



W.P.No.27750 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 23.01.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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and M.P.No.1 of 2010

The Regional Secretary,
All India General Insurance Employees Congress,
Old No.8, New No.4, Esplanade,
U.I.L. Building, Chennai - 600 108. .. Petitioner

Versus

1. The Central Government Industrial,
Tribunal-cum-Labour Court,
rep. by its Presiding Officer, Shastri Bhavan,
Haddows Road, Chennai - 600 006.
2. The Regional Manager,
United India Insurance Co. Ltd.,
Dr.Nanjappa Road, Regional Office,
Coimbatore - 641 018. .. Respondents

Prayer : 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 11.06.2010 in I.D.No.74 of 2007 on the



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file of the 1st respondent Tribunal filed and marked as Ex.'A' and quash the same and issue a consequential direction to the 2nd respondent that the concerned workman D.Pakkirisamy is a workman under the Industrial Disputes Act, 1947 and that he should be regularized as a Caretaker with effect from 01.11.1986 and paid the difference in back wages etc., and also continuity of service.

For Petitioner : Mr.N.Stalin

For Respondents : R1-Labour Court

: Mr.K.K.Sivasshanmugam, for R2

ORDER

This Writ Petition is filed challenging the award of the Central Government Industrial Tribunal-cum-Labour Court, Chennai, dated 11.06.2010 made in I.D.No.74 of 2007. By the said award, the Labour Court rejected the claim of the workman that his services be regularised.

2. The brief background of this Writ Petition is that the management is a General Insurance Company, a public sector undertaking. It has a guest



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house in Coimbatore. By the agreement dated 09.09.1986, the services of the workman, *D.Packiriswamy*, was engaged as a Caretaker by the management. An agreement was established, in which, the Caretaker was to provide the services specified and would be entitled to remuneration as detailed in the agreement. Consequently, the workman, *Packiriswamy*, functioned as the Caretaker. Following his appointment, his basic pay was revised to Rs.875/- and the applicable D.A. began to be paid from 01.01.1989. Periodically, his pay and allowances were adjusted. The contract was also formalized in writing for various periods.

3. Regarding a similarly situated caretaker, *C.Gnanam*, who was employed at another general insurance company, the New India Assurance Company, the workman raised a dispute concerning regularization in I.D.No.20 of 1997. This dispute was successful, and ultimately, *C.Gnanam's* services were regularized by the New India Assurance Company. The workman claims that, despite his duties being regular and perennial and



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having worked for about 21 years with the hope of being regularized, the management did not provide him with the same treatment. Meanwhile, several other staff members in subordinate positions, such as Daftary, Electrician, Lift Man, Driver, and Watchman, were regularized. Although the petitioner received wages equivalent to those of regular sub-staff, along with periodic annual increments and other allowances — including salary arrears and revisions — the formal order for the workman's regularization was not granted. Under these circumstances, the workman, through the petitioner trade union, raised a dispute under Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'I.D Act'). Conciliation efforts failed, and the appropriate Government subsequently referred the matter for adjudication by the Tribunal in the order, dated 01.11.2007, which outlined the following terms:

"Whether the demand of All India General Insurance Congress for regularization of Sri D.Packiriswamy by the management of United India Insurance Co. Ltd. is just and fair? If not, to what relief is the concerned workman entitled?"



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lines.

Thereafter, the Claim Petition is filed by the workman on the above

4. The claim is resisted by the management. It is the primary case of the management that the management is a public sector undertaking. Any recruitment can only be in a sanctioned post. The procedure for recruitment should be followed by public advertisement and also by following the rules of reservation and following the recruitment rules. As far as the post of Caretaker is concerned, there is no such post in the respondent organisation. The maintenance of the guest house is not the regular activity or the mainstream activity of the management. While so, given the peculiar job work involved in the house-keeping as well as the maintenance of the guest house and providing meals, etc., to the guests in the guest house at Coimbatore, it was thought fit to engage the services as an independent contractor/agency. It is 'contract for work' and not 'contract of work'. Only for remuneration, since otherwise, the work done by the agency cannot be



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gauged, in the contract, it was mentioned that the remuneration payable to the sub-staff cadre will be paid to the workman.

