
(2001) 04 MAD CK 0111

In the Madras High Court

Case No : Writ Petition No's. 18374, 18375 and 19135 of 1992

Raj Kumar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-04-2001

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10

Citation : (2002) 1 LLJ 1107

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : Hari Paranthaman, for the Appellant; Ganasekaran, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—All the above three Writ Petitions have been filed by different individual Petitioners as against the same Respondents No. 1 to 3 seeking for one and the same relief as against a common order dated September 25, 1989. The subject matter, the nature of Writ Petition and the relief sought for in all the three Writ Petitions being one and the same all the three Writ Petitions are heard together and this common order is passed.

For easy reference W.P. Nos. 19135 of 1992, 18374 of 1992 and 18375 of 1992 are respectively referred to herein after as the first, the second and the third Writ.

2. These Writ Petitions have been filed praying to issue a Writ of certiorarified mandamus calling for the concerned records from the file of the third respondent in B-1/8972/1988 (concerned with the first Writ Petition above), in B-1/9967/19S8 (concerned with the second Writ Petition above), in B-1 /, 11888/88 (concerned with the third Writ Petition above) and quash the common order dated September 25, 1989, and consequently direct the first and second respondents to employ the Petitioners as cleaners together with all attendant benefit with retrospective effect.

3. In the common affidavit filed in support of all the above Writ Petitions the Petitioners would trace the history of their case stating the first respondent was engaging cleaners on contract basis in catering services through different contractors in the course of which the Petitioners were appointed as cleaners-cum-maistries initially by one contractor Somasundaram who also gave them the photo identity card in the year 1982 endorsed by the Chief Catering Inspector and their contract continued upto April 31, 1984 in the Vegetarian Refreshment Stall, Madras Central Station : that subsequently they worked under two different contractors namely K.S. Rajarathinam and Rajkumar.

4. The Petitioners would further submit that since the wages paid to them were meagre, they got organized themselves into a trade union and each of the Petitioners became the office bearers and they started agitating against the award of contract system initiating action against the first and second respondents for violation of several provisions" of the Contract Labour (Abolition and Regulation) Act, 1970 : that since the subsequent contractors also did not pay the wages properly, the first respondent agreed to employ all the cleaners including the Petitioners but the same contract system continued having appointed one Sudharsan as a result of which they filed Writ Petitions before the Supreme Court of India in W.P. No. 19 of 1986 which was finally allowed giving direction to the Central Government to take action for abolition of contract labour in the cleaning work of catering establishments and pantry cars in Southern Railways within six months from the date of judgment February 4, 1987 further giving liberty to the first respondent on their own to abolish contract labour system and regularize the services of the Petitioners without waiting for an order from the Central Government: that further direction was also given for doing the cleaning work of Catering establishments and pantry cars by departmentally employing the petitioners in the same wages and conditions of work as applicable to those engaged in similar work in the Western Railways and that in case of any dispute regarding their employment by the contractor shall be decided by the third respondent and the parties could seek further directions if required, from this Court.

5. The petitioners alleged that they were made to serve under several contractors who did not pay the wages properly to the workmen as a result of which they had to file such applications before the third respondent Authority from time to time claiming wages : that initially there was a contractor by name K.S. Rajarathinam who did not pay the wages for a period from February 1, 1984 to January 31, 1985 : that subsequent to him there was one Ismail as the contractor who also did not pay the wages for November and December 1985 and ultimately one A.K. Sudarsan took over as the contractor and the petitioners" services continued with the new contractor who issued them the identity slips and it was during his tenure they filed the Writ Petition in the Apex Court seeking abolition of the contract system : that for non-payment of wages by these contractors a petition was filed, before the third respondent in P.W. No. 49 of 1986 and by an order dated April 2, 1987 an award was passed for a total

sum of Rs. 1,79,414.20 for the period from January 1, 1986 to February 3, 1987.

6. The petitioners would further submit that even while the case was pending before the Supreme Court, the first respondent arbitrarily extended the contract of A.K. Sudarsan with effect from January 1, 1987 and the contractor did not choose to appear in their application in P.W. 49 of 1986, but however the third respondent directed the first respondent to pay their wages directly instead of through the said contractor.

