

**(2008) 07 MAD CK 0103**

**In the Madras High Court**

**Case No :** Writ Petition No's. 37547 of 2005 and 12772 of 2006

Hindustan Petroleum Corporation Ltd. and Another

APPELLANT

Vs

Presiding Officer, Central Government Labour Court cum  
Industrial Tribunal and Others

RESPONDENT

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**Date of Decision :** 22-07-2008

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226  
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1), 21(4)  
Contract Labour (Regulation and Abolition) Central Rules, 1971 — Rule 25(2)  
Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 3  
Industrial Disputes Act, 1947 — Section 17B, 18(3), 2, 25T, 25U  
Tamil Nadu Shops and Establishments Act, 1947 — Section 2(3), 2(6)

**Citation :** (2009) 120 FLR 223 : (2009) 1 LLJ 425

**Hon'ble Judges :** K. Chandru, J

**Bench :** Single Bench

**Advocate :** G. Masilamani, AG and King and Patridge, for the Appellant; K.V. Ananthakrushnan, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

K. Chandru, J.—W.P. No. 37547/2005 is filed by the Hindustan Petroleum Corporation Limited (for short, "HPCL"), a Public Sector Undertaking, against the Award dated March 14, 2005 passed by the Central Government Industrial Tribunal cum Labour Court, Chennai (for short, "CGIT") in I.D. No. 311/2004 in granting relief of regularisation to the respondents 3 to 10 from the date of their alleged retrenchment with all attendant benefits including back wages quantified at 50%.

2. W.P. No. 12772/2006 is filed by eight workmen challenging the very same Award dated March 14, 2005 as well as the order dated September 19, 2005 made in I.A. No. 239/2005 and seeks for regularisation of their service from the date of completion of 480 days of service of their service, which was denied by the CGIT.

3. The writ petition filed by the Management of the HPCL was admitted on

November 21, 2005 and an interim stay was granted on the same day. Subsequently, when the workmen filed a petition for vacating the stay, this Court, vide order dated April 26, 2006, directed the HPCL to pay Rs. 6175/- to each of the workmen every month starting from October 2005 and that the arrears was to be made within a period of four weeks from the date of receipt of a copy of that order and if the workmen are not restored to duty on or before May 15, 2006, the HPCL was further directed to continue to pay monthly salaries in terms of Section 17B of the Industrial Disputes Act, 1947 (for short, "I.D. Act").

4. In view of the interconnectivity between these two writ petitions, the matters were taken up together and a common order is being passed.

5. Heard the arguments of Mr. G. Masilamani, learned Advocate General appearing for King and Patridge, representing the HPCL and Mr. K.V. Ananthakrushnan, learned Counsel appearing for the workmen and perused the records. For the sake of convenience, the Management is referred to as "HPCL" and the eight individual workmen are referred to as the "workmen".

6. It is the case of the workmen that they were engaged for cleaning toilets, house keeping, sweeping, maintaining the Lunch Room and bringing the lunch and tiffin to their offices at Egmore and Meenambakkam in Chennai and they have been working since the year 1989 in the case of four persons, in the case of one Vadivelu since 1985, in the case of one P.S. Iudayaraj since 1987, in the case of one A. Rajkumar since 1992 and in the case of one S. Egambaram since 1997.

7. The Government of India, vide their notification issued u/s 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (for short, "CLRA Act"), on and from December 9, 1976, prohibited employment of contract labour relating to sweeping, cleaning, dusting and watching of buildings owned or occupied by establishments in respect of which the appropriate Government under the CLRA Act is the Central Government. Subsequently, the Supreme Court in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], held that even though there is no express provision in the CLRA Act for absorption of the contract labour when engagement of contract labour stood prohibited on publication of the notification u/s 10(1) of the Act, from that moment the principal employer cannot continue contract labour and direct relationship between them and the principal employer gets established between the workmen and the principal employer and in that view of the matter, for any contract workman engaged in violation of provisions of the CLRA Act, they can get a direction to absorb the employee of the principal establishment.

8. Taking advantage of the said judgment, the workmen, who were engaged in contract by the HPCL at Bangalore, Bombay, Vishakapattinam and Mangalore filed wit petitions and it was allowed by the respective High Courts and those workmen have been i absorbed by the HPCL.

