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W.P.No.1748 of 2010 etc., (batch cases)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.1748 of 2010, 17963 and 17964 of 2012, 26293, 1496, 1497 and
24861 of 2013

& M.P.No.1 of 2013 in W.P.No.1496 of 2013

& M.P.No.1 of 2013 in W.P.No.1497 of 2013

W.P.No.1748 of 2010:-

1. P.Ramesh
2. K.Chandran
3. R.Ravi
4. S.Ramesh
5. K.Jaganathan
6. T.Raghunayagam
7. E.Venkatesan
8. S.Panchatcharam
9. R.Susendiran
10. C.Kattavarayan
11. R.Purushothaman
12. D.John Chouthri
13. L.Selvam
14. K.Mahendran
15. N.M.Johnson
16. M.Murugan
17. G.Raghu



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18. K.Rajkumar

19. S.Thirumurugan

20. S.Settu

21. I.Velu

22. K.Kuppusamy

23. D.Ilangovan

24. D.Vadivelu

.. Petitioners

Versus

1. The Presiding Officer,
The Principal Labour Court,
Vellore.

2. The Management of
M/s.Tamil Nadu Industrial Explosive Ltd.,
Tel Post, Vellore - 59.

.. Respondents

Prayer in W.P.No.1748 of 2010 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, after calling for the records relating to the Award, dated 11.06.2009 passed in I.D.Nos.92, 40, 34, 51, 89, 43, 91, 101, 41, 93, 46, 107, 48, 42, 49, 85, 96, 97, 90, 38, 94, 102, 73, 45/2003, quash the same and consequently direct the 2nd respondent to reinstate the petitioners in service with continuity of service and with back wages and other attendant benefits, award costs.

In W.P.Nos.1748 of 2010, 17963 and 17964 of 2012, 26293 and 24861 of 2013:-



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For Petitioners : Mr.S.T.Varadarajulu

For Respondents : R1 - Labour Court

: Mr.R.Jagadesan,
for M/s.K.V.Subramanian Associates
and Mr.M.A.Abdul Wahab for R2

In W.P.No.1496 of 2013:-

For Petitioners : Mr.R.Jagadesan,
for M/s.K.V.Subramanian Associates
and Mr.M.A.Abdul Wahab

For Respondents : Notice served for RR-1 to 3

In W.P.No.1497 of 2013:-

For Petitioners : Mr.R.Jagadesan,
for M/s.K.V.Subramanian Associates
and Mr.M.A.Abdul Wahab

For Respondents : Mr.S.T.Varadarajulu,
for RR-6, 7, 9, 10, 16, 17, 18, 20, 29,
31, 33, 34, 35, 37, 38, 42 to 44, 47,
50, 51, 52, 54, 56, 63 and 64

: Notice served for RR-1 to 5, 8, 11 to
15, 19, 21 to 28, 30, 32, 36, 39 to 41,
45, 46, 48, 49, 53, 55, 57 to 62, 65,
66 to 71



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COMMON ORDER

These Writ Petitions are connected and as such, are taken up and disposed of by this common order. Three sets of Industrial Disputes were disposed of by three common awards. Aggrieved by which, these Writ Petitions are filed.

2. I.D.No.89 of 2003 etc., were disposed of by the common award, dated 11.06.2009 rejecting the claim of the workmen. Aggrieved by the rejection of the claim in toto, 24 workmen filed W.P.No.1748 of 2010 and another workman filed W.P.No.24861 of 2013. The second set of Industrial Disputes in I.D.No.160 of 2004 etc., were disposed of by the common award, dated 01.11.2010. By the said award, the Labour Court, while declining the relief of reinstatement with back wages, ordered compensation by directing the management to pay a sum of Rs.20,000/- to each of the workman who worked for less than 100 days and a sum of Rs.35,000/- to each of the workman who worked for less than 200 days and a sum of



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Rs.50,000/- to each of the workman who worked more than 240 days.

