

Before the Industrial Tribunal, Tamil Nadu, Chennai -600 104.

Friday the 18th day of August 2017

Present: Thiru A.Kanthakumar, M.L.,
Presiding Officer, Industrial Tribunal.

I.D.NO. 36/2007

(In the matter of the Industrial Dispute for adjudication under Section 10(1) (c) & Section 10(1) (d) of the Industrial Disputes Act, 1947, between the workmen and the management of Chairman, Tamil Nadu Electricity Board, 800, Anna Salai, Chennai-2.)

Between

- 1.The President,
Anna Thozhir Sanga Peravai,
275, Avvai Shanmugam Salai,
Royapettai, Chennai-14.
 2. Tr.D.Kathirvel, S/o Duraisamy,
No.3/2 V.V.Koil Street,
Vellala Teynampet,
Chennai -86.
 3. Tr.Sankaralingam,
48/26, Thiruvika street,
Brikin Road, near Saravana Theatre, Otteri,
Chennai-12.
(Impleaded as per I.A.6/15, 7/15 & I.A.No.25/15
dated 17.5.2016) ..Petitioners/Union
- And
The Management of
Chairman, Tamil Nadu Electricity Board,
800, Anna Salai, Chennai-2.
..Respondent/Management.

REFERENCE: அரசாணை (டி) எண் 389 நாள் 23.05.2007 தொழிலாளர் மற்றும் வேலை வாய்ப்பு (அ1) துறை, தமிழக அரசு சென்னை-600 009)

This dispute coming on 10.08.2017 for final disposal in the presence of M/s K.M.Ramesh, M.Azhagananth and S.Apunu advocates appearing for the petitioners/union and of Tvl. T.S.Gopalan advocate appearing for respondent/management and upon

perusing the reference, claim statements, counter statements and other connected papers on record in this dispute , and having stood over for consideration till this day, this Tribunal passed the following: -

AWARD

1. The Government of Tamil Nadu have referred to this Tribunal in the Industrial dispute in G.O.(D) No.389 Dated 23.05.2007 Labour and Employment (அ1) Dept., Govt. of Tamil Nadu, Chennai 600 009.

இணைப்பு

எழுவினா

தொழிற்சங்கம் தாக்கல் செய்துள்ள இணைப்பில் உள்ள பட்டியலிட்ட 10592 தொழிலாளர்களைப் பணி நிரந்தரம் செய்ய வேண்டும் என்ற கோரிக்கை நியாயமானதா? ஆம் எனில் தகுந்த உத்தரவு பிறப்பிக்கவும்.

ANNEXURE

Sl. No.	Name of the EDC	Lr.No 62/01.	Lr.No 12/01	Lr.No. 19/01	Lr.No. 24/01	Lr.No 27/01	Total No. of Workers
1.	Tiruvannamalai EDC	1701	7	4	15	3	1730
2.	Villupuram EDC	573	3		1		577
3	Cuddalore EDC	869	2				871
4	Chennai EDC	1269	1	1	4		1275
5	Chengalpattu EDC	3					3
6	Dharmapuri EDC	446	1				447
7	Vellore EDC	42					42
8	Kancheepuram EDC	331					331
9	Coimbatore EDC	639	20	1			660
10	Nilgiris EDC	109					109
11	Erode EDC	295					295
12	Gobi EDC	3					3

13	Mettur EDC	1474	28	56	10		1568
14	Salem EDC	720	5		4	3	732
15	Dindigul EDC	118					118
16	Madurai EDC	523					523
17	Ramanathapuram EDC	18					18
18	Theni EDC	42					42

19	Kanyakumari EDC	96					96
20	Tirunelveli EDC	295					295
21	Tuticorin EDC	506					506
22	Virudhunagar EDC	6					6
23	Karur EDC	5					5
24	Nagapattinam EDC	2					2
25	Pudukkottai EDC	56					56
26	Thanjavur EDC	26			1		27
27	Trichy EDC	255					253
		10,422	67	62	35	6	10592

2. The case of the petitioners/union are as follows:

The Petitioner Union States that the Respondent has been engaging contract workmen for its day -today perennial nature of work for over several years. Apart from contract workmen, the Respondent is also employing temporary and casual workmen in all its Distribution Circles. In the year 1987, as per the directions of the Hon'ble Supreme Court of India Hon'ble Mr.Justice Khalid was appointed as One Man Commission to identify the contract workmen for their absorption in the Tamil Nadu Electricity Board. Justice Khalid Commission convened several meetings and enlisted the contract workmen who were employed by the Respondent and submitted

its report for regular absorption of 18,540 contract workmen as Helper by the Respondent Board. However, due to various reasons, names of number of other contract workmen who are employed right from 1980 have been left out in the list prepared by the Justice Khalid Commission. The said contract workmen whose names did not find place in the said list continued to be employed as contract workmen till date.

The Petitioner Union submits that as of 31.3.1997 such of those contract workmen who had worked continuously for 5 years in the Respondent Board numbering about 8,400 were called for interview to be held on 08.08.1998. The said 8,400 contract workers were interviewed and identified and were given adhoc amount as per B.P.(EB) No.37, dated 29.10.2005. Out of 8,400 contract workers, 2,500 contract workers were absorbed as Mazdoor Gr.II. The remaining 5,900 contract workers are yet to be absorbed by the Respondent Board. The said 5,900 contract workmen have been working continuously from 1997 and prior to that they had worked for 5 years. Upto October 2005 the Respondent Board has paid Rs.750/- per month as exgratia amount to 7,854 contract workmen as identified by the Chief Engineer. In the year 2006 the said exgratia amount was fixed at Rs.1,000/- per month. Thus, the total contract workmen who are to be absorbed in the employment of the Respondent Board as on date are $5,900 + 7,854 = 13,754$. The petitioner union states that the above said contract workmen are continuing in employment without any disruption whatsoever.

The Petitioner Union states that the Respondent Board introduced a Scheme of payment of exgratia to contract workmen since 1995-96. The contract workers who were engaged on need basis for 5 years or more as on 05.01.98 and identified by the Committee on 08.08.1998 were given ex-gratia payment till 2003-2004. For the year 2004-2005 based on the orders of the Government the ex-gratia payment were extended to 3,873 contract workers. Subsequently 4,860 contract workmen who are

said to have not completed 5 years of service have not been paid the ex-gratia amount.

The petitioner states that the nature of work performed by the said contract workers, on whose behalf this industrial dispute has been raised are engaged in perennial in nature of work which comes fully within the four corners of Sec. 10(2) of the Contract Labour (Regulation and Abolition) Act 1970. The Petitioner Union submits that the so-called contract between the Respondent Board and the respective contractors are mere paper arrangement. The said contractors have no role to play except lending their names as contractors even the payments are directly made by the officials of the Respondent Board.

The Respondent Board is adopting the device of contract in order to deny the subject workmen the status of regular workmen of the respondent Board and the benefits available to the workmen directly employed by it. The petitioner union submits that the scheme of Contract Labour (Regulation and Abolition) Act 1970 is to abolish contract labour at the 1st instance when the nature of work performed by the contract workmen is regular and perennial in nature and the said Act is being exploited by the respondent Board, a Government owned statutory Body. Further Hon'ble Supreme Court has recognized the right of the contract workmen to raise industrial dispute for absorption by the principal employer if the alleged contract between the principal employer and the contractor is sham and nominal.

The Respondent Board has paid adhoc amount and bonus to contract workmen who have been identified by the Chief Engineer and also regularized 2500 contract workmen as Mazdoor Gr.II as per B.P. (F.B) No.37 dated 29.10.2005. At that time 235 contract workers were withheld due to lack educational qualification certificate and the remaining were absorbed. The said contract workmen have been working for more than a decade continuously without any break for more than 480 days in 2 calendar years, they are entitled to be regularized in service in accordance with the provisions of Tamil Nadu Industrial Establishment (Conferment of Permanent Status

to workman) Act 1981 (Tamil Nadu Act 46 of 1982). Therefore the demand of petitioner union for regularization of 10592 contract workmen is fully justified.

Since, the work in which the subject workmen are employed is regular and perennial in nature, it is just and necessary that the respondent board should regularize the services of the said workmen and employ them directly. In as much as the work is perennial in nature and the so called contract is sham and nominal, the demand of the petitioner union for regular absorption of the subject workmen in the fold of the respondent board is fully justified.

The petitioner union states that the Respondent Board circulated a draft settlement to be arrived at under Section 18(1) of the Industrial Disputes Act 1947 dated 10.08.2007 to all the trade unions including the petitioner union. It was stated in the said draft settlement that number and broad description of the persons covered by the settlement would be 21,600 contract labourers engaged in Circles other than Thermal, Hydro and Gas Turbine Project. However the Petitioner Union states that the said number of 21,600 is not correct and it far exceeds 40,000 and more.

