it. In doing so this Court should make an effort to protect the rights of the weaker sections of the society in view of the clear constitutional mandate discussed above. Thus, social justice, the very signature tune of our Constitution and being deeply embedded in our constitutional ethos in a way is the arch of the Constitution which ensures rights of the common man to be interpreted in a meaningful



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way so that life can be lived with human dignity."

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18.Following the above decisions and being satisfied with the reasonings offered by the Labour Court in the impugned awards, this Court is not inclined to entertain these writ petitions.

Accordingly, all the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

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

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