9. Similarly, the workmen through their Trade Union, by name, Petroleum

Workers Union, filed a writ petition being W.P. No. 12297/1998 before this Court and sought for absorption as direct workmen. Pending the writ petition, this Court, vide order dated August 18, 1998, granted an injunction not to terminate the services of the workmen. During the pendency of the writ petition, they also moved the authority under CLRA Act, viz., Deputy Chief Labour Commissioner (Central), Bangalore, under Rule 25(2)(V)(a) and (b) of the CL(R&A) Central Rules, 1971 seeking for payment on par with the workmen directly engaged by HPCL as the CLRA Act guarantees the same payment even if workmen were engaged as contract labour and the principal employer, by virtue of Section 21(4) of the CLRA Act was bound to make the payment. But the authority, by his order dated March 23, 2000, held that since neither the HPCL nor the so-called contractors were engaging more than 20 workers, the CLRA Act will not be applicable. Therefore, the only remedy available to the Union was to move the machinery to enforce the Government Order dated December 9, 1976 prohibiting contract labour.

10. The workmen did not pursue their remedy against the said order. In the meanwhile, HPCL charge-sheeted the Regional Secretary of the Trade Union (by name, R. Govindarajan), who was also an employee of the HPCL, by a Charge memorandum dated, December 28, 1999 for having taken the issue before the Deputy Chief Labour Commissioner claiming parity of wages for the contract workmen and also seeking for their absorption in a writ petition before this Court. Even though such an act was contemptuous, they proceeded with an enquiry and imposed a punishment of stoppage of two increments with cumulative effect vide order dated April 25, 2001. He was also transferred from Chennai to Vadalur in Cuddalore District (the punishment order was" marked as Exhibit W.98 before the CGIT).

11. In view of the punishment imposed on the Secretary of the Trade Union, the workmen, apprehending that their case may not be prosecuted properly, filed an impleadment petition being W.M.P. No. 63298/2002. This Court, by an order dated March 3, 2003, allowed the application and ordered the workmen to be impleaded as petitioners 2 to 9.

12. Subsequently, the judgment of the Supreme Court in *Air India Statutory Corporation v. United Labour Union* (supra) came to be overruled by a Constitution Bench of the Supreme Court in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, . The Notification dated December 9, 1976 issued by the Central Government abolishing contract labour was also set aside by the Supreme Court. The following passages found in paragraphs 125(3) to 125(6) and in paragraph 126 of the said judgment may be usefully reproduced as it will have a bearing on the present writ petitions:

125. (3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under

Sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

(4) We overrule the judgment of this Court in Air India case prospectively and declare that any direction issued by any industrial adjudicator/any Court including the High Court, for absorption of contract labour following the judgment in Air India case shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification u/s 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 ruse/camouflage to evade compliance with 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.

(6) If the contract is found to be genuine and prohibition notification u/s 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical, qualifications.

126. We have used the expression "industrial adjudicator" by design as determination of the questions aforementioned requires enquiry 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 the Industrial Tribunal/Court whose determination will be amenable to judicial review.

13. In the light of the later development of law, the writ petition filed by the workmen (W.P. No. 12297/1998) was dismissed with the following directions as

found in paragraph 18 of the said order:

In the result, the writ petition is disposed of" with the following observations:

(i) The third respondent/Union Government is directed to frame and refer the disputes between the workers and respondents 1 and 2 u/s 10 of the Industrial Disputes Act to the appropriate forum namely, Industrial Tribunal or the Labour Court at Chennai, within a period of four weeks from the date of receipt of a copy of this order.

(ii) The appropriate authority Industrial Tribunal/Labour Court shall proceed thereon to adjudicate the reference in accordance with law and pass an award within a period of four months from the date of receipt of the order of reference. The said authority is also directed to consider the mutual contentions independently without being influenced by any of the observations made in this order. The appropriate authority has to find out the real nature of the engagement of the petitioners/employees and the relief to which they are entitled to in accordance with law.

(iii) Respondents 1 and 2 are directed to retain the petitioners/employees in service on the same terms and conditions as on date, without prejudice to the contentions of both sides.

14. In view of the direction issued by this Court, the Central Government, vide its order dated February 19, 2004 referred the industrial dispute for adjudication by the CGIT, Chennai. The point for adjudication as mentioned in the order of reference reads as follows:

Whether the industrial dispute raised by Petroleum Workers Union against the management of Hindustan Petroleum Corporation Ltd. for regularisation of services of eight workmen as mentioned in the Annexure and also for other relief claimed in Writ Petition No. 12297/1998 is justified? If so, to what relief the concerned workmen are entitled?