7. The further case of the petitioners is that after the judgment of the Supreme Court the Central Government abolished the employment of contract labour in the work of cleaning in catering establishments and pantry cars of the Railways by a notification dated July 28, 1987 : that in the meanwhile the respondents No. 1 and 2 prepared a list of contract labour for the purpose of absorption and issued an office order dated nil, 1987 wherein only 79 names were mentioned and the names of the petitioners and several others were not found therein : that on repeated representations made to the first respondent, since there was no reply the petitioners filed applications before the third respondent who by the common impugned order dated September 25, 1989 rejected the claim of the petitioners on ground that they were not eligible to have the benefit of the Supreme Court judgment: that only challenging this order passed by the third respondent the petitioners have filed the above Writ Petitions alleging that the said order is wholly illegal, unjust and liable to be interfered with by this Court.

8. In the counter affidavit filed on behalf of the respondents No. 1 and 2, they would submit that the third respondent on elaborate enquiries, passed the impugned order dated September 25, 1989 holding that these petitioners were not employed as catering cleaners on that date: that the Supreme Court in its order dated February 4, 1987 in W.P. No. 19 of 1986 gave certain directions in accordance with which these respondents constituting a Screening Committee accorded temporary status for those cleaners who were previously working under the contractors and since the names of the petitioners were not found in the records they were not considered for screening: that it is only challenging the non-consideration of the petitioners they initiated proceedings before the third respondent who rightly dismissed their applications : that following the directions of the Supreme Court the Southern Railway Administration initiated actions to abolish the engagement of contract labour for cleaning in catering establishment from April 1, 1987 and to engage such of those cleaners who were on the rolls of the contractors on the date of judgment departmentally employing them in the same wages and conditions of service on par with those engaged in similar work in the Southern Railways.

9. The respondents would also submit that to their reliable information the petitioners in the first and third Writ Petitions above have been terminated by the contractor A.K. Sudarsan long prior to the Judgment of the Supreme Court and that the petitioner in the second Writ Petition above was terminated in the same manner by the contractor K.S. Rajarathinam from December 10, 1984 and

therefore on the date of judgment rendered by the Supreme Court of India, the petitioners were not on the rolls and their services had already been terminated by the contractors and as such they are not eligible for being absorbed; that in appreciation of the evidence placed on record the third respondent duly rejected the petitions filed by the Writ Petitioners. The respondents would also submit that the petitioners in the first and third Writ Petitions above namely Rajkumar and Indukumar were caught for unauthorized hawking in connivance with the Railway cook and were fined to Rs. 10/- each by the Metropolitan Magistrate and on being appraised of the same to the contractor A.K. Sudarsan, they were terminated on November 17, 1986. The respondents would further repeat that the cleaners who were engaged by the contractors were departmentally absorbed and engaged as casual labourers on daily wages from April 1, 1997 following the same procedure in respect of all catering units of the Southern Railways : that since the Writ Petitioners' names were not on the rolls at the time of abolishing the contract system they were not considered for being engaged departmentally.

10. During arguments the learned counsel appearing for the petitioners would submit that the crucial date for decision as to whether one is actually in service and on the rolls was taken as April 1, 1987 for absorbing labourers : that the finding of the lower Court was that the petitioner in the second Writ Petition was not employed after December 10, 1984 and the petitioners in the first and third Writ Petitions above were not employed after November 14, 1986 and therefore held that they were not eligible for being absorbed and rejected their applications.

11. The learned counsel would point out that it was V. Chinnathambi, the second Writ Petitioner herein who filed W.P. No. 19 of 1986 on the file of the Supreme Court under Article 32 of the Constitution of India, that year after year there was no dispute and the petitioners were not paid their due wages in accordance with the Minimum Wages Act: that on behalf of the petitioners many documents were placed before the third respondent, Deputy Commissioner, who did not consider them properly: that it is Section 10 of the Contract Labour (Regulation and Abolition). Act, 1970 which is relevant in consideration which deals with the prohibition of employment of contract labour and the same is incorporated in the judgment of the Supreme Court : that the Deputy Commissioner's Order is perverse, since none of the exhibits was considered by the Authority that in the year 1984 one K.S. Rajarathinam was the contractor and in the year 1985 he was replaced by one Ismail: that in the subsequent year 1986 it was one A.K. Sudarsan who was the last contractor and then the contract labour system was abolished in accordance with the directions of the Supreme Court in the Southern Railways: that nearly 300 workmen were absorbed in the entire Southern Railways: that in the Central Railway Station, Madras, 79 cleaners were absorbed : that the issue before this Court is of three cleaners who were not absorbed.

