

W.P(MD).Nos.2137 of 2019 batch case

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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ORDER RESERVED ON : 25.08.2025

ORDER PRONOUNCED ON : 29.08.2025

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).Nos.2137 & 2160 of 2019 & 28177 to 28179 of 2024
and WMP(MD).Nos.1710 & 1720 of 2019, 23886,
23888, 23898, 23899 & 23890 of 2024**

WP(MD).No.2137 of 2019:

The Superintending Engineer
Tamil Nadu Generation and Distribution
Corporation Ltd.,
Thoothukudi Electricity Distribution Circle
Ettaiyapuram Road
Thoothukudi
Thoothukudi District

....Petitioner

Vs

1.The Inspector of Labour – In charge
(Authority under the Tamil Nadu
Industrial Establishments (Conferment of
Permanent Status to Workmen) Act, 1981
Thoothukudi
Thoothukudi District.

2.A.Selvakumar

3.S.Ramesh Kumar

4.P.Amalraj

5.C.Rajasekar

6.P.Mariappan

....Respondents



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Prayer in WP(MD).No.2800 of 2017: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent in Na.Ka.E/2138 of 2011 and quash the order 11.12.2015.

In WP(MD).No.2137 of 2019:

For Petitioner : Mr.Anand Gopalan
For Mr.T.S.Gopalan

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader for R1

: Mr.H.Mohammed Imran
For M/s.Ajmal Associates for R2 to R4 & R6

: No appearance for R5

COMMON ORDER

The writ petitions have been filed by Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO) challenging the order passed by the authority under Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (CPS Act).

(A).Factual Background:

2.The private respondents in all the writ petitions were employed as contract labourers by TANGEDCO on a need based daily wage basis through a contractor. They have approached the first respondent under CPS Act seeking conferment of permanent status.

3.The petitioners herein had filed a counter contending that they are



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contract labourers and not direct employees of the Electricity Board, there is

no employer employee relationship and hence, CPS Act is not applicable.

However, the authority has proceeded to allow the applications with the following findings.

a) CPS Act is applicable to TANGEDCO.

b) TANGEDCO has not produced any record to establish the fact that they have registered themselves under Contract Labour (Regulation & Abolition) Act. Therefore, the workmen cannot be considered to be a contract labourers.

c) Under G.O.Ms.950 Labour and Employment Department dated 09.09.1990, transformer maintenance is also one of the prohibited employment under Section 10 of the above said Act. Therefore, the workmen should only be considered to be direct employees of TANGEDCO..

d)The workmen have produced various certificates from the Junior Engineers to establish that they have completed 480 days of service within a period of 24 months. Therefore, it is clear that they are entitled to conferment of permanent status.

e)Even though TANGEDCO claims that the workmen have not completed 480 days, no records have been produced from their side to establish the same.



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WEB COPY 4.Challenging the above said order, the present writ petitions have been filed by TANGEDCO:

(B).Submissions of the learned counsels appearing on either side:

5.The learned Standing Counsel appearing for the writ petitioners submitted that all the employees were engaged either under a chit agreement or through a contractor. The salary was not paid by TANGEDCO. There was no employer employee relationship between the private respondents and the writ petitioners herein so as to invoke the provisions of CPS Act.

6.The learned counsel appearing for the petitioners had further submitted that the private respondents herein have either relied upon some certificates issued by their contractors or some section officials of TANGEDCO. He further submitted that even the certificates issued by the section officials would only prove that they were engaged through a contractor. Those services would only disclose the period during which they had worked and not number of days. Hence, the respondents have failed to prove that they have worked for 480 days in 24 months.

7.The learned counsel for the petitioners had relied upon a Division Bench judgment of our High Court reported in ***2022 SCC Online Mad 1003 (Superintending Engineer, Erode Electricity Distribution Circle Vs. The Inspector of Labour and others)*** to contend that the authority under CPS Act



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would have jurisdiction to entertain an application seeking conferment of permanent status only if the workmen is directly employed with the employer.