15. It was thereafter, a Writ Appeal was filed against the order of the learned Judge in W.A. No. 627/2004. The Division Bench of this Court took note of the subsequent reference made by the Central Government and, therefore, declined to interfere with the order. But, however, it modified the continued retention of the workmen and paragraph 2 of the said judgment of the Division Bench reads as follows:

Having regard to the arguments of either counsel and having regard to the facts and circumstances of the case, we dispose of this writ appeal with a direction to the Central Government Industrial Tribunal cum Labour Court, Chennai to dispose of the industrial dispute referred by the Central Government in its reference dated February 19, 2004 within four months from the date of receipt of a copy of this order, after affording opportunity of hearing to either party. Pending the same, the eight members of the writ petitioner Union namely, 1. G. Sekar, 2. G. Karmegam, 3. J. Irudayaraj, 4. A. Rajkumar, 5. S. Egambaram, 6. K.

Vadivelu, 7. K. Williams and 8. S. Irudayaraj, who are respondents 2 to 9 herein, shall be paid the existing wages for a period of four months Should there be a delay in disposing of the industrial dispute, then either party can mention to this Court, apart from the making such request before the Central Government Industrial Tribunal cum Labour Court itself It is needless to mention that if the industrial dispute ends in favour of the workmen, then the appellants have to abide by the said award of the Industrial Tribunal cum Labour Court, and even if any appointment is made in place of the workmen in the meantime, they have to pave way for the induction of the respondents workmen....

(emphasis added)

16. It was thereafter, the CGIT took up the dispute as I.D. No. 311/2004 and issued notice to the HPCL. In the meanwhile, the workmen, without any necessity, moved the Central Government for an amendment of the reference by requesting that the individual workmen should also be made as parties to the dispute. But when they did not get any reply, they filed an application being I.A. No. 69/2004 before the CGIT seeking for impleadment of the eight workmen as petitioners in addition to the Trade Union. Though it was resisted by the HPCL, the CGIT allowed the said I.A. by an order dated July 14, 2004 and the workmen were also made as petitioners 2 to 9 in the said Industrial Dispute.

17. In the affidavit filed in support of the writ petition, in paragraph 7, a contention was raised that the impleadment of the workmen by the CGIT was erroneous and the HPCL reserved its right to challenge the said order at an appropriate stage meaning, after the Award was passed. In view of the said averment, the learned Advocate General argued that the CGIT has no power to implead any party and the dispute is only between the Trade Union and the Management and the individual workers have no right of say in collective industrial dispute. But, however, it is found from the prayer made in the present writ petition no such attack is made against the order dated July 14, 2004 made in I.A. No. 69/2004 and the certified copy of the I.A. order has also not been filed. Hence, they cannot be permitted to raise such an issue without proper pleadings. Even otherwise, u/s 18(3) of the I.D. Act, when an Award is binding on a party, the Tribunal has power to implead any party, who is proper and necessary to the dispute. The power of the Tribunal to implead a new party has been approved by the Supreme Court vide its judgment in *Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar, Orissa and Others*, .

18. In the present case, apprehending that the Union may not pursue the dispute, the workmen were allowed to come on record in the earlier writ petition filed before this Court. Further, the Union leader himself was charge-sheeted by the HPCL (as found in Exhibit W-98) for taking up the issue by the workmen herein. During the trial before CGIT, the trade Union had also remained ex-parte as found in paragraph 3 of the impugned Award.

19. A Division Bench of this Court vide its judgment in *The Special Officer of The*

Management of T.U.C.S. Ltd., Madras-5 Vs. S. Loganathan and D. Nampillai, upheld the right of the individual workmen to challenge an Award passed by the Industrial Adjudicator on the ground that the individual workers, who are aggrieved by the Award, are entitled to question it even in their individual capacity. Therefore, the objection raised by the learned Advocate General with reference to the impleadment of the workmen in the Industrial Dispute has to be necessarily overruled and it is accordingly, overruled.