12. Citing the copy of the identity slip issued by the contractor A.K. Sudarsan in

favour of the petitioner in the second Writ Petition above, the learned counsel would point out that it is clearly given therein that this is valid from January 1, 1986 : that on January 7, 1986 this petitioner in order to draw the attention of the public towards the irregularities of the Southern Railway Administration climbed atop the flood light tower of the Nehru Stadium thus protesting against the stopping of all the cleaners from their routine work by the contractor A.K. Sudarsan: that in the talks held in the evening that day by the Southern Railway Administration agreed to employ all the cleaners including these petitioners from the next day: that there is no whisper about all these in the impugned order.

13. The learned counsel further reminding that the principal employer of the petitioners is the Railways, would then extract the following passage from the common order passed by the Deputy Commissioner, Labour as to the point for consideration:

"Now going to the merit of the case the only issue involved is whether the applicants have been employed by the opposite party through a contractor to do the cleaning work in their catering establishments at Madras Central Railway Station or not ?"

14. The learned counsel would then recite the conclusions arrived at by the third respondent in his common order so far as it pertains to the petitioners, wherein he would ultimately end up holding that the petitioners were not employed as catering cleaners as on February 4, 1987, that was on the date of delivery of the judgment by the Supreme Court in W.P. No. 19 of 1986.

15. The learned counsel would then point out the letter dated December 10, 1984 addressed to the first respondent, The Chief Commercial Superintendent by Contractor K. S. Rajarathinam and say that it is not a dismissal order, but only a communication of certain facts regarding the petitioner in the second Writ Petition and another to the effect that all the petitioners were dismissed from the cleaning contract work for disobedience, besides complaining on their irregularities in their duties, further ensuring smooth and efficient performance of their contract work in future. The learned counsel would further point out that infact K.S. Rajarathinam filed a suit in O.S. No. 94 of 1985 on the file of the XI Assistant City Civil Court, Madras : that K.S. Rajarathinam's period ended in January 1985. The learned counsel would then cite from the judgment of the Supreme Court expressing satisfaction of the functioning of the cleaning catering establishments and pantry cars. The learned counsel continuing to argue would further submit that as far as contractor A.K. Sudarsan is concerned, he was operating from January 1986 : that the petitioners have claimed wages upto December 1985 : that since the contractor Ismail also did not pay the wages for November and December 1985 actions were initiated by the petitioners : that so far as the case of the second Writ Petitioner above is concerned, the third respondent pointed out that he got dismissed from the service by contractor K.S. Rajarathinam on December 10, 1984 and that he was not in service on the cut off date and therefore concluded that he was not entitled to the relief.

16. On behalf of the petitioners, the learned counsel would question whether this contractor K.S. Rajarathinam paid the wages to all the labourers for November and December 1984 and January 1985. The answer is in the negative. Hence the petitioners and others filed Payment of Wages case in proceeding P.W. No. 31 of 1985 before the Competent Authority under the Payment of Wages Act : that the Deputy Commissioner allowed the petition of all the workmen including that of the petitioner in the second Writ Petition above inspite of objection that he was terminated by the contractor on December 10, 1984 and this was for the period of November and December 1985. The learned counsel would question if he had been dismissed from service, he would not have been permitted to draw the wages subsequent to December 10, 1984 that is for November and December 1985 as it had been ordered by the Competent Authority : that the next contractor Ismail also did not pay the wages and therefore claiming for that period P.W. No. 37 of 1986 was filed and that was also allowed : that as per the Schedule II to the quantum of wages to the workmen admittedly the petitioners in the first and third Writ Petitions were in service upto November 17, 1986 ; that so far as the case of the petitioner in the second Writ Petition above is concerned, he was not at all terminated and the letter of correspondence in between contractor K.S. Rajarathinam and the Railway Authority cannot be taken as a termination order based on which no conclusion could be arrived at : that the City Civil Court went through this letter in O.S. No. 94 of 1985 for restraining V. Chinnathambi in the O.P. No. 1 filed by the contractor K.S. Rajarathinam and found that this petitioner was employed by the subsequent contractor Ismail and A.K. Sudarsan and therefore the contents of the telegram that this petitioner V. Chinnathambi was terminated from service is totally wrong: that if the Authority had considered the relevant materials placed on record this petitioner would have got the relief: that the evidence placed in Ex. A.4 is the order of the Authority passed in the petition filed under Payment of Wages Act, wherein it is revealed that the petitioner in the second Writ Petition was in employment in December 1984 and January 1985 and the same inspite of having been pointed out to the Authority, it was not at all considered, likewise Ex. A.5 is the order passed by the Deputy Commissioner in P.W. No. 37 of 1986 this was also not considered by the Authority; that Ex. A.6 is the order passed against the contractor A.K. Sudarsan in P.W. No. 49 of 1986: that the case of the petitioners therein is that A.K. Sudarsan did not pay five months wages which had also been considered by the Supreme Court in its judgment, but the same was not considered by the Authority : that a deposit of Rs. 1,20,914/- had been made and all the petitioners names in the above Writ Petitions figure in the list of the names of the contract labour entitled for the wages along with 33 others.

