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W.P. No.34852 of 2023 etc., Batch

WP.Nos.34852, 34856, 34859, 34864
34861,34863, 34867, 34868, 34871,
34872, 34879, 34880, 34882, 34884,
34902, 34905, 34906 and 34909 of 2023

D.BHARATHA CHAKRAVARTHY.J.

This matter is listed under the caption for being mentioned.

2. The learned counsel for the petitioner submitted that common order has been passed on 06.03.2025 in the above Writ Petitions. The cause-title has been generated for one case alone. Hence, he needs separate cause title for all the cases.

3. Hence, the Registry is directed to include the cause-title for all the cases and issue fresh order copy.

30.04.2025

dna



W.P. No.34852 of 2023 etc., Batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDERS RESERVED ON : 27.01.2025

ORDERS DELIVERED ON : 06.03.2025

Coram:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P. Nos.34852, 34856, 34859, 34861, 34863, 34867, 34868, 34871, 34872, 34864, 34879, 34880, 34882, 34884, 34902, 34905, 34906 and 34909 of 2023 and W.M.P.Nos.34850, 34851, 34853, 34855, 34856, 34857, 34858, 34861, 34864, 34865, 34869, 34873, 34874, 34876, 34893, 34894, 34896, 34897 of 2023, 13917, 13927, 13937, 13943, 14006, 14012, 14015, 14017, 14019, 14021, 14022, 14024, 14025, 14074, 14075, 14076 and 14077 of 2024

W.P.No.34852 of 2023:

1.The Chairman

Tamil Nadu Generation and Distribution Corporation

No.144/800

Anna Salai, 10th Floor

Chennai – 600 002.

2.The Chief Engineer (Personnel)

Tamil Nadu Generation and Distribution Corporation

No.144/800

Anna Salai, 10th Floor

Chennai – 600 002.

3.The Superintending Engineer

Tamil Nadu Generation and Distribution Corporation

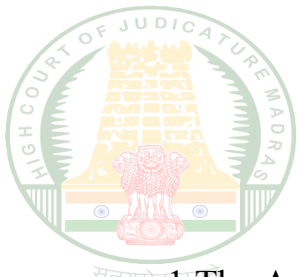
Chennai Central Electricity Distribution Circle

Valluvar Kottam

Chennai – 600 034.

... Petitioners

Page No.2/56



W.P. No.34852 of 2023 etc., Batch

Vs.

1.The Assistant Commissioner of Labour (Enforcement)
Authority under Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workmen) Act,
Circle – II, Nandanam, Chennai – 600 035.

2.M.Mathiazhagan (Deceased)

3.M.Amutha

4.M.Keerthana

5.Minor M.Preethi

6.Minor M.Deepak

(R5 and R6 are represented by their mother
as natural guardian R3)

(R3 to R6 are substituted as LR's of the
deceased R2 as per the order of this Court
dated 22.11.2024 in W.P.No.34852 of 2023)

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the order of the 1st respondent in Case No.E/3617 of 2018 and quash its order dated 28.04.2023 and pass such further orders.

For the Petitioners	:	Mr.G.Anand Gopalan for M/s Agam Legal (in all W.P.'s)
For the Respondents	:	Mr.N.G.R.Prasad for Mr.V.Stalin for M/s Row & Reddy for RR3 to 6 (in all W.P.'s) Mr.K.Tamilvendan, Govt. Advocate for R1 (in all W.P.'s)



W.P. No.34852 of 2023 etc., Batch

COMMON ORDER

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All these Writ Petitions are connected and, since identical grounds are raised, are taken up and disposed of by this common order.

A.The Writ Petition:

2. The prayers made in these Writ Petitions are by the Tamil Nadu Generation and Distribution Corporation (TANGEDCO) and its officers challenging the individual awards issued by the authority(respondent No.1 in the respective Writ Petition), under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (referred to as 'the Act of 1981'). The awards grants permanent status to the individual Workmen, who are designated as party respondents in the Writ Petitions.

B. The Brief Facts:

3. The workmen submitted claim petitions to the authority, asserting that they had completed 480 days of continuous service within two calendar months and, therefore, should be granted permanent status. These workmen contended

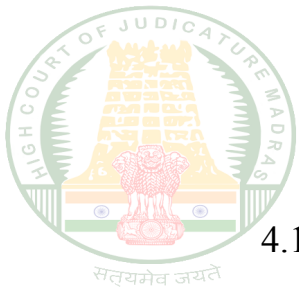


W.P. No.34852 of 2023 etc., Batch

that since around 1998, they had been working directly under management for several years before being transitioned to contractors and classified as contract workmen. Nevertheless, they have rendered service for the past 20 to 25 years. An award was passed in all these cases, granting permanent status effective from the date they completed 480 days of service with the petitioner management. Feeling aggrieved, the current writ petitions have been filed.

C.Case of the Management:

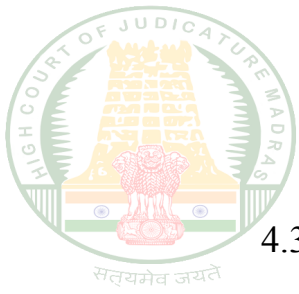
4. The case of the Writ Petitioner is that it was originally constituted as the Electricity Board under the Electricity (Supply) Act, 1948 (Central Act) on 01.07.1957. Regarding the services under the Board, Regulations were framed under Section 79 (c) and 79 (k) of the said Act. From 1978 to 1990, to meet the contingent manpower requirements for the electrification of various parts of the State, the petitioner resorted to engaging contract labourers by Board Proceedings No. 38 dated 23.05.1986.



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4.1. The former Tamil Nadu Electricity Board was committed to filling 700 Helper positions through Direct Recruitment from candidates possessing the prescribed qualifications. The matter was challenged and escalated to the Hon'ble Supreme Court of India. In 1991, the Hon'ble Supreme Court appointed the Hon'ble Mr. Justice Khalid (Retd) to recommend criteria for the recruitment of Helpers. The commission submitted its report recommending the absorption and regularization of 18,006 contract laborers. The Supreme Court accepted these recommendations and instructed the petitioner – Management not to recruit anyone else until these 18,006 individuals were absorbed. By 1998, all 18,006 contract labourers had been absorbed.

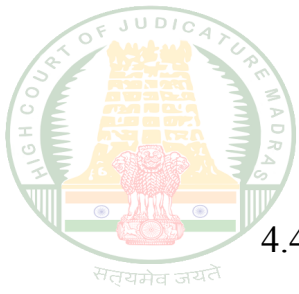
4.2. On 08.08.1998, an identification process was also conducted to determine who should be paid ex-gratia and to conclude that no new contract labourers were engaged after 1998. In that process, 8,500 persons who were regularly engaged from 1993 were identified and paid ex-gratia with retrospective effect from 1995 to 1996. Again, in 2004 – 2005 and 2005 – 2006, another 15,600 contract labourers were identified, and ex-gratia payments were extended to them.



4.3. The trade unions representing these contract laborers submitted a

demand for the absorption of contract workmen and raised industrial disputes.

Before the Labour Commissioner, a settlement under Section 12(3) of the ID Act was reached for the absorption of 21,600 contract labourers. The settlement outlined the criteria for absorption without naming specific workmen. It included a clause stating that the claims of all contract labourers would be considered according to the settlement. Subsequently, on 06.09.2007, the Management also issued B.P. No. 44 for the absorption of the workmen per the settlement. In 2007, a committee was established to identify individuals eligible for absorption. From April to May 2008, the system of contract labour was halted in the distribution circles. A request was made to provide ex-gratia payments to those engaged on a daily wage basis from May 2008 onwards, and ex-gratia was subsequently paid to them for the year 2010–2011. As of 2012, those contract labourers who received ex-gratia during the years 2011–2012 and continued to provide their services to the Board were absorbed into service. A total of 4,037 individuals were absorbed.