On the other hand, if they had been engaged through a contractor, the authority under CPS Act would not have any jurisdiction to adjudicate upon the validity of the contract. He also relied upon other Division Bench judgments of this Court in ***W.A.Nos. 273 and 275 of 2020 (Selvaraju and others Vs. The Superintending Engineer, Namakkal Electricity Distribution Circle and others)*** dated 20.01.2023 and ***W.A.(MD).Nos. 771 to 775 of 2019 (The Superintending Engineer, Madurai Electricity Distribution Circle and another Vs. The Inspector of Labour, Madurai and others)*** dated 21.12.2023 wherein they have followed the Division Bench judgment reported in ***2022 SCC Online Mad 1003***.

8.The learned counsel for the petitioners further submitted that in view of the admitted fact that the workmen have been engaged through a contractor, the authority under CPS Act would not have any jurisdiction at all to entertain the applications for conferment of permanent status. The workmen should be relegated to the Labour Court in order to adjudicate upon the validity of the contract or to find out whether the contract is sham and nominal.

9.Per contra, the learned counsel appearing for the respondents workmen has relied upon the Hon'ble Division Bench judgment of our High



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Court reported in **2019-1-LLJ-186(Mad) (Junior Engineer, Tamil Nadu**

Electricity Board and others Vs. R.Radhakrishnan and another) and

submitted that the certificates issued by the officials of TANGEDCO can be relied upon for the purposes of conferment of permanent status upon the contract labourers. He also relied upon another Division Bench judgment of our High Court in **W.A.No.2252 of 2021 batch cases(A.Ravi Vs. The Tamil Nadu Electricity Generation and Distribution Corporation Ltd., Chennai and others)** dated 22.02.2022 to contend that the Hon'ble Division Bench was pleased to reverse the order of the writ Court and directed conferment of permanent status on contract labourers. He also relied upon the order passed by this Court in contempt proceedings in Cont.Petition.No.982 of 2012 batch case dated 06.02.2025 wherein the authorities were directed to comply with the order of the Hon'ble Division Bench.

10.The learned counsel for the respondents workmen had also relied upon various Board proceedings to contend that they have complied with the orders passed by the authorities wherein they have absorbed the Gangman who lead the chit agreement. He had further stated that all the workmen are employed for more than 20 years and therefore, there cannot be any dispute whatsoever that they have completed 480 days service within a period of 24 months. Hence, he prayed for sustaining the order passed by the authority under CPS Act.



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11. Heard both sides and perused the material records.

WEB COPY **(C).Discussion:**

12. The primary contention of the learned Standing Counsel appearing for TANGEDCO is that the authority under CPS Act would not have any jurisdiction whatsoever to entertain the application from the contract labourers seeking conferment of permanent status. According to him, unless the workmen are directly employed with the employer, the authority would not get any jurisdiction.

13. The Hon'ble First Bench of our High Court in a judgment reported in ***2022 SCC Online Mad 1003 (Superintending Engineer, Erode Electricity Distribution Circle Vs. The Inspector of Labour and others)*** in Paragraph Nos. 25 to 27 has held as follows:

25. In view of the above, we can safely hold that the Labour Inspector can exercise jurisdiction only in the nature of summary enquiry, while a case involving complicated question of fact and law to be left for its adjudication under the Act of 1947. The question of fact and law to be left for its adjudication under the Act of 1947. The Labour Inspector can exercise his power under the framework of the Act of 1981. He has no power to adjudicate the issue in reference to other statutes, which includes the Act of 1970.

26. Since we have analyzed the issue aforesaid, we



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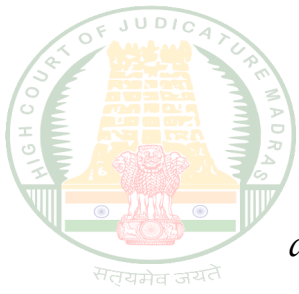
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would like to refer to the impugned order of the Labour Inspector to find out as to whether he has caused a summary enquiry or has travelled beyond his jurisdiction to adjudicate the questions of fact and law pertaining to the other statute.