17. The learned counsel would point out that the Exs. A.1, A.11 to A.14 are the identity cards : that it could be seen that without paying the wages to the labour the contractor A.K. Sudarsan was absconding from August 1986 and his whereabouts were not known as it comes to be known by affidavit filed by the petitioner in the second Writ Petition above: that on November 17, 1986 there

was no contractor at all, since the last contractor A.K. Sudarsan was also absconding and therefore there was nobody to issue any identity card or even termination order; that inspite of having received the wages from January to June 1986 when the contractor A.K. Sudarsan was himself absconding how could he terminate the services of the petitioners is the big question that is to be answered by the respondents: that the Supreme Court says that on February 4, 1987 all the contract labour employed with the previous contractor have to be absorbed.

18. The learned counsel would end up his argument with the note that absolutely there was no consideration of the materials placed before the Authority and hence his order is perverse. Had the Authority properly considered those documents, he would have passed orders for absorbing these petitioners also.

19. In reply the learned counsel appearing on behalf of the respondents would admit that it was the railways which employed catering cleaners through individual contractors and that the Supreme Court passed orders quashing the contract labour system and gave directions to absorb those who were serving under the erstwhile contractors on the date of delivery of the judgment: that it is further true that W.P. No. 19 of 1986 had been filed by some of the employees working under the contractors before the Supreme Court pertaining to the contract labour of the Madras Central Station and this was allowed on February 4, 1987 : that the prayer therein was to abolish the contract labour system and appoint them as regular Railway employees that the directions were also given to the Central Government by the Supreme Court regarding the absorption of the erstwhile employees under the Contract Labour System as the Railway employees for the Railways concerned to carry out the directions: that accordingly the Central Railway Station Authorities identified 79 cleaners who were employed through contractors and absorbed them as the Railway employees that five persons including these three Writ Petitioners who were not absorbed approached the Labour Court stating that they were also employed through the contractors, but not absorbed and praying for a direction to absorb them also as the Railway employees that out of five, the Labour Court identified one Kalimuthu and another Kathirvelu who have been qualified for appointment and directed the Railways to absorb them, further rejecting the plea of the three Writ Petitioners herein : that the petitioner in the second Writ Petition was terminated on December 10, 1984 by his contractor K.S. Rajarathinam that the other two Writ Petitioners in the Writ Petitions 1 and 3 above were also terminated from their services on November 14, 1986 on account of the punishment awarded by the Magistrate and therefore they were also not identified : that the date of judgment of the Supreme Court i.e. February 4, 1987 was crucial and the Railways identified 79 persons rejecting the five persons on ground that they were not working on February 4, 1987 based on the identity cards issued by the contractors. The learned counsel would end up his arguments citing two judgments delivered in State of Haryana and Others Vs. O.P. Gupta, etc., : and State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad

Singh and Others, :

20. So far as the first judgment cited above is concerned it is regarding the arrears payable on notional promotion wherein the Supreme Court directed the Department to prepare fresh seniority list strictly in accordance with the rules ignoring any inconsistent administrative instructions: that a fresh seniority list has been prepared accordingly and thereafter in absence of any specified direction in that behalf eligible persons were given notional promotion from the deemed date. It was held that in such circumstances the said promotees were not entitled to arrears of pay from the deemed date to the date of their posting in promotional posts as they had not worked during that period. No pay for no work.

21. In the second judgment cited above, it is held that the judicial review under Article 226 of Constitution of India could not be converted into an appeal, since it is not against the decision but it is confined to the examination of decision making process: that the issues raised in judicial review is whether a decision is vitiated by taking into account irrelevant or neglecting to take into account of relevant factors or is so manifestly unreasonable that no reasonable authority, entrusted with the power in question could reasonably have made such a decision, the judicial review of the decision making process includes examination, as a matter of law, of the relevance of the factors.