The Petitioner states that after circulating the above draft settlement the Respondent Board convened a meeting with all the trade unions and the Petitioner also participated in the said meeting and refused to sign the settlement stating that other issues have been left out in the draft settlement. The petitioner pointed out that there are certain other issues which they had already submitted in the form of a representation dated 26.9.2006 and unless those issues are brought out in the draft settlement it will not sign the settlement. However the LPF, INTUC and few other unions have signed the settlement. Since the said settlement is only under Section 18(1) of the I.D. Act 1947 it binds only the parties to the settlement and not the Petitioner Union herein.

The list of contract workmen for whose benefit the above said settlement was prepared by the Respondent Board did not contain the names of contract workmen

for whom the above industrial dispute has been raised. A new list has been prepared by the Respondent Board for the purpose of arriving at a settlement with the trade unions who are favourably disposed towards the ruling party and the Respondent Board. The majority of workmen in the list of contract workmen furnished by the Petitioner Union do not find place in the list prepared by the Respondent Board for implementing the above said settlement. The Petitioner Union states that the names of workers who are employed in the Respondent Board as contract workers in various Distribution Circles numbering 10,592 with their date/year of joining service and the places where they are working will be furnished in due course of time.

During the course of conciliation proceedings the Respondent Board adopted a stiff attitude and was not willing for any settlement. The Respondent Board contended that the said contract workmen were not employed for regular jobs but for odd works of and on and there is no direct employer-employee relationship and hence they cannot be absorbed in the services of the Board. The Conciliation Officer was therefore, left with no alternative but to close the conciliation proceedings and reported failure of conciliation talks to the Government of Tamil Nadu by his letter dated 09.05.2001.

The petitioner union submits that the action of the respondent Board in engaging the subject workmen through intermediary contractor even though they are directly working under it is nothing but exploitation of cheap labour and victimization and unfair labour practice. The list of contract workmen furnished by the Petitioner Union has been deliberately not included in the list of contract workmen prepared by the Respondent Board. This is nothing but unfair labour practice and victimization.

The Petitioner union therefore submits that its demand for regularization and absorption of 10592 contract workmen who are covered by the above industrial dispute is fully justified and the subject workmen are entitled to absorption from the

date they had made the demand through conciliation proceedings, namely, from 18.11.1999 and the Petitioner prays for an Award accordingly.

The 2nd and 3rd petitioners are endorsed that they have accepted the claim statement filed by the 1st petitioner/union.

3. The counter statement is as follows: The respondent has stated that the petitioner union has not furnished the list of names of persons with details till the date of exparte award passed by this Honble Court on 09.03.2010.

The Board has entered into settlement under section 12(3) of the Industrial Disputes Act, 1947 on 10.08.2007 with the trade unions for regularization of 21,600 Contract Labourers in a phased manner. Accordingly, the Board has issued orders vide Per .B.P.(CH) No.44, Adm. Branch, dated 06.09.2007. Further the Board has issued orders vide Per B.P (Chairman) No:9, Adm Branch, dated 09.01.2008 to constitute a committee consisting of 5 members, namely Director/ Finance, Director / Distribution, Secretary, Chief Engineer / Personnel and Senior Personal Officer / Labour to examine the cases of left out Contract Labourers who have worked continuously and not covered by 12(3) settlement, dated 10.08.2007, Accordingly, the Board has issued instructions vide Chief Engineer / Personnel's Memo, dated 20.02.2008 to the effect that the Contract Labourers who have worked continuously, but not covered under 12(3) settlement may be continued to be engaged on daily wages . As per the said memo, there are 4037 Contract Labourers have been engaged on daily wages on need basis continuously and orders were issued vide (Per) FB.TANGEDCO Proceedings No.22 Adm. Branch, dated 25.10.2012 for their absorption as Mazdoor (Trainee).

The above said settlement was signed before the Commissioner of Labour on 10.08.2007 during the course of conciliation proceedings Under Section 12(3) of the Industrial Disputes Act 1947. It binds not only the signatories to the settlement but also binds past, present and future workmen and employees as per the Industrial

Disputes Act 1947. On this ground alone, the claim of the Petitioner union can be dismissed since the claim were already covered and settled by the 12(3) Settlement. The union cannot unsettle the settled issue now.

The contract Labourers who were worked continuously and not covered by 12(3) settlement were considered for absorption vide (Per) FB TANGEDCO Proceedings No.22 Adm. Branch, dated 25.10.2012. The members of the petitioner's union who were worked continuously without any break and not covered by 12(3) settlement may also covered in the said (Per). B.P. (CH) No.44, Adm,Branch, dated 206.09.2007 and (per) FB TANGEDCO Proceedings No.22 Adm. Branch dated 25.10.2012. Further, the Board has issued instructions to all Superintending Engineers that the engagement of Contract Labourers directly by TANGEDCO/TANTRANSCO is prohibited strictly and no more Contract Labourers should be engaged via (Per) FB TANGEDCO Proceedings No.22Adm.Branch, dated 25.10.2012.

The name of the Petitioner's union namely Tamil Nadu Minvariya Anna Podhu Thozilalar Sangam is renamed as Anna Thozhir Sangam Minsara Pirivu and the said Tamil Nadu Minvariya Anna Podhu Thozilalar Sangam is no more in existence. When the union is no more in existence, this petitioner union cannot espouse of the cause of any workmen. Hence to dismiss the I.D.

4. Additional counter statement of the respondent is as follows:

The Respondent contended that the Petitioner Union has no locus standi to raise the issue. Hence the order of reference itself is bad in law and no valid adjudication can be made on the basis of the said reference.

Pending finalization of these matters no recruitment could be made to the post of helpers. Various unskilled jobs which could not be attended by the regular workmen were used to be awarded on contract. Such contracts were used to be awarded on work assignment basis and the Board was not involved in the

mobilization of the labour nor the Board felt concerned about the number of men engaged by the contractor for executing his contract work or the wages paid by them.

In the year 1988 following the prescription of new qualification for the post of helpers, on behalf of the contract workmen writ petitions were filed seeking regularisation of their service and for a declaration that the prescription of new qualification and registration of candidates with the Employment Exchange was illegal. The Petitioner did not succeed in the Writ Petition and the matter was taken to the Supreme Court in SLP No. 1820 of 1990. By its order dated 10.04.1990 the Supreme Court directed that a retired Judge of the Supreme Court be appointed to examine and recommend as to what should be the criteria to be applied for the post of helpers in respect of persons who were parties to the SLP and also to suggest whether any relaxation of the qualification of NTC/NAC prescribed by the Board could be made in respect of the said persons having regard to the experience. The Supreme Court appointed the Hon'ble Mr. Justice Khalid's Commission the Tamil Nadu electricity workers Federation and the Petitioner union got itself impleaded and they also submitted the list of contract workmen who should be considered for regularization.

During the pendency of the Writ Petitions filed by the Contract Workmen, they also moved an application for an interim order to stop fresh recruitment till the existing contract workmen were absorbed. The said petition for interim relief was rejected by the learned single judge of the Madras High Court and a Writ. Appeal No.663 of 1987 was filed. In the Writ appeal the contract workmen also sought an interim direction in CMP No.7740 of 1987. Though the Division Bench initially granted an Interim injunction against fresh recruitment. Subsequently the High Court modified the order and observed that fresh recruitment would not affect the rights of the Petitioners who moved the Court. By the time about 7000 workmen possessing the requesting qualification were recruited as helpers.

On 11.02.1991 Mr. Justice V. Khalid gave his report on holding that the purpose of his investigation was not to render any finding whether or not contract workmen are employed by the Boards, but only to lay down the guidelines by which the workers will be accommodated in the services of the Board, that the problem before the Commission was not strictly a legal one, that it was more a human problem, that therefore, it would not go into the question whether the prescription of the qualification has the sanction of law, or whether it was necessary to relax the qualification to enable the contract workmen to get absorption into the services of the Board. The Commission came to the conclusion that 18006 contract workmen were making claim for absorption, that the fresh recruitments of 7000 helpers with national Trade Apprenticeship Certificate was subject to the final decision, that the Board in the first instance should absorb 7000 workers from the lists submitted by the 3 petitioner unions and laid down the procedure for selection of absorption. The Commission also held after the issue of appointment orders to the 7000 existing contract workmen, the Board will be free to appoint the remaining contract workmen as per the lists furnished by the unions and fresh candidates possessing the requisite qualification in the ratio of 1 : 1 and in this manner they were to be filled up in a phased manner by 31.12.1992. The Commission also made it clear that this decision will apply only to the contract workmen mentioned in the 3 lists furnished by the 3 petitioner unions and not the others. In paragraph 80, the Commission held that when once the contract workmen as per the lists furnished by the 3 unions are accommodated, thereafter the Board will be free to recruit candidates possessing the requisite qualification as helpers.

