



W.A.Nos.2513, 2519, 2537 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.07.2024

Delivered on: 21.08.2024

CORAM :

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MR. JUSTICE P.DHANABAL

W.A.Nos.2513, 2519, 2537 of 2023
and connected miscellaneous petitions

1. Tamil Nadu Electricity Board
Anna Salai
Chennai-600 002
Rep. By its Secretary

2. Ennore Thermal Power Station
Ennore
Chennai-600 057
Rep by its Chief Engineer

...Appellants/Petitioners
in WA.2513, 2519/2023
..R2 and R3 in WA.2537/2023

Vs

1. The Presiding Officer
Industrial Tribunal
Tamil Nadu-600 104

..R1 in 2513, 2519 &.2537/2023

2. S. Sivaraman

..R2 in WA.2513, 2519/2023
..1st Appellant in WA.2537/2023

3. P. Ravi

....R2 in WA.2513, 2519/2023
..2nd Appellant in WA.2537/2023

COMMON PRAYER: Writ Appeals filed under Clause 15 of the Letters



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Patent as against the common order dated 30.09.2022 passed in W.P.Nos.23857

and 24779 of 2010.

For Appellants
in W.A.2513, 2519/2023

: Mr.Anand Gopalan for
M/s.T.S.Gopalan and Co

For Respondents
For appellants
in WA.2537/2023

: Mr.Balan Haridoss
for Mr.S.N.Ravichandran
in W.A.No.2513, 2519/2023.

COMMON JUDGMENT

Per J.NISHA BANU, J.

The above appeals are filed as against the order of the learned Single Judge dated 30.09.2022 passed in W.P.Nos.23857 and 24779 of 2010.

2. WA.2513 and 2519 of 2023 are filed by the Tamil Nadu Electricity Board. W.A.No.2537 of 2023 is filed by the workman.

3. By the order of the learned Single Judge, the award passed by the Industrial Tribunal in I.D.No.33 of 2006 was upheld and modified by directing the Electricity Board to pay 25% backwages to the workmen from the date of non-employment till the date of Award till 31.12.2009. This portion of the impugned order was challenged by the Electricity Board in WA.2513 and 2519



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4. Insofar as denial of 75% of backwages to the workmen from the date of non-employment till the date of the award, the workman has challenged the order of the learned Single Judge in W.A.No.2537 of 2023.

5. The short facts necessary for the disposal of the writ appeals are as follows:-

(i) The two workmen who approached writ court viz., Sivaraman and Ravi were employed as Contract Labourer through various contractors at Ennore Thermal Power Station from 01.05.1994 and 18.07.1992 respectively.

(ii) Their work was perennial in nature and that their employment was continuous. On completion of 480 days as on 05.01.1998, their names were included in the seniority list. They were issued separate ID card and token number.

(iii) Contract labourers who have put in 240 days of continuous service in a calendar year will be sanctioned ex-gratia payment and both the workmen were paid ex-gratia payment and arrears of wages for years 1994-95, 1995-96, 1996-97. Further, there was deduction of amounts from their wages towards E.S.I.,



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and P.F.

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(iv) To ensure proper implementation of the provisions of ESI and PF and for other reliefs, writ petitions WP.13327/98, 12994/98, 15188 & 16743/98 were filed by Tamil Nadu Minvariya Oppantha Thozhilalar Sangam. This court passed direction to disburse wages in the presence of Authorised representative of the Principal Employer/Electricity Board.

(v) But, the 2nd and 3rd respondent workmen were denied employment without notice on 01.10.1998 and 02.10.1998. Another WP.No.17142 of 1998 was filed by the Workmen seeking absorption of contract workers. During the pendency of the above WP, the Government decided to abolish contract labour system and ordered absorption of 11,029 contract labourers working in four Thermal power stations and Generation stations.

(vi) TNEB issued a circular on 19.03.1999 envisaging that those contract labourers who had put in 480 days of continuous service in 24 calendar months and identified as on 05.01.1998 alone will be considered for absorption and that verification of the service particulars of the contract labourers were directed to be done by the Assistant Executive Engineer and Assistant Engineer.

(vii) Pursuant to the above circular, workmen were falsely implicated in the



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complaint and right of absorption and permanency was denied for their involvement in Trade Union Activities.

(viii) W.P.No.17142 of 1998 filed by the workmen union was disposed of stating those who have completed 480 days as on 05.01.1998 and included in the seniority list alone were eligible for absorption. Aggrieved by the said order, the workmen filed writ appeal which was disposed of vide order dated 17.06.2002 directing the workmen to raise a dispute under Section 10 of the Industrial Disputes Act and the Government was directed to refer the dispute for adjudication to the Industrial Tribunal.

(ix) The Government referred the dispute for adjudication to the Tribunal. The dispute was raised in I.D.No.33 of 2006.

(x) The Tribunal on perusal of oral and documentary evidence let in, negated the contentions raised by the Management and held that the claim of the workmen is justified and a valid one.