20. Before the CGIT, on behalf of the workmen, three witnesses were examined as W.W. 1 to W. W.3 and 198 documents were filed which were marked as Exhibits W-1 to W-198. On the side of the HPCL, three witnesses were examined as M.W.1 to M.W.3 and 57 documents were filed which were marked as Exhibits M-1 to M-57. The CGIT, on an analysis of the evidence (both oral and documentary), came to the conclusion that the so-called contractors examined as M.W.2 and M.W.3 are fake and the contract entered into between them and the contractors M/s. T.M. Gurusamy M.W.3 and A. Kasper M.W.2 and P.S. Irudayaraj W.W.3 was sham and nominal and the workmen are employees of the HPCL. After having recorded the said finding, the CGIT held that the workmen are entitled for relief of regularisation from the date of their retrenchment with all the attendant benefits including 50% of the back wages.

21. Finding that the CGIT had not given full relief, the workmen filed I.A. No. 239/2005 before the CGIT and sought for correcting the error and also for directing their regularisation from the date of completion of 480 days" within a period of 24 calendar months. This was stoutly resisted by the HPCL. Thereafter, the CGIT, by an order dated September 19, 2005, dismissed the said I.A. holding that there was no error in the Award passed by it and if at all the Union is aggrieved, they will have to challenge the same before a higher forum. Therefore, the workmen have filed the writ petition being W.P. No. 12772/2006 as noted above.

22. The learned Advocate General, attacking the Award made the following submissions before this Court:

(a) The workmen were contract workers. Even in the pleadings in the writ petition filed before this Court, they have admitted that they were contract workers and, therefore, they cannot turn back and make an argument that the contract is sham and nominal;

(b) The workmen were continued in service by virtue of the interim order of this Court dated August 18, 1998 and, therefore, anything done after the said interim order cannot be taken note of for the purpose of deciding whether the contract is sham and nominal;

(c) Since the establishment of HPCL had not engaged more than 20 contract labourers and the contractors also have not engaged more than 20 contract labourers in terms of the CLRA Act, there is no prohibition for engagement of contract labour and there is no employer employee relationship between the

workmen and the HPCL;

(d) The fact that the HPCL paid Provident Fund contributions and ESI contributions to the workmen will not create any relationship between the workmen and the HPCL as under those two enactments, the obligation is on the principal employer to make contributions.

(e) The question of regularisation of the workmen will not arise as their entry into service was not proper and no Court can direct their absorption when their initial entry was improper; and

(f) The provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (T.N. Act 46 of 1981) will not apply to the HPCL.

23. It must be stated that the Division Bench, when approached by the HPCL, vide its order dated March 25, 2004, clearly directed that if the Industrial Dispute ends in favour of the workmen, then the HPCL should abide by the said Award. Even after getting such a direction, it is not fair for the HPCL to challenge the impugned Award before this Court.

24. In any event, the learned Advocate General submitted that in *L. Justine and Another Vs. The Registrar of Coop. Societies and Others*, this Court held that the back door entry of workmen cannot be permitted and the provisions of the T.N. Act 46 of 1981 cannot be pressed into service in such cases. The issue was also taken before the Supreme Court in *A. Umarani Vs. Registrar, Cooperative Societies and Others*, and the judgment of the Division Bench was confirmed. Learned Advocate General placed strong reliance upon paragraphs 39 and 40 of the said judgment to emphasis that those who came by back door should go through that door and that regularisation cannot give permanency to an employee whose services are: ad hoc in nature.

25. He also placed reliance upon the Constitution Bench judgment of the Supreme Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, to reiterate the very same point. It must be noted that even in *Secretary, State of Karnataka v. Uma Devi (supra)*, the Supreme Court in: paragraph 45, had observed as follows at p. 739 of LLJ:

36. ...A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned

knows the nature of his employment. It is not an appointment to a post in the real sense of the term....

Therefore, it is not as if the Secretary, State of Karnataka v. Uma Devi (supra) has prohibited employment of workmen in contract or temporary and it only states that while making regularisation, proper norms will have to be followed consistent with Articles 14 and 16 of the Constitution.

26. The learned Advocate General also referred to the decision of the Supreme Court in Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., and submitted that the rules of recruitment cannot be relaxed and the Court/Tribunal cannot direct regularisation to temporary employees dehors the Rules (See: page 430).

27. The learned Advocate General also referred to the judgment of the Supreme Court in Dena Nath and others Vs. National Fertilisers Ltd. and others, for the proposition that a contract labour employed does not become direct employee of the principal employer merely because the contractor does not hold any licence under the CLRA Act.