The report of Justice Mr. V. Khalid Commission was confirmed by the Supreme Court. In SLP No.1820/90 the Supreme Court directed that till the Commission's decision is fully implemented, the Board should not make any fresh recruitment to the post of helpers. Justice Khalid's Commission Report was fully

implemented by March 1998.

The absorption of contract workmen as per the report of the Khalid Commission was only a one time exercise and the Commission clarified that when once the workmen who were covered by the Khalid Commission were absorbed, thereafter the Board was free to recruit candidates for the post of Helpers base on the eligibility criteria laid down by the Board. There is also another practice of entrusting certain jobs to one identified person who in turn will have to mobilize the required manpower for the job and the charges paid in terms of the contract were shared by all the workmen in the group, often including the person to whom the contract was awarded. This is called as K2/Chit agreement. The difference between the two are based on the value of the contract.

The Respondent being a statutory body, the mode of recruitment can only be done as per the service Regulations which is statutory in character. While such recruitment is made either by publishing notice in the newspapers or by making a requisition to the Employment Exchange. The persons who were engaged as casual, temporary or through K2/Chit agreement have no right to demand employment in the service of the Board as a matter of right or as a matter of course, not is it recognised as a source for recruitment.

It is submitted that the issue of absorption and regularization of contract labour was being persistently raised by the recognized Unions and both the recognized unions and the Board wanted to resolve the issue once and for all as one time concession by the settlement dated 10.08.2007. The object of the settlement was to put an end to the issue of the contract labour making a claim for absorption and regularization.

Without prejudice to the aforesaid submissions, the petitioner submits that out of 10592 contract workmen listed in the annexure to the order of reference many of them would have been absorbed and regularized either by the settlement dated

10.08.2007 or by board proceedings issued between 2007 and 2012, or some might have found some found alternate employment or might have passed the age of superannuation or may not be alive. The petitioners union is put to strict proof to establish that each of these 10592 workmen was engaged even on the date of reference and still he is interested in seeking absorption and regularization. It is therefore prayed that this Hon'ble Court may be pleased to make an award rejecting the claim of the petitioner union.

5. Rejoinder statement filed by the petitioner union is that the petitioner union raised the Industrial dispute by its letter dated 18.11.1999 and during the course of conciliation proceedings the list of its members were produced. The Respondent Board has absorbed thousands of contract workmen subsequent to Khalid Report, who were not part of Khalid Commission Report. The contract workmen due to their poverty accepted engagement on daily wages and as long as they are given work they have been discharging the work. Whether their recruitment / engagement is in accordance with the Service Regulations or not is not the concern of the contract workmen. The contract workmen after having been engaged continuously for years together, cannot be denied absorption on the ground that their engagement is not in accordance with the Recruitment Rules / Service Regulations.

The main thrust of the dispute is that though the contract workmen are branded as such, they have been discharging regular and perennial nature of work and the so called contract is not real, genuine or bonafide, but it is sham, nominal and make believe arrangement. The contractor is only a name lender who did not oversee or allot work to the contract workmen, it is the officials of the Respondent Board who were allotting and extracting work directly from the contract workmen.

The contention of the Respondent Board that the contract workmen have no vested right to claim absorption etc. cannot be accepted as it is the Respondent Board which has entered into settlement for absorbing the contract workmen and the other

set. The Respondent Board being a State Owned organization should adopt a uniform policy in the matter of absorption and any deviation would attract violation of Article 14 and 16 of the Constitution of India. The Petitioner union submits that its demand for absorption of the contract workmen is fully justified and the reference will have to be answered in affirmative by directing the Respondent Board to absorb the contract workmen. Hence prays for award.

6. On the side of the petitioners 19 witnesses have been examined as WW1 to WW19 and exhibits W1 to W-95 have been marked. On the side of the respondent/Management MW1 has examined and Exs.M1 to M13 have been marked.

7. The points for consideration that arises in this Industrial disputes are :

- 1) Whether the demand of the petitioner union is justified?
- 2) To what other relief the petitioner union is entitled to?
- 3) To what other relief the respondent management is entitled to?

8. POINT Nos. 1 to 3: The learned counsel for the petitioner/union argued that the respondent has been engaging contract workmen for its day -today perennial nature of work for over several years. Apart from contract workmen, the respondent is also employing temporary and casual workmen in all its Distribution Circles. In the year 1987, as per the directions of the Hon'ble Supreme Court of India Hon'ble Mr.Justice Khalid was appointed as One Man Commission to identify the contract workmen for their absorption in the Tamil Nadu Electricity Board. Justice Khalid Commission convened several meetings and enlisted the contract workmen who were employed by the respondent and submitted its report for regular absorption of 18,540 contract workmen as Helper by the Respondent Board. However, due to various reasons, names of number of other contract workmen who are employed right from

1980 have been left out in the list prepared by the Justice Khalid Commission. The said contract workmen whose names did not find place in the said list continued to be employed as contract workmen till date.

9. Further the nature of work performed by the said contract workers, on whose behalf this industrial dispute has been raised are engaged in perennial in nature of work which comes fully within the four corners of Sec. 10(2) of the Contract Labour (Regulation and Abolition) Act 1970. The respondent Board circulated a draft settlement to be arrived at u/s 18 (1) of the I.D.Act dated 10.8.2007 is binds only the parties to the settlement and not the Petitioner Union herein.

10. Learned counsel for the respondent argued that the Board has entered into settlement under section 12(3) of the Industrial Disputes Act, 1947 on 10.08.2007 with the trade unions for regularization of 21,600 Contract Labourers in a phased manner. The above said settlement was signed before the Commissioner of Labour on 10.08.2007 during the course of conciliation proceedings u/s 12(3) of the Industrial Disputes Act 1947. It binds not only the signatories to the settlement but also binds past, present and future workmen and employees as per the Industrial Disputes Act 1947. On this ground alone, the claim of the Petitioner union can be dismissed since the claim were already covered and settled by the 12(3) Settlement.

11. Learned counsel for the respondent further argued that on the date of the reference, no employee/workmen of the Board/ respondent was its member. According to the petitioner the contract workmen, casual workmen, and temporary workmen were attending to the work connected with the establishment of the respondent and that they should be made permanent. Their demand is that those casual, temporary contract workmen should be absorbed and regularized in the service of the respondent. The Board was formed on 1.7.1957 and it had taken over the electricity department of the then Government of Madras. The Board was formed u/s 5 of the Electricity supply Act 1948. Sec.79 of the above act empowered the

Board to make regulations on the duties of the officers and other employees of the Board and their salaries, allowances and other conditions of services and also any other matter arising out of its functions under the Act for which it is necessary or expedient to make the regulations.

12. As per Ex.M-4 G.O.Ms. NO.1177 dated 28.11.1980 it has been held that National Trade Certificates/National Apprenticeship Certificate in engineering trades like Blacksmith, Carpenter etc, thought in Industrial Training Institutes Recognition of purposes of appointment to suitable posts in various departments.

13. In view of these developments the Board started sanctioning posts of helpers for field manual work and the temporary casual labourers were absorbed for such posts of helpers. The automatic absorption of temporary casual labourers post in the post of helpers led to a situation where the Board could not prescribe any meaningful qualification for appointment as helpers. In the year 1974 the Board issued orders banning further appointment of temporary casual labourers.

14. MW1 in his proof affidavit has stated that the Service Regulations envisages creation of posts, prescription of qualification, sanction of posts and recruitment for the vacancies in the sanctioned posts. The board has to make the recruitment only as per the service regulations. The respondent being a statutory body, the mode of recruitment can only be done as per the service regulations which is statutory in character. While such recruitment is made either by publishing notice in the newspapers or by making a requisition to the Employment Exchange.

15. In Ex.M-5 B.P. MS.(FB) No 38 dated 23.5.86 in class 3 (1) it has been stated that the NTC/NAC awarded by the National council for training and vocational Trade in the prescribed Trades be prescribed as an essential

qualification for appointment to the post of Helper in Regular Work Establishment.

16. Learned counsel for the respondent argued that Annexure 1 to the Service Regulations enumerated various categories of employees for which posts could be created and appointments made based on the qualification and the method of recruitment to such posts. The qualification prescribed for the post of a Helper was initially IV standard pass with one years practical experience in the type of work concerned and later on changed as VIII standard with one year experience. On 28.11.1980 the Government of Tamil Nadu issued G.O.Ms.No.1177 prescribing NTC (National Trade Certificate)/NAC (National Apprenticeship Certificate) as a pre-requisite qualification for the appointment to the lowest post.

