



W.P.No.33069 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.10.2025

Delivered on : 04.12.2025

CORAM:

THE HONOURABLE MR.JUSTICE HEMANT CHANDANGOUDAR

**W.P.No.33069 of 2022
and
W.M.P.No.32476 of 2022**

The Management of
International Bakery Products Limited
Pondicherry - Tindivanam Highway Post,
Thiruchitrambalam
Vanur, Villupuram District - 605 111
Represented by its Authorised Representative
Mr.Akhauri Vivek Sahay

... Petitioner

vs.

1. The Joint Director of Industrial Safety and Health
Cuddalore.
2. Mr.P.Bakkiaraj
S/o.Pandiyan
3. Mr.K.Vinoth
S/o.Kathavarayan
4. Mr.A.Senthil
S/o.Arumugam
5. Mr.P.Arumugam
S/o.Ponnikanu



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6. Mr.K.Dhinakaran
S/o.Kuppusamy
7. Mr.N.Ravi
S/o.Natarasan
8. Mr.P.Sakthivel
S/o.Pandiyan
9. Mr.V.Lakshmanan
S/o.Veerappan
10. Mr.L.Sunil
S/o.Lakshmanan
11. Mr.K.Vinayagamoorthy
S/o.Kumar
12. Mr.A.Malaiyan
S/o.Arumugam
13. Mr.G.Muthukumar
S/o.Govindan

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, to call for the records connected with proceedings No.D/835/2022 on the file of the Joint Director of Industrial Safety and Health (FAC), Cuddalore and to quash the Award dated 17.11.2022 made herein.

For Petitioner : Mr.Sanjay Mohan
M/s.S.Ramasubramaniam and Associates



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For Respondents : Mr.E.Vijay Anand,
Additional Government Pleader, for R1
Mr.S.Sathiachandran, for R2 to R13

ORDER

The challenge in this writ petition is to the proceedings dated 17.11.2022 issued by the first respondent, by which the prayer of the private respondents seeking permanent status was accepted, and the said private respondents were granted permanent status from the date of completion of 480 days of continuous service, computed from the date of their first entry into service. The petitioner–Management was directed to issue orders conferring permanent status on all the private respondents with effect from the date of completion of 480 days of continuous service from their respective dates of joining, i.e., their first entry into service.

2. Facts of the case :

2.1. The private respondents (R2 to R13) filed petitions before the first respondent seeking an order conferring permanent status on them in the petitioner–Management. They stated that they had been working as contract employees in the petitioner–Management for several years. Despite this, they



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had not been accorded permanent status and were made to work as contract employees under the labour contractors M. Gomethagan and A.K. Ayanar, without increments and for meagre wages.

2.2. The petitioner–Management appeared and stated that it is duly registered under the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter, “1970 Act” for brevity, convenience, and clarity) and has been permitted to engage contract employees under order dated 02.09.2020. The private respondents were engaged through licensed contractors and used in allied activities such as loading and unloading of maida, charging, stacking, and sugar binding. Therefore, the contract employees do not qualify as ‘workman’ as defined in Section 2(4) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter “1981 Act” for brevity, convenience, and clarity). In the absence of an employer–employee relationship, the petition seeking permanent status is not maintainable either in law or on facts.

2.3. The petitioner–Management further contended that the private respondents are on the rolls of the licensed contractors; their work was supervised and controlled by the contractors; and wages were paid by the contractors. The first respondent, after considering the materials on record and referring to Section 2(1) of the Factories Act, 1948 (hereinafter “1948 Act” for



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brevity, convenience, and clarity), which defines “worker,” and Section 2(4) of the 1981 Act, which defines “workman,” recorded a finding that the private respondents had worked for several years in the petitioner–Management as casual or contract workers instead of being treated as regular workers, merely to deny them benefits under various Labour Laws. This amounts to unfair labour practice and exploitation. Accordingly, the first respondent allowed the petitions and conferred permanent status on the private respondents. Aggrieved by the same, the petitioner–Management has filed the present writ petition.

3. Submissions of Mr. Sanjay Mohan, learned counsel for the petitioner–Management:

3.1. The jurisdiction of the first respondent under the 1981 Act is very limited. It does not have the powers of an adjudicating authority such as the Labour Court. It has no jurisdiction to disregard an existing master–servant relationship between a licensed contractor and his employee and grant permanent status to persons who are not employees of the principal employer.