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Aggrieved by the award of compensation, the management filed W.P.No.1497 of 2013. 16 of the workmen filed W.P.No.17963 of 2012 and 15 of the workmen filed W.P.No.26293 of 2013 against the said common award. The third set of Industrial Disputes in I.D.No.39 of 2003 etc., were also disposed of by yet another common award on the same day i.e., on 01.11.2010, where under also, compensation on the same terms was ordered by the Labour Court. Aggrieved by the same, the management filed W.P.No.1496 of 2013 while the workmen filed W.P.No.17964 of 2012.

3. The brief factual background, in which, these Writ Petitions arise is that the management namely, Tamil Nadu Industrial Explosive Limited, is a public sector undertaking fully owned and sponsored by the Government of Tamil Nadu. It was manufacturing certain kinds of explosives. In the course of its activity, it is seen that a requirement arose to engage casual labourers.

As per the rules of the Government of Tamil Nadu to engage even casual



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labourers, it is through Employment Exchange as laid down in G.O.Ms.No.790, dated 05.07.1971 reiterated vide G.O.Ms.No.44, dated 11.03.2015. The Employment Exchange was notified and the names were called for from the Employment Exchange. The casual workmen were specifically employed only for three months or six months. At the time of joining duty itself, it was made clear to the workmen and even an undertaking was signed by the workmen that they understood that their contract employment for three months and six months, will not confer any right whatsoever for them to claim any permanency or any other benefit and that they will be non-employed after the period of contract. Accordingly, these batches of workmen were employed on various dates in the year 2000-2001 and after the need ceased to exist, more specifically, when there was an incident of accident and during the audit, it was brought to the notice of the management that already, the Government of India has banned the employment of casual labourers in Explosive industries, all these workmen were discharged. Aggrieved by the same, the workmen raised a dispute.



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The conciliation failed and the Industrial Disputes were taken on file.

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4. The Industrial Disputes were resisted by the management because none of the employees ever crossed 240 days. Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'I.D Act') does not apply to them. Therefore, no relief whatsoever can be claimed by them. Even if they were sponsored through Employment Exchange, that does not give any right to them as they were appointed by way of specific contracts. After considering the case of the parties, in the first batch of awards in I.D.No.89 of 2003 etc., the Labour Court considered the stand of the parties in detail and held that these workmen would fall within the definition of contract employees under Section 2(oo)(bb) of the I.D Act. Therefore, even Sections 25F and 25H of the I.D Act will not apply to them and the Labour Court held that they are not entitled to any relief and dismissed the Claim Petitions.

5. In the second and third common awards, dated 01.11.2010, while



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the Labour Court found that as few of the employees crossed 240 days, it ordered compensation on various slabs as mentioned therein for the employees who crossed 240 days and for those who did not cross 240 days, the lesser amount was ordered to be paid as compensation. Aggrieved by the action of the Labour Court in awarding the compensation, the management is before this Court. Aggrieved by the award of the Labour Court in not ordering the reinstatement with back wages and dismissing the claim in total in respect of certain workmen, the workmen are before this Court.

6. Heard *Mr.S.T.Varadarajulu*, learned Counsel for the workmen *Mr.R.Jagadesan* and *Mr.M.A.Abdul Wahab*, learned Counsel for the management.

7. The learned Counsel for the management, by taking this Court to the various decisions relied upon by the Labour Court, would submit that the position is very well settled that if the employees have not put in even 240



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days, the non-employment cannot attract even the benefits under Section 25F of the I.D Act and certainly, they cannot claim any reinstatement or continuity or permanency whatsoever. Therefore, the Labour Court ought not to have granted any relief whatsoever in respect of the employees except the 10 employees who put in 240 days. Even the said 10 employees did not properly establish the fact that they were employed for more than 240 days. In that view of the matter, when the first batch of the Industrial Disputes were dismissed in toto, the same should have been followed in the second and third batches also. Therefore, he would submit that the Writ Petitions, filed by the management, should be allowed.