17. The automatic absorption of temporary casual labourers post in the post of helpers led to a situation where the Board could not prescribe any meaningful qualification for appointment as helpers. In the year 1974 the Board issued orders banning further appointment of temporary casual labourers.

W.W.1 in his cross-examination has stated that

நாங்கள் எங்கள் தொழிலாளர்களுக்கு மஸ்தூர் எண் 1 என்ற நிலையில் பணி வழங்கும்படி கோருகிறோம். அந்த பணிநிலை நிர்வாகத்ததால் முன்பே நீக்கப்பட்டுவிட்டது என்ற விவரம் எனக்கு தெரியுமா என்றால் தெரியாது,

18. The contention of the respondent Board that the petitioner union has not proved its representative capacity to espouse the cause of the contract workers by passing a resolution in the general body meeting and hence the reference is bad and the above industrial dispute is not maintainable cannot be

countenanced. The further contention of the respondent Board that the petitioner union has no locus standi to raise the industrial dispute regarding regularization of the contract workmen is liable to be rejected as the same is without any substance.

WW1 in his cross-examination has stated that

தொழிற் தாவா தமிழ்நாடு மின்வாரிய அண்ணா பொது தொழிலாளர்கள் சங்கம் என்ற பெயரில் எழுப்பப்பட்டது என்றால் சரிதான். அந்த சங்கம் அனைத்து இந்திய அண்ணா தொழிற்சங்க பேரவையுடன் இணைக்கப்பட்ட சங்கம் என்றால் சரிதான். 2005ம் ஆண்டு மின்வாரிய அண்ணா தொழிற்சங்கம் என்ற பெயரில் தொழிற்சங்கம் புதிதாக நிறுவப்பட்டகுழு என்றால் சரிதான்

எங்கள் சங்கம் 1989ம் ஆண்டு ஆரம்பிக்கப்பட்டதாகும். பொதுக் குழு கூட்டத்திற்கு ஒரு மினிட்ஸ் புத்தகமும் நிர்வாகக் குழு கூட்டத்திற்கு ஒரு மினிட்ஸ் புத்தகமும் உள்ளது. எங்கள் சங்கத்தில் 10592 ஒப்பந்த தொழிலாளர்களை தவிர மற்ற நேரடியாக வேலை பார்த்த தொழிலாளர்களும் நிரந்தர தொழிலாளர்களும் உறுப்பினர்களாக இருக்கிறார்கள். பொது குழுவிலும் நிர்வாக குழுவிலும் தீர்மானம் நிறைவேற்றப்பட்டு தொழிற் தாவா எழுப்பப்பட்டது. அந்த தீர்மானத்தை தாக்கல் செய்யவில்லை. ஆனால் தாக்கல் செய்ய இயலும்.

But, the petitioner union has not filed any oral and documentary evidence.

19. The respondent has clearly established that the petitioner/union has no locus standi to raise the industrial disputes . The petitioner union has raised an industrial dispute regarding the regularization of 10592 contract workmen and the same was referred for adjudication to this Industrial Tribunal . In SLP NO.1820/90 i.e. Ex.M-1 it has been stated that the

case of the Board is that the workers are appointed by the contractors and that they are not workers. Additionally, it is contended that the Board does not come within the provisions of the Contract Labour (Regulations and Abolition) Act 1970 since the number of workers employed by contractors is less than 20 and the Board cannot take shelter under that plea and escape from the provisions of the Act. According to them, the Board has not made available any evidence about who the contractors are and what the number of workers under each contractor is. The Board cannot sit quiet and walk away with such a plea without any supporting materials.

20. The learned counsel for the respondent further argued that the issue of absorption and regularisation of contract labour was being persistently raised by the recognized Unions and both the recognized unions and the Board wanted to resolve the issue once and for all as one time concession by the settlement dated 10.08.2007. The object of the settlement was to put an end to the issue of the contract labour making a claim for absorption and regularisation. In Ex.M-2 Memorandum of settlement dated 10.8.2007 it has been stated that the in pursuance of the negotiation held between the parties on 9.8.2007 settlement u/s 18 (1) of Industrial Disputes Act was reached on 10.8.2007.

21. In view of the above terms and conditions and as the Board will maintain attendance Register for contract Labourers the Unions have agreed to withdraw all the cases pending before Industrial Tribunal, and other legal forums. In the claim statement in para -11 it has been stated that the respondent Board circulated a draft settlement to be arrived at u/s 18 (1) of I.D.Act 1947 dated 10.8.2007 to all the trade unions including the petitioner union.

22. The learned counsel for the petitioner contended that there are certain other issues which they had already submitted in the form of a representation dated

26.9.2006 and unless those issues are brought out in the draft settlement it will not sign the settlement. However the LPF, INTUC and few other unions have signed the settlement. Since the said settlement is only under Section 18(1) of the I.D. Act 1947 it binds only the parties to the settlement and not the Petitioner Union herein.

23. Learned counsel for the respondent submitted in Writ Appeal 1302/2003 and others dated 24.10.2008 it has been held that under the circumstances, we are convinced that the settlement entered in to by the Board with workmen and union is valid and enforceable. Hence, the writ petitions challenging the 18 (1) settlement will stand dismissed.

24. The respondent argued that the petitioner union has not furnished the list of name of the persons. The list of the contract workmen for whose benefit the above said settlement was prepared by the respondent board did not contain the names of contract workmen for whom the above industrial dispute has been raised. The petitioner union stated that the names of workers who are employed in the respondent board as contract workers in various Distribution Circles numbering 10592 with their date/year of joining service and the places where they are working will be furnished in due course of time. The Government has passed a G.O to refer a case without indicating the names of those workmen.

WW1 in his cross-examination has stated that

18.11.99 தேதியில் இந்த தொழில் தாவா எழுப்பப்பட்டது அந்த மனுவினை இங்கு தர்ககல் செய்யவில்லை என்றால் சரிதான். 18.11.99 தேதிக்கு முன்பு பணிபுரிந்தவர்களின் விவரங்கள் மட்டும் கொடுத்துள்ளோம். அந்த பட்டியலில் 312 பேர்கள் எந்த தேதியில் பணிக்கு சேர்ந்தார்கள் என்ற விவரம் காணப்படவில்லை என்றால் சரிதான். 514 எண்ணிக்கையிலான தொழிலாளர்களின் பெயர்கள் காணப்படவில்லை என்றால் சரியல்ல. என்னிடம்

காட்டப்படும் தர்மபுரி மின் பகிர்மான வட்டத்தில் பணி புரிந்த

தொழிலாளர்களின் பட்டியலில் வரிசை எண் 355க்கு பிறகு 388 என்ற வரிசை எண் காணப்படுகிறது என்றால் சரிதான். 5224 தொழிலாளர்கள் தொழிற்தாவா எழுப்பியபிறகு அதாவது 1999க்கு பிறகு பணியில் சேர்ந்துள்ளவர்கள் என்று சொன்னால் எங்கள் சங்கத்தின் உறுப்பினராக சேரும்போது அவர்கள் கொடுத்த ஆவணங்கள் அடிப்படையில் அவ்வாறு கொடுத்தோம், 18.11.99க்கு பிறகு 49000 தொழிலாளர்கள் பணி நிரந்தரம் செய்யப்பட்டுள்ள நிலையில் எங்கள் சங்கமோ அல்லது தாவா தொகுத்துள்ள 10592 தொழிலாளர்களோ சங்கம் சார்பாகவோ அல்லது தொழிலாளர்கள் தனிப்பட்ட முறையிலோ அவர்களை பணி நிரந்தரம் செய்வதற்காக ஏதேனும் மனுக்கள் நிர்வாகத்திற்கு அளித்தோமோ என்றால் சங்கம் அவ்வாறு மனு அளித்துள்ளது அதனை ஆவணமாக இங்கு தாக்கல் செய்துள்ளோனா என்றால் தாக்கல் செய்யவில்லை.

25, In Ex.W-3 dated 29.1.2001 the petitioner union has mentioned 10442 contract labourers/mazdoors, Ex. W-4 dated 16.2.2001 the petitioner union has mentioned 10489 contract labourers/mazdoors , Ex.W5 dated 9.3.2001 the petitioner union has mentioned 10551 contract labourers/mazdoors, Ex. W-6 dated 5.4.2001 the petitioner union has mentioned 10586 contract labourers/mazdoors, and in W-7 dated 12.4.2001 the petitioner union has mentioned 10592 contract labourers/mazdoor.

