

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

W.A.Nos.2896 and 2897 of 2012
and M.P.Nos.1 and 2 of 2015
and M.P.Nos.1 of 2012, 1 of 2013 and 1 of 2013

W.A.No.2896 of 2012

1. V.Anandan
2. S.Sivalingam
3. S.Jayabalan
4. K.Sasikumar
5. G.Manigandan
6. E.Murugesan
7. S.Murugan
8. M.Gunasekaran
9. T.Ravikumar
10. P.Venkatesan
11. A.Kamaraj
12. G.Rajan
13. R.Manickam
14. M.Paneerselvam
15. M.Raman
16. R.Vasudevan
17. M.Babu
18. K.Murugan
19. S.Sheik Mohideen
20. R.Somasundaram
21. L.P.Narendran
22. R.Elumalai
23. G.Sathiyathan
24. K.Raja
25. S.Murugan
26. G.Amuthan
27. T.Padmanaban
28. V.Munusamy
29. K.E.Suresh
30. M.Nandakumar
31. N.Krishnakumar
32. R.Anandakumar
33. M.Moorthy
34. M.Ramu
35. T.Kalaivanan



WEB COPY

36. M.Ravi
37. C.Sugumar
38. R.Sampath
39. V.Yoganandam
40. V.M.Subramani
41. S.Murali
42. C.Thiagarajan
43. C.Ravi
44. K.Ravi
45. R.Vijayakumar
46. P.Velupichai
47. M.S.Raju
48. M.Gopal
49. K.Chinnamunusamy
50. R.Natarajan
51. A.Chinnadurai
52. S.Karunanithi
53. G.Ganesan
54. K.Elumalai
55. B.Duraibabu
56. T.Chandran
57. N.Pathinathan
58. T.Mani
59. V.Chinnaraj (Died)
60. T.V.Narayanan (Died)
61. Egambaram
62. M.Krishnan
63. A.Balu
64. V.Varadhan
65. G.Ankariya (Died)
66. T.Ruthrakotti
67. S.Chandran
68. N.Sekar
69. R.S.Murugan
70. R.Govindaraj
71. C.Veeriya

..... Appellants

सत्यमेव जयते
Vs.

1. The Superintending Engineer (Occupier)
Basin Bridge Gas Turbine Station,
Tamil Nadu Electricity Board,
Chennai - 600 012.
2. The Deputy Chief Inspector of Factories
First Division,
Anna Salai, Chennai - 600 006.

..... Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court, dated 14.12.2012 made in W.P.No.5679 of 2011.

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st respondent herein culminating with his Award dt 25.11.2010 passed in Appln. No. 3453/2004 in File No. B/2066/2010 and quash the same.

W.A.No.2897 of 2012

Minvaria Oppantha Thozhilargal Sangam
Rep. by its General Secretary,
149, C.J.Complex, IV Floor,
Thambuchetty Street,
Chennai - 600 001. Appellant

Vs.

1. Tamil Nadu Electricity Board
Rep. by its Chairman,
N.P.K.K.R Maligai,
Anna Salai, Chennai - 2.
2. The Superintending Engineer (Occupier)
Basin Bridge Gas Turbine Station,
Tamil Nadu Electricity Board,
Chennai - 600 012.
3. Tamil Nadu Generation & Distribution Corporation
Rep. by its Managing Director,
N.P.K.K.R Maligai, Anna Salai,
Chennai - 600 002. Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court, dated 14.12.2012 made in W.P.No.778 of 2011.

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents herein to comply with the order in Application No.3453 in the file No.B/2066/2010 pronounced on 26.11.2010 by the Deputy Chief Inspector of Factories I Division Chennai and pay the workers same wages as paid to the permanent workers with effect from the date on which they have been found to be entitle to permanency.