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4.4. Consequently, the engagement of contract labourers in the petitioner's management ceased. There has been no engagement of contract labourers in the manner that prevailed from 1978 to 2008. In 2012, the system of engaging contract labourers was regularized. Full compliance was made with all statutory requirements under the Contract Labour (Regulation and Abolition) Act, 1970 (hereafter referred to as 'The Act'). The engagement itself has been minimal. Nevertheless, in 2013, the party respondents in these cases filed applications seeking permanent status. The management also submitted interlocutory applications regarding the maintainability of the petitions. On 31.08.2021, these interlocutory applications were dismissed, confirming that the petitions are maintainable. The management had previously filed W.P.No.26895 of 2021, challenging the said order, and the petitions were held as maintainable by the order dated 04.08.2022. Subsequently, the present orders were issued on 28.04.2023, granting permanent status to these individual private respondents. Aggrieved by this, the present writ petitions have been filed.

D.Case of the Workmen:

5. The Writ Petitions are contested through the filing of counter-affidavits.

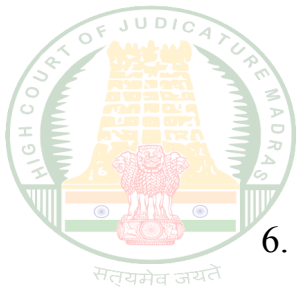


W.P. No.34852 of 2023 etc., Batch

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The Workmen assert that they were appointed as temporary employees in various positions under the petitioner – Management. In that capacity, as daily wagers, they have served for over 480 days within a two-year period. When they expected their services to be regularized, they were overlooked and were also placed under contractors, prompting them to file a case. The previous Writ Petition challenging maintainability was also dismissed, although with the observation that the authority should decide the issue, considering the applicability and considering all submissions made by the parties, while providing an opportunity for full hearing. The petitioner – Management has delayed the proceedings. The nature of the documents submitted by the Workmen to the authority, such as the petty cash book and details of how many days it covers within the two calendar years, along with the fact that it indicates direct wage payments by the Assistant Engineer of the petitioner – Management, is stated in the counter-affidavit. The various grounds raised in the Writ Petitions are disputed. In light of this, they request that these Writ Petitions be dismissed.

E.Submissions of the Management:



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6. *Mr. Anand Gopalan*, the learned counsel appearing on behalf of the petitioner – Management, takes this Court through the impugned award and certain orders passed in earlier Writ Petitions involving similarly placed Workmen and the Management, and makes the following submissions:

(i) The specific finding regarding the timeframe during which the Workman had rendered 480 days of continuous service under the Management was not provided. Without this specific finding, the authority passed the award on a general basis, which was not permissible. His second contention is that when the petition was filed, the Workmen were clearly not in the service of the petitioner—Management, but were instead employed by the contractors.

(ii) The learned counsel would point out to the questions posed to the Workmen during the inquiry before the 1st respondent, wherein the Workmen affirmatively stated that they were employed under the contractors as of 2018 and that they received wages solely from the contractors. Therefore, he submits that since the Workmen were not in service with the petitioner – Management at the time of filing the petition, the petition is not maintainable.

(iii) Thirdly, the learned counsel contends that there were two phases



regarding appointing contract labourers in the petitioner – Management. Until the year 2012, it was governed by the Khalid Commission's report and then by the 12 (3) settlement. There was no question of absorbing any contract labourer after the 12 (3) settlement. The 12 (3) settlement stipulated certain criteria for the permanent absorption of workmen. If these workmen met the specified criteria, they should have been appointed, pursuant to BP No.44. If they received any ex-gratia payments, they should have provided proof thereof, and along with the 4,037 persons who were absorbed, they would have also been absorbed.

6.1. The Division Bench of this Court in the case of ***Superintending Engineer, Nagapattinam Electricity Distribution Circle, Tamil Nadu Electricity Board and Others Vs. The Inspector of Labour and Others***¹ confirmed that absorption shall adhere to the terms of the 12 (3) settlement. Therefore, if they did not claim the benefit, and if they were Workmen under the petitioner – Management who had served and were eligible for ex-gratia, having chosen to work under the relevant contractors merely because the wages they earned under those contracts on a piece-rate basis were higher, they cannot now,

¹ MANU/TN/1165/2008



belatedly, revert to seeking direct employment with the petitioner - Management.

WEB COPY The petitioner – Management has regularized all casual labourers and daily-rated workers to enable them to claim benefits under either Khalid's commission or the 12 (3) settlement for regularization. Since 2012, the petitioner – Management has ceased to engage any casual labourers directly. Contract labourers have been engaged strictly according to the provisions of the Act after obtaining the necessary licenses. Given the foregoing, these Workmen are not entitled to claim permanent status now belatedly.

6.2. *Mr. Anand Gopalan*, the learned counsel, would further contend that when the Management asserts that these workmen are contract labourers and are not directly employed by the Management, the authorities have also opted to decide this issue. When the dispute pertains to the validity of the contract system, examining whether it is appropriate, genuine, or merely nominal, the authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act , 1981 has no jurisdiction to make such determinations. Only the industrial adjudicator, namely the Labour Court or the Industrial Tribunal as applicable, can rule on whether the workmen's claim for absorption, despite



being identified as contract labourers, is correct or not.

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6.3. The learned counsel would further submit that when Management has taken appropriate steps to absorb all the Workmen as per Khalid's Commission and subsequently under Section 12(3) settlement, and has regularized the system of engaging contract laborers, with the necessary licenses obtained under the Act, it cannot be considered sham and nominal. The engagement is made solely by the contractors, payment is made exclusively by the contractors, and it is only the contractors who supervise their employees and take disciplinary action, etc. The petitioner – Management has no control over the continuity of these Workmen in service or otherwise. Because of this, even considering the relevant criteria, it can never be declared that the contract is sham and nominal, and once it is acknowledged that these Workmen are not employed under the contractors, they cannot claim permanent status.

6.4. *Mr. Anand Gopalan*, the learned counsel, would then argue that even assuming the workmen were initially working directly under the petitioner – Management, the benefit of permanency would accrue to them only up to the date of their direct engagement with the Management. After that, once they have

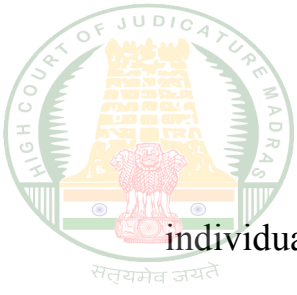


W.P. No.34852 of 2023 etc., Batch

been assigned to the contractors, these benefits would no longer apply, and it is for the workmen to further seek such relief before the appropriate industrial adjudicator with reference to the other reliefs.

6.5. The learned counsel would further submit that even a violation of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, would not automatically confer the benefit of an employer-employee status; at best, the violation would only entitle prosecution of the Management under the provisions of the said Act.

6.6. The learned counsel for the petitioner – Management further submits that this Court should consider the operation of the Act of 1981, particularly concerning Government Service and other public sector undertakings. Although the activities undertaken by public sector organizations, such as the petitioner – Management, could classify them as industrial establishments under the Act, this Court must still examine the relationship between the Constitution of India and the mandate of Article 311, alongside principles related to public employment and labour welfare legislation. According to the Constitution of India, every



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individual has a fundamental right to participate in the selection process for posts under the State. These employees were never appointed through any selection process. The Service Regulations, which are also statutory, have not been followed. There was no public advertisement or call for applications through the employment exchange. Additionally, there is no sanctioned post. Therefore, when the Workmen cannot directly claim regularization under the Service Regulations or are restricted by their fundamental rights as outlined in Articles 14 and 16 of the Constitution of India, they cannot indirectly achieve this through provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. The provisions of this Act cannot be interpreted in a way that overrides the respective statutes, statutory regulations, and constitutional requirements. Permanent entry cannot be granted through backdoor methods.