5. On a reading of the clauses of the agreement, it would be clear that it is only a 'contract for work' like work's contract as that of an independent agency/contractor, and there is no employer-employee relationship. There is no sanctioned post. Therefore, there cannot be any regularisation of the workman. With the end of the contract period, the agency will come to an end. With the above pleadings in the background, the Labour Court took up the matter for enquiry. On behalf of the workman, one *T.P.Kannan* was examined as *W.W.1* and the workman, *D.Packiriswamy*, was examined as *W.W.2*. *Exs.W-1* to *W-21* were marked. On behalf of the management, one *R. Govindarajan* was examined as *M.W.1* and *Exs.M-1* to *M-9* were marked. The Labour Court, thereafter, considered the case of the parties. It considered the decisions of the Hon'ble Supreme Court of India in *U.P.*

***Power Corporation Ltd. and Anr. Vs. Bijli Mazdoor Sangh and Ors.*¹,**

¹ (2007) 5 SCC 755



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Chandrasekhar Azad Krishi Evam Prodyogiki Vishwavidyalaya Vs. United
Trades Congress and Anr.²

Thereafter, it had adverted to the case of the workman.

6. It found that the workman was not engaged as a workman but as an independent agency under an agreement. When necessitated by the business, a guest house was provided for management for stay, and it is intended to be run through an independent contractor. It is in that capacity that the workman was engaged. The termination of the petitioner as a contractor cannot be held to be sham or nominal. When there was no post at all, there is no question of any recruitment to the said post or engagement of the person as a workman. There is no malice or unfair labour practice that can be attributed to the management. In that view of the matter, when the Caretaker remained only as an independent agency, his claim for regularisation cannot be entertained and dismissed the claim of the workman. Aggrieved thereby, the workman side is before this Court and the

² (2008) 2 SCC 552



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Writ Petition is filed by the petitioner trade union.

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7. *Mr.N.Stalin*, learned Counsel for the workman would submit that in this case, the finding of the Labour Court that the workman is only an independent agency is erroneous. Taking this Court through the various documents such as payment voucher slips, etc., the learned Counsel would submit that the workman was treated as sub-staff all along. His remuneration consisted of basic pay, Dearness Allowance, etc. Even the washing allowance and other benefits, which are granted to the regular workman such as supply of uniform, umbrella, canvass shoes etc., were all extended to the workman involved in the present case also. When all along, the petitioner was treated only as an employee and even the revision of pay scale etc., which are made to the regular sub-staff, having been extended to the petitioner, the petitioner is deemed to be an employee under the management and the Labour Court ought not to have held that there was an independent agency. Therefore, he would submit that the claim of the



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workman ought to have been allowed by the Labour Court.

8. The learned Counsel would submit that only because the Labour Court dismissed the Claim Petition by the award, after the award, on 25.04.2011, the petitioner was eased out from service. Therefore, he is also entitled to reinstatement and back wages. The petitioner attained the age of superannuation of 60 years in the year 2022, and therefore, all the benefits that are available to the permanent workman should be ordered to be paid to him. He would submit that after putting in a lengthy service from 09.09.1986 to 25.04.2011, i.e., for 25 years, the workman was left high and dry without any benefit whatsoever.

9. Countering the submissions that are made, he would submit that this is not a case of any illegal appointment. He would rely upon paragraph No.44 of the judgment of the Hon'ble Supreme Court of India in ***Secretary,***

State of Karnataka and Ors. Vs. Umadevi and Ors.³ to contend that such

³ CDJ 2006 SC 310



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employees like that of the petitioner who has put in long and continued service should be granted the benefit of regularisation. The learned Counsel would further rely upon the judgment of the Hon'ble Supreme Court of India in ***Jaggo Vs. Union of India and Ors.*** (S.L.P.(C). No.5580 of 2024), more fully relying upon paragraphs Nos.25 to 27 of the said judgment. In the said judgment, the Hon'ble Supreme Court of India took note of the fact that India is also a member of the International Labour Organisation, which had advocated for employment stability and fairness of the treatment of the workers.