22. In consideration of the pleadings by parties, having regard to the materials placed on record and upon hearing the learned counsel for both what conies to be known is that, that the unsuccessful petitioners before the third respondent, Deputy Commissioner of Labour, Madras, to get themselves inducted into the services of the Southern Railways as catering cleaners as per common order dated September 25, 1989 passed by the said Authority have come forward to file these Writ Petitions. In the common order, from out of five applicants, the third respondent Authority gave the relief for two, rejecting for these three Writ Petitioners resulting in the petitioners resorting to file these Writ Petitions praying to issue a Writ of certiorarified mandamus calling for the records from the file of the third respondent and to quash the common order dated September 25, 1989, consequently directing the first and second respondent to employ the petitioners as cleaners together with all attendant benefits with retrospective effect.

23. Tracing the history of the case of the petitioners as brought forth in their respective petitions, documents displayed and through the arguments of the counsel what is disclosed is that in the system of contract labour that prevails in the Railways, though the respective Railways were considered to be the principal employer they appointed contractors through whom the Railways engaged cleaners on contract basis in their catering services wherein number of persons like the petitioners were appointed as cleaners-cum-maistries. Likewise, the first respondent, Southern Railways, also engaged the petitioners and such others numbering 84 as cleaners-cum-maistries initially through a contractor namely Somasundaram in the year 1982 issuing them the photo identity cards endorsed

by the Chief Catering Inspector of the Railways and the said contractors tenure having come to a close on April 31, 1984, two other contractors namely K.S. Rajarathinam and Rajkumar were recognized by the first respondent as a result of which the petitioners and such other employees engaged in the capacity of cleaners-cum-maistries were made to serve under them. After the tenure of these two contractors one Ismail became the contractor followed by one A.K. Sudarsan, who is said to be the last of such contractors employing the labourers and these contractors during their respective tenures issued the photo identity cards to the employees and since the service conditions of the employees of such nature serving as cleaners in the catering section of the Southern Railways of Madras Central Section and in the pantry cars were not well taken care of by the said contractors engaged by the first respondent, Southern Railways, the petitioners filed W.P. No. 19 of 1986 in the Supreme Court under Article 32 of Constitution of India praying for abolition of the contract labour system and further directing the first respondent principal employer to absorb them in the services of the Southern Railways as Government Servants: that the Supreme Court in its judgment dated February 4, 1987 rendered in the said W.P. No. 19 of 1986, not only allowed the said W. P. but also directed the Central Government to take appropriate action u/s 10 of the Contract Labour (Regulation and Abolition) Act, prohibiting the employment of contract labour engaged in the cleaning catering establishments and pantry cars in the Southern Railways within six months from the date of its judgment, further giving liberty to the Southern Railways on its own to abolish the contract labour system and to regularize the services of those employed in the said capacities, thus enabling the work of cleaning catering establishments and pantry cars to be done departmentally by employing those workmen who were previously employed by the contractors of the same wages and conditions of work as are applicable to those engaged in similar work by the Western Railways. The Honourable Supreme Court was also pleased to indicate that any dispute arising out of non-employment of any individual workman shall be decided by the Deputy Commissioner of Labour, Madras and to seek further direction if any from the Madras High Court.

24. On the part of the respondents it would be submitted that in accordance with the directions of the Supreme Court appointing a Screening Committee they identified those workers whose names were found in the records of the erstwhile contractors, rejecting those names who were not found in the records for giving temporary status, thus identifying 79 employees who were on the rolls of the contractors on the date of judgment, departmentally employing them in the same wages and conditions of service as applicable to those engaged in similar work in the Western Railways. The second respondent would express his inability to absorb the petitioners since the petitioner concerned with the second Writ Petition above was terminated from, service as early as on December 10, 1984 by contractor K.S. Rajarathinam and the other two Writ Petitioners concerned with the Writ Petitions 1 and 3 above were also discharged on November 14, 1986 by contractor A.K. Sudarsan and therefore since their names were not

found in the rolls on the date of delivery of judgment by the Supreme Court on February 4, 1987, they were not absorbed in the services of the Southern Railways as cleaners. The respondents would further contend that the third respondent, Deputy Commissioner of Labour, Madras, also concurred with their view and rightly concluded that they were not eligible to be inducted into the services of the Railways since their services were terminated long prior to the cut off date.

25. A careful perusal made into the order passed by the third respondent, Deputy Commissioner of Labour, Madras, would reveal that the service of the petitioner in the second Writ Petition above was terminated as early as on December 10, 1984 for disobedience and negligence in duties by the then contractor K.S. Rajarathinam as per Ex. R. 1 and that he was not working through any contractor thereafter as catering cleaner much less on February 4, 1987 the cut off date and that the two petitioners in the Writ Petitions 1 and 3 above since got convicted for misappropriating the properties of Southern Railways as per Ex. R. 5, they were also discharged by contractor A.K. Sudarsan as on November 14, 1986 and therefore all the three petitioners herein having not been in service as on February 4, 1987, the third respondent had arrived at the conclusion that all the petitioners herein were not employed as catering cleaners as on February 4, 1987.

