Date of reserved for Judgment :16.12.2025
Date of Pronouncement :16.03.2026
Date of uploading :16.03.2026

APHC010515212024

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3545]**
(Special Original Jurisdiction)

MONDAY,THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

WRIT APPEAL NO: 974/2024

Writ Appeal under clause 15 of the Letters Patent to set aside the impugned order of the Learned Hon'ble Single Judge made in W.P.No.n862/2005, dt 06.09.2024, consequently direct the Respondents to regularize the service of the Appellants herein as per the Award of Industrial Tribunal cum Labour Court made in I.D.No.37/2002,dt 14.12.2004, with all consequential benefits, and pass

Between:

1. THE AP POWER ENGINEERING AND TECHNICAL WORKERS UNION, REGD NO.H-9G, REP. BY ITS GENERAL SECRETARY, SANAPU REDDY JAYACHANDRA REDDY, S/O LATE SANAPU REDDY HARI NARYANA REDDY, AGED 55 YEARS, R/O D.NO.36/208-40-5-3, REDDY COLONY, CHINNA CHOWK (POST), KADAPA-516002.

...APPELLANT

AND

1. THE TRANSMISSION CORPORATION OF A P LIMITED, REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR, GUNADALA, VIJAYAWADA.
2. THE CHIEF ENGINEER, TL AND SS ZONE KADAPA, TRANSMISSION CORPORATION OF A.P LIMITED, KADAPA.
3. THE SUPERINTENDING ENGINEER, TL AND SS CIRCLE KADAPA, TRANSMISSION CORPORATION OF A.P LIMITED.

4. THE SUPERINTENDING ENGINEER, TL AND SS CIRCLE KURNOOL, TRANSMISSION CORPORATION OF A.P LIMITED, KURNOOL.
5. THE DIVISIONAL ENGINEER, TL AND SS DIVISION KADAPA, TRANSMISSION CORPORATION OF AP LIMITED, KADAPA.
6. THE DIVISIONAL ENGINEER, TL AND SS DIVISION ERRAGUNTLA, TRANSMISSION CORPORATION OF A.P LIMITED, KADAPA.
7. THE DIVISIONAL ENGINEER, TL AND SS DIVISION KURNOOL, TRANSMISSION CORPORATION OF A.P LIMITED, KURNOOL.
8. THE DIVISIONAL ENGINEER, TL AND SS DIVISION ANANTAPUR, TRANSMISSION CORPORATION OF A.P LIMITED, ANANTAPUR.
9. THE DIVISIONAL ENGINEER, TELECOM DIVISION KADAPA, TRANSMISSION CORPORATION OF A.P LIMITED, KADAPA.
10. THE ADDITIONAL INDUSTRIAL TRIBUNALCUM ADDLTLONAL LABOUR COURT, HYDERABAD, REP.BY PRESIDING OFFICER.
11. P NARSA REDDY, , S/O.P.KONDA REDDY, AGED ABOUT 58 YEARS, R/O.GANDHI NAGAR, BADWEL, KADAPA.
12. Y SAMBASIVA REDDY, S/O.Y.NARAYAN REDDY, AGED ABOUT 47 YEARS, R/O.D.NO.18-1-298, VENUGOPAL NAGAR, ANANTHAPUR.
13. S V RAMANA REDDY, S/O.S.LINGA REDDY, GAED ABOUT 35 YEARS, R/O.87/515, SRINAGAR COLONY, KURNOOL.
14. K NAZEER BASHA, S/O.K.KASIM SAHEB, AGED ABOUT 53 YEARS, R/O 14/541, DASTAGIRIPET, PRADDATUR, KADAPA DISTRICT.
15. N SRIHARI PRASAD, S/O.VISHVESWARA SASTRY, AGED ABOUT 40 YEARS, R/O.N.P.KUNTA POST AND MANDAL, ANANTAPUR DISTRICT.
16. M RAMA MURTHY, S/O.M.RAMA DASS, AGED ABOUT 44 YEARS, R/O.4-71, M.R.D.STREET, CHENNURU, KADAPA DISTRICT.
17. M NAGA RAJU, , S/O.M.YOHAN, AGED ABOUT 33 YEARS, R/O.LO-413/AL, SAI NAGAR, KOILAKUNTLA, KURNOOL DISTRICT.
18. T ANAND MOHAN, S/O.T.RAGHUNATHA SATRY, AGED ABOUT

34 YEARS, R/O. PLOT NO.70, GURU RAGHAVENDRA NAGAR, KURNOOL.

...RESPONDENT(S):

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased Pleased to set aside the order of the Learned Hon'ble Single Judge made in W.P.No.n862/2005, dt 06.09.2024, consequently direct the Respondents to regularize the service of the Appellants herein as per the Award of Industrial Tribunal cum Labour Court made in I.D.No.37/2002, dt:14.12.2004, with all consequential benefits, pending disposal of the present Writ Appeal in the Interest of justice and pass

Counsel for the Appellant:

1. G V SHIVAJI

Counsel for the Respondent(S):

1. THE ADVOCATE GENERAL
2. V V SATISH

The Court made the following:

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

And

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

WRIT APPEAL No.974 of 2024

JUDGMENT: *(Per Hon'ble Sri Justice A. Hari Haranadha Sarma)*

Introductory:-

1. This Writ Appeal is directed against the Orders dated 06.09.2024 passed by the learned Single Judge of this Court in W.P.No.11862 of 2005.

2. The appellant herein is the A.P. Power Engineering and Technical Workers Union (for short "the Trade Union"). The cause of its workers (members) for regularization was espoused by the Trade Union before the Industrial Tribunal vide I.D.No.37 of 2002 before the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (for short "the Tribunal"). The writ petitioners are Respondent Nos.1 to 9 before the Tribunal. The Tribunal passed the Award directing regularization of services of the members of petitioners' Union from the date of respective services. Aggrieved thereby, the respondents before the Industrial Tribunal filed the Writ Petition No.11862 of 2005 invoking Article 226 of Constitution of India seeking to issue a Writ of Certiorari declaring the orders passed in I.D. No.37 of 2002, dated 14.12.2004 on the file of the Additional Industrial Tribunal, Hyderabad published vide G.O.Rt.No.499, dated 25.02.2005 as illegal arbitrary and without jurisdiction and to quash the same by calling for the record and the writ petition was allowed setting aside the award passed

by the Industrial Tribunal. Hence, the present appeal by the Trade Union / respondent No.2 in the Writ Petition.