6.7. With reference to his arguments regarding the interplay between the Act and the provisions in the Constitution and the statutory service regulations, the learned counsel will rely on the Division Bench Judgment of this Court in



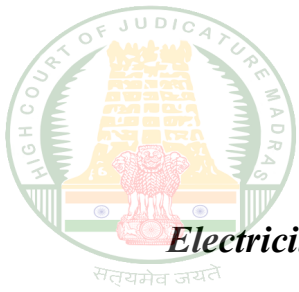
W.P. No.34852 of 2023 etc., Batch

L. Justin Vs. Registrar of Cooperative Societies². In that case, the issue of illegal appointees claiming protection or regularization under the Conferment of Permanent Status Act was explicitly addressed. The Court held that the Act cannot be applied to illegal appointments. The findings in paragraphs 14 to 16 and 18(a) are cited. The learned counsel will then reference the Judgment of the Hon'ble Supreme Court of India in ***Umarani Vs. Registrar of Co-operative Societies and Others***³. The Hon'ble Supreme Court examined the illegal appointments made in cooperative societies and concluded that the Workmen were not entitled to regularization, even in light of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981.

6.8. The learned counsel would rely on the judgment of this Court in ***Tamil Nadu Slum Clearance Board vs. Thalaivar Tamil Nadu Kudisai Matru Varia Thuppuravu Paniyalargal Sangam (AITUC)*** (W.A.No.1169 of 2020), wherein the Court held that the provisions of the Act of 1981 do not apply to the Tamil Nadu Slum Clearance Board. The learned counsel would further base their argument on the judgment of this Court in the case of ***Chairman, Tamil Nadu***

² (2003) 1 LLN 315

³ (2004) 7 SCC 112



Electricity Board and Others vs. Inspector of Labour and Others⁴. In this case,

the very arguments presented before this Court regarding state-owned undertakings and the necessity to adhere to the rule of reservation were examined. The Court determined that, in relation to employment under the petitioner – Management, it is essential to consider the constitutional rights of all other young individuals whose rights are infringed while granting the absorption of these contract labourers. Ultimately, the Court ruled that the provisions of the Electricity Act and the Statutory Service Regulations take precedence. Additionally, the Court referenced the judgment of the Hon'ble Supreme Court of India in ***Secretary, State of Karnataka vs. Umadevi***⁵, allowing the claim of the petitioner – Management. Therefore, the learned counsel submits that, considering the employment scheme in the Electricity Board as public employment, along with the statutory regulations and the judgments of the Hon'ble Supreme Court of India in ***Umadevi*** as well as ***Umarani's case*** (cited supra), and given that the issue has been addressed with respect to the petitioner – Management by the learned Single Judge in the aforementioned judgment, the writ petitions should be allowed.

⁴ (2009) SCC OnLine Madras 35861

⁵ 2006 (3) SCR 953

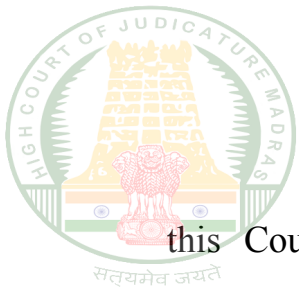


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6.9. In support of his contention that after entering into 12 (3) settlements by the Management on 10.08.2007 and after the issuance of B.P.No.44, the question of absorption and regularization of contract labourers will be solely in accordance with the said settlement, the Division Bench Judgment of this Court in the '**Superintending Engineer, Nagapattinam Electricity Distribution Circle**' case (cited supra) was relied upon. The learned counsel points out the finding of the Division Bench that the settlement is valid and enforceable, and the Workman can claim regularization only in accordance with the said settlement. The dictum laid down by the above Division Bench has been followed in various Writ Petitions, including W.P.Nos.358 of 2018, 38265 of 2006, 15174 of 2008, 29541 of 2018, 193 of 2019, 6480 of 2006, 30603 of 2018, etc.

6.10. The learned counsel would rely on the judgment of the Hon'ble Supreme Court of India in **Tamil Nadu Civil Supplies Corporation Workers Union Vs. Tamil Nadu Civil Supplies Corporation Limited and Others**⁶, specifically referring to paragraph No.10. The judgment of the Division Bench of

⁶ (2001) 4 SCC 469



W.P. No.34852 of 2023 etc., Batch

this Court in *Sivakumar and Others Vs. Deputy Inspector of Factories,*

Chennai and Another⁷ was also cited. The finding of the Division Bench in paragraph No.15, stating that a petition under Section 3 of the Act of 1981 cannot be filed by a dismissed employee, is noted. The learned counsel would again rely on the judgment of the Hon'ble Supreme Court of India in *Oshiar Prasad and Others Vs. Employers in Relation to Management of Sudamdih Coal Washery of M/s Bharat Coking Coal Limited, Dhanbad, Jharkhand*⁸, particularly pointing to paragraph No.28 of that judgment.

6.11. Regarding the validity of the contract labour system, when the Courts deem the contract as sham and nominal, the learned counsel will refer to the judgment of the Hon'ble Supreme Court of India in International *Airport Authority of India Vs. International Air Cargo Workers Union and Another*⁹, as well as the judgment in *Balwant Rai Saluja Vs. Air India Limited and Others*¹⁰. For the proposition that violations of the provisions of the Contract Labour (Regulation and Abolition) Act do not lead to an employer-employee

7 (2007) 1 LLN 302

8 (2015) 4 SCC 71

9 (2019) 13 SCC 374

10 (2014) 9 SCC 407



W.P. No.34852 of 2023 etc., Batch

relationship and that only an industrial adjudicator can decide the same, the judgment of the Hon'ble Supreme Court of India in ***Director, Steel Authority of India Vs. Ispat Khadan Janta Mazdoor Union***¹¹ is referenced.

6.12. Regarding the proposition that when questions arise concerning contract labour, if the matter extends beyond the scope of the Act, the authority under the Act of 1981 has no power, the learned counsel will refer to the judgment of the Division Bench of this Court in ***Superintending Engineer, Erode Electricity Distribution Circle, Tamil Nadu Electricity Board, Erode Vs. Inspector of Labour, Erode and Ors*** in W.P.No.4061 of 2013 etc. (Batch cases). The same judgment is relied on to support the assertion that the benefit of granting permanent status can only be extended while they remain in service. Similarly, this Court's judgment in ***A.Ravi Vs. Chairman, TANGEDCO and Others*** W.A.No.2254 of 2021 etc. (Batch of cases) and ***R.Pazhani vs. Chairman, TANGEDCO and Others*** W.A.No.1554 of 2022 were also cited. The learned counsel will also reference the judgment of the Hon'ble Supreme Court of India in ***Oil and Natural Gas Corporation Vs. Krishan Gopal and Others***¹²

¹¹ (2019) 7 SCC 440

¹² (2020) SCC OnLine SC 150



for the assertion that the labour court cannot create a post to confer permanent status. Additionally, the learned counsel will refer to the judgment of the Hon'ble Supreme Court of India in *the State of UP Vs. Neeraj Awasthi and Others*¹³ to argue that recruitment rules must be strictly adhered to.

6.13. The learned counsel submits that since the Workmen are not employed by the Management, the benefits they would ultimately be entitled to would only be the compensation under Section 25 (F) of the Industrial Disputes Act. In support of this proposition, he relies on the judgment of the Hon'ble Supreme Court of India in *BSNL Vs. Bhurumal*¹⁴. The judgment in *Deputy Executive Engineer Vs. Kuber Bhai Kanjibhai*¹⁵ is also referenced regarding the same proposition. The Hon'ble Supreme Court of India's judgment in *Authorised Officer, Central Bank of India Vs. Shanmugavelu*¹⁶ is cited to argue that, in appropriate cases, the provisions can be interpreted by the Court, ensuring compliance with constitutional requirements, statutory provisions, and recruitment rules. Hence, the Act of 1981 may also be interpreted accordingly by this Court. For all these reasons, he prays that this Court allow the Writ Petitions

13 (2006) 1 SCC 667

14 (2014) 7 SCC 177

15 (2019) 4 SCC 307

16 (2024) 6 SCC 641



by setting aside the orders of permanency issued by the authority.