28. Considering these arguments, it must be stated that the Constitution Bench of the Supreme Court in the Steel Authority of India Ltd. and Ors. v. National Union Waterfront Workers and Ors. (supra) had categorically laid down in paragraphs 125-(3) to (6) and 126 (as extracted above), the parameters under which an industrial adjudicator can decide the claims of the workmen. In such cases, it was also held that in case of a sham and nominal contract, the employer cannot contend that it was still a contract and the Court has no power to order relief to such workmen. Therefore, that position of law has not been so far diluted in the subsequent pronouncement of the Supreme Court.

29. Though the learned Advocate General tried to contend that there is no statutory bar for engaging labour on contract and outsourcing is the modern trend in employment, it must be stated that under the existing law, there is limitations in doing so. The workmen in HPCL are governed by certified standing orders (CSO) framed under the Industrial Employment (Standing Orders) Act, 1946. In that CSO, there is no provision to engage any contract labour and Courts have held that any contract in violation of Certified Standing Orders will be void. (See: Western India Match Company Ltd. Vs. Workmen, ).

30. Further, "Unfair Labour Practice" in any forum is prohibited u/s 25-T of the I.D. Act and violation of which is punishable u/s 25-U of the said Act. The term "Unfair Labour Practice" is defined u/s 2(ra) read with V Schedule to the I.D. Act. Part I of the V Schedule lists out the Unfair Labour practices prohibited to be committed by an employer. Item No. 10 of Part I reads as follows:

to employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.

Hence, commission of such an unfair labour practice by the employer is prohibited by the I.D. Act. In this Award, the finding of the CGIT was that the work in which workmen were engaged was of a permanent and perennial in nature.

31. It must also be stated that the Supreme Court in U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others, referred to Secretary, State of Karnataka v. Uma Devi (3) (supra) and observed in paragraphs 11,16 and 17 and 19, which may be usefully extracted below at p. 1023 of LLJ:

Para 11: Learned Counsel for the appellant has relied upon the decision of this Court in Secretary, State of Karnataka and Ors. v. Uma Devi and Ors. (supra) and has urged that no direction for regularization can be given by the Court. In our opinion, the decision in Secretary, State of Karnataka and Ors. v. Uma Devi and Ors. (supra) is clearly distinguishable. The said decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution.

16. We are constrained to refer to the above decisions and principles contained therein because we find that often Secretary, State of Karnataka and Ors. v. Uma Devi and Ors. (supra) is being applied by Courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University (supra) and Bharat Petroleum Corporation Ltd. (supra), a little difference in facts or even one additional fact may make a lot of difference in the precedential value of a decision. Hence, in our opinion, Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Ors. (supra) cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Ors. (supra) inapplicable to the facts of that case.

17. In the present case the writ petitioners (respondents herein) only wish that they should not be discriminated against vis-a-vis the original employees of the Electricity Board since they have been taken over by the Electricity Board "in the same manner and position." Thus, the writ petitioners have to be deemed to have been appointed in the service of the Electricity Board from the date of their original appointments in the Society. Since they were all appointed in the society before May 4, 1990 they cannot be denied the benefit of the decision of the Electricity Board dated November 28, 1996 permitting regularization of the employees of the Electricity Board who were working from before May 4,1990. To take a contrary view would violate Article 14 of the Constitution. We have to read Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Ors. (supra) in conformity with Article 14 of the Constitution, and we cannot read it in a manner which will make it in conflict with Article 14. The Constitution is the supreme law of the land, and any judgment, not even of the Supreme Court, can violate the Constitution.

19. In the present case many of the writ petitioners have been working from

1985 i.e. they have put in about 22 years" service and it will surely not be reasonable if their claim for regularization is denied even after such a long period of service. Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of regularization and are made to face the same selection which fresh recruits have to face.

32. Very recently, {vide its judgment dated May 16, 2008), the Supreme Court in G.M. O.N.G.C, Shilchar v. O.N.G.C. Contractual Workers Union 2008 AIR SCW 3996 had reviewed the previous case laws and in paragraphs 11 to 18, the Court held as follows:

11. It will be seen therefore that each case has to be examined to a very large extent on its specific facts, and a universal yardstick should not be attempted.

12. In the instant case, on a consideration of material produced before it, the Tribunal came to the following conclusions:

(1) That there existed a relationship of master and servant.

(2) That there was no contractor appointed by ONGC.

(3) That the ONGC used to supervise and allot works to individual workers.

(4) That the ONGC took disciplinary action and called for explanations from the workers.

(5) The workers were paid wages though 35 they did not attend their duties due to Cachar Bandh and due to flood.