The case of the Trade Union:-

3. [i] There was engagement of the workers through contractors for operation of various sub-stations and the same was commenced by the APSEB from the year 1990 against the regular sanctioned posts of Helpers (later re-designated as Lineman), Watchmen and Sweepers under the guise of a stopgap arrangement till the vacant posts are filled up as per service rules. But it was continued for 12 years and extended to all the newly commissioned sub-stations. Several vacancies arose time-to-time on account of promotion, retirement, demise of regular workers, but they are not filled up. In respect of several substations as a combination of both regular and contract labour the agreements between the contractors and the authorities of the respondent organization were entered ranging from one month to one year and they are all formal for the purpose of record. The contractors are changed from time to time but the workers are same irrespective of the contractors through whom they are engaged.

[ii] Provisions of Section 7 and 12 of Contract Labour (R&A) Act [for short 'CLRA'] are not complied with.

[iii] Engaging workers from the contractors claimed by the Petitioner- organisation, viz., the writ petitioner is a mere ruse, camouflage and a veil intended to exploit the workers and to deny various benefits

available to them under Labour Welfare legislations. The contractors are mere name lenders and the workers are working under direct control and supervision of the APSEB officials and operations are carried out by them during the duty hours.

[iv] Log of operation book, Line clear book, Message book, Log sheet etc., are maintained on par with the regular workers.

[v] The Power Transmission Corporation/respondent No.1 is one of the three main wings of APSEB, which was trifurcated into three independent companies viz., 1) A.P. Power Generation Corporation 2) A.P. Power Transmission Corporation and 3) A.P. Power Distribution Company. The Government of A.P. issued G.O.Ms.No.41 dated 23.09.1996 prohibiting engagement of contract labour in APSEB in (33) categories of works, which include Helper, Watchmen, and Sweeper. The said GO was acted upon by the erstwhile APSEB, while regularizing the services of workmen in prohibited categories in Generation Wing. But regularization of the services similarly placed persons in Transmission and Distribution wings was not done.

[vi] In fact, BPMS No.260 dated 19.12.1997 provides for regularization of services of those engaged against prohibited categories in APSEB. Therefore, the transmission Corporation, being successor-in-interest to APSEB vested with the all powers and bound by the assurance provided under BPMS No.260 but remained silent, resulting to hostile

discrimination to the members of the Trade Union. Some Ex. casual labour, who worked about 60 days as Helpers were regularised while ignoring the services of the members of the Trade Union, who are put in one to 10 years of service at the relevant time.

[vii] The respondent Corporation is an industry. The members of the Union are in fact workers falling under the definition of Section 2(s) of the Industrial Disputes Act *[for short ' I.D. Act']*, and entitled to the benefits under the provisions of Section 25-F, G and H of the I.D. Act.

[viii] Earlier, the Trade Union has filed W.P.No. 8219 of 2000 seeking Writ of Mandamus to declare the action of respondents in engaging the members of petitioners union as contract labourers as arbitrary, illegal and unconstitutional and to regularize them as Helpers (re-designated as Junior Lineman), Watchmen, Sweepers as the case may be. The Honourable High Court vide orders dated 8.2.2002 disposed of the said Writ Petition directing the Trade Union to approach the Labour Court for redressal of grievances since the matter involves evidence etc.,

[ix] The Trade Union filed Writ Appeal and the Division Bench of this Court disposed of the said appeal vide orders dated 23.4.2002 confirming the decision passed in the Writ Petition. Thereafter, the Union moved an application before the Labour Court or the Industrial Dispute Tribunal for necessary reliefs and successful but the owner of the Labour

Court are set aside the orders in the Writ Petition, vide W.P.No.11862 of 2005, now impugned.

[x] The workers are entitled to all the reliefs prayed for and that the Trade Union (petitioner before the Labour Court) is entitled to represent its members, being a Registered Union.

Case of the respondents:-

4. [i] The Trade Union has no local standi, as the same is not a recognized Union. Only recognized Trade Unions have got the right to represent before the Labour Court and Tribunals. So the present Trade Union cannot espouse the cause of workmen, nor act as a bargaining unit on behalf of the workers.

[ii] There is no privity of contract between the members of the Trade Union and the organization and there is no master and servant relationship or command and obedience – relationship. Therefore, the petition must be dismissed.

[iii] Jurisdiction of the Industrial Tribunal cannot be made applicable as the dispute is not raised by the individual worker nor it is a case of workmen seeking relief in a dismissal, discharge, termination as referred under the provisions of law.

[iv] The application before the Tribunal is not maintainable under section10 (1) of the I.D. Act without exhausting the remedy of conciliation and Section 10 can be invoked by the appropriate government only. The

Union which has espoused to the cause failed to add the contractors or parties, who are supposed to be possession of the records and competent to clarify any applicant as a contract labour.

[v] Even if it is assumed that the provisions of the CLRA Act 1970 applies to the members of the petitioner union. The only forum open to the petitioner Union is to approach appropriate Government under Section 10 of the abolition of Contract Labour, therefore, the petition is not maintainable.

[vi] Merely because the contractors have no valid license under the Act, the members of the petitioner-union (workers) cannot act as a direct employees of the organization. Such situation is not contemplated under the provisions of CLRA Act. The remedy available is only penal provision.

[vii] The members of the Trade Union, even if it put in a continuous service of 240 days, they are entitled to get compensation and nothing. The allegation that the workers are under the direct control and supervision of the officials of the writ petitioner-organization is not correct.

[viii] APSEB prohibited engagement of contract labour in (33) categories under BPMS No.37 and the same is applicable to transmission and distribution wings and restricted to 33 categories alone in A.P. Generation Corporation. The BPMS No.260 has no application to the claim made by the present Trade Union. The workmen under the I.D. Act and definition under CRLA are entirely different and the provisions of Section 25 F,G and H of the I.D .Act are not applicable.