27.A perusal of the order passed by the Labour Inspector in the case on hand shows an adjudication of the issue in reference to the Act of 1970 also, though it was not within his competence. He is not having powers to comment on the nature of employment and the policy adopted by the petitioner corporation. He was required to simply see whether the workman has rendered continuous service for 480 days in 24 calender months. Thus, on the aforesaid issue, the interference therein may require to be made. “

14.The Hon'ble Division Bench of our High Court in a judgement rendered in W.A.Nos.273 and 275 of 2020 dated 20.01.2023 in paragraph No. 3 has held as follows:

“3.In view of the above said decision of this Court, these writ appeals are also disposed of. However, we make it clear that the authority can go into the question as to whether the contract is sham and nominal and, if it is sham and nominal, he has no authority to decide the issue and the matter has got to be decided either before the Industrial Adjudicator or the authority under the Contract Labour (Regulation and Abolition) Act, 1970. The



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authority is expected to decide the issue as early as possible on day-to-day basis, without adjourning the matter beyond seven working days at any point of time, as the same is pending for more than 25 years. No costs.”

15.The Hon'ble Division Bench of our High Court in W.A(MD).Nos. 771 to 775 of 2019 dated 21.12.2023 was pleased to follow the judgment of Division Bench cited supra. The private respondents herein have been engaged through the contractors for the purposes of digging, erection of poles etc., in the capacity of a Muzdoor. The workmen have admitted in their petition before CPS Authority that they are engaged through a contractor. The authority has also arrived at a finding that the workmen are engaged through a contractor.

16.In the orders impugned in the present writ petitions, the authority under CPS Act has arrived at a finding that the workmen were employed in transformer maintenance and therefore, their jobs fall within the purview of prescribed employment in view of the notification of the Government dated 09.09.1990.

17.A perusal of the applications filed by the workmen reveals that the petitioners are not technically qualified in maintenance of transformer. However, the authority under CPS Act has proceeded to hold that they are involved in the job of maintenance of transformer and therefore, their



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contract employment is prohibited under the above said notification. The workmen have not been able to establish the nature of work done by them. In such circumstances, such a finding ought not to have been rendered by the authority.

18. Even assuming that a particular employment is prohibited under Contract Labour (Regulation and Abolition) Act and the contractors are appointed to pursue the said duties, the validity of the said contract can be ascertained only by the industrial adjudicator and not by the authority under CPS Act.

19. The Hon'ble Supreme Court in a judgment reported in **2001 (7) SCC 1 (Steel Authority of India Ltd., & others Vs. National Union Water Front Workers and others)**, in Paragraph No.125 (5) and 126 has held as follows:

“125.....

(5). On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere



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ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

126.We have used the expression “industrial adjudicator” by design as determination of the questions aforementioned requires inquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be industrial tribunal/court whose determination will be amenable to judicial review.”

(D).Conclusion:

20.In view of the judgment of the Hon'ble Supreme Court and that of the Hon'ble Division Bench of our High Court, the authority under CPS Act, would not have any jurisdiction whatsoever to entertain a claim seeking conferment of permanent status from the contract labourers. Therefore, the orders impugned in the writ petitions are not sustainable in the eye of law and the same are set aside. The writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

29.08.2025.



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Internet : Yes/No
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In charge
(Authority under the Tamil Nadu
Industrial Establishments (Conferment of
Permanent Status to Workmen) Act, 1981
Thoothukudi
Thoothukudi District.

2.The Assistant Commissioner of Labour (Enforcement) (Incharge)
Authority under Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workman) Act, 1981
Tuticorin 628 101.

3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR, J.

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Pre-delivery Common Order made in

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WMP(MD).Nos.1710 & 1720 of 2019,
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