26. Learned counsel for the respondent argued that the petitioners union is put to strict proof of establish that each of these 10592 workmen was engaged prior to 1999, that he was continued to be engaged and that he was so engaged even on the date of reference . The absorption and regulation of contract labour as a onetime measure was dealt with by a commission appointed by the Supreme Court called as

Justice V.Khalid's Commission. The report of the said commission clearly stated that when once the absorption and regularization of 18006 contract workmen is completed, thereafter the Board was free to recruit persons who satisfy eligibility criteria as laid down by the service regulations.

27. Further, the learned counsel for the respondent argued that there is also another practice of entrusting certain jobs to one identified person who in turn will have to mobilize the required manpower for the job and the charges paid in terms of the contract were shared by all the workmen in the group, often including the person to whom the contract was awarded. This is called as K2/Chit agreement. .

Petitioner' side witnesses have stated in their cross-examination as follows:

WW2 - நான் பணி செய்த ஒப்பந்தக்காரர்களின் பெயர் தெரியாது. பிசிபி என்ற பெட்டி கேஸ் புக் சீட் அக்ரிமெண்ட் பற்றி எனக்கு தெரியாது,

WW3 - அய்யம்பட்டு அலுவலத்தில் பணி புரிவதற்கான எந்த ஆவணமும் நான் தாக்கல் செய்யவில்லை, ஒப்பந்தக்காரர்களிடம் பணியாற்றவில்லை,

WW4 -திருவுக்கரசீடம் நான் பணியாற்றவில்லை,

WW-5- 42,43 44 என திருச்சி மின் தொழிலாளர் ஆவணம் குறிப்பிடப்பட்டதுது என்றால் சரிதான் திருவண்ணாமலையில் வரிசை எண் 188ல் என் பெயர் உள்ளது. கருணைத்தொகை வழங்கவில்லை,

WW6 கருணைத்தொகை பெற்ற நபர்களை தான் வேலைக்கு எடுத்ததார்களா என்றால் தெரியாது. நான் திருவண்ணாமலை மாவட்டத்தில் வேலை பார்க்கவில்லை என்றால் சரிதான் நான் திருவண்ணாமலையில் வசிக்கவில்லை. சங்கத்திதல் எந்தெந்த மாவட்டத்தில் காலியாக உள்ள இடத்தை என் பெயரை சங்கத்தினர் போட்டு இருப்பார்கள்,

WW7- கருணைத்தொகை எதுவும் எதிர்மனுதாரரிடம் பெறவில்லை . நான் கருணைத்த தொகை கேட்டும் வேலை கேட்டும் மனு தாக்கல் செய்யவில்லை.

தொ,ஆ.சா.53 ஆவணம் ஒப்பந்தக்காரர் தயார் செய்தார். ' எப்போது தயார் செய்யப்பட்டது என தெரியாது,

WW8 கருணைத்தொகை பெறவில்லை,

WW9 - 55,56 ஆவணங்கள் 1998லிருந்து 2002 என்று குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான்.

WW10 கருணைத்தொகை எதுவும் வாங்கவில்லை.

WW11 கருணைத்தொகை எதுவும் வாங்கவில்லை. 98க்கு முன்பு யாரெல்லாம் பணியாற்றினார்களோ அவர்களை நிரந்தரமாக்கினார்கள்

WW12- கருணைத்தொகை எதுவும் நான் பெறவில்லை,

WW13 2000க்கு பிறகு ஒப்பந்தக்காரரிடம் பணியாற்றியதற்கு ஆவணம் எதுவும் தாக்கல் செய்யவில்லை . ஊதியத்தை தவிர கருணைத்தொகை எதுவும் பெறவில்லை.

WW 14 நான் கருணைத்தொகை எதுவும் பெறவில்லை ,

WW-16 நான் ஒப்பந்தக்காரரிடம் பணி செய்ததற்கான பணி ஆவணம் எதுவும் தாக்கல் செய்யவில்லை கருணைத்தொகை எதுவும் வாங்கவில்லை .

WW 18 கருணைத்தொகை எதுவும் வாங்கவில்லை.

WW-19 கருணைத்தொகை நான் பெறவில்லை,

WW1 to WW19 are not received any exgratia amount from the management. The petitioner union has not produced any oral and documentary evidence.

28. In Ex.M-2 dated 10.8.2017 it has been stated that the remaining contract labourers not exceeding 15,600 who are paid exgratia will be identified by a committee of Officers to be deputed from Headquarters to various Circles. The TCLs as well as the Contract labourers identified by the committee will be given photo identity card. Attendance Register will be maintained for T.C.Ls and Contract Labourers in each section.

29. The Board has entered into settlement under section 12(3) of the Industrial Disputes Act, 1947 on 10.08.2007 with the trade unions for regularization of 21,600 Contract Labourers in a phased manner. Accordingly, the Board has issued orders vide Per .B.P.(CH) No.44, Adm. Branch, dated 06.09.2007. Further the Board has issued orders vide Per B.P (Chairman) No:9, Adm Branch, dated 09.01.2008 to constitute a committee consisting of 5 members, namely Director/ Finance, Director / Distribution, Secretary, Chief Engineer / Personnel and Senior Personal Officer / Labour to examine the cases of left out Contract Labourers who have worked continuously and not covered by 12(3) settlement, dated 10.08.2007, Accordingly, the Board has issued instructions vide Chief Engineer / Personnel's Memo, dated 20.02.2008 to the effect that the Contract Labourers who have worked continuously, but not covered under 12(3) settlement may be continued to be engaged on daily wages . As per the said memo, there are 4037 Contract Labourers have been engaged on daily wages on need basis continuously and orders were issued vide (Per) FB.TANGEDCO Proceedings No.22 Adm. Branch, dated 25.10.2012 for their absorption as Mazdoor (Trainee). .Ex.M7 to M11 are the Board proceedings regarding absorption of the contract Labourers

30. RW1 in his proof affidavit has stated that as per the evidence of WW1, Kathirvel, he and other workmen were not in the service of the any contractor or working as a contract labour on the date of the reference 23.05.2007.

31. The learned counsel for the petitioner argued that the contention of the Respondent Board that all the 10000 and odd workmen have not been examined and the entire documents relating to their employment have not been produced and hence, the petitioner union has not proved its case. On the side of the petitioner/union WW1 to WW19 witnesses have been examined and Exs W1 to

W95 documents have been marked . But the respondent have not produced any documents relating to the work performed by the contract labourers..

32, Learned counsel for the respondent argued that Ex.M-2 settlement was filed before the Commissioner of Labour u/s 12 (3) of I.D.Act and it binds not only the signatories to the settlement but also binds past, present and future workmen of the employees as per the Industrial Disputes Act 1947.

33. The Management of the Tamil Nadu Electricity Board in its Letter No.098731/G.58/G582/2007-1 daed 10.8.2007 addressed to the Commissioner of Labour, Chennai for converting the above mentioned settlement as a settlement u/s 12 (3) of I.D.Act. The claim were already covered and settled by this 12 (3) settlement. The above said settlement was signed before the Commissioner of Labour on 10.8.2007 during the course of Conciliation proceedings u/s 12 (3) of I.D Act 1947..

34. Learned counsel for the petitioner union has cited the following judgments.

1) M/s Bharat Heavy Electricals Ltd -vs- State of U.P And others 2003 STPL 11667 SC

2) Dharangadhara Chemical Workers Ltd -vs-State of Saurashtra and others 1956 STPL 1738 SC.

3) Silver Jubilee Tailoring House and Others -vs- Chief Inspector of Shops and Establishments and another 1973 STPL 2817 S.C.

4)Hussainbhai –vs-Alath Factory Tezhilali Union and others 1978 STPL 2747 SC.

5)Bidi, Bidi Leaves and Tobacco Merchants' Association, Gondia and others -vs-State of Bombay (now Maharashtra) and others 1961 STPL 2563 SC.

35. Disposal of cases by blindly placing reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect in deciding such cases one should avoid the temptation to decide cases (as said by CARDOZO J) by matching the colour of one case against the colour of another. To decide therefore on which side of the line a case falls the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches."

" My plea is to keep the path of justice clear of obstructions which could impede it."

These citations are not applicable to the facts of the case.

36. The learned counsel for the respondent further pointed out that the Board was unanimous in regularizing the service of the contract labourers, more especially when the sanctioned post was less than the available employees. The decision reported in 2001-II-LLJ P.1087 is pointed out, wherein the Hon'ble Supreme Court has held in the above case that ' there was no specific provision made for automatic absorption of contract labour by Principal employer in the concerned establishment on issuance of notification prohibiting employment of Contract Labour ' Absorption of contract labour not concomitant to abolition Notification issued by appropriate Government under

section 10 of Contract Labour (Regulation and Abolition) Act'.