Findings of the Labour Court-cum-Industrial Tribunal:

5. It is the contention of Transmission Corporation of Andhra Pradesh that erstwhile A.P. State Electricity Board (APSEB) has recognised certain unions which have got a representative capacity. Those unions are 1) A.P. Electricity Employees Union. 2) APSEB Employees Union 3) Telugunadu Vidyuth Karmika Sangam. All the employees were members of these three unions of the erstwhile APSEB and they are continuing in the respective wings even after trifurcation into three entities. Therefore, the unrecognised trade union cannot espouse the cause of the contract workers. The certificate of registration of appellant's trade union in Form-C is filed along with the claim petition. Recognition to the three trade unions referred to above was granted without taking up any verification process. As there is no law in force in the state of Andhra Pradesh to recognise trade unions and since there is no specific law or procedure for recognition of a trade union, there cannot be any distinction between the recognised and un-recognised trade unions. Therefore, the objection as to locus standi of the appellant is not tenable.

6. The objection that the conciliation process should to have been exhausted and that the State Government should have referred the dispute and without such reference to the appropriate tribunal or Court there cannot be any jurisdiction is not tenable, for the reason that in the earlier writ petition W.P.No.8219 of 2001, adjudication of the dispute by the labour court was directed by the high court and the same was confirmed by the Common

High Court in W.A.No.692 of 2002. Therefore, the objection as to the maintainability of the proceedings before the Labour Court is not tenable.

7. The objection that there exists no Master and Servant relationship between the workers and the Transmission Corporation, particularly when they are engaged through the contractor for maintenance of operations of various sub stations, does not merit consideration. The objection that W.W.1 has acted as a Labour Contractor cannot be regarded particularly in the context of admission of M.W.4, who is a Divisional Engineer has categorically admitted in the cross-examination that W.W.1 worked as a Labourer in the contract works shown in Ex.M-16 to M-39 agreements. Several documents disclosed, list of Contract Labourers shown in Annexure I and II of the claim petition, *vide* Exs.W.1, W.3, W.4 and W.5, emanated from the offices of the Transmission Corporation. Such lists are exhibited by the writ petitioner in Exs.M-1 to M-5, M-7, M-8, M-9 and M-12. There are official documents along with Log Sheets maintained by sub divisions. There is abundant evidence both oral and documentary established the fact that the workers of the Trade Union has been working as Contract Labour in various divisions. In view of the evidence, the objection is not tenable

8. The objection that the contract workers are not posted in sanctioned posts is not tenable. Ex.W3 is one of the letters where the Divisional Engineer (operation) Rajampet wrote to the Superintendent Engineer, Kadapa, to furnish the particulars of Contract Labourers working against

regular sanctioned, vacant posts pertaining to the operation division and a list was submitted under a prescribed proforma.

9. The contractors with whom the agreements are stated to have been entered for supply of contract workers were not holding licences as required under Section 12 of the CRLA Act, not even a single copy of licence of any contractor was produced by the department, on whom the burden lies to prove that the contract labourers were secured by lawful agreements through licensed contractors. The nature of work of the contract workers and the regular workers union is similar and it is perennial in nature, who control the work of the workers is demonstrated from the cross examination of the witnesses from the department like M.W.1 etc.

10. The evidence of the other witnesses M.W.1, M.W.2, M.W.3 and M.W.4 is also sufficient to believe the control the engagement of contract workmen is a camouflage.

11. The objection as to maintainability of application for regularisation of contract workers by the union is not tenable particularly in the light of Ex.M40 a memo and that the work men are entitled for regularisation.

Findings of the learned Single Judge in the writ petition under the impugned orders:

12. The Trade Union which espoused the cause of the workers is not a recognised union but only a registered union. Therefore, it cannot espouse the cause.

13. The writ petitioner corporation was engaging the services of members of the union on need basis subject to availability of the work and contractor was making the payments.

14. In W.P.No.25357 of 2013 while considering the claim of contract labourers seeking extension of time scale on par with the regular employees made a distinction was made between the contract labour and the casual labour whereas the casual labour are not entitled for the same.

15. Respondent No.2 Trade union could not have approached the tribunal for omnibus relief and tribunal also could not have passed the orders without verifying the case of each member independently on its own merits.

Arguments in the appeal:

For the appellant:

16. [i] Sri G.V. Shivaji, learned counsel for the appellant's Trade Union would submit that the workers, members of the appellant trade union, have been working as contract labour in the category of skilled, semi-skilled and un-skilled basing on their qualification, with the writ petitioner corporation for more than two and half decades. The writ petitioner is a successive entity. As per Section 10(1) of the Contract Labour (Regulation and Abolition) Act, there is prohibition for engaging contract labour system in various categories. In pursuance of the same, the scheme was introduced for absorbing the contract labour. However, the workers engaged like helpers, shift helpers, shift operators in the Sub Stations and Electric lines are of

perennial works. But, they have not been considered for regularisation, while other contract labour are regularised.

[ii] In Writ Petition No.8219 of 2001, by considering the law laid down by the Hon'ble Supreme Court in ***Steel Authority of India vs. National Union Water Front Workers***[1]***,*** direction was given to pursue remedy before Labour and Industrial Tribunal. Thereupon, I.D.No.37 of 2002 was resorted to. In the said I.D., the Transmission Corporation (writ petitioner Corporation), by I.A.No.289 of 2002, sought to decide the maintainability of the dispute as a preliminary issue on the ground that the appellant union is not a recognised union. The said petition was dismissed by the Industrial Tribunal vide order dated 31.03.2003, against which W.P.No.3880 of 2003 was filed by the writ petitioner. Vide orders dated 12.08.2003, the said writ petition was allowed by the learned Single Judge. Thereupon W.A.No.1987 of 2003 was filed and the Division Bench of this Court was pleased to allow the Writ Appeal vide order dated 19.11.2003, setting aside the orders of the learned Single Judge passed in W.P.No.3880 of 2003 and also directing the Industrial Court to consider the objection as to maintainability. Against which SLP (Civil) No.8736 of 2004 was preferred by the writ petitioner and the same was dismissed by the Hon'ble Apex Court vide orders dated 15.07.2005 as infructuous. (It is relevant to note that by the said date I.D.No.37 of 2002 was disposed of).