8. The learned Counsel for the workmen would submit that in this case, the finding of the Labour Court that the workmen would fall within the definition of Section 2(oo)(bb) of the I.D Act is *ex facie* incorrect because the management needs hands and therefore, they engaged the persons on a casual basis. The contract period was never adhered to. The very fact that



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many of the workmen crossed 240 days and none of the workmen were discharged on expiry of the contract period of three months or six months, as the case may be, would itself demonstrate that they were only casual labourers and not contract labourers. Once they are casual labourers, in respect of the employees who crossed 240 days, when they are non-employed and Section 25F of the I.D Act is not followed, then, the relief of reinstatement with back wages ought to have been given by the Labour Court.

9. Even in respect of the persons who are not put in 240 days, this is a case where the management is involved in engaging badlis. It had called for a list from the Employment Exchange and in the second letter, it specifically addressed that to sponsor new names other than those who had already worked. Similarly, the three batches of the employees were taken in. Therefore, that proves that though the work is perennial in nature, only to avoid any claims of benefits under the Labour Laws and to evade the Labour



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Welfare Legislation, the management was involved in the unfair labour practice of employing badlis for regular work. Therefore, the Labour Court ought to have granted relief of reinstatement with back wages to all the workmen.

10. As a matter of fact, the unit is closed in the year 2017. Subsequently, B.H.E.L, as a purchaser of the properties, is running the unit now. Even though it is not a transfer of undertaking and there is no connection between the respondent management and B.H.E.L, when these workmen approached the B.H.E.L, they refused the employment only on the ground that the matters are pending before this Court. Therefore, even though the reinstatement with back wages cannot be now ordered, B.H.E.L can also be directed to consider the cases of the workmen. The quantum of compensation, granted by the Labour Court, is also very low and it has to be enhanced.



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11. I have considered the rival submissions made on either side and perused the material records of the case.

12. There can be no quarrel over the proposition that to attract the benefits or compliance under Section 25F of the I.D. Act, the workmen should have put in 240 days. Admittedly, in the second and third batches of the Industrial Disputes, the learned Counsel for the management agrees that at least, 10 workmen put in 240 days. As far as the first batch of the Industrial Disputes, dismissed by the common order, dated 11.06.2009, it can be seen from the proof affidavit filed on behalf of the workmen, that there also, 29 out of the 48 workmen crossed 240 days. Therefore, when all these persons were non-employed and when the procedure under Section 25F of the I.D Act is not followed, certainly, no exception whatsoever can be taken in respect of the second and third batch of the awards, where compensation was awarded.



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13. As far as the first batch of the Claim Petitions is concerned, it can be seen that the relief is denied to them only on the ground that they were contract labourers. As rightly contended by the learned Counsel for the workmen, when the workmen were engaged as casual labourers and when the period of contract was not followed by the management, certainly, they cannot fall back on Section 2(oo)(bb) of the I.D Act and I hold that even in respect of the first batch of the Industrial Disputes, the workmen, who crossed 240 days, will be entitled for compensation for violation of Section 25F of the I.D Act.

14. As far as the workmen who did not put in 240 days, it can be seen that the Labour Court awarded compensation of Rs.20,000/- and Rs.35,000/- each to the workmen. Though they were not entitled to any compensation under Section 25F of the I.D. Act, in this case, it is demonstrated that the respondent management has engaged in different sets of casual labourers only to avoid the casual labourers claiming permanency. It can be seen from



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paragraphs Nos.2 to 4 of the letter sent by the management to the Employment Exchange, marked as **Ex.W-2** itself, as follows:-

"2. We give below the position of the first batch of the candidates:---

a. Total candidates (I Batch)	164
b. Already worked/working	48
c. Candidates called	106
d. No. of persons absent	76
e. No. of persons present	30
f. Persons not willing	14
g. Persons joined as CLs	16

It may please, be noted that out of 154 candidate we could get only 16 persons.