26. On the contrary the case of the petitioners is that neither Ex. R. 1 cited by the third respondent in his common order is an order of termination as to be relied on for the allegation that the petitioner in the second Writ Petition above had been terminated from the service on December 10, 1984 by contractor K.S. Rajarathinam nor Ex. R. 5 relied on by the third respondent that the other two petitioners were convicted by the Court for misconduct and on account of which their services were also terminated as on November 14, 1986 by the then contractor A.K. Sudarsan and thereafter they were not at all employed in the services of the contractors are not at all true, nor the same substantiated. The petitioner's contention is that the learned Deputy Commissioner of Labour, Madras, did not at all look into any document filed on the part of the petitioners nor has there been any discussion held by the Authority on such vital documents placed before him on the part of the petitioners and the conclusions reached by the third respondent in the cases of the petitioners herein were perverse.

27. In these circumstances the point for determination in all the above three Writ Petitions is whether the common order passed by the third respondent so far as it is concerned with these Writ Petitioners is not sustainable in law and whether the conclusion arrived at are perverse?

28. The Petitioners would not only deny that there had been termination order passed on December 10, 1984 against the petitioner in the second Writ Petition above and a similar termination order passed against the other two petitioners in the Writ Petitions 1 and 3 above on November 14, 1986 and that they were not at all engaged thereafter in the services of the respondent through the

contractors: that so far the petitioner in the second Writ Petition above is concerned that the identity slip had been issued in favour of this petitioner by contractor A.K. Sudarsan which is valid from January 1, 1986 and it is wrong on the part of the respondent Nos. 1 and 2 to say that the services were terminated on December 10, 1984 by contractor K.S. Rajarathinam never to resume thereafter, nor the letter dated December 10, 1984 written by contractor K.S. Rajarathinam to the Railway Authority is the termination order, but it is only a communication containing false allegations and in spite of the letter produced before the third respondent marking the same as Ex. R. 1 having been vehemently attacked by the petitioner in the second Writ Petition above, taking it as termination order the third respondent had arrived at the wrong conclusions. It would further be contended on behalf of the other two petitioners also that it is wrong on the part of the third respondent to have concluded that their services had also been terminated from November 14, 1986 by contractor A.K. Sudarsan, since they were convicted by the Magistrate's Court for misconduct. It would be brought to the notice of this Court that these two petitioners were proceeded against for selling catering items without being permitted by the contractors and therefore they were sentenced to pay the fine of Rs. 10/- each, but at the same time, it is not correct to say that their services were terminated and they were not absorbed by the contractors thereafter which is a wrong conclusion arrived at by the third respondent absolutely bereft of any evidence.

29. Further, it would be pointed out by the learned counsel appearing on behalf of the petitioners that since contractor K.S. Rajarathinam did not pay the wages to the labourers from November and December 1984 and January 1985, the petitioners and other employees filed applications under the Payment of Wages Act against him in P.W. No. 31 of 1985 before the Competent Authority and the said Authority allowed the petition of all the workmen including that of the petitioner in the second Writ Petition above: that since this was for the period of November and December 1984 and for January 1985, it is wrong to say that the services of the petitioner in the second writ petition above service was terminated on December 10, 1984 and he was not in the service of the contractor thereafter. Likewise, the new contractor Ismail also did not pay the wages resulting in the petitioners and others filing P.W.No. 37 of 1986 which was also allowed by the Competent Authority wherein the petitioners in the first and third Writ petitions above were the applicants: that the order of Authority passed in Exs. A.4 and A.5 would reveal that these petitioners continued to be employed even after the alleged date of termination of the service which were not at all considered by the Authority below. It is Ex. A.6 wherein the order had been passed by the Authority against the contractor A.K. Sudarsan in P.W. No. 49 of 1986 for non-payment of five months wages for all the petitioners therein which had been considered by the Supreme Court in its Judgment, but not by the Authority below: that in consequence of this order under Ex. A.6 the contractor A.K. Sudarsan also deposited an amount of Rs. 1,20,914/- as the arrears of wages and in the list of names of the contractor the names of all the petitioners