[1] (2001) 7 SCC 1

[iii] The award passed by the Labour Court was suspended under order in W.P.M.P.No.1551 of 2005, dated 08.06.2005. Then the wages are not paid during the pendency of the writ petition. Hence, a miscellaneous application was moved for payment of wages and directions was given to pay minimum wages directly to the principals of the union bypassing the contractors, if any. But, on review, orders are modified directing the principal employer to ensure that contractors shall pay wages to the workmen every month by way of crossed cheques.

[iv] The findings in the impugned orders that the Trade union is not a recognised trade union and that the contract labour petitioners has to raise the industrial dispute is not correct.

[v] The learned Single Judge ought to have considered that the appellant union is a registered union. Therefore, the objection raised is not correct.

[vi] The learned Single Judge ought to have considered that the engagement through contractor is merely a camouflage and that the contract labour will have to be considered as employees of the principal employer and that they shall be directed to be regularised.

[vii] The learned Single Judge ought to have considered that the Labour and Industrial Tribunal has properly appreciated all the aspects and ought not to have set aside the award passed by the Labour and Industrial Tribunal.

For the Respondents (Writ Petitioner's-Transmission Corporation)

17. [i] The orders in I.D.No.37 of 2002, dated 14.12.2004 are not sustainable in law and the maintainability of the proceedings at the instance of an unrecognised trade union are not properly appreciated by the Tribunal.

[ii] The learned Single Judge has properly appreciated the legal aspects as to maintainability of the legal proceedings against the unrecognised union and the entitlement of contract labour, particularly when the engagement of services of the workers represented by the trade union is need-based and not on regular basis.

[iii] The factual and legal position is properly appreciated by the learned Single Judge. Regularisation will have a lot of effect on the service condition and in respect of several other employees as well as the exchequer of the department.

[iv] The Labour and Industrial Tribunal has no jurisdiction to interfere the regularisation issue with reference to contract labour abolition provisions under the Contract Labour (Regulation and Abolition) Act.

[v] Admittedly, workers are engaged through contractors. They can't claim direct engagement.

[vi] There are no grounds to interfere and the writ appeal is liable to be dismissed.

18. Perused the material available on record. Thoughtful and anxious consideration is given to the arguments advanced by both sides.

19. The points that arise for determination in this appeal are:

1) Whether the appellant trade union has locus standi to espouse the cause of the workers, before the management, Tribunal and Courts when it is an unrecognised trade union?

2) Whether the Labour and Industrial Tribunal has jurisdiction?

3) Whether the workers listed under Annexure-I and II to the claim statement filed by the union before the Labour Court are entitled for regularisation?

4) Whether the impugned orders of the learned Single Judge allowing the writ petition and setting aside the award passed by the Labour and Industrial Tribunal in I.D.No.37 of 2002, dated 14.12.2004 are sustainable or require any interference?

5) What is the result of the appeal?

Point No.1:

20. It is relevant to note that initially W.P.No.8219 of 2001 was filed and orders were passed on 08.02.2002 following the judgment in ***Steel Authority of India vs. National Union Water Front Workers*** (1 supra). The learned Single Judge of erstwhile common High Court of Andhra Pradesh in W.P.No.8219 of 2001 observed that the issue relating to absorption of contract labour be adjudicated by the forum established. In W.A.No.692 of 2002, under orders dated 23.04.2002, the Division Bench of

this erstwhile Common High Court of Andhra Pradesh has confirmed the same. Then I.D.No.37 of 2002 was moved. Thereafter, an application was moved to decide the maintainability vide I.A.No.289 of 2002 before the Industrial Tribunal-cum-Labour Court. Orders were passed by the Tribunal dismissing the application and upholding the maintainability, assigning reasons that the union is a registered one. The said orders were questioned in W.P.No.3880 of 2003 and the learned Single Judge of the common High Court of Andhra Pradesh, vide orders dated 12.08.2003, held that a non-recognised trade union cannot espouse the cause and that the petition is not maintainable.

21. Questioning the same, W.A.No.1987 of 2003 was filed and the said Writ Appeal was allowed, setting aside the orders of the learned Single Judge. However, it was observed that the maintainability of the industrial dispute can also be decided by the Industrial Tribunal. The same was questioned before the Hon'ble Supreme Court in SLP (Civil) No.8736 of 2004, but the same was dismissed as infructuous. The Labour and Industrial Tribunal has held that the proceedings are maintainable at the instance of the claimant trade union for the following reasons:

1) There is no established process of recognition in the state of Andhra Pradesh.

2) There is no material indicating debarring unregistered unions to represent the cause of trade union workers, particularly when the same are registered trade unions.

3) There is no material to show that whether recognition to the trade union now litigating is denied, if so, on what basis.

22. Reliance is placed by the respondents herein viz. Transmission Corporation for the proposition that, only a recognised trade union can espouse the cause in ***Chairman, SBI and Another vs. All Orissa State Bank Officers Association and others***[2]. It is relevant to note that the observations in para 14, 15 and 16 read as follows:

> ***14.*** *The High Court disposed of the review petition by passing the judgment/order which has been quoted earlier.*
>
> ***15.*** *With growth of industrialization in the country and progress made in the field of trade union activities the necessity for having multiple unions in an industry has been felt very often. Taking note of this position power has been vested in the management to recognize one of the trade unions for the purpose of having discussions and negotiations in labour-related matters. This arrangement is in recognition of the right of collective bargaining of workmen/employees in an industry. To avoid arbitrariness, bias and favouritism in the matter of recognition of a trade union, rules have been framed laying down the procedure for ascertaining which of the trade unions commands support of majority of workmen/employees. Such procedure is for the benefit of the workmen/employees as well as the management/employer since collective bargaining with a trade union having the support of majority of workmen will help in maintaining industrial peace and will help smooth functioning of the establishment. Taking note of the possibility of multiple trade unions coming into existence in the industry, provisions have been made in the Rules conceding certain rights to non-recognized unions. Though such non-*