37. Pointing out the decision the learned counsel for the respondent/management contends that as per the above decision, absorption is not automatic and the Electricity Board was benevolent in regularizing the services of those contract labourers and the petitioners are not expected to make any further claim.

38. The counsel for the respondent also pointed out that in para -82 of the judgment (2001-II-LLJ page 1087 & 1093) where there was discussions to show as to why no specific provision is made for automatic absorption of contract labour under the Contract Labour (Regulation and Abolition) Act. The Hon'ble Supreme Court has held that :

"The eloquence of the Contract Labour (Regulation and Abolition) Act in not spelling out the consequence of abolition of contract labour system discerned in the light of various reports of the commissions and the committees and the Statement of Objects and Reasons of the Act, appears to be that parliament intended to create a bar on engaging Contract Labour in the establishment covered by the prohibition notification by a Principal employer so as to leave no option with him except to employ the workers as regular employees directly. Section 10 is intended to work as a permanent solution to the problem rather than to provide a one time measure by departmentalizing the existing contract labour who may, by a fortuitous circumstance be in a given establishment for a very short time as on the date of the prohibition notification. It could as well be that a contractor and his contract labour who were with an the establishment for a number of years were changed just before the issuance of prohibition

notification. In such a case there could be no justification to prefer the contract labour engaged on the relevant date over the contract labour employed for longer period earlier. These may be some of the reasons as to why no specific provision is made for automatic absorption of contract labour under the Contract Labour (Regulation and Abolition Act).

.....A beneficial legislation needs to be construed liberally in favour of the clause for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided. Whether expressly or by necessary implication or substituting remedy or benefits not provided by the legislature...."

When the legislature has not chosen to spell out the consequence of the Abolition of Contract Labour, the Court has to find out the solution.

IMPORTANT JUDGMENTS OF THE SUPREME COURT

Three Judgments delivered by the Supreme Court in the cases of Gujarat State Electricity Board -vs- Union of India , AIR India Statutory Corporation Ltd. & Others-vs- United Labour Union and others, and Steel Authority of India Ltd & Others-vs- National Union Water Front Workers and others on 9.5.95, 6.12.96 and 30.8.2001 respectively are **Landmark Judgments..**

The following case law development has been discussed in 2008 (4) CTC page 819.

a) Air India Statutory Corporation -vs- United Labour Union 1997 (9) SCC 377: it has been held that Even though there is no express provision in the contract labour regulation and Abolition Act (CLRA) Act for absorption of the Contract Labour, when engagement of contract labour stood prohibited.

b) This Judgment (Air India) was overruled by the **Steel Authority of India Ltd and Others -vs-National Union Water Front Workers and Others (2001) 4 CTC 48 : 2001 (7) SCC page 1 (paras 125 (3) to para 125 (6)**

Para 125 (3)Neither Section 10 of the CLRA Act nor any other provision provide for automatic absorption of Contract Labour.

Para 125 (4) Judgment in AIR India case prospectively overruled.

Para 125 (5) On prohibition of Notification u/s 10 (1) of the CLRA Act in an Industrial Dispute brought by contract labour the **Industrial adjudicator have to consider whether contractor has been interposed and whether the contract is a genuine contract or is a mere ruse or camouflage to evade compliance with various beneficial legislation. If the contract is found to be a camouflage contract labour have to be treated as employees of the Principal employer who shall be directed to regularize the services of the contract labour.**

Para 126 (6) If the contract is a genuine, and prohibition is issued under sec.10 (1) of the CLRA Act. The principal employer when intending to employ regular workmen he shall give preference to erstwhile contract labour if found suitable and if necessary by relaxing the condition has to maximum age appropriately and also by relaxing the condition as to academic qualifications other than technical qualifications.

The parameters under which an industrial adjudicator can decide the claims of the workmen has been laid down in para 125 (3) to paras 125 (6) .

c. L.Justine and another -vs- Registrar of Co-operative societies – (2002 4 CTC p.385) Hon'ble Madras High Court held that back door entry of the workmen cannot be permitted and the provisions of Tamil Nadu Act 46 of 1981 cannot be pressed into service in such cases.

d. Uma Rani -vs- Registrar of Co-operative Societies and others (2004 (7) SCC P.112) The decision reported in L.Justine and others case confirmed.

e. State of Karnataka and Uma Devi Constitution Bench Judgment of the Hon'ble Supreme Court (2006) (4) SCC p. 1 (paragraph 45)

Uma Devi's case did not prohibit employment of workmen in contract or temporary and it only states that while making regularization proper norms will have to be followed consistent with art.14 and 16 of the Constitution.

f. Indian Drugs and Pharmaceuticals Ltd -vs- Workmen of Indian Drugs and Pharmaceuticals Ltd. The rules of recruitment cannot be relaxed and the court/tribunal cannot direct regularization to temporary employees dehorse the rules.

g. Dena Nath and others -vs- National Fertilizers Ltd (AIR 1954 SC p.457 .A contract labour does not become direct employee of the principal labour merely because the contractor does not hold any license under CLRA Act.

h. Western India Match Co., Ltd -vs- Its Wokmen (1973 II LLJ page 403) "In the certified Standing Orders (of HPCL there is no provision to engage any contract labour and Courts have held that any contract in violation of the Certified Standing orders will be void).

i. U.P. State Electricity Board -vs- Pooran Chandra Pandey and others (2007) AIR SCW 6904) Uma Devi's case cited and distinguished (paras 11, 16 and 19)

Often Uma Devi's case is being applied by courts mechanically as if it were Euclids Formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University and Bharat Petroleum case a little difference in facts are even one additional fact may make a lot of difference in the precedential value of the decision.

39. The learned counsel for the petitioner contended that the contract workmen for whom the petitioner union has raised this Industrial Dispute have been working for the respondent Board in its various Distribution circles for years together are entitled to be absorbed and regularized in the service of the respondent Board as Mazdoor Gr.II as has been done earlier. The said contract workmen have been working for more than a decade continuously without any break for more than 480 days in 2 calendar years, they are entitled to be regularized in service in accordance with the provisions of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to workman) Act 1981 (Tamil Nadu Act 46 of 1982). Therefore the demand of petitioner union for regularization of 10592 contract workmen is fully justified.

40. Further the learned counsel for petitioner contended that

A) absorption is automatic on abolition of contract labour.

b) Absorption is automatic when arrangement of contract is found to be a camouflage.

C) Once the employment for 480 days in 24 calendar months is proved, availability of sanctioned post or sponsorship by Employment exchange cannot stand in the way of employee being made permanent.

41. In 1986 1 SCC 639 Surinder Singh and another -vs-Engineer -in-Chief, CPWD, and others, the Hon'ble Supreme Court has condemned the practice of Government and Public Section Undertaking keeping many employees in service on a temporary daily wages without their services being regularized.

(1978) 4 SCC 257 (Hussainbhai Calicut -vs-The Alath Factory Thozhiali Union Kozhikode and others) the Hon'ble Supreme Court has held that ...The facts found are that the work done by the workmen was an integral part of the industry concerned, that the raw material was supplied by the management, that the factory premises belonged to the management, and that the finished product was taken by the management for its own trade.

42. On consideration of the decision relied on both sides, and in view of the latest decision of the Hon'ble Supreme Court the petitioners are not entitled to automatic absorption on abolition of contract labour. In fact already they have been absorbed. Now they claim absorption from an earlier date. While claiming absorption their plea was that they were contract labourers. Now they contend that they are not contract labourers.

43. **Hon'ble Apex Court in Nalco case reported in (2014) 6 SCC 756,** wherein it was opined that the proper approach would be to ascertain whether there was a complete control and supervision of the appellant, namely, Nalco and concluded in para -65 it has stated that

...Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, interalia:

- 1) who appoints the workers
- ii) who pays the salary/remuneration
- iii) who has the authority to dismiss.
- iv) who can taken disciplinary action
- v) whether there is continuity of service and
- vi) extent of control and supervision, i.e. whether there exists complete control and supervision."

44. It is not as if the workmen are claiming for the relief of regularization. In that case, if the court comes to the conclusion that the contract is sham then the court may treat the employees as the direct employees of the Principal employer from the date of entry and can order the Principal Employer to pay all the benefits, as if they are the direct employees. But in this case it is the consistent case of the workmen that they were contract labourers and as such their claim had been considered and negated by the several courts including the Hon'ble Supreme Court and based upon the report of the Khalid commission, the Government has chosen to abolish the contract labour system. There are circumstances available in this case to indicate that Hon'ble Justice Khalid has taken several decisions in order to avoid certain situation and in order to save certain situations.

