

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2015

CORAM

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

W.P. Nos.34348 to 34351 & 34353 to 34356 of 2014

- 1.The Superintending Engineer,
Production and Communication Circle,
TAN -TRANSCCO,
Tamilnadu Electricity Board,
Tatabad, Coimbatore - 12.Petitioner in WPs.34348 to 34351,
34353 to 34355/14 and 2nd Petitioner
in WP.34356/14
- 2.The Superintending Engineer,
Coimbatore Electricity Distribution,
Circle/North, TANGEDCO,
Tamilnadu Electricity Board,
Tatabad, Coimbatore.1st Petitioner in WP.34356/14
- Vs
- 1.The Presiding Officer,
Labour Court,
Coimbatore.1st Respondent in all the WPs
- 2.G.Rajan2nd Respondent in WP.34348/14
- 3.P.Anbarasu2nd Respondent in WP.34349/14
- 4.V.Samikutti2nd Respondent in WP.34350/14
- 5.S.Rajendran2nd Respondent in WP.34351/14
- 6.P.Madasamy2nd Respondent in WP.34353/14
- 7.M.Prabusamy2nd Respondent in WP.34354/14
- 8.K.V.Mohan Kumar2nd Respondent in WP.34355/14
- 9.M.Mohamed Ali2nd Respondent in WP.34356/14

COMMON PRAYER TO ALL THE WRIT PETITIONS :

Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the first respondent in relation to the award passed in E.P.Nos.22 to 25 of 2014 and E.P.Nos.27 to 30 of 2014 respectively dated 24.11.2014 and quash the same as illegal.

For Petitioner : Mr.P.R.Dhilipkumar

For Respondents : Mr.R.Renga Ramanujam for R2

C O M M O N O R D E R

In all these Writ Petitions, the petitioner is the Superintending Engineer, Production and Communication Circle, TAN -TRANSCCO and challenge is to the order passed by the Labour Court, Coimbatore, dated 24.11.2014, in Execution Petitions filed by the second respondent in each of the Writ Petitions.

2. Since the Execution Petitions were disposed of by a common order, these Writ Petitions were heard together and disposed of by this Common order.

3. Heard Mr.P.R.Dhilipkumar, learned counsel appearing for the petitioner and Mr.R.Renga Ramanujam, learned counsel for the contesting second respondent. In this order, the second respondent in all these Writ Petitions shall be referred to as the Workmen.

4. The Workmen raised a dispute before the Inspector of Labour, Coimbatore, contending that they were contract labours as Mazdoor Grade-I and they have been engaged by the contractor, who have executed various works for the petitioner under K2/Chit Agreement between the various periods during 1998. As the Contractor denied the employment to the workmen, they raised individual disputes before the Labour Court claiming reinstatement with backwages and continuity of service. The contention raised by the Workmen is that they have continuously worked for 480 days in 24 calendar months. This contention was resisted by the petitioner and ultimately the Labour Court passed the common award on 01.07.2003, directing reinstatement with backwages and continuity of service. The award was put to challenge by the petitioner in W.P.No.29188 of 2004, which was dismissed by order dated 25.10.2007. The petitioner did not prefer an appeal against

the order chose to implement the award passed by the Labour Court and the Workmen were reinstated in service. It is stated that the backwages were paid to the Workmen by means of cheque and appointment was offered to them subject to an undertaking that they will work as Mazdoor Trainee for a period of three years on consolidated wages and they will not claim any benefit under the Provident Fund Act and agreed to withdraw the cases filed on behalf of them by their Trade Union and will not claim any service benefits for the period during which they worked as contract labours.

5. It is the specific case of the petitioner that the Workmen agreed to all these conditions and joined duty as Mazdoor Trainee and subsequently, one of the conditions that they should work for three years on consolidate wage was reduced to one year by proceedings, dated 23.01.2014. The Workmen filed Contempt Petitions alleging disobedience of the orders passed in the Writ Petitions in Contempt Petition No.479, 489, 490, 492 & 493 of 2009. By order dated 06.04.2011, the Contempt Petitions were dismissed as not maintainable with an observation that the dismissal of the Contempt Petitions will not disentitle the workmen to avail the remedies open to them under the law. In the said order, it was observed that Section 11B of the I.D., Act empowers the Workmen to seek for compliance of the award passed by the Labour Court and filing of Contempt Petitions was clearly misconceived. Another set of Contempt Petitions were filed in Contempt Petition Nos.480, 486 to 488 of 2009, which were disposed of by common order dated 15.11.2011, granting liberty to the Workmen to file a petition under Section 11B of the I.D. Act which the workmen were willing to do with a direction to the Labour Court to dispose of the same within a period of six months from the date of filing of the petition. In this background, the Workmen filed Petitions under Section 11B of the I.D., Act. The relief claimed by the Workmen are as hereunder:-

Reinstatement with full backwges with continuity of service. Award published by Labour and Employment Dept in Govt., Gazette on 17.09.2003 and came into effect on 17.10.2003. The High Court conformed it. But the respondent implemented the award partly by reinstating petitioner as casual labour on daily wages basis by order dated 30.08.2010.