10. In paragraph No.25, the Hon'ble Supreme Court of India took note of the fact that the organisations, including the Public Sector Organisations, are using outsourcing as a shield to replace the workman at their will and perpetuate the exploitation. Thereafter, the Hon'ble Supreme Court of India considered the import of the judgment in ***Umadevi's*** case (cited *supra*) in paragraph No.26. It concluded that quite often, the judgment in ***Umadevi's***



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case (cited *supra*) has been misapplied to deny the genuine benefit of regularisation which accrues for employees that of the workman in the present case who worked for a long number of years. The Hon'ble Supreme Court of India decried the distorted application of the judgment in its true spirit and effectively weaponising it against the employees who rendered indispensable services over decades.

11. Taking the attention of this Court to paragraph No.27, the learned Counsel would submit that the said dictum would squarely apply to the instant case and would submit that the claim of the workman should be allowed. It is his case that if the Labour Court allowed the claim of the workman, he would not have been eased out from service with effect from 25.04.2011, and as such, the subsequent relieving of the workman would not render the claim infructuous, and all the benefits should be granted.

12. Per *contra*, *Mr.K.K.Sivasshanmugam*, learned Counsel for the



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management would submit that in the counter to the Claim Petition, firstly, it has been categorically mentioned in paragraph No.10 of the counter statement as to the nature of the regular posts that are available in the management. The post of Caretaker is not available. The activity of running the guest house is not the regular activity of the management, and it is only the peripheral activity necessitated due to the travel of the officers of the Company. In cases of peripheral activity such as housekeeping of the guest house, outsourcing cannot be said to be an unfair exercise. Considering the nature of work, it is a necessary exercise, especially when there is no sanctioned post. In view thereof, by a specific agreement only, the person was engaged.

13. On a perusal of the agreement, it can be seen that he has to perform the works of housekeeping and other maintenance of the guest house as an independent agency. Only regarding the quantum of remuneration, by way of consideration, instead of a specific amount, it was



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mentioned that the remuneration that will be available for sub-staff will be periodically paid and that is accepted by the person concerned. In view thereof, the mere payment of the salary available to the sub-staff by itself will not create any master-servant relationship. The relationship is that of the principal and agency. Therefore, the claim of the workman cannot be countenanced.

14. This apart, he would submit that even paragraph No.44 of the judgment in **Umadevi's** case (cited *supra*), the distinction was only drawn between irregular and illegal appointment. If the appointment is made without even a post, then that will only become an illegal appointment. Therefore, the judgments that are relied upon by the learned Counsel for the petitioner in **Umadevi's** case (cited *supra*) as well as in **Jaggo's** case (cited *supra*) will not apply to the instant case. When there is no post at all, the Court under Article 226 of the Constitution of India cannot create a post and order that the workman should be regularised with the said post. The prayer



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of the workman cannot be countenanced. Further, the workman, upon expiry of the contract, was also disengaged with effect from 25.04.2011.

Thereafter, he also did not choose to challenge his termination. Therefore, there is no question of granting any relief at this point in time.

15. The learned Counsel would also rely upon the judgment of the Hon'ble Supreme Court of India in ***Oshiar Prasad and Ors. Vs. The Employers in relation to Management of Sudamidh Coal Washery of M/s.BCCL, Dhanbad, Jharkhand*** (Civil Appeal No.1389 of 2015), more specifically, would rely upon paragraph No.28 of the said judgment.

16. The learned Counsel would further take a preliminary objection concerning the maintainability of the Writ Petition by the trade union. Even though trade unions can represent the workmen in the Industrial Forum, when further Writ Petition is filed, especially when it relates to only one single workman, the trade union cannot maintain the Writ Petition. In



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support thereof, the learned Counsel would rely upon the judgment of this

Court in ***Bharathidasan University Vs. State of T.N. Madras High Court***

(W.P.(MD).No.3846 of 2012), more specifically relying upon paragraph

No.15(vii), whereupon, the Court took into consideration the position of law

as laid down in the earlier judgments and held that the Writ Petition, filed by

the trade union, is not maintainable. Even regarding the Writ Petition of the

present kind, the learned Single Judge of the Allahabad High Court in the

judgment reported in ***Industrial Employees Union Vs. State of Uttar***

Pradesh and Ors.⁴, held that the Writ Petition filed by the trade union is not

maintainable. Therefore, both on the maintainability as well as on merits,

the Writ Petition is bound to fail, and no relief can be granted to the

workman.