45. The contract workmen have no vested right to claim absorption etc, cannot be accepted as it is the Respondent Board which has entered into settlement for absorbing the contract workmen. The respondent Board being a State Owned organization should adopt a uniform policy in the matter of absorption and any deviation would not attract violation of Articles 14 and 16 of the Constitution of India.

46. In this dispute, even though the petitioners are able to prove the fact that they have also fulfilled the criteria for absorption and regularization fixed by the Board, it is submitted by the Board that even though 21600 contract workmen were identified as eligible for absorption and regularization,.. As per principle laid down by the Steel Authority of India case cited supra, the respondent could not be compelled to absorb and regularize the contract workmen after abolition of contract labour system. Similarly, contract workmen have also not entitled to seek automatic absorption and regularization and they cannot claim it as a right. Hence, I find that the claim made by the petitioner union is not maintainable and the same is not justified. Point No. 1 to 3 are answered accordingly.

In the result, award is passed holding that the demand of the petitioner union is **not justified.** No costs.

Dictated by me and typed directly in the computer by the Steno Typist, corrected and pronounced by me in the Open Court, this, the 18th day of August 2017.

Presiding Officer
Industrial Tribunal
Chennai-104.

LIST OF WITNESSES AND EXHIBITS**WITNESSES EXAMINED ON THE SIDE OF PETITIONERS/ UNION**

WW1 Thiru T.Kathirvel
WW2 Thiru N.Kamalakannan
WW3 Thiru S.Loganathan
WW4 Thiru A.Rangaraji
WW5 Thiru A.Gunasekaran
WW6 Thiru K.Muthumari
WW7 Thiru A.Magendran
WW8 Thiru M.Dass
WW9 Thiru Thangadurai
WW10 Thiru S.Baskar
WW11 Thiru A.Nagarajan
WW12 Thiru Raveendran
WW13 Thiru C.P.Palanisamy
WW14 Thiru C.Mohan
WW15 Thiru A.Anandakumar
WW16 Thiru N.George
WW17 Thiru M. Ponnusamy
WW18 Thiru V.Gopal
WW19 Thiru R.Venkatesan

WITNESSES EXAMINED ON THE SIDE OF RESPONDENT/MANAGEMENT:

M.W.1 Thiru Muralitharan

EXHIBITS MARKED ON THE SIDE OF THE PETITIONER/UNION

<i>S.NO</i>	<i>DATE</i>	<i>Exhibits</i>	<i>DESCRIPTION OF DOCUMENT</i>
1	-	Ex.W1	Registration Certificate of the Petitioner
2	-	Ex.W2	Rules/Bye laws of the petitioner union
3	29.01.2001	Ex.W3	Letter from Petitioner to the Commissioner of Labour, Chennai.
4	16.02.2001	Ex.W4	Letter from Petitioner to the Commissioner of Labour, Chennai.
5	09.03.2001	Ex.W5	Letter from Petitioner to the Commissioner of Labour, Chennai.
6	05.04.2001	Ex.W6	Letter from Petitioner to the Commissioner of Labour, Chennai.
7	12.04.2001	Ex.W7	Letter from Petitioner to the Commissioner of Labour, Chennai.
8	09.05.2001	Ex.W8	Conciliation failure report
9	26.09.2006	Ex.W9	Letter from Petitioner to the respondent
10	26.09.2006	Ex.W10	Letter from Tamil Nadu Electricity Board Workers Progressive Union to Respondent.
11	26.09.2006	Ex.W11	Letter from INTUC Tamil Nadu National Electricity Workers Federation to the respondent.
12	10.08.2007	Ex.W12	Settlement made u/s 18 (1) of the I.D.Act between the respondent and other trade unions.
13	09.04.1999	Ex.W13	Letter from Petitioner Union to the Commissioner of Labour, Chennai.
14	27.10.1999	Ex.W14	Memo issued by the Administrative Branch of the Respondent.
15	27.10.1999	Ex.W15	Letter from Member Generation of the Respondent

<i>S.NO</i>	<i>DATE</i>	<i>Exhibits</i>	<i>DESCRIPTION OF DOCUMENT</i>
			to Chief Engineer North Chennai Thermal Power Station, Chennai.
16	05.11.1999	Ex.W16	Letter from Petitioner Union to the Chairman, TNEB
17	21.01.2000	Ex.W17	Letter from Petitioner Union to the Chairman, TNEB
18	17.02.2000	Ex.W18	Letter from Petitioner Union to the Chairman, TNEB
19	06.09.2000	Ex.W19	Letter from Petitioner Union to the Commissioner, of Labour, Chennai.
20	24.07.2001	Ex.W20	Letter from Petitioner Union to the Honble Chief Minister of Tamil Nadu.
21	12.07.2005	Ex.W 21	Letter from Petitioner Union to the Honble Minister of Electricity and Transport Department.
22	06.09.2007	Ex.W 22	B.P.(FB) No.44, Administrative Branch, TNEB
23	09.01.2008	Ex.W 23	B.P.(FB) No.9, Administrative Branch, TNEB
24	20.02.2008	Ex.W 24	Memo issued by the Administrative Branch, TNEB
25	05.07.2010	Ex.W 25	Letter from Petitioner Union to the Chairman, TNEB
26	07.06.2011	Ex.W 26	Letter from Petitioner Union to the Chairman TNEB
27	03.12.2011	Ex.W 27	Letter from Petitioner Union to the Chairman & M,D.,TNEB
28	24.02.2012	Ex.W 28	Letter from Petitioner Union to the Chairman, TNEB
29	23.05.2012	Ex.W 29	(Per) FB TNGEDCO, Administrative Branch Proceedings No.9
30	27.08.2012	Ex.W 30	Letter from Petitioner Union to the Chairman, TNEB
31	25.10.2012	Ex.W 31	(Per) FB TNGEDCO, Administrative Branch Proceedings No.22
32	25.10.2012	Ex.W 32	Memo issued by the Tamil Nadu Generation & Distribution Corp. Ltd. Administrative Branch.

<i>S.NO</i>	<i>DATE</i>	<i>Exhibits</i>	<i>DESCRIPTION OF DOCUMENT</i>
33	07.11.2012	Ex.W 33	(Per)CMD TNGEDCO, Administrative Branch Proceedings No.116
34		Ex.W 34	Tamil Nadu Electricity Anna Podhu Thozilalar Sangam, MDS/1916 Registered. (Spiral binding)
35	16.08.1999	Ex.W 35	Copy of School Transfer Certificate of N. Kamalakannan
36		Ex.W 36	Copy of salary Certificate issued by Junior Engineer, O&M TNEB Poothamedu in favour of N.Kamalakannan
37	13.11.2002	Ex.W.37 (s)	Copy of Certificate issued by K. Azhaganantham, TNEB Contractor in favour of N. Kamalakannan
38	18.09.2003		Copy of Certificate issued by G.Aviraman, TNEB Contractor in favour of N. Kamalakannan
39	12.02.2004		Copy of Certificate issued by K.Ulaganathan TNEB Contractor in favour of N. Kamalakannan
40	26.11.2005		Copy of Certificate issued by J.Palanivel, TNEB Contractor in favour of N. Kamalakannan
41	11.09.2007		Copy of Certificate issued by A.Kumar TNEB Contractor in favour of N. Kamalakannan
42		Ex.W 38	Copy of application submitted by A.Rangaraj for identification of contract labour.
43		Ex.W 39	Copy of Service Certificate issued to A.Rangaraj TNEB Contractor D. Kumar
44	21.08.1992	Ex.W 40	Copy of school Transfer Certificate of A.Gunasekaran.
45		Ex. W41	Copy of letter issued by co-workmen of A.Guneseakaran along with enclosures
46		Ex. W42	Copy of working details of A.Gunasekaran