(6) The wages were paid direct to the workers by the ONGC and the acquaintance roll was prepared by the Management to make payment to the workmen.

13. It has also been observed that even the ONGC had admitted that since 1988, there was no licensed contractor and that the wages were being paid through one of the leaders of the Union and one such contractor, Manik has been named. The Tribunal then opined that it appeared from the record that Manik himself was a workman and not a contractor as he too was shown in the acquaintance roll to have received wages. We find that the real issue was as to the status of the workmen as employees of the ONGC or of the contractor, and it having been found that the workmen were the employees of the ONGC they would ipso facto be entitled to all benefits available in that capacity, and the issue of regularization would, therefore, pale into insignificance. We find that in this situation, the Industrial Tribunal and the Division Bench of the High Court were justified in lifting the veil in order to determine as to the nature of employment in the light of the judgments quoted above. We, therefore, find that the ratio of the judgment in Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Ors. (supra) would not be applicable and that the facts of UP. State Electricity Board v.

Pooran Chandra Pandey and Ors. (supra) case are on the contrary more akin to the facts of the present one.

14. We are therefore of the opinion that in the light of the aforesaid observations, Mr. Dave's argument that the workmen being on a contractual, were not entitled to any relief, cannot be accepted and the large number of judgments cited by Mr. Dave, on this aspect, cannot be applied to the facts of the case.

15. We have also considered Mr. Dave's argument with regard to the nature of the reference. We re-produce the reference as made:

Whether the demand of the ONGC "Contractual Workers" Union, Silchar on the management of ONGC, Cachar Project, Silchar for regularization of the services of the contractual workers is justified. If so, what relief are the workmen concerned entitled to?

Para 16: It is true that the underlined portion of the reference prima facie does give the impression that it pre-supposes that the workmen were contractual employees and the only dispute was with regard to the regularization of their services. It is equally true that the reference appears to have been rather loosely worded but as observed by the Industrial Tribunal and the Division Bench, both parties were aware of the real issues involved in the light of the protracted litigation and the efforts made during conciliation proceedings. The Division Bench has, thus, rightly observed that it was open to the Industrial Tribunal to have lifted the veil so as to determine the nature of the employment and the dispute between the parties and for that purpose to look into the pleadings and evidence produced before it.

17. In Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, , this is what the Court had to say at p. 431 of LLJ:

In our opinion, the Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the Conciliation Officer and it was certainly open to the Management to show that the dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else.

18. The pleadings in the present matter would show that the core issue before the Tribunal was with regard to the status of the employees as employees of the ONGC or of the contractor and that it was this issue simpliciter on which the parties went to trial. Mr. Dave's argument with regard to the decision of the

Tribunal being beyond the reference, is to our mind, and in the circumstances, hyper technical. In this background, we feel that the judgments cited by Mr. Dave pertaining to regularization of contract labour are not applicable to the facts of the case.

33. Therefore, the present issue will have to be decided in the light of the parameters indicated by the latest decision of the Supreme Court in O.N.G.C. Case (cited supra) which had taken note of all the contentions raised by the learned Advocate General. The sum and substance of the decisions are that if it is established that the workmen were employed directly by HPCL, even on temporary basis, they are eligible for regularisation provided it is shown that they have not come through any back door. One such back door entry as indicated in the decisions of the Supreme Court in A. Umarani v. Registrar, Co-operative Societies and Ors. (supra) and Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Ors. (supra) cases is not getting the names sponsored through the Employment Exchange.

34. Admittedly, the workmen were all either sweepers or scavengers or cleaners. u/s 3 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, any employment to do unskilled office work has been exempted from the purview of the said Act. It is also not shown that the workmen were not appointed by the appropriate authority.

35. A Division Bench of this Court in School Committee, Tilak Vidyalaya Higher Secondary School, Kallakurichi v. District Educational Officer, Tirunelveli 1991 TLNJ 1 has held that an Office Helper need not come through the Employment Exchange and his appointment cannot be considered to be in violation of the 1959 Act.