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

⁴ AIR 1960 ALL 738



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18. The following questions arise for determination in this case:-

(i) Whether the Writ Petition, filed by the petitioner trade union, is maintainable or not?

(ii) If so, whether, in the instant case, the award of the Labour Court, holding that the instant transaction is 'contract for work' and not 'contract of work' and is only an independent agency, is sustainable?

(iii) If the award of the Labour Court is not sustainable, then to what relief will the workman be entitled?

Question No.i:-

19. The instant Writ Petition is filed challenging the award of the Labour Court made in I.D.No.74 of 2007. The award arises out of a dispute raised under Section 2(k) of the I.D Act. It is essential to extract Section 2(k) of the I.D Act, which is as follows:-

"2. Definitions.—

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(k) "industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

20. It is further relevant to extract Section 2(qq) of the I.D Act which reads as follows:-

"2. Definitions.—

.
. .
.

(qq) "trade union" means a trade union registered under the Trade Unions Act, 1926 (16 of 1926);;"

21. Section 36 of the I.D Act reads as follows:-

"36. Representation of parties.—(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—

(a) any member of the executive or office bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by any member of the executive or



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other office bearer of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorised in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—

(a) an officer of an association of employers of which he is a member; (b) an officer of a federation of association of employers to which the association referred to in clause (a) is affiliated;

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceedings and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be."

Therefore, from the provisions of the I.D Act, it would be clear that the question of filing the Writ Petitions directly for other prayers is different from filing a Writ Petition concerning the award of the Labour Court or the Industrial Tribunal.



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22. When the workman is entitled to be represented by the trade union in the Industrial Forum and when the trade union is the petitioner in the Industrial Dispute, naturally, when the Writ Petition is to be filed challenging the award of the Labour Court, then, the Writ Petition by the trade union is maintainable.

23. As far as the judgments which are relied on by the learned Counsel for the petitioner, the same do not arise out of the challenge to the award, whereunder, the concerned trade union, which is the petitioner. As far as the judgment of the Allahabad High Court is concerned, I am not in the agreement of the same, given the express provisions contained in the I.D Act and when the award of the Tribunal or the Labour Court has to be challenged before the Court, the same principles, which apply to the Industrial Forum, will also apply. Therefore, I reject the contention of the learned Counsel for the petitioner management, and I answer the question that the writ petition is



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maintainable.

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Question No.ii:-

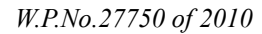
24. The question of whether a particular relationship between the workman and the management is 'contract for work' or 'contract of work' is no longer *res integra*. The Hon'ble Supreme Court of India in ***Dharangadhra Chemical Works Ltd., Vs. State of Saurashtra and Ors.***⁵,

held in paragraph No.15 as follows:-

"15. The correct method of approach, therefore, would be to **consider whether having regard to the nature of the work there was due control and supervision by the employer** or to use the words of Fletcher Moulton, L.J., at p. 549 in ***Simmons v. Heath Laundry Co.*** [(1910) 1 KB 543 (CA)] :

"In my opinion it is impossible to lay down any rule of law distinguishing the one from the other. It is a question of fact to be decided by all the circumstances of the case. The **greater the amount of direct control exercised over the person rendering the services by the person contracting for them the stronger the grounds for holding it to be a contract of service, and similarly the greater the degree of independence of such control the greater the probability that the services rendered**

⁵ 1956 SCC OnLine SC 11



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25. In *Shri Chintaman Rao and Anr. Vs. The State of Madhya*

26. In *Silver Jubilee Tailoring House and Ors. Vs. Chief Inspector*

*of Shops and Establishments and Anr.*⁷, the Hon'ble Supreme Court of

⁶ 1957 SCC OnLine Raj 38

⁷ (1974) 3 SCC 498



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case be treated as determining ones. The plain fact is that in a large number of cases, the Court can only perform a balancing operation weighing up the factors which point in one direction and balancing them against those pointing in the opposite direction. [See **Atiyah, PS. “Vicarious Liability in the Law of Torts”, pp. 37-38**]

29. During the last two decades the emphasis in the field has shifted and no longer rests so strongly upon the question of control. **Control is obviously an important factor and in many cases it may still be the decisive factor. But it is wrong to say that in every case it is decisive. It is now no more than a factor, although an important one.** [See **Argent v. Minister of Social Security and Another, (1968) 1 WLR 1749 at 1759**]."