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F.Submissions of the Workmen:

7. *Mr. N.G.R. Prasad*, the learned Senior Counsel representing the Workmen, contends that the Act of 1981 applies to the petitioners – Management, a fact confirmed by several judgments of this Court. Once it is established as an industrial establishment, by the operation of the Act of 1981, if the Workmen have worked for 480 days within a period of two calendar years, they are entitled to permanency. The Act operates in its own sphere, and the law applicable to regularization under Article 226 cannot be applied in this case. These Workmen were originally appointed directly and were employed by the petitioner - Management before being transitioned to contract labourers. Therefore, having worked for 480 days directly under the Management, Section 3 deems them permanent employees. Once they are considered permanent employees, the subsequent engagement as contract labourers does not alter their status, as the Management is not entitled to change the status. Relying on the documents submitted to the first respondent authority, the learned counsel argues that the Workmen have definitively established their original direct employment

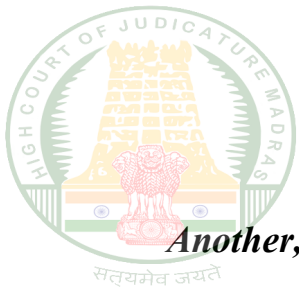


with the petitioner – Management from either 1998 or 2000, as applicable. They

have also demonstrated the number of days worked by providing relevant wage registers that show they worked more than 480 days, and thus, upon careful consideration, the petitions are ordered.

7.1. He would submit that the earlier Division Benches have also concluded that the Act of 1981 is applicable and that the Workmen will be entitled to regularization. In view of this, the judgment of the learned Single Judge of this Court denying the benefit, particularly based on *Umadevi's case* (cited supra), will not be binding on this Court, and the appeals against the said judgment are still pending. To support his submissions, the learned counsel would rely upon the judgment of the Hon'ble Supreme Court of India in *Sahu Minerals and Properties Ltd. vs. Presiding Officer, Labour Court and Others*¹⁷, for the proposition that the tribunals under industrial adjudication can always address incidental and other questions. The learned counsel would also refer to the judgment of the Division Bench of this Court in *N. Mamundi Raj and Others vs. Management of Bharat Heavy Electricals Limited, Trichy and*

¹⁷ 1976 (3) SCC 93



Another,¹⁸, particularly paragraph No. 24, to argue that the deeming provisions in the Act of 1981, along with the public policy established by the Act, would not bar the employee from claiming benefits merely because the management has chosen to terminate the relationship. The learned counsel would further rely on the judgment of this Court in **HPCL and Another vs. Presiding Officer, Central Government Industrial Tribunal cum Labour Court and Others**¹⁹, to assert that once there is a valid state enactment providing relief to workmen deemed permanent after completing 480 days of service within a two-year period, this cannot be questioned under Articles 14 and 16 of the Constitution of India. He relies on paragraph No. 38.

7.2. The learned counsel will rely on the Judgment of the Hon'ble Supreme Court of India in **Harjinder Singh Vs. Punjab State Warehousing Corporation**²⁰ emphasizing paragraph No. 14. The learned counsel contends that certain new pleas raised before this Court should not be considered. Further relying on paragraphs No. 30 and 31, the learned counsel submits that the Hon'ble Supreme Court has specifically addressed pleas similar to those raised in the present case,

¹⁸ (1998) 2 LW 534

¹⁹ (2008) 4 CTC 819

²⁰ (2010) 3 SCC 192

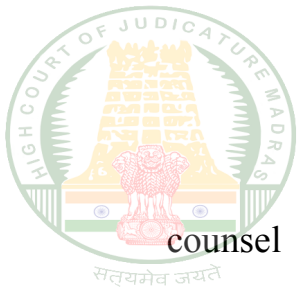


classifying them as stock pleas. The Hon'ble Supreme Court has stated that a

typical 'stock plea' raised by a public employer is that the initial employment or engagement of the workmen was contrary to certain statutes, and that reinstating the workmen would place an unbearable burden on the financial health of the establishment. These arguments were specifically rejected, redirecting the Courts' focus on the fundamental and constitutional rights of the workers who are deprived of their livelihood. The learned counsel then cites the Judgment of this Court in *the Management of Bikatty INDL Vs. The Deputy Chief Inspector of Factories*²¹, attracting the Court's attention to paragraph No. 11, to argue that the right conferred by the Act of 1981 is automatic and that the Court should not be influenced by other considerations. Next, the learned counsel refers to the Judgment of this Court in *Special Officer, Salem Cooperative Sugar Mills Vs. Deputy Chief Inspector of Factories and Others*²², placing reliance on paragraphs No. 10, 32, and 35 to argue that concerning the 480 days, the Management also has an obligation to present its statutory registers showing the number of days worked by the workers. It has been established that mere termination of the workers does not disqualify them from benefits. The learned

²¹ (2010) SCC OnLine Madras 2848

²² (2011) SCC OnLine Madras 1894



counsel further cites the Judgment of this Court in ***the General Manager, Madurai District Cooperative Milk Producers Union Vs. The Secretary to Government and Others***²³, more specifically relying on paragraphs No. 15 and 18 regarding the contentions of issuing regularization orders, and the principles laid out by the Hon'ble Supreme Court in ***Umadevi's case*** (cited supra), asserting that the principles from ***Umadevi's case*** will not apply in this context.

7.3. The learned counsel would rely on the Judgment of the Hon'ble Supreme Court of India in ***Bhilwara Dugdh Utpadak Sahakari Samithi Ltd. Vs. Vinod Kumar Sharma***²⁴, particularly on paragraph No.3, which states that the purpose of labor statutes is to protect workers from exploitation since they are not in an equal bargaining position. The learned counsel would also refer to the Division Bench Judgment of this Court in ***Executive Engineer, Tamil Nadu Water Supply and Drainage Board and Others Vs. Inspector of Labour and Others***²⁵, focusing on paragraph Nos.14 and 20, to argue that the Judgment in ***R.Lakshmi Vs. Chief Engineer and Others***²⁶ applies, and that adverse inference

23 (2011) SCC OnLine Madras 2081

24 (2011) 15 SCC 209

25 (2019) SCC OnLine Madras 8926

26 (2012) SCC OnLine Madras 2941



W.P. No.34852 of 2023 etc., Batch

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should be drawn against the Management for failing to produce the relevant registers. Furthermore, the learned counsel would rely on the Division Bench Judgment of this Court in ***Vellore District Consumer Cooperative Wholesale Stores Ltd. Vs. The Authority under the Conferment of Permanent Status Act and Others*** (W.A.No.2190 of 2021), particularly paragraph No.10, where it was held that mere cessation of employment does not curtail the rights of employees, following the Judgment in N.Mamundi Raj's case (cited supra). Additionally, the learned counsel would cite the Judgment of the Hon'ble Supreme Court of India in ***Jaggo Vs. Union of India and Others***²⁷, particularly paragraphs No.22 to 27, contending that the Hon'ble Supreme Court has clarified, in reference to the Judgment in ***Umadevi's case***, that public employers cannot increasingly resort to labour exploitation by using outsourcing as a subterfuge to deny various Workmen benefits such as security of tenure.

7.4. The learned counsel would also rely on the judgment of this Court in ***Superintending Engineer, Vellore Electricity Distribution Circle Vs. Inspector of Labour and Others***²⁸, specifically paragraphs 40 and 42, to contend that even

²⁷ (2024) SCC OnLine Sc 3826

²⁸ (2004) 3 LLN 598



W.P. No.34852 of 2023 etc., Batch

in cases involving contract labor, the matter can be examined by the Inspector of Labour under the Act of 1981. The learned counsel would then reference the judgment of the Division Bench of this Court in ***R. Lakshmi's case*** (cited supra), particularly paragraphs 23, 26, 34, and 35, to argue that the operation of the Act establishes a deeming clause under Section 3 of the Act of 1981, which admits no exceptions and is mandatory in nature. Therefore, once the condition of 480 days within two calendar years is met, the benefit of permanent status must be granted to the employee. Reliance is further placed on the Division Bench judgment of this Court in ***the Chairman, Tamil Nadu Electricity Board and Others case*** (cited supra), specifically citing paragraph 35 of the judgment related to the powers of the Inspector of Labour. It has been laid down by the Division Bench that merely because the Inspector of Labour examines this matter, it cannot be concluded that he is encroaching on the adjudication process contemplated under the Industrial Disputes Act. Additionally, reliance is on the Division Bench judgment of this Court in ***Tamil Nadu Electricity Board Accounts and Executive Staff Union Vs. Tamil Nadu Electricity Board*** (W.P.No.21324 of 2011 etc., and Batch) (to which I am also a party) to highlight that the numerous contentions raised by the learned counsel in the present Writ



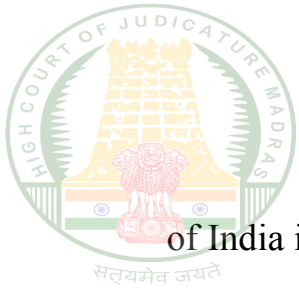
Petition have already been addressed in several rounds of litigation, with the Management repeatedly reiterating the same arguments.

