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W.P.No.11220 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 10.02.2026

Orders pronounced on : **10.03.2026**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.11220 of 2023
and W.M.P.No.11084 of 2023

The General Secretary,
Tamil Nadu Jananayaga Thozhilalar Sangam,
No.1/5, Perumal Koil Street,
Nellikuppam Village Post,
Kancheepuram District – 603 108.

.. Petitioner

Versus

The Management,
J & J Leather Enterprises Ltd.,
Kancheepuram District – 603 108,
Kancheepuram.

.. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records and quashing the impugned order of the Tamil Nadu Industrial Tribunal, dated 26.12.2022 in I.D.No.31/2006.

For Petitioner : Mr.P.Solomon

For Respondent : Mr.S.Ravindran,
Senior Counsel,
for Mr.S.Sellapillai Kumar



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ORDER

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This Writ Petition challenges the impugned award, dated 26.12.2022, made in I.D.No.31 of 2006. The Award was in answer to the reference made via G.O.(D).No.738, dated 30.10.2006, made by the Industrial Tribunal, Chennai, ruling against the workmen and stating that the claims are not justified.

2. The brief factual background, in which the Writ Petition arises, is that vide G.O.(D).No.738, dated 30.10.2006, two issues were referred for adjudication by the Tribunal. The first question was whether all the workmen, without any discrimination, are entitled to a wage hike and, if so, the requisite orders should be passed. The second question was whether the action of the management, in terming the regular workmen working under the management as contract labourers, is justified or not, and if it is not justified, then, appropriate orders should be passed. The said reference was taken on file as I.D.No.31 of 2006.

3. On behalf of the workmen, Tamil Nadu Jananayaga Pothu Thozhilalar Sangam, the trade union, filed a Claim Petition. It claims that 123 workmen are involved in the dispute. They were working in the core



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functions of the factory. Their tasks included shaving, setting, buffing, staking, piniplus, polishing, boiler operation, drum handling, store and chemical distributions, padding, assorting, gardening, ETP, electrical maintenance, welding, and so on. It is their specific case that these workers have been in service since 1991, 2001, and 2002 until they were sent out of their jobs. They were not considered employees of any contractor. In the meantime, the management created records to falsely show that these workmen were working under contractors. This was a sham and nominal arrangement, only on paper, made in 2003. Before that, one Chandra Enterprises was also brought in as the employer. Later, in 2005, two contractors were introduced: Sri Kishore Labour Contractors and K.V. Enterprises.

4. On 01.08.2005, *James Ponnarasu*, who was in charge of protection, threatened severe actions against the workers and ill-treated them, causing them to leave the company that day. On 03.08.2005, the union sent a representation requesting that the said workers be reinstated by the management. The management rejected the union's request. On 16.08.2004, the union raised four demands before the Assistant Commissioner of Labour, of which two were dropped. The remaining two



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demands were persisted. On 04.03.2006, the Assistant Commissioner of Labour submitted a failure report. Therefore, on behalf of the workers, it was requested that an award be issued declaring that the demands raised by the union are justified and that the management be directed to reinstate the workers with back wages, continuity of service, and all other attendant benefits.

5. The Claim Statement was opposed by the management by filing a counter. It was stated that the factory was started in 1999 after being purchased from *James Ponnarasu*. The previous workmen were all settled by him, and documentary evidence of this was submitted before the conciliation officer. The management employed workmen through contractors for daily operations. Two registered contractors, Sri Kishore Labour Contractors, Chennai – 78, and K.V. Enterprises, Chennai – 73, supplied labour. The petitioner union's members are all contract workers under these contractors, none of whom are direct employees of the management. It is false to claim that these workers worked directly for the management since 1991. In 2005, when the contract labour involved misconduct- disrespect towards senior management, physical violence against officials and loyal workers, and an unlawful strike on 17.06.2005-



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production and efficiency declined. The contractors instructed the workers to report to their work sites, took disciplinary action, and dismissed them.

Therefore, without an employer-employee relationship, claims for wage increments or employment as direct employees are not valid. There is no provision for converting contract workers into regular employees. The contractors, Sri Kishore Labour Contractors and K.V. Enterprises, were properly engaged with valid licenses, and all statutory dues were paid. Previously, they were employed through Chandra International. All supporting documents submitted by the management substantiate their case.