[2] (2002) 5 SCC 669

recognized unions may not have the right to participate in the process of collective bargaining with the management/employer over issues concerning the workmen in general, they have the right to meet and discuss with the employer or any person appointed by him on issues relating to grievances of any individual member regarding his service conditions and to appear on behalf of their members in any domestic or departmental enquiry held by the employer or before the Conciliation Officer or Labour Court or Industrial Tribunal. In essence, the distinction between the two categories of trade unions is that while the recognized union has the right to participate in the discussions/negotiations regarding general issues affecting all workmen/employees and settlement, if any, arrived at as a result of such discussion/negotiations is binding on all workmen/employees, whereas a non-recognized union cannot claim such a right, but it has the right to meet and discuss with the management/employer about the grievances of any individual member relating to his service conditions and to represent an individual member in domestic inquiry or departmental inquiry and proceedings before the Conciliation Officer and adjudicator. The very fact that certain rights are vested in a non-recognized union shows that the Trade Unions Act and the Rules framed thereunder acknowledge the existence of a non-recognised union. Such a union is not a superfluous entity and it has a relevance in specific matters relating to administration of the establishment. It follows, therefore, that the management/employer cannot outrightly refuse to have any discussion with a non-recognized union in matters relating to service conditions of individual members and other matters incidental thereto. It is relevant to note here that the right of the citizens of this country to form an association or union is recognized under the Constitution in Article 19(1)(c). It is also to be kept in mind that for the sake of industrial peace and proper administration of the industry it is necessary for the management to seek cooperation of the entire workforce. The management by its conduct should not give an impression as if it favours a certain section of its employees to the

exclusion of others which, to say the least, will not be conducive to industrial peace and smooth management. Whether negotiation relating to a particular issue is necessary to be made with representatives of the recognized union alone or relating to certain matters concerning individual workmen it will be fruitful to have discussion/negotiations with a non-recognized union of which those individual workmen/employees are members is for the management or its representative at the spot to decide. At the cost of repetition we may state that it has to be kept in mind that the arrangement is intended to help in resolving the issue raised on behalf of the workmen and will assist the management in avoiding industrial unrest. The management should act in a manner which helps in uniting its workmen/employees and not give an impression of a divisive force out to create differences and distrust amongst workmen and employees. Judged in this light the contents of paragraph 2 of Staff Circular No. 91 of 1987 clearly give an impression that the management has decided at the threshold before being aware of the nature of the dispute raised that its representatives should have no discussion at all with office-bearers of the non-recognized Association. Such a circular is not only contrary to the express provision in Rule 24 but also runs counter to the scheme of the Trade Unions Act and the Rules.

16. *In the case of Balmer Lawrie Workers' Union [1984 Supp SCC 663 : 1985 SCC (L&S) 331 : (1985) 2 SCR 492] this Court, reviewing the scheme of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, traced the history of development of trade unions on the advent of the Industrial Revolution and the need for multiple trade unions in industries and consequential necessity for selecting one of the trade unions as the recognised union by the management, and also took note of the difference between the rights and privileges of a recognized trade union and a non-recognised trade union. In that connection, this Court made certain observations, portions of which are extracted hereunder: (SCC pp. 670 & 672-74, paras 12 & 15-17)*

"12. A need was felt that where there are multiple unions seeking to represent workmen in an undertaking or in an industry, a concept of recognised union must be developed. Standing Labour Committee of the Union of India at its Twenty-ninth Session held in July 1970 addressed itself to the question of recognition of trade union by the employer. In fact even amongst trade union leaders there was near unanimity that the concept of recognised union as the sole bargaining agent must be developed in the larger interest of industrial peace and harmony. National Commission on Labour chaired by late Shri P.B. Gajendragadkar, former Chief Justice of India, after unanimously and wholeheartedly expressing itself in favour of the concept of recognised union and it being clothed with powers of sole bargaining agent with exclusive right to represent workmen, addressed itself only to the question of the method of ascertaining which amongst various rival unions must be accorded the status of a recognised union. Planting itself firmly in favour of democratic principle, it was agreed that the union which represents the largest number of workmen working in the undertaking must acquire the status as that would be in tune with the concept of industrial democracy.

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15. Before the introduction of Section 2-A in the Industrial Disputes Act, 1947 the courts leaned in favour of the view that individual dispute cannot be comprehended in the expression 'industrial dispute' as defined in the Industrial Disputes Act, 1947. Any dispute not espoused by the union for the general benefit of all workmen or a sizeable segment of them would not be comprehended in the expression 'industrial dispute' was the courts' view. Often an invidious situation arose out of this legal conundrum. An individual workman if punished by the employer and if he was not a member of the recognised union, the latter was very reluctant to espouse the cause of such stray workman and the individual workman was without a remedy. Cases came to light where the recognised union by devious means compelled the workmen to be its members before it would espouse their cause. The trade union tyranny was taken note of by the legislature and Section 2-A was introduced in the Industrial Disputes Act, 1947 by which it was made distinctly clear that the discharge, dismissal, retrenchment or termination of service of the individual workman would be an industrial dispute notwithstanding that no other workman or any union of workman is a party to the dispute. Section 20 sub-section (2) while conferring exclusive right on the recognised union to represent workmen in any proceeding under the Industrial Disputes Act, 1947 simultaneously denying the right to be represented by any individual workman has taken care to retain the exception as enacted

in Section 2-A. This legal position is reiterated in Section 20(2)(b). Therefore while interpreting Section 20(2)(b) it must be kept in view that an individual workman, who has his individual dispute with the employer arising out of his dismissal, discharge, retrenchment or termination of service will not suffer any disadvantage if any recognised union would not espouse his case and he will be able to pursue his remedy under the Industrial Disputes Act, 1947. Once this protection is assured, let us see whether the status to represent workmen conferred on a recognised union to the exclusion of any individual workman or one or two workmen and who are not members of the recognised union would deny to such workmen the fundamental freedom guaranteed under Articles 19(1)(a) and 19(1)(c) of the Constitution.