27. In *Kishore Lal Vs. Chairman, Employees' State Insurance Corporation*⁸, the Hon'ble Supreme Court of India, in paragraph No.8, held as follows:-

"8. ...There is a distinction between a “contract of service” and a “contract for service”. A “contract for service” implies a contract whereby one party undertakes to render service e.g. professional or technical service, to or for another in the performance of which he is not subject to detailed direction and control and exercises professional or technical skill and uses his own knowledge and discretion, whereas a “contract of service” implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance. A contract of service is excluded for consideration from the ambit of

⁸ (2007) 4 SCC 579



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definition of “service” in the Consumer Protection Act, whereas a contract for service is included...”

28. In *Sushilaben Indravadan Gandhi and Anr. Vs. New India Assurance Company Limited and Ors.*⁹, the Hon'ble Supreme Court of India, in paragraph Nos.13, 14 and 32, deals with the said question and they are extracted as hereunder:-

"13. This Court has in a series of judgment indicated the tests to be followed in order to determine, in the context of the Industrial Disputes Act and the Factories Act, as to whether different kinds of persons who supply goods or services could be said to be “in the employ” of the employer. Thus, in **Dharangadhra [Dharangadhra Chemical Works Ltd. v. State of Saurashtra, 1957 SCR 152 : AIR 1957 SC 264]**, the question posed before the Court was whether the salt manufactured by a class of professional laborers, known as agarias, from rain water that got mixed with saline matter in the soil, could be said to be in pursuance of contracts of service with the appellant, as a result of which they would then be entitled to be treated as workmen under the Industrial Disputes Act. After setting out the definition of “workman” under Section 2(s) of the said Act, this Court referred to the earliest test laid down to distinguish between a contract of service and a contract for service, namely, that whereas in the latter case, the master can order or require what is to be done, in the former case, he can not only order or require what is to be done, but also how it shall be done.

14. After referring to a number of English

⁹ (2021) 7 SCC 151



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judgments, the Court then held, giving the example of a ship's master, a chauffeur, and a reporter on the staff of a newspaper as against a ship's pilot, a taxi man and a newspaper contributor, that the test would be whether work is done as an integral part of the business of the employer, in which case it would be a contract of service, or whether it was done as an accessory to such business, in which case it would be a contract for service. Other tests that were laid down were as to whether the master had the power to select the servant, whether he paid wages or other remuneration, whether the master had the right to control the method of doing the work, and whether the master had the right to suspend or dismiss the employee. Ultimately, the true test, according to the judgment, was held to be as follows : **(Dharangadhra case [Dharangadhra Chemical Works Ltd. v. State of Saurashtra, 1957 SCR 152 : AIR 1957 SC 264] , SCR p. 160)**

“The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at p. 23 in **Mersey Docks & Harbour Board v. Coggins & Griffith (Liverpool) Ltd.** [**Mersey Docks & Harbour Board v. Coggins & Griffith (Liverpool) Ltd., 1947 AC 1 (HL)**] , AC at p. 23: “The proper test is whether or not the hirer had authority to control the manner of execution of the act in question”.

14. The nature or extent of control which is requisite to establish the relationship



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of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition. As has been noted above, recent pronouncements of the Court of Appeal in England have even expressed the view that it is not necessary for holding that a person is an employee, that the employer should be proved to have exercised control over his work, that the test of control was not one of universal application and that there were many contracts in which the master could not control the manner in which the work was done (**vide observations of Somervell, L.J. in Cassidy v. Ministry of Health [Cassidy v. Ministry of Health, (1951) 2 KB 343 : (1951) 1 All ER 574 (CA)] , and Denning, L.J. in Stevenson, Jordan & Harrison Ltd. v. MacDonald & Evans [Stevenson, Jordan & Harrison Ltd. v. MacDonald & Evans, (1952) 1 TLR 101 (CA)]).**”

...