3.2. In the absence of an employer–employee relationship, and merely because the private respondents had completed 480 days of service, the first respondent could not have granted permanency. In doing so, the first respondent effectively altered the contract between the private respondents and their



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employer, namely, the licensed contractors. If the private respondents had indeed completed 480 days of service, they could have been made permanent only by the contractor and not by the petitioner–Management.

3.3. There is no dispute that the private respondents are employees of licensed contractors, as evidenced by the Registration Certificate issued under the 1970 Act, the Wage Registers maintained by the contractor containing the names of the private respondents, and their signatures acknowledging receipt of wages. The first respondent grossly erred in ignoring these vital documents. The petitioner–Management had produced several documents establishing that the private respondents are employees of the contractor and not of the petitioner–Management. However, the first respondent, without referring to these documents, passed the impugned order.

3.4. The materials placed before the first respondent clearly establish that the private respondents, being employees of licensed contractors, cannot claim permanency under the petitioner–Management. Therefore, the impugned order, passed without considering these vital documents, is illegal and suffers from arbitrariness and mala fides.

4. Submissions of Mr. S. Sathiachandran, learned counsel for the private respondents–workmen:



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4.1. It was submitted that the private respondents were initially appointed by the petitioner–Management as casual labourers and that wages were directly paid by the petitioner–Management until 2013. Thereafter, from 2014, the private respondents were instructed to open individual bank accounts, and their wages were credited directly to those accounts. They were employed in core production activities on a day-to-day basis throughout the year. Work allocation was done by supervisors of the petitioner–Management.

4.2. In the case of the third and fourth respondents, the petitioner–Management paid Employees’ Provident Fund (EPF) contributions from 2009, and in respect of the others, EPF was paid from 2014. Thereafter, the workers were converted from direct casual workers to contract labourers in 2017. Though they were placed under a contractor for the purpose of wage payment, this was only a sham and nominal arrangement. They continued to work under the direct control and supervision of the petitioner–Management. The documents placed before the first respondent and before this Court establish that the private respondents were initially appointed by the petitioner–Management as casual labourers. After several years, they were shown as contract labourers under licensed contractors merely as a camouflage to deny permanent status. The arrangement between the petitioner–Management and the contractors is sham and bogus, amounting to unfair labour practice.



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4.3. Though sufficient opportunity was granted to the petitioner–Management to produce relevant registers and records pertaining to the employment of the private respondents, they failed to produce the same without sufficient cause. This clearly shows a deliberate attempt to suppress the documents, as those documents would negate the claim that the private respondents are contract labourers.

5. The first respondent, being the competent authority under Section 4 of the 1981 Act, has even filed a counter affidavit supporting the impugned order. Such a practice is deprecated, as a quasi-judicial authority has no right to file a counter affidavit defending its own order

6. The arguments of the learned counsel for the parties and the materials on record have been duly considered.

7. The petitioner–Management had filed an affidavit before the Enforcement Officer of the Provident Fund Organisation stating that M. Gomethagan and A.K. Ayanar are licensed contractors who had obtained licences under the 1970 Act. It was further stated that, as per the company records, the persons listed in the tabular statement were working as contract



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employees under the said contractors. The details of their PF-UAN numbers, their particulars in the IBPL contract employees' code and in the separate code obtained by their respective contractors, their dates of joining, their dates of exit from the IBPL contract employees' code, and their dates of joining under the contractors' separate code were furnished in the tabular statement annexed to the affidavit. These documents were not produced before the Respondent No.1 , but produced by the private respondents in this writ petition .

8. The said documents have not been disputed by the petitioner, and the affidavit along with the annexed documents was furnished before the said authority. Therefore, this Court, while exercising its writ jurisdiction, deems it appropriate to consider and appreciate the said documents for the purpose of effectively resolving the controversy. The Court is of the view that relegating the matter to the first respondent at this stage, despite the availability of undisputed material on record would only prolong the litigation and perpetuate the long-standing dispute between the parties. In order to render substantial justice and to avoid unnecessary procedural delay, this Court proceeds to examine the documents and adjudicate the issues, thereby putting a quietus to the dispute rather than remanding the matter back to the first respondent.