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16. … Conferring the status of recognised union on the union satisfying certain prerequisites which the other union is not in a position to satisfy does not deny the right to form association. In fact the appellant Union has been registered under the Trade Unions Act and the members, have formed their association without let or hindrance by anyone. Not only that the appellant Union can communicate with the employer, it is not correct to say that the disinclination of the workmen to join the recognised union violates the fundamental freedom to form association. It is equally not correct to say that recognition by an employer is implicit in the fundamental freedom to form an association. Forming an association is entirely independent and different from its recognition. Recognition of a union confers rights, duties and obligations. Non-conferring of such rights, duties and obligations on a union other than the recognised union does not put it in an inferior position nor the charge of discrimination can be entertained. The members of a non-recognised association can fully enjoy their fundamental freedom of speech and expression as also to form the association.

17. The legislature has in fact taken note of the existing phenomenon in trade unions where there would be unions claiming to represent workmen in an undertaking or industry other than recognised union. Section 22 of 1971 Act confers some specific rights on such non-recognised unions, one such being the right to meet and discuss with the employer the grievances of individual workman. The legislature has made a clear distinction between individual grievance of a workman and an individual dispute affecting all or a large number of workmen. In the case of even an Unrecognized union, it enjoys the statutory right to meet and discuss the grievance of individual workman with employer. It also enjoys the statutory right to appear and participate in a domestic or departmental enquiry in which its member is involved. This is statutory recognition of an Unrecognized union. The

> *exclusion is partial and the embargo on such Unrecognized union or individual workman to represent workmen is in the large interest of industry, public interest and national interest. Such a provision could not be said to be violative of fundamental freedom guaranteed under Article 19(1)(a) or 19(1)(c) of the Constitution."*

23. A clear reading of entire judgment is not leading to the conclusion that an unrecognised trade union cannot have locus standi to espouse the cause of workers who are its members. Even otherwise, which is the recognised trade union is not stated anywhere by the writ petitioner corporation. What is the test for recognition and whether the appellant trade union was put to such test of recognition and for what reasons it was recognised are not spelt out. Therefore, the objection as to locus standi of the appellant trade union found not convincing and the findings of the Labour Industrial Tribunal in that regard are found convincing. The findings of the learned Single Judge are found not sustainable. Point No.1 is answered accordingly in favour of the appellant and against the respondents (Writ petitioners).

Point No.2:

24. Maintainability of the proceedings before the Labour and Industrial Tribunal for regularisation can be answered taking aid of observation in ***Steel Authority of India Ltd. vs. Union of India and others***[3]. The observations in para Nos.20 to 24 of the judgment are relevant to answer the objection and they are as follows:

[3] (2006) 12 SCC 233

20. *The 1970 Act is a complete code by itself. It not only provides for regulation of contract labour but also abolition thereof. Relationship of employer and employee is essentially a question of fact. Determination of the said question would depend upon a large number of factors. Ordinarily, a writ court would not go into such a question.*

21. *In State of Karnataka v. KGSD Canteen Employees' Welfare Assn. [(2006) 1 SCC 567 : 2006 SCC (L&S) 158] this Court held: (SCC p. 584, para 43)*

> *"43. Keeping in view the facts and circumstances of this case as also the principle of law enunciated in the above-referred decisions of this Court, we are, thus, of the opinion that recourse to writ remedy was not apposite in this case."*

22. *We may reiterate that neither the Labour Court nor the writ court could determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of the appropriate Government.*

23. *A decision in that behalf undoubtedly is required to be taken upon following the procedure laid down in sub-section (1) of Section 10 of the 1947 (sic) Act. A notification can be issued by an appropriate Government prohibiting employment of contract labour if the factors enumerated in sub-section (2) of Section 10 of the 1970 Act are satisfied.*

24. *When, however, a contention is raised that the contract entered into by and between the management and the contractor is a sham one, in view of the decision of this Court in Steel Authority of India Ltd. [Steel Authority of India Ltd. v. National Union Waterfront Workers, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121] an industrial adjudicator would be entitled to determine the said issue. The industrial adjudicator would have jurisdiction to determine the said issue as in the event if it be held that the contract purportedly awarded by the management in favour of the contractor was really a*

camouflage or a sham one, the employees appointed by the contractor would, in effect and substance, be held to be direct employees of the management.

(emphasis added)

25. In the present case also there is vehement submission that the engagement of the workmen through a contractor is only camouflage and that the workmen are engaged to work under the writ petitioner institution directly and were under direct control of the writ petitioner institution. Hence, the proceedings in terms of the Industrial Tribunal Act before the Labour and Industrial Tribunal are maintainable. In view of the disputed facts as to whether the engagement through contractor is true or it is only a fiction to avoid the application of some beneficial legislation to workers, the jurisdiction of the Labour and Industrial Tribunal to examine the issue need not be doubted and the objections in that regard are found untenable. Therefore, to the extent of maintainability of Industrial Dispute, the objection of the writ petitioner corporation is found not tenable. The point is answered accordingly against the writ petitioner(s) and in favour of the appellant herein. However, it is to be seen whether engaging of workmen through contractor is a sham and for name sake and that the contractors are only name lenders, which will be addressed infra.

Point Nos.3 and 4:

Contention of the Trade Union (Appellant):

26. [i] The contractors are mere name lenders and agents of the department appointed for successful exploitation of the workers. There is

no valid contract between the contractor and the department. Therefore, the members of the union who are the workers are deemed to be the direct employees. The members on behalf of whom the Industrial Dispute is raised is listed in Annexure-I and there are about '70'. Annexure-II to the claim petition refers to the basis on which the dispute is raised. Wages being paid to the members of the union are mentioned in Annexure-III. As per Annexure-II to the claim statement, as against the regular sanctioned posts of helper (re-designated as Junior Lineman), watchman and sweeper, on account of stop gap arrangement until the sanctioned vacant posts are filled up, the workers are engaged through contractors. But, the same continued for 12 years uninterruptedly. Several vacancies arise on account of promotions, retirement and demise of the existing regular employees. Therefore, the members of the petitioner union, the contract labour are asked to work on par with regular employees. Contractors are changed time to time. But, the registration process contemplated under Section '7' of the CRLA Act was not done nor were licences obtained from the competent authority as contemplated under Section 12 of the Act. There is no contract, much less valid one, between the contractor and the department. This contract system allegedly followed by the writ petitioner institution is a mere ruse, camouflage, smoke screen and a veil intended to exploit the workers from the benefit of welfare status such as Employees Provident Fund and Miscellaneous Provisions Act, Minimum Wages Act, Payment of Wages Act, Payment of Bonus Act, Payment of Gratuity Act etc.