6. With the above pleadings, the Industrial Tribunal conducted an enquiry. On behalf of the workmen, *S.Anbalagan*, who was the President of the trade union and one of the employees, was examined as *W.W.1*, and *Exs.W-1* to *W-14* were marked. On behalf of the management, the Manager, *Suba*, was examined as *M.W.1*, and *Exs.M-1* to *M-30* were marked. Thereafter, the Industrial Tribunal considered the case of the parties. First, after evaluating the evidence on record, it concluded that the workmen did not fulfil their initial obligation to prove that they were engaged and working as direct employees under the management



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from 1991 or thereafter. Next, in the absence of proof, it addressed the second issue: whether, in this case, the alleged contract labour system by the management is sham and nominal. It found that the evidence, such as the agreement, wages paid by the contractor, the required license obtained under the Act, etc., was sufficient to establish that the contract labour system was not sham and nominal. Furthermore, it noted that, since the contractors had also terminated the workmen's services, the claims were not sustainable, and accordingly, it answered the reference.

7. *Mr.P.Solomon*, learned Counsel for the petitioner, submitted that the workmen are poor persons from nearby villages who were misled by the management. The workmen were all directly employed. They were suddenly taken over by contractors. This itself indicates that the arrangement is sham and nominal. Initially, they were shown as under Chandra Enterprises. Chandra was also the Management Director of the company. This further proves it to be sham and nominal. Later, they were transferred to other contractors. Throughout these transitions, the workmen had no involvement. The management's assertion that these workmen are contract labour is merely a sham and nominal. Additionally, even while the dispute was pending, they were terminated in direct



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violation of Section 33 of the Industrial Disputes Act, 1947. To support this, the learned Counsel relied on the judgment of this Court in ***Chairman, Tamil Nadu Generation and Distribution Corporation, Anna Salai, Chennai and Ors. Vs. Assistant Commissioner of Labour (Enforcement), Circle-II, Nandanam, Chennai and Ors.***¹, asserting that the workmen should be considered permanent as they worked for 480 days within a two-year period.

8. Merely because they are wrongly camouflaged as contract labourers, their services cannot be disregarded. The learned Counsel, by pointing out the method adopted by the management, argues that it is nothing but exploitation, and the rights of the workmen would be governed by the judgment of the Hon'ble Supreme Court of India in ***Shripal and Anr. Vs. Nagar Nigam, Ghaziabad***². The learned Counsel also relies on the judgment of the Hon'ble Supreme Court of India in ***M/s.Sriram Industrial Enterprises Ltd., Vs. Mahak Singh and Ors.***³. The Counsel further relies on the judgment of the Hon'ble Supreme Court of India in ***R.M. Yellatti Vs. Assistant Executive Engineer***⁴ to contend that workmen

1 2025-II-LLJ-527 (Mad)

2 2025 INSC 144

3 AIR 2007 SC 1370

4 (2006) 1 SCC 106



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cannot be expected to produce all relevant registers to prove employment, and if the management refuses, then adverse inference must be drawn.

9. Per *contra*, Mr.S.Ravindran, learned Senior Counsel for the respondent management, would submit that the burden of proving the employer-employee relationship is on the workmen since they have asserted that they were working in the company from the year 1991 as direct labour. They have not produced any iota of evidence. The learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in *Workmen of Nilgiri Coop. Mkt. Society Ltd., Vs. State of Tamil Nadu and Ors.*⁵, more specifically, on paragraph No.47 in that regard. The learned Senior Counsel would submit that even if there is any procedural violation during engagement of these workmen under the contractor, that would only entitle prosecution and payment of fine by the management, and that by itself would not be a ground for absorption of all the contract labourers as regular workmen. Paragraph No.22 of the judgment of the Hon'ble Supreme Court of India in *Dena Nath Vs. National Fertilisers Ltd.*⁶ is relied upon.

⁵ (2004) 3 SCC 514

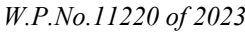
⁶ (1992) 1 SCC 695



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10. The learned Senior Counsel further submits that the present reference is only under Section 2(k) of the Industrial Disputes Act, 1947, relating to the two demands concerning a wage hike and whether the workmen can be classified as contract labour. Since it is admitted that the workmen have not been in service since 2006, there was no scope for an academic decision on the demands in the absence of an employer-employee relationship. Paragraph Nos.23, 24, and 25 of the judgment of the Hon'ble Supreme Court of India in ***Oshiar Prasad Vs. Sudamdih Coal Washery***⁷ are relied upon. The learned Senior Counsel also refers to subsequent developments: the workmen, alleging violation of Section 33, had also filed a complaint under Section 33A of the Act in Complaint Nos.9 to 55 of 2018. By the judgment dated 31.01.2023, the Industrial Tribunal dismissed the cases, and that order has now become final. Based on the voluminous documents produced by the management concerning contractor registration, ESI, and Provident Fund subscriptions, which mention the contractors as employers and date from the relevant period, the learned Senior Counsel argues that there is no reason for this Court to interfere with the award.