7.5. The learned counsel ultimately guided this Court through the proof affidavit submitted and the cross-examination of the Workmen in all these cases. He submits that there is substantial evidence regarding the commencement of service and the completion of 480 days within two calendar years. Accordingly, after a thorough application of mind, the awards were passed. Therefore, he requests that the Writ Petitions be dismissed.

G.The Questions:

8. The following questions arise for consideration upon reviewing the arguments presented by both sides' learned counsel and examining the material evidence on record.

(i) Should the Workmen be non-suited on the grounds that the petitioner, the Management, is a Public Sector Undertaking, that posts are not available, adherence to recruitment rules, the constitutional mandates under Articles 14 and 16 of the Constitution of India, and the judgments of the Hon'ble Supreme Court



W.P. No.34852 of 2023 etc., Batch

of India in the *Umadevi case* (cited supra)?

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(ii) Whether the Workmen should be non-suited or, alternatively, have their benefits restricted until the date of their employment, on the grounds that they are subsequently employed by the contractors and that there is no employer-employee relationship between the Management and the Workmen as of the date of filing the petition under the Act?

(iii) Should the awards issued under the Act of 1981 be set aside on the grounds that the authority exceeded its jurisdiction?

(iv) Should the Workmen be non-suited for not claiming the benefit under the 12 (3) settlement dated 10.08.2007?

(v) Have the Workmen demonstrated that they served 480 days, and is the award issued by the authority under the Act of 1981 valid?

(vi) To what relief are the parties entitled?

H.Question No.(i):

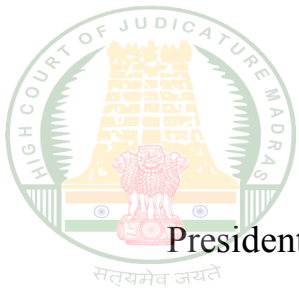
9. The learned counsel representing the Management argued the matter in detail, emphasizing the need for a transparent recruitment method to satisfy the provisions of Articles 14 and 16 of the Constitution of India, the existence of a



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post, and the recruitment being conducted in accordance with the statutory service regulations. The Judgment of the Hon'ble Supreme Court of India in *Umarani* and *Umadevi's case* (cited supra) is also referenced. The essence of the argument presented by the learned counsel is that the operation of labour welfare legislation, such as the Act of 1981, exists in one sphere. The constitutional mandate, along with the statute under which the petitioner – Management is constituted, and the service regulation exists in another sphere. When the matter involves an interplay between the two spheres, this Court should appropriately interpret the Act of 1981 to accommodate the constitutional mandate, larger public interest, and the statutory principles contained within the electricity code and the service regulations framed thereunder.

9.1. Firstly, it is evident that the judgment in Umarani's case (cited supra) and the judgment of this Court in L. Justin's case (cited supra), concerning the illegal appointments made in cooperative societies, assert that if the appointments are illegal, the provisions of the Act of 1981 should not be enforced. The facts in those cases indicate that when the Registrar of Co-operative Societies prescribes cadre strength, recruitment rules, etc., the elected



President/Management of the Co-operative Society, in blatant violation of the rules, appoints individuals, often accepting bribes, among other things. In that context, those employments were deemed illegal. Furthermore, in the aforementioned judgments, it has been held that a distinction should be made regarding irregular employment.

9.2. Concerning the present case involving the Tamil Nadu Electricity Board, it is not the case that the Head Office, Chairman, or Managing Director issued any circular establishing an outer limit or stating that these Assistant Engineers, among others, should not engage any person, or that there were existing posts whose recruitment rules were violated. The term back-door entry signifies that if a post exists alongside recruitment rules, and those rules are violated, it constitutes back-door entry or illegal appointment. However, this Court's Division Bench has previously addressed this aspect in *Union of India -Vs- R. Paramasivam*²⁹. It has been determined that when no post is available and no recruitment rules pertain to it, the appointments cannot be considered back-door or illegal. In the case of the Electricity Board, their needs are diverse.

²⁹ 2014 SCCOnline Mad 144



They require a workforce for various tasks not covered by any planned posts, and it is not accurate to state that these are solely the posts of Helper governed by recruitment rules occupied by contract employees. They have only a limited number of establishments to perform these tasks. To manage these ongoing tasks, they exceed their sanctioned strength of Helpers or other designated staff and employ contract labourers as Mazdoors, etc. These workers have been involved since 1998 and have dedicated many years of service. Therefore, this appointment cannot be labeled as illegal or back-door entry. In this context, there can be no doubt that the petitioner – Management, namely TANGEDCO or the Electricity Board, qualifies as an 'industrial establishment' under the Act of 1981.

The definition of 'Industrial Establishment' is as follows:-

(a) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (Central Act LXIII of 1948) or any place which is deemed to be a factory under sub-section (2) of section 85 of that Act; or

(b) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (Central Act LXIX of 1951); or

(c) a motor transport undertaking as defined in clause (g) of section 2 of the Motor Transport Workers Act, 1961 (Central Act 27 of 1961); or

(d) a beedi industrial premises as defined in clause (i) of section 2 of the Beedi and Cigar Workers (conditions of employment) Act, 1966. (Central Act 32 of 1966); or

(e) an establishment as defined in clause (6) of section 2 of the Tamil Nadu Shops and Establishment Act, 1947 (Tamil Nadu Act XXXVI of 1947); or

(f) a catering establishment as defined in clause(1) of



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W.P. No.34852 of 2023 etc., Batch

section 2 of the Tamil Nadu Catering Establishment Act, 1958.(Tamil Nadu Act XIII of 1958) ; or

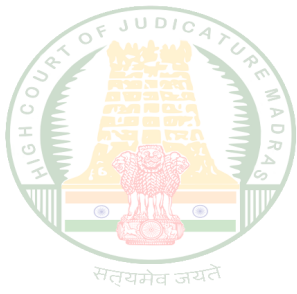
(g) any other establishment which the Government may, by notification, declare to be an industrial establishment for the purpose of this Act;”

9.3. In several litigations, it has already been held that the Act of 1981 applies to the Electricity Board as well. Numerous contract labourers working under the petitioner – Management have approached the authority under the Act of 1981, and this action has been upheld with directions given in several judgments. In this context, the Act of 1981 will fully apply to the petitioner – Management. Section 3 of the Act of 1981 states as follows:-

“3.Conferment of permanent status to workmen.—

(1) Notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty four calendar months in an industrial establishment shall be made permanent.

(2) A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike, which is not illegal, or a lock-out 1 [***] or a cessation of work which is not due to any fault on the part of the workman. 2 Explanation I.-- 3 [For the purposes of computing the continuous service referred to in sub-sections (1) and (2), a workman shall be deemed to be continuous service during the days on which ---] ; (i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (Central Act XX of 1946) or under any other law applicable to the industrial establishment ; (ii) he has been on leave with full wages, earned in the previous years; (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of



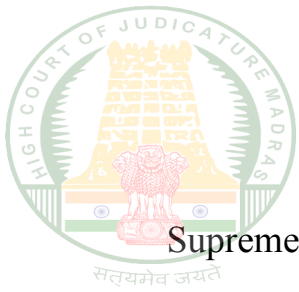
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W.P. No.34852 of 2023 etc., Batch

his employment ; and (iv) in the case of a female, she has been on maternity leave ; so, however, that the total period of such maternity leave does not exceed twelve weeks. 4 [Explanation II. – For the purposes of this section, ‘law’ includes any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of this Act.]”