(xi) By Award dated 31.12.2009, the Tribunal directed the Management to re-employ and regularise the service of the workmen in Board service w.e.f., 05.01.1998 with continuity of service and without backwages.



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(xii) The workmen sought for implementation of the Award u/s.29 of the Industrial Disputes Act.

(xiii) Challenging the Award, W.P.No.23857 of 2010 was filed by the Electricity Board. In so far as denial of backwages, workmen filed WP.No.24779 of 2010.

(xiv) The learned Single Judge, answered the following three issues as under:-

6. **Issue No.1.** Whether the employee and employer relationship subsist between the Board and the workmen as the claim of the workmen is for absorption of contract labourers.

Issue No.2. Whether the cut off date is 05.01.1998 or 28.04.1999.

Issue No.3 Whether the Tribunal was right in drawing adverse inference against the Board for non-production of documents.

7. **Answer to Issue No.1** : After elaborate discussion and threadbare analysis in the light of supreme court decisions, the learned Single Judge pointed out that it is a settled principle of law that absorption and regularisation in service can be claimed or/and granted only when the contract of employment subsists and is in force inter se employee and the employer. Once it comes to an



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end either by efflux of time or as per the terms of the contract of employment or by its termination by the employer, then in such event, the relationship of employee and employer comes to an end and no longer subsists except for the limited purpose to examine the legality and correctness of its termination.

8. It is trite law that all these measures and legislations are intended to be beneficial and protect the right of the labourers. A substantive right of employment and redressal of the grievance of non~employment cannot be rejected on a technical plea as is sought to be done by the Board which being an instrumentality of the State ought to conduct itself as a model employer.

9. The learned Single Judge, referred to the following judgments:

(i) Bhupendra Nath Hazarika v. State of Assam, reported in (2013) 2 SCC 516:

(ii) Balram Gupta v. Union of India [1987 Supp SCC 228 : 1988 SCC (L&S) 126 : (1987) 5 ATC 246] had observed thus : (SCC p. 236, para 13)

(iii) State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403]

(iv) State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753]

(v) Asger Ibrahim Amin v. LIC reported in (2016) 13 SCC 797:

10. The learned Single Judge held as follows:-

“...that a refusal to give employment/absorption of contract labourers by the Board would constitute an Industrial



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Dispute as defined under Industrial Disputes Act, which reads as under:

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Section 2(k) of the Industrial Disputes Act:

-Industrial dispute- means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected, with the employment or non~employment or the terms of employment or with the conditions of labour, of any person.

The above definition is very wide in its terms to also include non~employment, terms of employment, etc. The width and ambit of the above definition has been considered by the Federal Court in the case of Western India Automobile Assn Vs. Industrial Tribunal reported in 1949 SCC Online FC 12, wherein, it was clarified that a dispute relating to non~employment is also an industrial dispute and that non~employment is the negative of employment and would mean that disputes of workmen out of service are within the ambit of the definition. Reference is made to the above only to show that industrial dispute is wide enough to also examine the question of non employment including re~employment. It appears that the refusal on the part of the Board to provide employment/re~employment to the workmen would qualify as an industrial dispute and the terms of reference is much wider in the present case inasmuch it uses the expression “re~employment” rather than ?absorption?. For the above reason, this Court is of the view that the plea of maintainability is liable to be rejected. “

The learned Single Judge, thus given a clear finding that the relationship of employer employee exists in the case on hand.

11. Answer to Issue No.2

The question as to whether the cut off date ought to be 05.01.1998 as submitted by the workmen or 28.04.1999 as submitted by the Board, the learned



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Single Judge held that the entire exercise was pursuant to the policy decision by

the Board and the Government to abolish the contract labourers in the four power stations. The Memo dated 05.01.1998 was issued relating to engagement of contract labour, wherein, it was reiterated that no additional contract labourers should be engaged other than those engaged for a long time and stress should be to reduce the number of contract labourers. It was further stated that indiscriminate deployment of contract labourers by the Board has resulted in the Board being constrained to regularize the contract labourers in view of the Khalid Commission-s report without maintaining any level of qualification. This was followed by the Circular dated 19.03.1999, wherein, a reference was made to the Memo dated 05.01.1998 and instructions were issued to examine various details relating to the contract labourers. It importantly provided that the details of the contract labourers shall be verified on 24.03.1999 and the verification shall be confined to contract labourers engaged until 05.01.1998. The physical verification was meant to be carried out on 24.03.1999 and the same was to be submitted before 24.03.1999 by the Scrutiny committee to the Superintending Engineer. Thus, the entire exercise of gathering data/details of the contract labourers and verification and submission to the authorities were all made and was actually completed even prior to issuance of B.P.No.17. Importantly, B.P.No.17 was issued almost after a year and 3 months since



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05.01.1998. Importantly, the verification being confined to contract labourers engaged only until 05.01.1998, it may not be open to the Board to insist that contract labourers must be engaged beyond the said date to be entitled to the benefit of the Scheme for absorption.