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9. A perusal of the said details indicates that one Arumugam P (5th respondent herein) joined the petitioner–Management on 12.01.2009 and exited the contract appointment on 28.02.2017. His joining date under the Gomethagan/Ayyanar contractor was 03.01.2017. Similarly, the names of the other private respondents are reflected in the tabular statement, showing their dates of joining in the IBPL contract account as 03.03.2014, 01.12.2009, 01.09.2014, 01.03.2015, 03.03.2014, 01.07.2014, 01.12.2009, 01.03.2015, 01.10.2014, 01.07.2014, and 01.07.2014 respectively. Their exit dates from the IBPL contract accounts were on 28.02.2017 and 31.07.2017 respectively, and their joining dates in the Gomethagan/Ayyanar contract account were 01.03.2017, 01.08.2017, and 22.02.2022 respectively.

10. The documents filed along with the affidavit establish that, much prior thereto, the private respondents/workmen were working in the establishment of the Petitioner. The service history issued by the Employees' Provident Fund Organisation for each private respondent was also annexed. A perusal of the same shows that the private respondents have been under the employment of the labour contractors since March 2017, and prior to that, they were shown as contract employees of the petitioner–Management. The total experience reflected in the said information shows that some of the private respondents had



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worked for more than 10 years, 15 years, and 1 year 8 months prior to their joining date in the labour contractor's account. This information pertains to the provident fund account of each private respondent and clearly establishes that, until March 2017, they were covered under the provident fund account of the petitioner-Management and thereafter under the account of the licensed contractor.

11. The petitioner-Management also produced information dated 03.01.2023 furnished under the Right to Information Act, 2005, by the Employees' Provident Fund Organisation, pursuant to a request made by the second respondent. The said information states that the second respondent is covered under the ESI Act with M/s. M. Gomethagan as the employer from April 2017 onwards, and that the contribution has been paid up to September 2022. It also states that the second respondent was earlier covered under the petitioner-Management as employer, and that contributions were paid from August 2014 to March 2017. Contribution details were enclosed as Annexure-I.

12. The petitioner-Management produced information dated 14.08.2023 furnished under the RTI Act by the competent authority of the Employees' Provident Fund Organisation to Senthil Arumugam, the fourth respondent



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herein. It was stated that the information relating to a copy of the enquiry report of the petitioner–Management was not available in the office records. The communication dated 12.05.2023 issued by the Employees’ Provident Fund Organisation was also produced, wherein it is stated that the petitioner–Management had obtained an EPF code for its contract employees from 2009 onwards and paid contributions until 2017, and that thereafter the contractors engaged by the establishment had obtained separate code numbers. It is further stated that, with regard to the complaint made by 12 contract employees and 3 other employees, they had not submitted any proof of having worked prior to 2009.

13. The petitioner produced the Register of Wages. A perusal of the register shows that the name and address of the establishment are those of the petitioner–Management, while the name of the employer/contractor is shown as A.K. Ayanar, labour contractor. The register pertains to the period from 2016 onwards. However, to support its stand, the petitioner has not produced the Register of Wages for the period prior to March 2016. To substantiate its contention that, prior to March 2016, the private respondents were also outsourced by the labour contractors, the petitioner Management has not produced the muster rolls maintained under the Factories Act. Therefore, an



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adverse inference has to be drawn against the petitioner Management for its failure to produce such vital documents, which would otherwise have established whether the private respondents were on the muster rolls of the petitioner Management or on those of the licensed contractors.

14. The details of the contract employees working under the contractors contain a code number allotted to the contract, which was a sub-code operated under the petitioner–Management prior to 2017, as the contractor did not have a PF code during that period. The PF code of the petitioner was shown under the column meant for contract employees, and Column No.7 indicates that a new code number had thereafter been allotted to the contractor, showing that the contract had subsequently been assigned a separate code number.

15. However, to substantiate the claim that the private respondents were outsourced as contract employees by the contractor prior to March 2017, the petitioner has not produced any agreement entered into with the said contractor for providing outsourced employees to carry out work in the petitioner–Management. Admittedly, the records clearly establish that the workmen had been working in the petitioner–Management from 2003 onwards.