9.4. Therefore, it has been established that this is a deeming provision and is mandatory. There was a line of judgments in *N. Mamundi Raj's case* (cited supra) that affirmed the mandatory nature of the Act of 1981. In fact, in *the General Manager, Madurai District Cooperative Milk Producers Union* case (cited supra), it was specifically determined in paragraph No. 18 that such conferment cannot be characterized as a violation of Articles 14 and 16 of the Constitution of India. It is correct that the learned Single Judge of this Court in *the Chairman, Tamil Nadu Electricity Board and Others case* (cited supra) considered the issue in detail, referencing the Act, recruitment rules, the judgment in *Umadevi's case* (cited supra), and the constitutional mandate, and accepted the Management's contention, thereby allowing the Writ Petitions. Normally, this judgment would also be binding upon this Court. Therefore, this Court must consider the binding nature of this judgment in light of the differing opinions expressed in various Division Bench judgments. However, the Hon'ble



Supreme Court of India has authoritatively addressed the issue in the recent judgment of *Jaggo's case* (cited supra). The judgment in *Umadevi's case* (cited supra) is also specifically examined. It is essential to extract paragraph Nos. 22 to 27, which read as follows:-

“22. With respect, it appears to us that the question whether the jettisoning of the constitutional scheme of appointment can be approved, was not considered or decided. The distinction emphasised in *R.N. Nanjundappa v. T. Thimmiah* [(1972) 1 SCC 409 : (1972) 2 SCR 799] was also not kept in mind. The Court appears to have been dealing with a scheme for “equal pay for equal work” and in the process, without an actual discussion of the question, had approved a scheme put forward by the State, prepared obviously at the direction of the Court, to order permanent absorption of such daily-rated workers. With respect to the learned judges, the decision cannot be said to lay down any law, that all those engaged on daily wages, casually, temporarily, or when no sanctioned post or vacancy existed and without following the rules of selection, should be absorbed or made permanent though not at a stretch, but gradually. If that were the ratio, with respect, we have to disagree with it.

23. We may now consider *State of Haryana v. Piara Singh* [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] . There, the Court was considering the sustainability of certain directions issued by the High Court in the light of various orders passed by the State for the absorption of its ad hoc or temporary employees and daily-wagers or casual labour. This Court started by saying : (SCC p. 134, para 21)

“21. Ordinarily speaking, the creation and abolition of a post is the prerogative of the executive. It is the executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the



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W.P. No.34852 of 2023 etc., Batch

Constitution or (in the absence of such rules) by issuing rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any, governing the conditions of service.

24. This Court then referred to some of the earlier decisions of this Court while stating : (SCC p. 134, para 21)

“The main concern of the court in such matters is to ensure the rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularisation. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above.”

25. This Court then concluded in paras 45 to 49 : (SCC p. 152)

“45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a



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W.P. No.34852 of 2023 etc., Batch

temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

47. Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

48. An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

49. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.”



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W.P. No.34852 of 2023 etc., Batch

26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent—the distinction between regularisation and making permanent, was not emphasised here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in para 50 (of SCC) of Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognised in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.

27. We shall now refer to the other decisions. In *State of Punjab v. Surinder Kumar* [(1992) 1 SCC 489 : 1992 SCC (L&S) 345 : (1992) 19 ATC 500 : AIR 1992 SC 1593 : 1991 Supp (3) SCR 553] a three-Judge Bench of this Court held that the High Courts had no power, like the power available to the Supreme Court under Article 142 of the Constitution, and merely because the Supreme Court granted certain reliefs in exercise of its power under Article 142 of the Constitution, similar orders could not be issued by the High Courts. The Bench pointed out that a decision is available as a precedent only if it decides a question of law. The temporary employees would not be entitled to rely in a writ petition they filed before the High Court upon an order of the Supreme Court which directs a temporary employee to be regularised in his service without assigning reasons and ask the High Court to pass an order of a similar nature. This Court noticed that the jurisdiction of the High Court while dealing with a writ petition was circumscribed by the limitations discussed and declared by judicial decisions and the High Court cannot transgress the limits on the basis of the whims or subjective sense of justice varying from judge to judge. Though the High Court is entitled to exercise its judicial discretion in deciding writ petitions or civil revision



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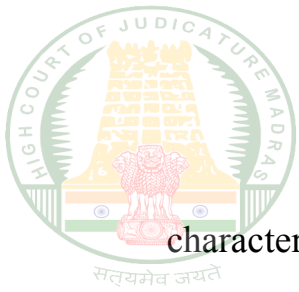


W.P. No.34852 of 2023 etc., Batch

applications coming before it, the discretion had to be confined in declining to entertain petitions and refusing to grant reliefs asked for by the petitioners on adequate considerations and it did not permit the High Court to grant relief on such a consideration alone. This Court set aside the directions given by the High Court for regularisation of persons appointed temporarily to the post of lecturers. The Court also emphasised that specific terms on which appointments were made should be normally enforced. Of course, this decision is more on the absence of power in the High Court to pass orders against the constitutional scheme of appointment.”

9.5. Therefore, the Hon'ble Supreme Court of India has held that even Public Sector Undertakings in this country cannot engage in outsourcing as a means to deny the basic rights, benefits, and security of tenure to the workmen. The Hon'ble Supreme Court of India is guided by the approach of the courts to align with international standards and set a positive precedent for the private sector to follow. The Hon'ble Supreme Court of India has ruled that fair employment practices must be ensured, job security promoted, and the principles of justice and fairness upheld. In light of the authoritative pronouncement of the Hon'ble Supreme Court of India in *Steel Authority of India Limited and Another Vs. Jaggu and Others*³⁰, the arguments based on constitutional safeguards and *Umadevi's case* (cited supra) are not sustainable. Furthermore, the Hon'ble Supreme Court of India in *Harjinder Singh's case* (cited supra) even

³⁰ (2019) 7 SCC 658



characterized such a plea as a stock plea, and it is important to extract paragraph

WEB NO.30 of the said judgment, which reads as follows:-

“30. Of late, there has been a visible shift in the courts' approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalisation and liberalisation are fast becoming the *raison d'être* of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganised workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman/employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood.”

(emphasis supplied)

9.6. Therefore, I hold that the Workmen cannot be non-suited, and the provisions of the Act of 1981 cannot be interpreted in a way that excludes their applicability to Public Sector Undertakings that have established statutory rules, etc. It can only be exempted in cases of illegal appointments, meaning that when posts are created and recruitment rules are established, an authority, in violation



of those rules, recruits individuals whimsically and arbitrarily. However, the

facts of this case indicate that there were no restrictions, no posts, and no recruitment rules. Nevertheless, the need for hands was very much present and was perennial in nature, with the authority themselves sanctioning funds distributed by the respective Assistant Engineers, Superintending Engineers, etc. In light of this, I answer the question in favor of the Workmen.

I.Question No.(ii):

10. In this regard, it can firstly be observed that the Division Bench of this Court had an occasion to elaborate on this in the judgment of *the Superintending Engineer, Erode Electricity Distribution Circle, Tamil Nadu Electricity Board, Erode case* (cited supra). In cases of their non-employment, restrictions must apply until their date of employment. The relevant portion is extracted hereunder:

“34. We have considered the submission aforesaid and find that the order passed by the Labour Inspector needs to be interfered with remand of the case. It is, however, to be made clear that the Labour Inspector would not cause enquiry beyond the powers given under the Act of 1981 and thereby would not be having jurisdiction to adjudicate the complicated questions of fact and law in reference to any other statute than the Act of 1981. The Labour Inspector may, for the purpose of conducting summary enquiry, allow the parties to produce documents and if any of the workmen has completed 480



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W.P. No.34852 of 2023 etc., Batch

days of continuous service in 24 calendar months, appropriate directions can be issued for granting permanency. However, even if such an order is issued, it should be with a clear finding about each workman and the number of working days by referring to the period of 24 calendar months. The benefit as to the consequences thereupon would be only for the period of employment and if any of the workman is discontinued or not in service, he would be entitled to the benefit only for the period of service and not beyond that and, that too, after the completion of continuous service of 480 days in 24 calendar months, and not for a prior period. The direction aforesaid is not driven by the settlement for the reason that the workmen herein are those who were not extended the benefit of settlement and, therefore, sought claims by maintaining claim separately. However, it would not preclude both the sides from entering into settlement, if they so choose, during the period of summary enquiry by the Labour Inspector. The issue as to whether the respondents fall within the definition of "workman" is however decided against the petitioner Corporation, as not only a settlement was entered, but adjudication about claim to seek permanency has been decided earlier in reference to similarly placed."