For Appellant : Mr.K.M.Ramesh in both the Appeals

For Respondents : Mr.R.Varalakshmi for
R1 in W.A.No.2896 of 2012
& R1 and R2 in W.A.No.2897 of 2012

Mr.N.Srinivasan, AGP
for R2 in W.A.No.2896 of 2012

No Appearance for R3
in W.A.No.2897 of 2012

COMMON JUDGMENT

(Judgement of the Court was delivered by
P.KALAIYARASAN, J)

These instant writ appeals arise from the common order, dated 14.12.2012 passed by the learned single Judge in W.P.Nos.5679 of 2011 and 778 of 2011.

2. W.P.No.5679 of 2011 was filed by the Management to issue a writ of certiorari to quash the order of the Deputy Chief Inspector of Factories, Chennai, dated 25.11.2010 conferring permanent status to the 71 workers under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

3. W.P.No.778 of 2011 was filed by the Minsara Oppantha Thozhilalargal sangam to issue a writ of mandamus, directing the Management to comply with the order, dated 26.11.2010 passed by the Deputy Chief Inspector of Factories.

4. The learned single Judge allowed the writ petition filed by the Management and dismissed the writ petition filed by the Labour Union. 71 workmen and Thozhilalargal sangam are the appellants in the present two writ appeals respectively.

5. The brief facts of the case leading to the filing of these two intra court appeals are as follows :

(i) 71 workers, who are benefited under the impugned order of the Deputy Chief Inspector of Factories were Security Guards deployed in the Basin Bridge power station. They were initially employed by a private security contractor. In July 1998, the Government of Tamil Nadu had taken a policy decision that the State Public Establishment who engage Ex-servicemen sponsored by TEXCO for the appointment of security service instead of engaging private agencies. In compliance of the G.O.Ms.No.62, dated 18.02.1999, the private contract system was given up and the TEXCO security was deployed on 01.04.1999. In the meantime, after giving up the private contract system, those workers

already employed by the private security contractor continued to work from 28.12.1998 till 30.03.1999 for a temporary short period of 93 days on daily wages. Thus, the present 71 workers were employed on daily wages.

(ii) These 71 workers filed writ petition in W.P.No.5336 of 1999, seeking regularisation of their service and this Court passed an interim order on 31.03.1999 directing the Board to maintain status quo and to continue the employment of those 71 persons. In the writ petition, the High Court passed orders on 12.08.2004, directing the workmen to go before the Deputy Chief Inspector of Factories for conferment of permanent status and protected the service of the workmen, pending decision of the authorities. When the authority rejected the application, citing jurisdictional reasons, the workmen again approached the High Court by way of filing W.P.No.6997 of 2005 and the workmen were granted an interim order protecting their service. Finally the above writ petition was also disposed of directing the Deputy Chief Inspector of Factories to decide the issue on merits in accordance with law and pending decision of the authority, the service of the workmen was also protected. The Deputy Chief Inspector of Factories held the workmen to be entitled to permanency computing 480 days of employment by including the period of litigious employment.

6. The learned counsel appearing for the appellants contend that similar workers who are not parties to any litigation were also allowed to continue and therefore, the finding of the learned single Judge in excluding the litigious period is not correct. It is further contended that the Board did not take serious steps to have the interim order vacated and the workers herein have put in service for more than 4 years. The present 71 workers and 5 other workers were recruited by the Board only after conducting interview.

7. The learned counsel appearing for R1 in W.A.No.2896 of 2012 and R1 and R2 in W.A.No.2897 of 2012 per contra contends that the workers having fully known that their employment on daily wages will be for a short period, accepted the employment and therefore, they cannot claim permanency. It is further contended that for conferment of permanency, the litigious period, particularly when the service is protected by the orders of the Court should not be included in computing 480 days.

8. There is no dispute that 71 workmen were employed by the Board as daily wage and purely on temporary basis and it would be for a limited period from 28.12.1998 to 30.03.1999 and the same was also indicated in the proceedings. The fact also remains that the said workmen approached the High Court for regularisation by way of filing writ petition and got an interim order of status quo on 31.03.1999 and continued to be in service

under the pretext of interim orders of this Court after 30.03.1999. The Deputy Chief Inspector of Factories, being the authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, while calculating 480 days of continuous work included the period protected by the interim orders of this Court. Excluding the litigious period, the continuous period of employment is shown varying from 44 days to 91 days in the order of the authority under the Act.