[ii] The petitioners are working under the direct control and supervision of the respondents. Thirty-three categories of workers, including the category of helper, watchmen and sweeper were designated as prohibited categories vide G.O.Ms.No.41, dated 23.09.1996 and B.P.Ms.No.260 dated 19.12.1997 for regularisation of services of those engaged against prohibited categories in A.P.S.E.B., but the principle remained only as a principle.

[iii] The power corporation is an Industrial establishment. The workers squarely cover the definition of "workman" under Section 2(s) of the Industrial Disputes Act and they are entitled to the benefit of Section 25-F, 25-G & 25-H of the I.D. Act, 1947. Therefore, the claim.

Contention of the Writ Petitioners'-Corporation:

27. [i] As per the counter of the Transmission Corporation, the contention relevant for the present point is that the industrial Disputes Act deals only with dismissal, discharge and termination but not absorption. The petitioners before the Labour Court, if entitled for any relief and to raise an industrial dispute, must exhaust the remedy of conciliation process and only if the appropriate Government feels that there is necessity of adjudication, then only a reference can be made under Section 10 of the Industrial Disputes Act. The contractors to whom the workers are engaged are not made parties, who are supposed to be in possession of the records. The petitioner Trade Union should have approached the Conciliation Officer for having a reference.

[ii] Even if the contractor has no valid licence under CRLA, the members of the petitioner's Trade Union can't be declared as direct employees of the corporation. The contention that after abolition of contract labour system in the categories of helpers, watchmen and sweeper, the workers become direct employees is not acceptable. The members of the union working for 240 days are entitled for absorption is not supported by any statutory provisions. Continuation of service for 240 days will enable one to get compensation in terms of Section 25-F of the I.D. Act on discontinuation etc. and nothing more. Allegation that, some persons are regularised is baseless. The details in Annexure-I are self serving statements. There is no direct control of contract labour by the officers of the power Corporation.

[iii] B.P.Ms.No.37 and prohibition of contract labour in 33 categories is correct, but, the same is not applicable to the transmission and distribution wings.

Discussion:

28. When the definition of "Industrial Dispute" as provided under Section 2(k) and "workman" as defined under 2(s) and "trade union" as defined under Section 2 that a trade union registered under the Trade Unions Act vide Section 2(qq), combinedly read with the facts and circumstances of the present case, the findings of the tribunal that the dispute is maintainable before the tribunal are found reasonable.

29. For appreciating the contention as to engaging workers directly by the Transmission Corporation or whether engaging through contractor is whether a camouflage intended to exploit the working class, the following aspects are relevant:

[i] There is no dispute about the persons listed in the Annexure-IV of the claim petition working as the Contract works in the writ petitioner Corporation, except one or two workers. Documents marked as Exs.M-1, M-2, M-3, M-4, M-5, M-7, M-8 and M-12 testify that contract workers are working in the various divisions.

[ii] The evidence of the workers of the appellant union, particularly the workmen witness W.W.1 shows that he is working as Junior Lineman at substation Maidukur joined in 1992 and there are 5,220 sub stations under the control of divisional engineer, transmission lines sub stations at Kadapa. He is working along with two contract workers in the sub stations, who are also Junior Linemen. Certain memos were issued vide Ex.W1, W3, W4 and W5 consisting of the list of Contract Labour as on 31.08.1997 of TL & SS Division Kurnool(Ex.W1), list of contract labour working against sanctioned posts pertaining to operation division, Rajampet(Ex.W3) particulars of contract workers engaged in TL&SS division, Kadapa against regular sanctioned posts(Ex.W4) and also relating to list of Contract Labour working at various sub divisions of Telecom Division, Kadapa(Ex.W5).

[iii] Ex.W4 is another letter from Divisional Engineer, TL&SS, Kadapa. Then, Ex.W-5 letter addressed by the Divisional Engineer,

Telecom, APSEB, Kadapa, where it is stated that contract labours were being engaged for cleaning works in the sub divisions.

30. There is no other material indicating that the workers whose cause is now espoused are directly engaged by the Transmission Corporation or by its predecessor. There may be regular posts. Whether the recruitment process was properly taken place, how many recruitments have taken place, whether tenders are floated for engaging the workers through contractors are all the matters of evidence. Mere working for good length of time by itself whether justify the claim for regularisation and all consequential benefits like promotions and where they are to be fixed with the other persons are all serious questions. Evidence relating to those matters are neither placed nor taken note of by the Labour and Industrial Tribunal. The want of licence to the contractor through whom the workers are engaged is examined and concluded without there being any evidence and without at least notice to the said contractors.

31. It is relevant to note that chapter 'VI' of the Contract Labour (Regulation and Abolition) Act, 1970 provides certain penalties for the contravention of the provisions. Section 12 and 13 provide for licence to the contractors and suspension/grant of licence etc. The contravention of the provisions and penalties are contemplated under Sections 24 and 25 also. The findings of the Labour and Industrial Tribunal without reference to these provisions particularly in the absence of contractors that it is a mask, camouflage etc. are found not convincing.