36. On the question of non-application of the Tamil Nadu Act 46 of 1981, as argued by the learned Advocate General, it must be stated that the HPCL is an establishment coming u/s 2(6) of the Tamil Nadu Shops and Establishments Act, 1947 (for short, "TNSE Act"). The term "Commercial establishment" found in the said sub-section is further defined in Section 2(3) of the TNSE Act which includes a clerical department of a factory or even a joint stock Company. HPCL is certainly covered by Section 2(6) read with Section 2(3) of the TNSE Act and, therefore, it is automatically covered by the provisions of the Conferment of Permanent Status to Workman Act, 1981. Such a contention with reference to a joint stock Company raised by the HPCL was rejected by this Court in S. Ramanathan Vs. Saroja Mills Ltd. and Others, . Even otherwise, the office at Egmore is the clerical wing of the HPCL storages which are registered under the Factories Act by HPCL. Therefore, the argument of the learned advocate General cannot be accepted.

37. Further, it must also be that the constitutional validity of the Tamil Nadu Act 46 of 1981 was upheld by the Supreme Court vide its judgment in State of Tamil Nadu and Others Vs. Nellai Cotton Mills Ltd. and Others, .

38. Once there is a valid State enactment providing for relief to such of those workmen deemed permanency to those who had completed 480 days" of service within a period of two calendar years then, such workmen getting permanent status cannot be questioned by any Management. Such conferment of permanent status to the workmen cannot be labelled as violation of Articles 14 and 16 of the Constitution. The effect of a local enactment conferring permanent status to workmen was never considered by any Court so far.

39. Therefore, the only point that will have to be decided in the present case is whether the findings of the CGIT in recording that the so-called contracts under which the workmen were engaged, were "sham and nominal". If the answer to the question is in the affirmative, then the workmen can have the benefit of the Award impugned in the writ petition.

40. As already stated, before the CGIT, a wealth of documents were filed by the workmen and oral evidence was also let in even by one of the so-called contractor, viz., the 10th respondent P.S. Irudayaraj, who had deposed that there was no contract between him and the HPCL and that he himself was rendering physical service to the HPCL. With regard to the other finding that the contract between the so-called contractors and the HPCL was only sham and nominal, the CGIT has held that the workmen in Bombay and Vishakapattinam who were doing similar work in the HPCL, were absorbed in those areas. As found in the G.M., O.N.G.C, Shilchar v. O.N.G.C. Contractual Workers Union (supra) case, this is a violation of Article 14 of the Constitution by the HPCL.

41. In the present case, the workmen have been working from 1989 till 1998 without any break and they were not under the control of the so-called contractors. The HPCL was directly supervising their work. It also held that the work was perennial since for any establishment, the up-keep of the establishment is important even though under law, there was no requirement of holding any licence for a contractor, who supplies labour. In the present case, the issue is slightly different wherein the workmen were directly engaged by the HPCL, who supervised the work and controlled all their activities.

42. Though the HPCL claimed that as the principal employer they have paid the EPF and ESIC contributions in each of the agreements with the so-called contractors, they have specified that the contractors must be responsible for the EPF and ESIC contributions. This was not adhered to. Further, it was the HPCL which forwarded all the applications for part-withdrawal of PF to the authorities and the so-called contractors never initiated any such move.

43. The contract made between the HPCL and W.W.3, M.W.2 and M.W.3 is clearly sham and nominal. The agreements produced before the CGIT show the nature of duties to be performed by the men supplied by the so-called contractor. There are many instances in which the same workmen were sent out for work with outside agencies such as Sales Tax Department, Government Secretariat and Book shops for getting stationery and books as if they are the office boys of the

HPCL and the scope of such work was never specified in the agreement. For doing such work, in some of the authorisation letters, the workmen were described as the staff of HPCL.

44. The contract agreements produced as exhibits show that it was for labour supply agreement. But in real term, the so-called contractor himself was doing the work. In one case, there was no other worker other than the alleged contractor himself was doing the work. This was spoken to by the alleged contractors who had deposed as W.W.2 and W.W.3.

45. It was also from Exhibits W.93 and W.94 that the payment of wages was directly paid to the workmen by the HPCL and signatures were obtained from them in the records of the HPCL. Though the said contract did not provide for any Bonus, such payments were made to workmen as found in the documents produced by the workmen. Except contending that the workmen were contract labourers and relying upon the so-called agreements, the HPCL did not acquit itself to show that they were proper agreements. On the contrary, the workmen's evidence both oral and documentary clearly shows that the contracts were mere sham and nominal. It was a finding of fact recorded by the CGIT and such findings cannot be assailed in a writ petition under Article 226 of the Constitution.