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16. The statement of the fifth respondent was recorded by the first respondent. In his statement, he stated that he had been working in the petitioner–Management since 2000 and that ESI and PF deductions were made only from 2009. He further stated that he had requested the petitioner–Management to confer permanent status on him, and that though he was working in the petitioner–Management under the contract arrangement, the Management kept postponing conferment of permanent status for one reason or another. He also stated that there had been no increase in his salary and that he was being paid only meagre wages of Rs.7,000/- to Rs.8,000/-.

17. The petitioner–Management contends that the private respondents have categorically admitted that they had been working on a contract basis. However, this statement does not establish that the private respondents were outsourced by licensed contractors, as it only indicates that they had been working for the petitioner–Management under its own contract arrangement since 2009. The said statement has not been rebutted or contradicted by the petitioner–Management by producing any cogent evidence.

18. The documents establish that the private respondents had been working in the petitioner–Management much prior to 2017, and the claim



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petition seeking conferment of permanent status was filed in the year 2022. This clearly shows that the private respondents had completed more than 480 days of work within a period of 24 calendar months, thereby making them eligible to be conferred with permanent status under Section 3 of the 1981 Act. Except for producing the Register of Wages from March 2016 onwards, as referred to earlier, the petitioner–Management has not produced any document to substantiate the following:

(i) That the private respondents were not working in the petitioner–Management prior to 2017, despite their categorical assertion that they had been employed in the petitioner–Management since 2003 onwards; and

(ii) That the private respondents were not under the employment of the petitioner–Management, as the petitioner–Management has not produced the nominal muster rolls or the Register of Wages maintained under the 1948 Act, which would have established such a fact.

19. The notarized affidavit of the petitioner filed before the Enforcement Officer, Employees' Provident Fund Organisation, Trichy, along with the service overview of the private respondents obtained from the EPFO portal, and the



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reply from the ESI Corporation, clearly demonstrate that the private respondents/workmen were working in the petitioner–Management prior to the shifting of their PF accounts to the name of the licensed contractor. As already noted, the petitioner–Management has not produced any agreement to substantiate that it had entered into an arrangement with licensed contractors for outsourcing employees, except for producing the list of contractors dated 02.09.2020, annexed to the letter dated 02.09.2020 issued by the Joint Director of Industrial Safety and Health, Cuddalore.

20. A perusal of the list of contractors indicates that there are five existing contractors, of which two are the licensed contractors in question. The nature of work assigned to the contractors includes housekeeping, stacking, biscuit segregation, loading and unloading of maida, charging, stacking, sugar grinding, civil works, and security services. The petitioner–Management has not produced the list of contractors prior to 02.09.2020 or prior to March 2017. The earlier contractors deleted from the list are shown as K. Raji, M. Gomethagan, and J.J. Guarding Forces. The private respondents/workmen had specifically stated before the first respondent that the petitioner–Management failed to provide any records relating to their employment under the petitioner–Management. The first engagement of the private respondents under the petitioner–Management is



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as follows:

Sl.No.	Name of the Workmen	Year of first entry into service
1.	P.Bakkiraj, S/o.Pandiyan	2003
2.	K.Vinoth, S/o.Kathavarayan	2007
3.	A.Senthil, S/o.Arumugam	2004
4.	P.Arumugam, S/o.Ponnusamy	2002
5.	K.Dhinakaran, S/o.Kuppusamy	2005
6.	N.Ravi, S/o.Natarasan	2015
7.	P.Sakthivel, S/o.Pandiyan	2006
8.	V.Lakshmanan, S/o.Veerapan	2006
9.	L.Sunil, S/o.Lakshmanan	2006
10.	K.Vinayagamoorthy, S/o.Kumar	2014
11.	A.Malaiyan, S/o.Arumugam	2003
12.	G.Muthukumar, S/o.Govindhan	2007

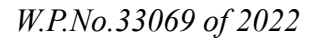
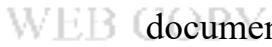
21. The statement made by the private respondents before the first respondent was not categorically denied by the petitioner–Management in its counter affidavit. Except for stating that it is a registered principal employer under the provisions of the 1970 Act and that a Certificate of Registration has been issued to that effect, the petitioner–Management merely contended that it has several licensed contractors and that no employer–employee relationship exists between it and the private respondents. However, there is no denial of the fact that the private respondents were engaged in the petitioner–Management, as stated supra.