32. [i] In a similar context of engaging of workers through contractor and when they sought benefits like annual grade increments, time scale etc. which were refused by the Andhra Pradesh Administrative Tribunal, Hyderabad and granted by the Hon'ble High Court, when the matter was taken up to the Hon'ble Supreme Court in ***The Municipal Council, Rep. by its Commissioner, Nandyal Municipality, Kurnool District, A.P vs. K. Jayaram and others etc.***[4] the Hon'ble Apex Court did not consider the same. The orders of the Tribunal are restored by setting aside the orders of the High Court and the observation in para '10' of the judgment is as follows:

> *10. In view of the discussions made hereinabove and for the reasons aforesaid, the appeals are allowed. The impugned order dated 23.08.2018 passed by the High Court is set aside and the orders of the Tribunal stand restored.*

[ii] In para No.9, the Hon'ble Apex Court considered the aspects relating to engagement of workers / employees through contractor, etc. The observations in para No.9 are as follows:

> *9. The Court would pause here to indicate that it is not anybody's case that the mode of employment through a contractor itself was illegal or there was any illegality in the terms and conditions of the contract so as to make it ultra vires any constitutional provision or to make it discriminatory, and further there has been no challenge to such contract or any of the terms stipulated in the contract. Another issue on facts, which has been addressed by learned counsel for the respondents is that the respondents could not have been exploited by the parties and the*

[4] 2026 LiveLaw (SC) 38 ; Special Leave Petition (Civil) Nos.17711 – 17713 of 2019

fact that they were the same persons being sent, though through different contractors itself shows that the relationship was direct and only a sham camouflage was created; that of a contractor being the intermediary. To this, in our considered view, the answer may not be in clear black and white terms and is still a grey area for the reason that even if the respondents were the same persons who actually worked for the appellant, there can be instances where the new contractor, to maintain continuity and to ensure that there is no complaint from the employer, the appellant in the present case, continues with the same persons who were already employed and were working with the appellant. Thus, there is argument for and against such stand, which we will not dwell on any further. Another issue which has been flagged by learned senior counsel for the respondents is that the respondents being in the position they are, and the relief given being the minimum of the time scale of the pay attached to the regular post cannot be termed as giving them something which was not due or something excessive, for ultimately they also have a family to support and they are also performing the job which is performed by people on the regular establishment. We have absolutely no doubt in our mind that such issue raised by learned senior counsel is of relevance, but the Court feels that the mode of contractual employment, that too, by a contractor and not directly by the employer will have to be seen in a different light in the eyes of law. If all such distinctions between a regular employee and such contractual employees is not made, then the basic concept of hiring through various modes and in different capacity would lose its purpose and sanctity and ultimately everybody would be getting exactly the same benefit. This cannot be permitted in law for the reason that employment under a State entity is a public asset and every citizen of the country has a right to apply for it. In a regular employment, directly made by the said State entity, there are safeguards to ensure that the system of employment/engagement is transparent and fulfills a minimum criteria and is open to all eligible

persons and a mode/procedure is adopted for ultimately choosing the right person. When employees/workmen are taken through a contractor, it is the absolute discretion of the contractor as to whom and through which mode he would choose such persons to be sent to the principal. This is where the difference lies, which is a very valid distinction in law. The reason why there are safeguards in regular appointment is that there should not be any favoritism or other extraneous consideration where persons, only on merit, are recruited through a fully transparent procedure known in law. If the persons who are employed through a contractor, and have come to work, are given equal benefit and status as a regular employee, it would amount to giving premium and sanction to a process which is totally arbitrary as there is no mode prescribed in any contract as to how the contractor would employ or choose the persons who are to be sent, except for the basic qualification, i.e., knowledge in the field for which they are required. The judgment/ order relied upon by learned counsel for the appellant aptly covers the field in the present case. The judgment cited by learned senior counsel for the respondents is basically different on facts for the reason that there the contractual employment was directly by the principal and in that background contractual workers have been regularized.

[iii] The Hon'ble Apex Court observed, in the background of the case, that the workers have not been disengaged or returned to the contractor and having uninterrupted service, they can be regularised. However, it is specifically observed in the judgment that the orders are passed in the special facts and circumstances of the case and shall not be treated as precedent. The observations in para No.11 are as follows:

11. Having passed the order, we feel that sometimes justice is required to be tempered with mercy as human factors cannot be totally lost sight of. In such view of the matter, we would require the

> *appellant to look into whether the jobs which were being done by the respondents, in the background that they have not been disengaged or returned to the contractor on the ground of being unsatisfactory, having uninterrupted service under the appellant for decades can be regularized on posts, which prima facie appears to be perpetual in nature. We make it clear that this direction is limited for the purposes of the present case only as it has been passed in the special facts and circumstances of the present case and shall not be treated as a precedent in any other case. We expect the appellant to take a compassionate and sympathetic view in the matter.*

33. It is relevant to note that, in the present case, there is no material placed indicating the direct engagement of workers by the Transmission Corporation and it is the specific case of the trade union that the contractors are changed from time to time, the workers are continuing, and payments are also being paid by the contractors. Even at the writ petition stage, interim arrangement was also made at one point of time for payment directly through the Transmission Corporation viz. the writ petitioner. However, the same was modified and reviewed, making it obligatory for the contractors to pay. But, it is not out of place for us to mention that the entitlement of the workmen for the other remedies like minimum wages, subscription to EPF etc. guaranteed under different labour welfare legislations, shall be open and they are entitled to pursue the same through proper legal proceedings.

34. In light of the discussion made above and in view of the observations of the Hon'ble Apex Court in ***The Municipal Council, Rep. by its Commissioner, Nandyal Municipality, Kurnool District, A.P vs.***

K. Jayaram and others etc. (4 supra), the claim of workers for regularisation found not tenable and the orders of the learned Single Judge allowing the writ petition by setting aside the award passed by the Labour and Industrial Tribunal vide I.D.No.37 of 2002 are found sustainable and require no interference. Consequently, the Writ Appeal is liable to be dismissed. Point Nos.3 and 4 are answered accordingly.

Point No.5:

35. In the result the writ appal is dismissed. However, it is clarified that the remedies for the contract workers under Minimum Wages Act, compliance of the provisions of Minimum Wages Act, contribution to EPF, ESI etc. shall be open and they are at liberty to prosecute the same. There shall be no order as to costs.

36. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE BATTU DEVANAND

JUSTICE A.HARI HARANADHA SARMA

Dated:16.03.2026
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THE HON'BLE SRI JUSTICE BATTU DEVANAND

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THE HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA

WRIT APPEAL No.974 of 2024

Date:16.03.2026

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