⁷ (2015) 4 SCC 71



12. Firstly, it can be seen that the contention of the management that it started the factory only in 1999 by purchasing it from a third party cannot be accepted, as the management remains the same entity, namely, J & J Leather Enterprises Ltd. Merely because there is a transfer of shareholding and new Directors are appointed, it does not mean that a new management has come into existence. Therefore, I hold that there is continuity in management's activities from 1991.

13. If the workmen were originally employed under the Directors who were in charge before the year 1999, it would constitute direct employment even under the current regime with the new Directors. If they had been directly employed and then brought under the contractors, that would indicate that the contract is sham and nominal. In this case, the documentary evidence presented by the workmen only pertains to the current representation, the conciliation proceedings, and the minutes of the petitioner union, etc. There is nothing in *Ex.W-1* to *Ex.W-14* relating to the direct employment of the workmen. Even *Ex.W-2* was issued solely



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by the contractor. It is strange that when the 123 workmen have been working since 1991, and it is hard to believe that they are unable to produce even a single piece of evidence. Even that oral evidence could have been let in by examining some of the workmen, which is also not done.

14. In this case, the President of the union, *Anbalagan*, was examined. In his proof affidavit, he simply stated that the 123 workers had been working from 1997, 1999, 2000, and 2001 onwards. However, the Claim Statement mentions from 1991. During the chief examination, he did not even speak about himself. The list of employees also lacks details of employment. In cross-examination, he admitted that he joined the service in 1997 but did not remember the exact month. He also admitted that he had not mentioned the last drawn salary of the 123 workers and had not produced any order of appointment or proof of employment for any workers directly under the management. Even in the chief examination, he did not expressly claim that he was directly employed in 1997. Therefore, there was no evidence from the workers to prove they were in service before the current Directors took over, whether from 1991 or 1997, as applicable. The Tribunal's finding that the workers failed to discharge



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their initial burden is justified. It is factually established that after the current Directors took charge and needed manpower, they entered into agreements with contractors, obtained contracts and licenses, and paid dues like ESI and Provident Fund by showing the contractors as the employees. Even in some Provident Fund forms, they were listed as principal employers. Thus, the records consistently show these workers as contract labour.

15. In the above circumstances, if only the workmen had established of their initial direct employment or subsequently that their deep and persuasive control vested solely with the management, the contracts cannot be considered as sham and nominal. No evidence relating to the granting of leave, wages, disciplinary actions, or continued employment under different contractors. Even during cross-examination of the management witnesses, apart from suggesting that the employees were not under the contractors, no other questions regarding control, etc., were asked. Although it is now argued that the first contractor, namely Chandra Agencies, is again run by the Managing Director, there was no cross-examination to establish this. For reasons best known to the workmen, they did not even put this to *M.W.1* in the box. No cross-



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examination was made relating to the various agreements with contractors.

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16. Evidence in the form of ESI registration, licenses from authorities under the Contract Labour (Regulation & Abolition) Act, 1970, etc is let in by the Management. Thus, based on the available evidence, it is difficult to conclude that it was a sham and nominal arrangement by the management. Therefore, when the Industrial Tribunal, after thoroughly analysing the oral and documentary evidence on record, answered the question in favour of the management, this Court is not in a position to interfere with that decision. Once it is established that the workmen failed to prove their direct engagement and that their employment as contract labourers was sham and nominal, and that they should be considered directly under the management, no relief can be granted to the workmen against the current management, which is the principal employer.

17. Furthermore, it is evident that the workmen's position was that when the dispute was pending, the management disengaged them, and no steps were taken regarding non-employment under Section 2(a)(ii) of the Act immediately. Only in 2018 did they file complaints under Section 33(A), which was appropriate. These complaints were dismissed in 2023,



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the workmen allowed that order of the Tribunal to become final and did not even question it.

18. For all the reasons stated above, I am unable to interfere with the award of the Tamil Nadu Industrial Tribunal, dated 26.12.2022, in I.D.No.31 of 2006. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

10.03.2026

Neutral Citation : yes
grs

To

The Presiding Officer,
Tamil Nadu Industrial Tribunal,
Chennai.



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D.BHARATHA CHAKRAVARTHY, J.

grs

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