At present we have in hand only balance 45 candidate out of which 13 persons already worked and 2 persons are not qualified for CL Vacancy. Hence only 30 persons are in panel and they will be called during this week after postal strike is over.

4. In the meantime we propose to get another list from Employment Exchange, Vellore and we are enclosing necessary notification for the same we request you to sponsor the suitable candidates at the earliest, without including the name of the candidates who have already worked in TEL."

(emphasis supplied)

Thus, if the work is perennial in nature and if the management keeps on changing the casual labourers one set after the other, as badlis, then, the same would be an unfair labour practice as per Entry 10 of the Schedule-V of the Industrial Disputes Act.



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15. Secondly, the management is also a public sector undertaking.

The law is too well settled that even though any employee, who is employed on a casual basis, even if it is through Employment Exchange, cannot claim regularisation or permanency. If the management was to engage casual labourers, one set of casual labourers cannot be thrown out and another set of casual labourers cannot be engaged. To that limited extent, there is a violation of the legal rights of the workmen and therefore, for the violation of the said rights and the unfair labour practice committed on these workmen certainly, compensation can be awarded. Further, in this case, even as per the case of the management, as per *M.W.I*, the management ought not to have appointed casual labourers at all since the industry was manufacturing explosives. These were unemployed, who were registered under the Employment Exchange and only to save some money, the respondent management suddenly called names from the Employment Exchange and put them at great risk of employing them in the explosive industry.



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days worked by these workmen is concerned, the dates, as mentioned in the proof affidavit, are taken as final and accordingly, the compensation be granted.

17. Concerning employment with B.H.E.L, they do not have any obligation to employ these workmen. However, independently, if these workmen apply and they need the hands, this dispute or order shall not come in the way and they can consider and employ these persons in their terms in accordance with law.

18. In view thereof, these Writ Petitions are disposed of on the following terms:-

(i) W.P.No.1748 of 2010 and W.P.No.24861 of 2013 stand partly allowed on the following terms:-

(a) The common award of the Principal Labour Court, Vellore, dated 11.06.2009 made in I.D.No.89 of 2003 etc., shall stand set aside;



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(b) The non-employment of the workmen, who had put in more than 240 days without following the procedure, is held to be unjustified;

(c) However, the workmen will not be entitled to the relief of reinstatement with back wages, but, will be entitled to compensation in lieu of reinstatement with back wages;

(d) Even in respect of the other workmen, for the unfair labour practice and for engaging them in an explosive industry, the compensation, as awarded in I.D.No.160 of 2004 etc., at the same rates, is to be adopted and paid;

(e) The 25 workmen, who are involved in these Writ Petitions are to be paid a sum of Rs.50,000/- as compensation if they crossed 200 days and a sum of Rs.35,000/- as compensation if they crossed 100 days and a sum of Rs.20,000/- as compensation if they have not crossed 100 days. The said compensation shall be paid with further interest at the rate of 6% per annum from 01.11.2010;

(ii) W.P.Nos.1496 and 1497 of 2013 stand dismissed;



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(iii) W.P.Nos.26293 of 2013 and 17963 of 2013 are disposed of on the

following terms:-

(a) The award of the Labour Court made in I.D.No.160 of 2004 etc., dated 01.11.2010 shall stand confirmed. However, the compensation amount, as directed, will be paid with further interest at the rate of 6% per annum with effect from 01.11.2010;

(iv) W.P.No.17964 of 2012 filed is disposed of on the following terms:-

(a) The award passed in I.D.No.39 of 2003, dated 01.11.2010 shall stand confirmed. However, the amount of compensation, as directed, shall be paid with further interest at the rate of 6% per annum from 01.11.2010;

(v) All the compensation amounts, as directed above, shall be paid within 16 weeks from the date of receipt/production of a web copy of the order without waiting for a certified copy of the order;

(vi) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.



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22.01.2025

Neutral Citation : yes
grs

To

The Presiding Officer,
The Principal Labour Court,
Vellore.



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D.BHARATHA CHAKRAVARTHY, J.

grs

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