46. In this context, it is necessary to refer to the decision of the Supreme Court in *Workmen of English Electric Company of India Ltd., Madras Vs. Presiding Officer and Another*, . The relevant passage found in paragraph 8 of the judgment may be usefully extracted below at p. 347 of LLJ:

8....While it is a fact that the workmen had made tall claims which they had failed to substantiate, it was for the Tribunal and the High Court to appreciate the material on the record and decide as to which part of the claim was tenable. The finding of the Tribunal that 131 workmen had put in more than 240 days of work was arrived at on the basis of some evidence; it may be that better particulars and clear evidence should have been placed before the Tribunal. Quantum of evidence or appreciation thereof for recording findings of fact would not come within the purview of High Courts extraordinary jurisdiction under Article 226 of the Constitution....

47. The HPCL's contention was that the pleadings of the workmen were not consistent and before this Court they have stated that they were contract workmen. But in the light of the changing decisions of the Supreme Court, such pleadings will become inevitable. In the writ petition, they heavily banked on the *Air India Statutory Corporation v. United Labour Union* (supra). But the learned Judge, while directing the matter to be tried by the Tribunal, removed all misconceptions and directed the matter to be dealt with afresh. The learned Judge even recorded a finding that the order of the Deputy Chief Labour Commissioner under the CLRA Act does not help either side. Even the Supreme Court in *Steel Authority of India Ltd. and Ors. v. National Union Waterfront*

Workers and Ors. (supra) has indicated the parameters of decision making by the industrial adjudicators and hence, the matter will have to be dealt with afresh in the light of the said judgment.

48. In the present case, the role of HPCL in hounding out a Union General Secretary with a charge-sheet and a resultant punishment and a transfer to far off place for pursuing the case of the workmen and coupled with the fact that the Union remained ex-parte before the CGIT will only show that there was bound to be minor contradictions in the stand of the workmen. Their plight in this regard is understandable.

49. The HPCL never denied in their pleadings regarding the workmen in Mumbai and Vizag, who were similarly placed, were regularised in view of the Air India Statutory Corporation case (cited supra). In Industrial Law, the "region cum industry" principle is applicable and the HPCL, being an all India Organisation, cannot take shifting stand depending upon the region in which it operates. Considering that most of these workmen had continuously worked before the interim order for over ten years in a work which is perennial in nature, their demand for regularisation can never be termed to be illegal or unjust.

50. In the light of the above materials, the finding of fact rendered by the CGIT regarding the contract between the workmen and the HPCL being sham and nominal, the impugned Award is fully in consonance with the legal precedents referred to above. Further, the Tribunal, conscious of its power, had limited the back wages at 50% to be paid to the workmen.

51. But while ordering the regularisation only from the date of retrenchment, the CGIT did not keep in mind the relevant legal provisions, viz., the effect of the Tamil Nadu Act 46 of 1981, which guarantees permanency if a workman completes 480 days" of service within a period of 24 calendar months. Pending the adjudication of the regularisation issue, the HPCL could not have dispensed with the service of the workmen without getting prior approval from the CGIT u/s 33(2)(b) of the I.D. Act. Such violation by the HPCL will clearly make their non-employment void ab initio and the position of law in this regard has been well-settled by a Constitution Bench judgment of the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, . In that case, the Supreme Court has held in paragraph 14 that the workman need not challenge such a dispensation from service with any independent proceedings.

52. Therefore, the payment of salary for four months from March 25, 2004, viz., the date of receipt of the order of the Division Bench, cannot help the case of the HPCL. The Division Bench itself had stated that in the event of the workmen succeeding, the HPCL should abide by the Award. As held in the Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma and Ors. (supra), any termination pending the adjudication without approval u/s 33(2)(b) of the I.D. Act will become void ab initio. Therefore, the CGIT was wrong in directing regularisation only from the date of the retrenchment, viz., July 2004, and it

should be in accordance with the mandate of Tamil Nadu Act 46 of 1981, which is applicable to HPCL.

53. In the light of the above, the writ petition W.P. No. 37547/2005 filed by the HPCL will stand dismissed with costs. The cost is quantified at Rs. 1000/- to be paid to each of the workmen (respondents 3 to 10) towards the cost of litigation, which has been pending since 1998 for a period of ten years.

54. W.P. No. 12772/2006 filed by the workmen will stand allowed. The Award of the CGIT dated March 14, 2005 made in I.D. No. 311/2004 will stand modified to the extent indicated above. The workmen are entitled to get their regularisation from the date on which each of them had completed 480 days" of service within a period of 24 calendar months together with 50% of the back wages ordered by the CGIT.