In the meantime the petitioner filed Contempt Petition before High Court and the High Court dismissed it on 15.11.2011, with a direction to approach the Labour Court for execution under Section 11B and the Labour Court is directed to

dispose it within 6 months if E.P., is filed. As per the award the respondent has to reinstatement to the petitioner as regular employee with continuity of service which carry promotions on par with his juniors who had got two promotions. Therefore, he should be posted as Foreman II grade/inspector (Assessment)/Assistant Administrative Supervisor with back wages with regular time scale pay w.e.f., 01.04.1998.

6. The Workmen also sought for attachment of the movable properties namely the vehicles of the petitioner department. The petitioner resisted the Execution Petition by filing a counter statement reiterating the contentions referred above with regard to the undertaking given by the Workmen. Further, it was stated that the pursuant to the award of the Labour Court, the Workmen were absorbed as casual labour directly on daily wages of Rs.120, since prior to the termination, they were engaged as contract labours under the Contractor. Further it was contended that Contributory Pension Scheme (CPC) has been effected from the date of joining duty as casual labourers. After which when they were appointed as Mazdoor (Trainee), on consolidated wages, which was accepted by the Workmen by giving an undertaking. That apart backwages were paid to the full satisfaction of the award of the Labour Court, which has been received by the Workmen without demur. Therefore, the petitioner took a stand that the Execution Petitions filed after a lapse of three years is only to harass the petitioner. Further, it was submitted that the question of treating the Workmen with those of their juniors is beyond the scope of the Execution Petition, since the award passed by the Labour Court, dated 01.07.2003, has been fully complied with. The contention that the training period of three years was reduced to one year with effect from 09.01.2014, was also reiterated. The Labour Court by the impugned order allowed the Execution Petitions holding that the award has not been fully complied with.

7. Before the Executing Court/Labour Court, the Workmen examined themselves and marked nine documents and on the side of the petitioner one official was examined and three documents were marked. The Labour Court framed the question as to whether the Execution Petitions have to be allowed or not.

8. Having framed such a point for consideration, the discussion in the impugned order is in two paragraphs namely, paragraphs 7 & 8. Paragraph 7 is the contentions raised by the parties and the operative portion of the common award, dated 01.07.2003. The so called reasoning in the impugned

order is contained in paragraph 8. However, it is seen that the Labour Court did not consider any of the contentions raised either by the Workmen or by the petitioner Management. The relief sought for in the Execution Petition has been quoted in the preceding paragraphs wherein the Workmen claimed that they are entitled for reinstatement as regular employees with continuity of service and consequential promotion on par with their juniors who are said to have been granted two promotions and they further stated about the post to which they should have been promoted and that they should be given regular scale of pay from 01.04.1998.

9. The petitioner in their counter statement raised a specific plea that the Workmen accepted the appointment, executed an undertaking received the entire backwages without demur, joined duty and after working for about three years have filed the Execution Petitions. The stand of the petitioner was that the award of the Labour Court has been complied with in full. Unfortunately the Labour Court did not consider the issues raised, but chose to render a finding that the Workmen joined duty and received backwages without prejudice to their claim. It further held that the award has not been fully complied with and therefore, the Workmen are before the Court to execute the award.

10. So far as the contention raised by the petitioner that they are not eligible for promotion on par with the other employees was rejected in a single line stating that it is not acceptable. The observation of the Labour Court is that the petitioner is liable to implement the award in its letter and spirit and for such reason, the Execution Petition was allowed.

11. In my view, the impugned order is devoid of reasons, the Labour Court failed to examine each of the Execution Petitions with regard to the contentions raised by the Workmen and the defence of the petitioner. The error crept in on account of not framing proper points for consideration and the Labour Court generalised the whole issue and passed a cryptic order. There is no discussion as regards the effect of the deposition given by RW-1 examined by the petitioner. That apart what is the effect of the undertaking given by the Workmen was also not considered. Thus, the impugned order being an order devoid of reasons, is liable to be set aside.

12. Accordingly, all the Writ Petitions are allowed and the impugned orders are set aside and the matter is remanded to the Labour court for fresh consideration. Pursuant to the interim order granted in these Writ Petitions on 08.01.2015, it is seen that the entire amount claimed by the Workmen being

a sum of Rs.14,00,000/-, has been kept in deposit with the Labour Court to the credit of the Execution Petitions. On account of the order of remand, the said amount shall continue to remain in deposit and shall abide by the final order to be passed in the Execution Petitions afresh. Since the Execution Petitions are of the year 1999, the Labour Court is requested to expedite the disposal of the Execution Petitions with a direction to the petitioner and Workmen to co-operate for early disposal. The Labour Court shall endeavour to dispose of the Petitions as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this Court. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

pbn

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Coimbatore.

+1cc to Mr.P.R.Dhilipkumar, Advocate, S.R.No.68210

+1cc to Mr.R.Renga Ramanujam, Advocate, S.R.No.68372

W.P. Nos.34343 to 34351 and
34353 to 34356 of 2014

BUR(CO)
CA(12/01/2016)

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