32. A conspectus of all the aforesaid judgments would show that **in a society which has moved away from being a simple agrarian society to a complex modern society in the computer age, the earlier simple test of control, whether or not actually exercised, has now yielded more complex tests in order to decide complex matters which would have factors both for and against the contract being a contract of service as against a contract for service.** The early “control of the employer” test in the sense of controlling not just the work that is given but the manner in which it is to be done obviously breaks down when it comes to professionals who may be employed. A variety of cases come in between cases which are crystal clear — for example, a master in a school who is employed like other employees



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of the school and who gives music lessons as part of his employment, as against an independent professional piano player who gives music lessons to persons who visit her premises. Equally, a variety of cases arise between a ship's master, a chauffeur and a staff reporter, as against a ship's pilot, a taxi driver and a contributor to a newspaper, in order to determine whether the person employed could be said to be an employee or an independent professional. **The control test, after moving away from actual control of when and how work is to be performed to the right to exercise control, is one in a series of factors which may lead to an answer on the facts of a case slotting such case either as a contract of service or a contract for service. The test as to whether the person employed is integrated into the employer's business or is a mere accessory thereof is another important test in order to determine on which side of the line the contract falls. The three-tier test laid down by some of the English judgments, namely, whether wage or other remuneration is paid by the employer; whether there is a sufficient degree of control by the employer and other factors would be a test elastic enough to apply to a large variety of cases. The test of who owns the assets with which the work is to be done and/or who ultimately makes a profit or a loss so that one may determine whether a business is being run for the employer or on one's own account, is another important test when it comes to work to be performed by independent contractors as against piece-rated labourers. Also, the economic reality test laid down by the US decisions and the test of whether the employer has economic control over the workers' subsistence, skill and continued employment can also be applied when it comes to whether a particular worker works for himself or for his employer. The test laid down by the Privy Council in Lee Ting Sang v. Chung Chi-keung [Lee Ting Sang v. Chung Chi-keung, (1990) 2**



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AC 374 (PC)] , namely, is the person who has engaged himself to perform services performing them as a person in business on his own account, is also an important test, this time from the point of view of the person employed, in order to arrive at the correct solution. No one test of universal application can ever yield the correct result. It is a conglomerate of all applicable tests taken on the totality of the fact situation in a given case that would ultimately yield, particularly in a complex hybrid situation, whether the contract to be construed is a contract of service or a contract for service. Depending on the fact situation of each case, all the aforesaid factors would not necessarily be relevant, or, if relevant, be given the same weight. Ultimately, the Court can only perform a balancing act weighing all relevant factors which point in one direction as against those which point in the opposite direction to arrive at the correct conclusion on the facts of each case."

29. In *Union Public Service Commission Vs. Girish Jayanti Lal*

*Vaghela and Ors.*¹⁰, the question is dealt with by the Hon'ble Supreme Court

of India, in paragraph No.6 and the same is extracted hereunder:-

"6. The problem of defining what is an employer and employee relationship and what is an independent entrepreneurial dealing frequently arises before the courts. Difficulty arises in defining what is a "contract of service" and what is "contract for service". In *Cassidy v. Ministry of Health* [(1951) 1 All ER 574 : (1951) 2 KB 343 (CA)] after referring to some earlier decisions, it was held that in

¹⁰ (2006) 2 SCC 432



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a “contract for service” the master can order or require what is to be done, while in the other case (a contract of service) he cannot only order or require what is to be done but direct how it shall be done. The House of Lords in *Short v. J.W. Henderson Ltd.* [(1946) 174 LT 417 : 115 LJPC 41 (HL)] laid down the attributes of employer-employee relationship which have been followed in later decisions. In this case the appellant, who was a dock labourer, sustained injuries by accident and claimed compensation against the respondents under the Workmen's Compensation Act, 1925. The respondents contended that the appellant was not a workman within the meaning of Section 3(1) of the said Act but was a member of a joint stevedoring adventure. **The House laid down the following four indicia of contract of service, namely, (a) the master's power of selection of his servant; (b) the master's responsibility of payment of wages or other remuneration; (c) the master's right of suspension or dismissal; and (d) the master's right to control the method of doing the work. It was also observed that a contract of service may still exist if some of these elements are absent altogether, or, present only in an unusual form and that the principal requirement of a contract of service is the right of the master in some reasonable sense to control the method of doing the work, and that this factor of superintendence and control has always been treated as critical and decisive of the legal quality of the relationship."**