herein find place and therefore the contentions put forward on the part of the respondents to the effect that the petitioner in the second Writ Petition above and the other two petitioners in the first and the third Writ Petitions above were respectively terminated from the service of the Railways by the contractors on December 10, 1984 and November 14, 1986 is without any basis or proof. All these vital factors have not at all been considered by the third respondent in his order and simply relying on Exs. R. 1 and R. 5 wrong conclusions have been arrived at by the Authority below. Pointing out Exs. A1, A11 to A14, identity cards placed before the lower Authority, it would be argued on the part of the petitioners to the effect that none of these documents have been either taken up for discussion or considered in the manner expected by law by the Authority below prior to arriving at the conclusions: that the petitioners were not employed by the contractors on the crucial date of delivery of Judgment by the Supreme Court and therefore, no doubt that the conclusions arrived at by the third respondent in the cases of petitioners herein is perverse, untenable and unsustainable in law. It would be still interesting to note that, 1 the last contractor A.K. Sudarsan without paying the wages to the employees was absconding for quite sometime and there was none to issue even the identity cards : that in spite of receipt of wages from January to June 1986 as per the orders of the Competent Authority and when the contractor A.K. Sudarsan himself was absconding how could the termination of services of the petitioners as reported on the part of respondents No. 1 and 2 could be accepted by the lower Court which is totally unfounded is the valid argument advanced on the part of the petitioners. Moreover, even taking for granted that the petitioners in the Writ Petitions 1 and 3 above for certain irregularities committed in violation of the rules were proceeded against and were sentenced to pay an amount of Rs. 10/- each as fine, this being a petty punishment and petty fine such of the punishments cannot be a stigma in the service of an employee and therefore the third respondent should have considered such vital aspects prior to arriving at such conclusions that the petitioners were not employed on the cut off date of February 4, 1987.

30. All the confusions have been caused in the implementation of the directions of the Supreme Court abolishing the contract labour system and absorbing those who were employed by the erstwhile contractors as the employees of the Southern Railways as Cleaners in the Catering Department and the Pantry Cars since the method of identification of such labourers based on identity cards issued by the previous contractors was faulty. Evidence is available in abundance on materials placed before the Deputy Commissioner of Labour that no uniform policy had been adopted by the contractors in the issue of identity cards nor does it seem that they have conducted any enquiry on any of the irregularities or misconducts alleged to have been indulged in by the employees engaged as contract labour to work as Cleaners in the Catering Section and the Pantry Cars of the Southern Railways. For instance, the services of the petitioner in the second Writ Petition are said to have been terminated by contractor

Rajarathinam from November 10, 1984 which was rather a dismissal from service for misconduct, but no enquiry seems to have been conducted nor is it alleged either, much less placing material evidence for the same. Since such serious allegations of dismissal from service, creating stigma to the employee, a full-fledged enquiry is a must as per the settled law. But nothing of that sort had either been admittedly done or even the order of dismissal was placed before the Deputy Commissioner, Labour and citing a letter addressed to the Railway Authorities in which certain remarks are passed by the contractors against this petitioner, blunt conclusions have been arrived at by the Deputy Commissioner, Labour to the effect that these petitioners had been dismissed from service by the contractor Rajarathinam for serious misconduct, which is a begging evidence. Moreover, this theory of termination of services of this petitioner from December 10, 1984 onwards is falsified by the issue of the Identity Card valid from January 1, 1986 by the Contractor A.K Sudarsan in favour of this petitioner and his name finding place in the Wage List. Therefore, this Court wonders as to how the Deputy Commissioner, Labour, inspite of such vital documents placed on record, was able to arrive at the conclusion that the petitioner in the second Writ Petition was terminated from service by the contractor from December 10, 1984 onwards and therefore he was not found in the rolls on the date of passing of the Judgment of the Supreme Court.

31. Likewise, even in the case of the petitioners in the Writ Petitions 1 and 3 above, though it is stated that their services have been terminated from November 14, 1986 on account of their conviction and sentence to pay a fine of Rs. 10/- each by the Criminal Court, no domestic enquiry seems to have been held nor even a show-cause notice issued seeking explanations from these petitioners based on such convictions said to have been passed by the Criminal Court. Even in the cases of these petitioners, blunt conclusions have been arrived at to terminate their services by those contractors based on a petty fine collected from them on a petty offence of selling eatables in the platform without having identity cards to do so. In fact, a full-fledged domestic enquiry should have been conducted based on the allegations with due opportunity for the petitioners being heard. But, since under the contract labour system no such enquiries have been held, based on mere allegations, no definite conclusions could be arrived at. Moreover, when the allegations of the petitioners that even for the work extracted, the contractors were not in the habit of effecting regular payments and they have, to move the authority every now and then and that the last contractor Sudarsan was absconding without paying the due wages to the employees and ultimately as per the order of the Labour Court, he remitted a sum of Rs. 1,79,414-20 for the period from January 1, 1986 to February 3, 1987 and the wage list pertaining to this shows the names of all the workers thereby proving that all the petitioners were in the service of the said contractor up to February 3, 1987 and while such plain facts have been placed before the respondent, how the third respondent was able to arrive at the conclusion that the services of the petitioner in the second Writ Petition were terminated by the