12. The learned Single Judge further held that as a matter of fact, the above condition had in fact been misused to deny benefit of absorption to contract labourers by disengaging them, according to the whims of the Board thereby rendering the entire exercise vulnerable to challenge under Article 14. This would be evident when one finds that admittedly juniors of the petitioner have been employed as could be seen from Exhibits.53, 54 and 55, when the entire exercise of absorption was meant to be made on the basis of seniority which was to be reckoned from the date of joining. It appears that the contention of the Board that it is only those workmen/contract labourers who were not only engaged as on 05.01.1998 but who continued to be in service as on 28.04.1999 would be eligible for absorption/employment appears to be lacking merit.

13. **Answer to Issue No.3:-** With respect to drawing of adverse inference, the learned Single Judge held that it appears that there is no doubt that the



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burden is on the workmen to show that he has been in continuous service; the absorption/employment of the contract labourers is on the basis of the Board Proceedings. Importantly, the workmen had also submitted RTI applications seeking the Board to furnish documents and had also taken out an application before the Tribunal, wherein, the Board was directed to produce the documents. However, it was only when the Board failed to produce the documents admittedly in their possession as would be evident from the deposition of the Management witness, that the Tribunal had proceeded to draw adverse inference. The learned Single Judge further held that it appears that one cannot lose sight of the distinction between burden, onus and the discretion to draw an adverse inference by an adjudicating body/Tribunal/court. The burden which is on the workmen stands discharged once he had let in evidence and had called upon the Board to furnish the documents; in the present case, the workmen had let in evidence in the form of photographs, ration card, proof of date of birth, educational certificates and proof of experience; thereafter, the onus is on the Board, by refusing to produce the documents, the Board has failed to discharge the onus; thus, the Tribunal in exercise of its discretion had proceeded to draw an adverse inference' drawing of an adverse inference being essentially discretionary, the jurisdiction of this Court to interfere with the exercise of the above discretion is rather narrow and limited to cases which suffers from being



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perverse or arbitrary.

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14. The learned Single Judge, applying the principles laid down in the Supreme Court in the subject matter, held that the burden of proof shifts to the appellant employer to prove that he did not complete 240 days of service in the requisite period to constitute continuous service.

15. The order of the learned Single Judge in confirming the findings arrived at by the Industrial Tribunal was based on categorical findings and by following the principles of law laid down by the Honourable Supreme Court. Therefore, the findings of the learned Single Judge, does not call for any interference from us and therefore, we do not find any merit in the arguments raised by the learned counsel for the appellants in W.A.2513, 2519 of 2023. Accordingly, Writ Appeals filed by the Electricity Board in W.A.Nos.2513 and 2519 of 2023 are dismissed.

16. As far as W.A.2537 of 2023 is concerned, the workmen seeks for remaining 75% of backwages on the ground that when the non-absorption and regularisation of services of the workmen is declared to be illegal and bad in law, then as a consequence, the workmen is entitled to full back wages.



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17. The learned Single Judge in paragraph 15, has discussed the claim for reinstatement with backwages by the workmen in the light of judgment of the Supreme Court in the case of ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya***, reported in ***(2013) 10 SCC 324***. It is held in the said decision that the denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments. Holding so, the learned Single Judge, pointed out that ends of justice would be met, if the petitioners are reinstated with 25% backwages keeping in view the principle laid down by the Honourable Supreme Court. The learned Single Judge, modified the Tribunal award to that extent and directed the management to reemploy and regularize the services of the workmen, viz., S.Sivaraman and P.Ravi from 05.01.1998 with continuity of service stands confirmed.

18. In the case on hand, the workmen were discriminated and singled out and not been absorbed into the regular service. Further when the Management has not let in any evidence controverting the statement of workmen that they are not gainfully employed, then order for full backwages is the normal rule and is absolutely necessitated. The plight of the workmen is that they could not make



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the ends meet. Therefore, following the labour jurisprudence that if the cessation and the consequent non-absorption and regularisation of services of the workmen is declared to be illegal and bad in law, payment of full backwages to the workmen/appellants in WA.2537 of 2023 would meet the ends of justice.

19. In the light of the above reasonings, WA.No.2537 of 2023 is allowed. The Management is directed to pay the entire backwages to the appellants/workmen within a period of three months from the date of receipt of a copy of this judgment.

20. In the result,

(i) W.A.Nos.2513, 2519/2023 are dismissed.

(ii) W.A.No.2537/2023 is allowed.

No costs. Consequently, connected Miscellaneous petitions are closed.

Internet: Yes/No
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(J.N.B.J.) (P.D.B.J)
21.08.2024

To

1. The Secretary, Tamil Nadu Electricity Board
Anna Salai, Chennai-600 002



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2.The Chief Engineer, Ennore Thermal Power Station
Ennore
Chennai-600 057

3.The Presiding Officer
Industrial Tribunal
Tamil Nadu-600 104



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**J.NISHA BANU ,J.
and
P.DHANABAL,J.**

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