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22. The first respondent recorded that despite being granted sufficient opportunities to produce the relevant registers and records relating to the employment of the private respondents, the petitioner failed to furnish the documents called for, nor did it provide any substantive reasons for such non-production. The petitioner contends that the Register of Wages referred to by the first respondent was, in fact, produced by it and that the Register pertains to the month of 2016, showing the name of the establishment as the petitioner–Management and the name of the employer as one of the licensed contractors.

23. A careful perusal of the Register of Wages indicates that wages had been paid by International Bakery Products Limited, i.e., the petitioner herein, and the name of the proprietor is shown as A.K. Ayanar. Though the first respondent did not refer to the documents produced by the private respondents/workmen, the petitioner–Management produced only the Register of Wages, as contended. However, in the absence of any document to substantiate that the private respondents/workmen were outsourced employees of the licensed contractor, the first respondent, on the basis of the admitted facts, concluded that the private respondents/workmen had worked for more than 480 days in the preceding 24 calendar months.



25. Therefore, the burden rested upon the petitioner–Management to substantiate that no employer–employee relationship existed prior to March 2016 or March 2017, and to establish the same , documents were created, in connivance with the licensed contractor, to camouflage the fact that the private respondents/workmen were employees of the contractor, and not the petitioner–Management thereby denying them permanent status.



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26. The Apex Court, in ***General Manager (OSD), Bengal Nagpur Cotton Mills v. Bharat Lal and Another, (2011) 1 SCC 635***, reiterated that if the industrial adjudicator finds the contract between the principal employer and the contractor to be a sham, nominal, or a mere camouflage to deny employment benefits, and that in reality there exists direct employment, relief may be granted by holding that the workman is the direct employee of the principal employer. Two well-recognized tests to determine whether contract labourers are in fact direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer exercises control and supervision over the work of the employee.

27. The Apex Court, in ***Hussainbhai, Calicut v. The Alath Factory Thezhilali Union, Kozhikode and Others, (1978) 4 SCC 257***, held that workers who appear to be engaged through contractors or intermediaries may nevertheless be treated as employees of the factory owner for the purposes of the 1947 Act. It further held that the presence of contractors is immaterial if, in substance, the management exercises economic and supervisory control. The Court emphasised the need to look beyond legal formalities, lift the corporate veil, and expose sham contractual arrangements. The following principles were



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laid down: (i) the real employer is the person for whose benefit and under whose supervision the work is performed, even where intermediaries exist; (ii) if the workers depend for their livelihood on the principal employer and their work forms an integral part of his business, the relationship is one of employer and employee; and (iii) when workers produce goods or services for the business of another and that other exercises economic control over their subsistence, skill, and continued employment, then that other is the employer. Simply put, where the principal employer controls the work, derives benefit from it, and the worker is economically dependent upon him, the worker must be treated as his employee notwithstanding the interposition of a contractor.

28. In *Steel Authority of India Ltd. and Others v. National Union Waterfront Workers and Others*, (2001) 7 SCC 1, the Apex Court held that where the contract is found to be sham, nominal, or a camouflage, the contract labour is, in reality, working in the establishment of the principal employer. Such situations do not relate to the abolition of contract labour but are instances where the Court pierces the veil and declares the true factual position, even after the prohibition of contract labour. It was further held that where the principal employer, in discharge of a statutory obligation (such as maintenance of a canteen), avails the services of a contractor, the contract labour so engaged



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would indeed be the employees of the principal employer.

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29. In light of the foregoing discussion, I am of the considered view that the private respondents are the direct employees of the petitioner–Management, having worked for more than 480 days in the preceding 24 calendar months. The arrangement between the petitioner–Management and the licensed contractor, entered into after March 2016 or March 2017, is merely a camouflage adopted to deny the private respondents/workmen the benefit of permanent status. Such an arrangement is sham and nominal and cannot be enforced against the private respondents/workmen. Therefore, in the absence of any infirmity or illegality in the impugned order passed by the first respondent, the writ petition is devoid of merits and is accordingly dismissed. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

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Speaking / Non-speaking

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To

The Joint Director of Industrial Safety and Health
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HEMANT CHANDANGOUDAR, J.,

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