<i>S.NO</i>	<i>DATE</i>	<i>Exhibits</i>	<i>DESCRIPTION OF DOCUMENT</i>
47	12.04.2007	Ex. W43	Copy of petty cash voucher showing payment made to A.Gunasekaran
48	23.8.2006, 27.3.2008 and 9.8.2007	Ex.W44	Copy of demand drafts issued to A.Gunasekaran by TNEB towards payment of wages.
49	13.12.2006	Ex.W 45	Copy of work permit issued to A.Gunasekaran by TNEB.
50	20.06.1991	Ex -W 46	Copy of school Transfer Certificate of K.Muthumari
51		Ex -W 47	Copy of letter issued by co-workmen of K.Muthumari along with enclosures.
52		Ex -W 48	Copy of working details of K.Muthumari (LC records).
53		Ex.W 49(s)	Copy of working details of K.Muthumrai (PCB) records
54	27.02.2007	Ex -W 50	Copy of petty cash voucher showing payment of wages to K.Muthumari.
55	09.08.2007	Ex -W 51	Copy of demand draft issued to K.Muthumari by TNEB.
56	08.02.2006	Ex -W 52(s)	Copy of work permit issued to K.Muthumari
57		Ex -W 53	Copy of work done by A.Mahendran and payments made to him by TNEB contractor
58		Ex.W 54(s)	Copy of work doe by M.Doss and payments made to him by TNEB contractor
59		Ex.W 55(s)	Copy of service certificate issued to G.Thangadurai by Jr. Engineer, TNEB, O & M, Kumaramanglam
60	03.11.1999	Ex.W 56	Copy of cheque issued in favour of G.Thangdurai by

<i>S.NO</i>	<i>DATE</i>	<i>Exhibits</i>	<i>DESCRIPTION OF DOCUMENT</i>
			TNEB
61	13.11.2001	Ex. W57(s)	Copy of payment order issued in favour of G.Thangadurai by TNEB
62	20.5.2002	Ex. W 58	Copy of payment order issued in favour of G.Thangaraj by TNEB.
63	09.06.1998	Ex. W 59	Copy of school transfer certificate of A.Nagarajan
64		Ex.W 60	Certificate of contract labourers worked in TNEB including A.Nagaraj.
65		Ex. W 61(s)	Working details of A. Nagarajan
66	12.02.2007 and 15.12.2008	Ex. W 62(s)	Copy of Demand Draft issued to A.Nagarajan by T.N.E.B.
67	13.12.2006	Ex. W 63 (s)	Copy of work permit issued to A.Nagarajan.
68		Ex. W 64 (s)	Copy of work done by A.Ravindran and payments made to him by TNEB contractor
69	20.06.1991	Ex. W 65	Copy of SSLC Mark sheet of C.P.Palanisamy
70	22.06.1991	Ex. W 66	Copy of School Transfer Certificate of C.P.Palanisamy.
71	July 1996	Ex. W 67	Copy of National Trade Certificate issued to C.P.Palanisamy.
72	16.08.2000	Ex. W 68	Copy of certificate issued to C.P. Palanisamy by Asst. Engineer IV, SSE, Salem
73	16.8.1999	Ex. W 69	Copy of school transfer certificate of C.Mohan
74	-	Ex. W 70	Copy of certificate issued to C.Mohan by Jr. Engineer O & M, TNEB, Poothamedu.
75	13,11.2002	Ex. W 71(s)	Copy of certificate issued by K.Azhagananthan, TNEB Contractor in favour of C.Mohan.

<i>S.NO</i>	<i>DATE</i>	<i>Exhibits</i>	<i>DESCRIPTION OF DOCUMENT</i>
76	-	Ex. W 72	Copy of certificate issued to N.George by E.Varadan, Ex. Jr. Engineer, TNEB.
77	-	Ex.W 73	Copy of statement containing the work done and payments received by N.George from TNEB.
78	-	Ex. W 74	Copy of statement containing the work done
79	-	Ex. W 75	Certificate issued by Jayakumar to one Thiru N.George.
80	25.06.91	Ex. W 76	Copy of School Transfer Certificate of M.Ponnusamy
81		Ex. W 77	Copy of Experience Certificate issued to M.Ponnusamy by Jr. Engineer, TNEB construction, Musiri.
82	31.3.1998	Ex W 78	Copy of certificate issued to M.Ponnusamy by Asst. Engineer O & M, TNEB, Musiri
83	-	Ex. W 79(s)	Copy of petty cash book for the period 25.01.99 onwards.
84		Ex. W 80 (s)	Copies of Chit agreement dated 29.06.05, 24.08.07, and 26.10.07.
85	-	Ex W 81	Labourers identification application.
86	21.05.1992	Ex. W 82	Copy of School Transfer Certificate of V.Gopal
87	09.08.2007 and 29.02.2008	Ex. W 83	Copies of Demand Drafts issued to V.Gopal by TNEB.
88	-	Ex. W 84	Statement containing work details of V.Gopal
89	-	Ex. W 85	Statement containing work details of V.Gopal
90	30.09.2006	Ex W 86	Copy of petty cash book in respect of payment made

<i>S.NO</i>	<i>DATE</i>	<i>Exhibits</i>	<i>DESCRIPTION OF DOCUMENT</i>
			to V.Gopal
91	04.01.2007	Ex. W 87(s)	Copy of work permit issued to V.Gopal by TNEB
92	22.06.1992	Ex. W 88	Copy of School Transfer Certificate of R.Venkatesan
93	10.03.1997	Ex. W 89	Copy of certificate issued to R.Venkatesan by Jr. Engineer O & M, TNEB. Arigilapadi.
94	-	Ex. W 90	Copy of certificate issued to R.Venkatesan by Jr. Engineer O & M, TNEB, Arigilapadi
95	28.05.1999	Ex. W 91	Copy of certificate issued to R.Venkatesan by Jr. Engineer O & M TNEB, Arigilapadi.
96	31.03.2000	Ex. W 92	Copy of certificate issued to R.Venkatesan by Jr. Engineer O & M, TNEB, Arigilapadi
97	04.01.2001	Ex. W 93	Copy of certificate issued to R.Venkatesan by Jr. Engineer O & M, TNEB, Arigilapadi
98	-	Ex. W 94	Copy of details regarding payment made to R.Venkatesan by TNEB.
99	-	Ex. W 95	Employment details of R.Venkatesan in TNEB.

EXHIBITS MARKED ON THE SIDE OF THE RESPONDENT/MANAGEMENT

<i>S.NO</i>	<i>DATE</i>	<i>Exhibits</i>	<i>DESCRIPTION OF DOCUMENT</i>
1	11.2.91	Ex.M-1	Extract of report of Hon'ble Justice V.Khalid
2	10.08.07	Ex-M-2	12(3) settlement entered between the unions and the Respondent
3	-	Ex.M-3	Extract of service regulations of the respondent
4	28.11.80	Ex.M-4	GO MS No 1117 prescribing ~qualifications for appointment
5	23.05.86	Ex.M-5	Board Proceedings No.38 of Respondent prescribing qualifications for appointment of post of helper

<i>S.NO</i>	<i>DATE</i>	<i>Exhibits</i>	<i>DESCRIPTION OF DOCUMENT</i>
6	07.09.95	Ex-M-6	Common Order in W.P. Nos 9901, 10032 and 10039/95 passed by Honble High Court of Madras and W.P.No.12869/91 and other batch passed by Hon'ble High Court of Madras.
7	09.01.08	Ex-M-7	Board proceedings No.9 regarding absorption of Contract Labourers
8	19.02.11	Ex-M-8	Board Proceedings No.3
9	06.01.12	Ex-M-9	Board Proceedings No.2 regarding absorption of Contract Labourers
10	25.10.12	Ex-M-10	TANGEDCO proceedings No.22 regarding absorption of Contract Labourers
11	10.08.15	Ex-M-11	Memo issued by TANGEDCO
12	24.06.14	Ex-M-12	Communication by the Superintending Engineer to M/s. Voltech Manufacturing Co Ltd for issuance of Contract for repairing of reconditioning of transformers
13	04.06.16	Ex-M-13	Communication from Asst. Executive Engineer to the Superintending Engineer CEDC/South.

Presiding Officer
Industrial Tribunal
Chennai-104.

Draft/ Fair Award
in
I.D.No.36/2007
Dt: 18.8.2017

.....

From
Thiru.A.Kanthakumar , M.L.,
Presiding Officer ,
Industrial Tribunal,
2nd Floor,City Civil Court Buildings,
Chennai-600 104.

To
The Secretary to Government
Labour and Employment Dept.,
Fort.St.George,
Govt. of Tamil Nadu,
Chennai 600 009.

I.T.R.No. /2017

Date: / 8 /2017

Honoured Sir,

Sub: Labour Industrial Tribunal, Tamilnadu, Chennai-
Dispute between the workmen and the
Management of Chairman, Tamil Nadu Electricity
Board, 800, Anna Salai, Chennai-2. - Award in
I.D.No 36/2007 – Forwarded.

.....

The award with 3 copies in the above dispute is herewith forwarded for
necessary action. The receipt of the same may kindly be acknowledged.

Yours faithfully,

Presiding Officer
Industrial Tribunal
Chennai-104.

I.D.No.36 of 2007.

Dated: 18.08.2017.

Award passed.

In the result, award is passed holding that the demand of the petitioner union is **not justified**. No costs.

P.O.