(emphasis supplied)

10.1. Certain judgments of this Court that hold a contrary view are also relied upon by the learned counsel for the Workmen. However, the very question under the Act of 1981 has recently been addressed by the Hon'ble Supreme Court of India in the Judgment of ***Tamilnadu Medical Services Corporation Limited Vs. Tamilnadu Medical Services Corporation Employees Welfare Union and anr***³¹ and it is essential to extract the relevant quote from paragraph No. 28 hereunder:

"28. The next question to be considered is whether the High Court on remand, could have ignored the order of the

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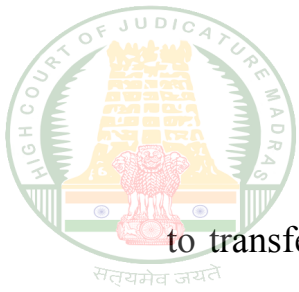


W.P. No.34852 of 2023 etc., Batch

Inspector of Labour and suggested that the employees raise an industrial dispute questioning their non-employment. The reason for remand, as is seen from the judgment dated 10th March, 2016, was that the High Court had not considered that the Act would be applicable to the parties, which were the very same as the parties before us. In other words, the scope of remand was limited. The order of the Inspector of Labour was passed under the Act. Since the High Court concluded that the Act would apply, there was no reason for it to disturb the finding of the Inspector of Labour and, therefore, it ought to have simply ordered that the order of Inspector of Labour which concluded that the members of the respondent-Union be given permanent employment, be complied with. When an issue stands already decided 21| SLP(C)30005/2019 and such decision does not suffer from any vice of authority or jurisdiction then, putting those who enjoy an order in their favour through the wringer once more of having to re-establish their claim, this time before the authority under the Industrial Disputes Act, 1947, would be unjustified."

(Emphasis supplied)

10.2. It has been established that despite non-employment, the authority's award must be implemented if the workmen have completed 480 days of service within a two-year period. Therefore, in light of the authoritative pronouncement by the Hon'ble Supreme Court of India, I hold that merely because the workmen were subsequently transferred to the contractor and there is no employer-employee relationship, this cannot serve as grounds to set aside the award or to non-suit the workmen. According to the Hon'ble Supreme Court of India, the award must be upheld. This is based on the principle that had the petitioner – Management itself granted permanency, there would not have been an occasion



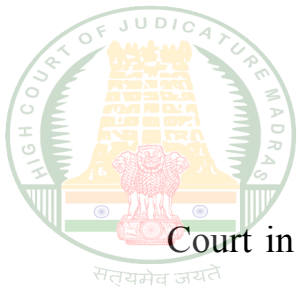
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to transfer them under the contractor or classify them as non-employees. These cases do not compare to *S. Sivakumar and Others vs. Deputy Inspector of Factories, Chennai and Another*³², where the workmen were dismissed from service. Thus, if, due to some misconduct, the workmen are dismissed following a proper inquiry, it cannot be construed that a subsequent order granting permanency to the workmen can be issued. Therefore, in this instance, the workmen cannot be non-suited, and the award cannot be set aside or modified on the grounds that, at the time of filing the petition, the workmen were not directly employed but solely employed by the contractors.

J.Question No.(iii):

11. *Mr. Anand Gopalan*, the learned counsel for the Management, contends that once these workmen are employed through contractors, the authority must classify the contract employment as sham and nominal to grant them benefit. The 1st respondent lacked jurisdiction to determine the issue, and the parties should be referred to the Labour Court or the Industrial Tribunal. In this regard, it is noted that the earlier view taken by the Division Bench of this

³² (2007) 1 LLN 302



Court in the case of ***Chairman Tamil Nadu Electricity Board vs. Inspector of***

Labour, W.A.(MD) Nos. 339 and 340 of 2015, indicates that merely because

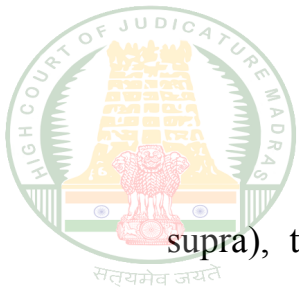
incidental questions are resolved by the Inspector of Labour, it cannot be

concluded that he is usurping the powers of the forum under the Industrial

Disputes Act. It is essential to extract paragraph No. 35, which states as follows:

“35 Therefore, I am unable to accept the submission made on behalf of the Board that the exercise of the power by the Inspector of Labour in conferring permanent status after holding necessary enquiries contemplated under section 5 read along with rule 6[4] should be construed as arrogating to himself the powers available to the other adjudicatory forums created under the provisions of the Industrial Disputes Act, 1947. It will have to be stated that while the exercise of powers vested with the Inspector under the provisions of the Act is summary in nature, the one under the provisions of the Industrial Disputes act may be an elaborate one. Nevertheless the same does not mean that by exercising the power under the provisions of the Act, the Inspector of Labour would be trespassing into the adjudication process contemplated under the provisions of the Industrial Disputes act. In this context, if the judgment of the Supreme Court in *Nirchiliya case* [1990 [2] LLN 3] [vide supra] is applied, it can be safely held that where there is no prohibition under the provisions of either the Industrial Disputes Act or the Act, exercise of the power in the manner in which it can be done by the Inspector of Labour under the Act cannot be found fault with. It will have to be stated that such an exercise would be well within the statutory limitations provided under the Act.”

11.1. However, a contrary view has been expressed by the later Division Bench of this Court in ***the Superintending Engineer, Nagapattinam Electricity Distribution Circle case*** (cited supra). In the judgment in ***Jaggu's case*** (cited



W.P. No.34852 of 2023 etc., Batch

supra), the Hon'ble Supreme Court of India held that the matter should be decided by the industrial adjudicator. The Division Bench interpreted the term 'industrial adjudicator' as referring to the Labour Court or the Industrial Tribunal under the Industrial Disputes Act.

11.2. Be that as it may, even according to the later Division Bench Judgment of this Court, if the matter only involves determining a question under the Act—specifically, if it is necessary for the Inspector of Labour to conclude that the employment of the Workmen through the contractor is sham and nominal—then the ratio in the aforementioned judgment would apply. These are not cases where the Workmen were employed exclusively under the contractor; they were initially employed directly by the Management. Their contention, now upheld by the authority under the Act of 1981, is that they have served 480 days in the direct employment of the Management over two calendar years and have attained the status of permanency as per Section 3 of the Act of 1981, even before they were assigned to the contractor. Therefore, in this instance, it was neither necessary nor obligatory for the first respondent authority to determine whether the contract was sham and nominal or whether the petitioner—



Management was under the direct or pervasive control of these Workmen, as

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well as whether the various criteria established by the Hon'ble Supreme Court of India in ***Balwant Rai Saluja's case*** (cited supra) are met. Thus, this is not a case where the Workmen were exclusively under the contractor. When the Workmen were directly employed by the petitioner—Management, the mere action of placing them under the contractor at a later date does not alter the jurisdiction of the authority under the Act of 1981, and accordingly, the awards cannot be annulled on this basis.

K.Question No.(iv):

12. It is true that originally, the disputes related to the contract labourers were brought before the Hon'ble Supreme Court of India, which appointed Justice Khalid's commission. The Court accepted the report and ordered the absorption of the contract laborers. It is also true that a 12(3) settlement was later reached regarding further employment, and the matter was ultimately considered by the Division Bench of this Court in the case of ***the Superintending Engineer, Nagapattinam Electricity Distribution Circle*** (cited supra). The question in those cases was whether the workmen had already obtained permanent status and



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were covered under the 12(3) settlement. In those circumstances, the workmen were entitled to regularization from a specific date. When the 12(3) settlement was challenged before this Court, the Court held that the 12(3) settlement could not be deemed unjust or unfair. When a public body employing thousands of persons seeks to bring finality to litigations and develop a practical solution, entering into such a settlement means that the workmen will be governed by it and cannot revert to earlier awards that were made.