30. On consideration of the above judgments, the fact that the activity

is not a core business activity of the respondent organisation is a point that is

in favour of the management. But it can be seen that the kind of control and



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supervision exercised on the workman is only that of an employee. It is not that the guest house was simply entrusted to him to look after. Every action is as per the direction of the management. Thus, on consideration of the control theory, the only conclusion that can be reached is that the workman is only an employee. Further, the payment made to the workman had no nexus to any output or the work he performed but related only to the wage period, that is, monthly salary.

31. In this regard, though the original contract was not filed by the parties, the subsequent contract between the same workman and the management is produced before the Labour Court as well as this Court and on a perusal of the contract, dated 01.01.2004, it can be seen that the Caretaker shall perform the works which are mentioned in column (a) to (k) of the said agreement. The don'ts of the Caretaker are mentioned in columns (a) to (e). The relevant portion, concerning the Company's obligations, reads thus:-



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"The Company shall:

- a) reserve the right to demand and take a caution deposit an amount not exceeding Rs.2,000/- from the person appointed as Care-taker in terms of this agreement which amount shall be returnable without interest or adjustable against any unpaid dues or damages payable by the Care-taker within 30 days of termination of this Agreement.
- b) pay monthly compensation to the care-taker at rates fixed as per the instructions of the Head Office from time to time for duties performed as per their agreement.
- c) allow the care-taker and one more person (helper) to stay with him in the transit camp.
- d) reserve the right to terminate the services of the care-taker by giving one month's notice or vice versa. However, in the event of the conduct or actions of the care-taker not being found satisfactory, the company shall have the right to terminate this service contract of the care-taker without any notice.

To this effect the parties have signed this Agreement on the day, month and year first above written."

It is expressly stated that the Caretaker services are engaged. The monthly compensation is to be paid as fixed by the Head Office from time to time. There was no consideration which was expressly fixed. The main aspect, which should be present in a 'work's contract' or a 'contract of work', is absent. The subsequent conduct of the parties i.e., the remuneration is paid as that of a sub-staff, is also to be noted.



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32. The salary slip of the petitioner, for example, for the month of December 2004, clearly mentions as follows:-

Cross Reference	
No.	Date
Basic	4965-00
Dearness Allowance	2055-51
C.C.A	124-13
Wash	75-00
	7219-64
H.R.A (Recovery)	496-50
	6723-14
Rounded off	6723-00

Therefore, it can be seen that there is a basic pay, Dearness Allowance, C.C.A, Washing Allowance are paid and since the workman was allowed to reside in the guest house itself, the House Rent Allowance is deducted and the balance pay scale was paid.

33. Admittedly, on a perusal of the communication, dated 09.03.1988, it can be seen that the various other benefits such as supply of uniform,



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umbrella, canvass shoes etc., were extended to the workman. A perusal of the communication, dated 08.07.1991, it can be seen that on par with the permanent sub-staff, the scale of pay with notional increment etc., are fixed. Even the pay revisions are periodically granted, and the arrears are paid to the workman. The most important factor is that the services were engaged continuously without going for any further tender or inviting anybody else. From 09.09.1986 until the award was passed, no other steps were taken by the management and the workman was continuously engaged for more than 25 years even until the decision which came in the award. Therefore, taking into account the method of engagement, the payment of remuneration, the continuity of service, etc., I hold that the relationship between the parties is in the nature of an employer-employee relationship and not that of an independent agency, and I am unable to agree with the findings of the Labour Court.

34. The findings of this Court are only in line with the judgment of the



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Hon'ble Supreme Court of India in **Jaggo's** case (cited *supra*). It is essential to extract paragraphs Nos.21, 23, 24 and 25 of the said judgment, which reads as follows:-

"21. The High Court placed undue emphasis on the initial label of the appellants' engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment: continuous, long-term service, indispensable duties, and absence of any *mala fide* or illegalities in their appointments. In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.

...

23. The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration (International Labour Organization - Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy) encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.