previous contractor from December 10, 1984 and the services of the other two petitioners were terminated from November 17, 1986 and that on date of the delivery of the Judgment by the Supreme Court on February 4, 1987, they were not employees of the former contractors is not known. Therefore, under no circumstance, the Deputy Commissioner, Labour could have arrived at the conclusion that the petitioners were not working on February 4, 1987 under the previous contractors based on the test of issuance of the identity cards which had not been done regularly by the contractors.

32. These bare facts placed before the third respondent had neither been taken up for discussion nor considered in the right angle so as to arrive at valid conclusions and therefore the conclusion arrived at by the third respondent that these petitioners were not employed by the former contractors on the date of the judgment of the Supreme Court is nothing but perverse and the said becomes liable only to be quashed as prayed for on the part of the petitioners in all the above Writ Petitions.

33. Under the contract labour system that was in vogue during the relevant point of time with which these Writ Petitions are concerned, nothing seems to have been going well with the system of appointment, continuance and conditions of service including issuance of the identity cards by the contractors appointed by the respondents 1 and 2 as a result of which not only the employment and the service conditions of these catering labourers were in shambles, but also they were not even paid for the work extracted by the contractors resulting in the petitioners resorting to file petitions before the Competent Authorities under the Payment of Wages Act every now and then claiming wages for the service rendered as it comes to be seen from the orders passed by the Competent Authorities in P.W. Nos. 31/1985, 37/1986 and 49/1986, wherein, contractor A.K. Sudarsan was made to deposit Rs 1,20,914/-and the wages of the petitioners and others have been paid, as it is seen from the Wages List. In these pathetic condition of the labour population, it is fitting to extract from the Judgments cited by the learned counsel for the petitioners rendered by the Honourable Supreme Court of India, delivered in two cases viz. (1) Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, : and (2) Workmen Vs. Williamson Magor and Co. Ltd. and Another, : In the first Judgment cited above, it is held:

"It is a problem of humanist justice that every proposal must be bottomed on the basis of economic fact that the beneficiaries are from the many below the destitution line."

"This Court has, in a very different context though has drawn attention to the Gandhian guideline:

"Whenever you are in doubt.... Apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him".

34. In the second judgment, the learned Judges, referred to an earlier judgment of the Hon^{ble} Supreme Court of India delivered in *The K.C.P. Employees' Association, Madras Vs. The Management of K.C.P. Ltd., Madras and Others*, :portion extracted in that Judgment is as follows:

"In Industrial Law interpreted and applied in the perspective of Part 4 of the Constitution, the benefit of reasonable doubt, on law and facts, if there be such doubt must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without overstepping the proved facts".

If the norms propounded by the Honourable Supreme Court are to be applied this Court is left with no option but to arrive at the only conclusion that the common order passed by the third respondent herein rejecting the request of the petitioners as per its order dated February 4, 1987 is nothing but inconsistent, perverse and unacceptable by any norms of law and the only course open for this Court is to quash the same further directing the respondents 1 and 2 to absorb the petitioners as cleaners. However, this Court is of the view that the petitioners are only entitled to the service benefits with retrospective effect i.e. from the date on which the other 79 co-employees of the petitioners were absorbed in the service of the Southern Railways. But, they are not entitled to back wages as it has been held by the Honourable Apex Court in *State of Haryana v. O.P. Gupta* (supra), adopting the policy of no pay for no work.

In result,

(1) All the above three Writ Petitions are allowed quashing the common order dated September 25, 1989 respectively made in B1/8972/1988, B1/9967/1988 and B1/11888/1988 concerned with the petitioners in the first, second and third Writ Petitions above.

(2) The respondents No. 1 and 2 are hereby directed to absorb the petitioners as Cleaners to serve in the Catering Section of the Central Railway Station, Chennai and in the Pantry Cars with retrospective effect of all service benefits with no back wages.

(3) Consequently, the connected W.M.P. Nos. 2751/1992, 26396/1992 and 26398/ 1992 are closed.

(4) No costs.