12.1. In this case, the Management does not contend that these Workmen are also covered under the 12 (3) settlement, nor do they assert that the Workmen will be entitled to permanent status effective from a specific date according to the 12 (3) settlement. The argument presented by the learned counsel for the Management—that these Workmen must either claim under the 12 (3) settlement or cannot approach the authority under the Act of 1981—is not the principle established by the Division Bench. A 12 (3) settlement entered into at the relevant time cannot nullify the rights of these Workmen who were not included in the 12 (3) settlement from approaching the adjudicating authority under the Act. There is no principle established stating that the operation of the statute



concerning the Electricity Board ceases to exist from the date of the 12 (3) settlement. Such an interpretation is not permissible. In that context, I also reject the argument made by the learned counsel representing the Management.

L.Question No.(v):

13. The proof affidavits filed by the Workmen are presented before the Court. It has been specifically stated from which date the Workmen were engaged. It is also specifically pleaded until what date they were under direct employment and from which date they transitioned to contract employment. The nature of the duties performed by these Workmen, which are part of the core services of the Management, can also be noted. They all attend to service cable faults, main cable faults, pillar maintenance, pillar erection, transformer maintenance, HT faults, sub-station maintenance, cable laying, attending calls, etc.

13.1. The documents proving 480 days of service over two calendar years are all marked. The primary document is the wage register maintained by the relevant Assistant Engineer, which clearly demonstrates the timeframe in which



W.P. No.34852 of 2023 etc., Batch

the 480 days were completed. Each workman has also submitted a tabular column detailing the days worked each month, indicating that they have completed more than 480 days within the two calendar years. In light of these proofs, including affidavits and the tabular column, management cross-examined the workmen consistently, and the cross-examination is tabulated as follows:

மனுதாரர்	பெயர் - வி.பாபு, வயது-45 த.பெ-ஜி.வேணுகோபால்	வழக்கு எண். 3627/2018
வ.எண்	எதிர் மனுதாரர் தரப்பில் ஆஜரான வழக்கறிஞரால் கேட்கப்பட்ட கேள்விகள்	மனுதாரர் தரப்பில் அளிக்கப்பட்ட பதில்கள்
1	இந்த வழக்கை 2018 இல் தான் நீங்கள் தாக்கல் செய்தீர்களா என்றால் ?	ஆம்
2	2018 இல் இந்த வழக்கு தாக்கல் செய்த போது நீங்கள் SRV எலக்ட்டிகல்ஸ் என்ற நிறுவனத்தில் தான் பணிபுரிந்து செய்தீர்களா என்றால் ?	ஆம்
3	SRV எலக்ட்டிகல்ஸ் ஒர்க்ஸ் என்ற ஒப்பந்ததாரர் தான் உங்களுக்கு சம்பளம் கொடுப்பார்களா ?	ஆம்
4	SRV எலக்ட்டிகல்ஸ் ஒர்க்ஸ் என்ற ஒப்பந்ததாரர் தான் உங்களுக்கு ஈஎஸ்ஐ மற்றும் பி.எப் கட்டி வந்துள்ளார்கள் என்றால் சரியா ?	ஆம்
5	நீங்கள் மின்சார வாரியத்தில் ஒப்பந்தத் தொழிலாளியா என்றால் ?	ஆம்
6	உங்களுக்கு தமிழ்நாடு மின்வாரியத்திடமிருந்து நியமன ஆணைகள் ஏதும் வழங்கப்பட்டுள்ளதா	இல்லை



மனுதாரர்	பெயர் - வி.பாபு, வயது-45 த.பெ-ஜி.வேணுகோபால்	வழக்கு எண். 3627/2018
	என்றால் ?	
7	நீங்கள் தமிழ்நாடு மின் வாரியத்திடம் ஊதியம் பெறவில்லை என்றால் சரியா ?	பெற்றுள்ளேன்
8	நீங்கள் மின்வாரியத்தில் ஒப்பந்தத் தொழிலாளியாக தான் வேலை பார்த்தீர்களா ?	ஆம்

13.2. Thus, it is evident that when the Workmen had positively stated that they had worked for 480 days within two calendar years, there was no question in the cross-examination regarding whether they had actually worked 480 days within two calendar months. The entire questioning focused on the issue of salary payment and employment from the year 2018 under the contractors. Therefore, the first respondent authority has considered the evidence on record. The Management has not produced any register or evidence to contradict the claim that the Workmen had indeed worked 480 days of service. In this context, I conclude that the Workmen have successfully proven that they have completed 480 days of service within a period of two calendar months and, as such, are entitled to be granted permanent status upon completing 480 days, as awarded by the 1. respondent.



W.P. No.34852 of 2023 etc., Batch

M.Question No.(vi):

14. It can be observed that most of the workers were employed from 1997 to 2001. The majority remained under direct employment until 2008, after which they began working for contractors. The petitioner, Management, does not deny that they are continued in service to this day. However, it is claimed that they were subsequently employed only through contractors and not directly by the petitioner, Management. The financial burden claimed and the fact that the workers received wages from the contractors are also considered and accordingly the relief(s) are granted.

N. The Result:

In light of this, these writ petitions are disposed of on the following terms:

(i) The orders passed by the first respondent, which are being challenged in the Writ Petitions and confer permanent status on the respective Workmen, are upheld;

(ii) The Management shall implement the awards by absorbing these Workmen on a permanent basis, and their service shall be counted from the date



on which they completed 480 days as ordered by the first respondent. The

absorption shall occur with continuity of service; however, the Workmen will not be entitled to any back wages;

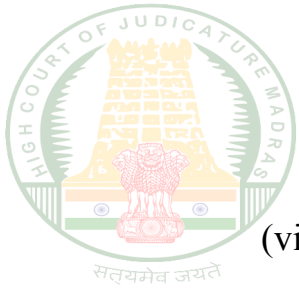
(iii) Management can permanently assign them to the same posts and pay scales as the other absorbed contract labourers. This process shall be completed within 12 weeks of receiving or producing the website-uploaded copy of the order without waiting for the certified copy.

(iv) Past service will be regarded as continuous for all purposes;

(v) The workmen will not be entitled to any arrears of back wages.

(vi) If any of the workmen have since passed away, they shall be considered to have died while in regular service of the Management, and the relevant death or terminal benefits shall be paid to their legal heirs;

(vii) If any of the workers have reached retirement age, they will be deemed to have retired from regular service, and all retirement benefits, including gratuity and the provident fund, shall be disbursed to them. The provident fund maintained by the contractor, along with the contributions made, will be taken into account accordingly.



W.P. No.34852 of 2023 etc., Batch

(viii) No costs. Consequently, the connected miscellaneous petitions are

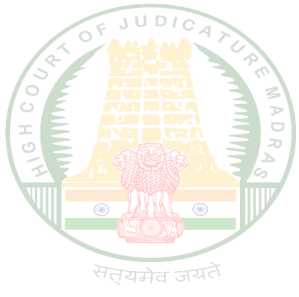
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06.03.2025

Neutral Citation: Yes

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To
The Assistant Commissioner of Labour (Enforcement)
Authority under Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workmen) Act,
Circle – II, Nandanam, Chennai – 600 035.



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W.P. No.34852 of 2023 etc., Batch

D.BHARATHA CHAKRAVARTHY, J.,

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W.P. Nos.34852, 34856, 34859, 34861, 34863, 34867, 34868, 34871, 34872, 34864, 34879, 34880, 34882, 34884, 34902, 34905, 34906 and 34909 of 2023 and W.M.P.Nos.34850, 34851, 34853, 34855, 34856, 34857, 34858, 34861, 34864, 34865, 34869, 34873, 34874, 34876, 34893, 34894, 34896, 34897 of 2023, 13917, 13927, 13937, 13943, 14006, 14012, 14015, 14017, 14019, 14021, 14022, 14024, 14025, 14074, 14075, 14076 and 14077 of 2024

06.03.2025