24. The landmark judgement of the United State in the case of **Vizcaino v. Microsoft Corporation** [97 F.3d 1187 (9th Cir.1996)] serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing



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benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the corresponding rights and benefits. It highlights the judiciary's role in rectifying such misclassifications and ensuring that workers receive fair treatment.

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

•**Misuse of "Temporary" Labels:** Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.

•**Arbitrary Termination:** Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of



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their service.

•**Lack of Career Progression:** Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.

•**Using Outsourcing as a Shield:** Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.

•**Denial of Basic Rights and Benefits:** Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances."

Therefore, the employers, more specifically, the public sector employers, cannot create such contracts as a subterfuge to extend the normal benefits to the employee and to deny him the security of tenure and the benefits of labour welfare legislations. The workman had put in a long number of years of service.

35. It is also to be further noted that under identical circumstances, in



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respect of a similar Company namely, United India Insurance Company, where, both are General Insurance Company and the services of both the General Insurance Companies being governed under the General Insurance Business (Nationalisation) Act, 1972, whereby, similar Caretaker claimed regularisation, which claim was allowed by the Labour Court and was also upheld by this Court. Pursuant to which he was also granted benefit by the said Company, is also taken into account.

36. Accordingly, I answer the question that there existed an employer-employee relationship between the petitioner and the management, and it cannot be termed as 'contract for work' or that of an agency.

Question No.iii:-

37. The first contention of the learned Counsel for the management that the workman has been eased out from the services from 25.04.2011 and that he has not questioned the termination is considered. If the Labour Court



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accepted the Claim Petition and ordered permanency, there was no way that

the workman would have been eased out from the services from 25.04.2011.

Therefore, the contention that the termination should be separately questioned cannot be accepted. However, the fact that the workman was eased out from the services from 25.04.2011 is to be kept in mind for the nature of relief that should be granted. It is seen that the workman has put in service from 09.09.1986 up to 25.04.2011 for 25 years. After 25 years, he was simply sent out high and dry without any benefits being paid, which is also kept in mind.

38. The contention of the learned Counsel for the management that there is no regular post to accommodate the petitioner is also borne in mind.

The petitioner has also since pending the Writ Petition attained the age of superannuation, which is also kept in mind. Therefore, while keeping in mind all the above factors and considering the overall facts and circumstances of the case, I am of the view that in this case, instead of



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reinstatement with back wages and above benefits, compensation can be ordered. By considering the dictum of the Hon'ble Supreme Court of India in ***O.P. Bhandari Vs. Indian Tourism Development Corporation Ltd., and Ors.***¹¹ that an amount of compensation should be enough to get at least 50% of the last drawn wages as interest per month and also considering the later judgment of Hon'ble Supreme Court of India in ***Workmen Vs. Bharat Fritz Werner Private Limited and Anr.***¹² that some amount should be added for the loss of employment also, I am of the view that in this case, an award of compensation of a sum of Rs.7,00,000/- to the petitioner will be fair and appropriate.

The Result:

39. In view thereof, this Writ Petition is allowed on the following terms:-

(i) The award of the Labour Court made in I.D.No.74 of 2007, dated

¹¹ (1986) 4 SCC 337

¹² (1990) 3 SCC 565



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11.06.2010, stands set aside;

(ii) It is held that the petitioner is a workman and there is an employer-employee relationship between the workman and the management and in lieu of reinstatement with back-wages, a compensation of a sum of Rs.7,00,000/- is ordered to be paid by the management within 12 weeks from the date of receipt/production of a web-copy of this order without waiting for a certified copy of this order;

(iii) There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

23.01.2025

Neutral Citation : yes
grs

To

1. The Central Government Industrial,
Tribunal-cum-Labour Court,
rep. by its Presiding Officer, Shastri Bhavan,
Haddows Road, Chennai - 600 006.

2. The Regional Manager,

<https://www.mhc.tn.gov.in/judis>



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United India Insurance Co. Ltd.,
Dr.Nanjappa Road, Regional Office,
Coimbatore - 641 018.



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D.BHARATHA CHAKRAVARTHY, J.

grs

W.P.No.27750 of 2010
and M.P.No.1 of 2010



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23.01.2025