9. The only question that is to be decided is whether the litigious period can be included in computing 480 days as per the Act.

10. The learned counsel appearing for the appellants cited Supreme Court Judgments to emphasize that the decision in Uma Devi's case has subsequently been interpreted, so that the workers are entitled to the benefits under the benevolent Act. He cited the decision in Catering Cleaners of Southern Rly v. Union of India, reported in (1987) 1 SCC 700 and Maharashtra State Road Transport Corporation and another v. Casteribe Rajya P.Karmchari Sanghatana, reported in (2009) 8 SCC 556.

11. In Catering Cleaners of Southern Rly v. Union of India, reported in (1987) 1 SCC 700, the Hon'ble Supreme Court has held as follows :

6...The Supreme Court held that the Tribunal was justified in giving the direction for the abolition of the contract system, observing that it was relevant to bear in mind that industrial adjudication generally did not encourage the employment of contract labour in modern times. Quoting from the report of the Royal Commission on Labour, it was said that whatever merit there was in the system in primitive times, it was now desirable for the management to discharge completely the complex responsibility laid upon it. The Court also referred to similar opinions expressed by several Labour Enquiry Committees appointed in different States. Proceeding to consider the merit of the contract labour system in the case before them, Wanchoo J. speaking for the Court observed:

"The contract in this case related to four matters. But the reference is confined to one only, viz., cleaning maintenance work at the refinery including premises and plant and we shall deal with that only. So far as this work is concerned, it is incidental to the

manufacturing process and is necessary for it and of a perennial nature which must be done every day. Such work is generally done by workmen in the regular employ of the employer and there should be no difficulty in having regular workmen for this kind of work. The matter would be different if the work was of intermittent or temporary nature or was so little that it would not be possible to employ full-time workmen for the purpose. Under the circumstances the order of the tribunal appears to be just and there are no good reasons for interfering with it.

The Court held that the contract in the case was a bona fide contract but that it did not affect the issue...."

12. In Maharashtra State Road Transport Corporation and another v. Casteribe Rajya P.Karmchari Sanghatana, reported in (2009) 8 SCC 556, it has been held by the Hon'ble Supreme Court as follows :

"26...The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years , with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer..."

13. In the above Judgments, it has been held that if the contract is bonafide one, the Court is bound to restrain itself to interfere and only in cases where unfair labour practise on the part of the employer is established, then the authorities are empowered to issue preventive directions.

14. Another Judgment of Supreme Court cited by the learned counsel for the appellants is ONGC Ltd., v. Petroleum Coal Labour Union & Ors, reported in 2015 STPL 4559 SC. This relates to the employees who have been regularly employed and the question arose in that case is as to which are among standing

orders and policy decision will prevail over the other. This decision is not applicable to the present facts of the case.

15. The learned counsel appearing for the appellants cited the Durgapur Casual Workers Union & Ors v. Food Corporation of India & Ors (Civil Appeal No.10856 of 2014) and contended that Uma Devi's case has not over ridden powers of labour courts. The Hon'ble Supreme Court in this Judgment held as follows :

"In case of unfair labour practice was considered by this Court in Maharashtra State Road Transport and another v. Casteribe Rajya Parivahan Karmchari Sanghatana (2009) 8 SCC 556. In the said case, this Court held that Umadevi's case has not over ridden powers of Industrial and Labour Courts in passing appropriate order, once unfair labour practice on the part of employer is established."

16. As already pointed out once unfair labour practise on the part of the employer is established, it has been held that Uma Devi's case has not over ridden powers of Industrial and Labour Courts in passing appropriate orders.

17. Here in this case, it is not the case of the workmen that there is any unfair labour practise on the part of the Board. It is pertinent to note that the workmen have been indicated in the proceedings that they were engaged on daily wages that too for a particular short period.

18. It is worth noting the decision of the Hon'ble Supreme Court in Dharmapur Sugar Mills Ltd., v. Bhola Singh, reported in (2005) 2 SCC 470, wherein it has been held as follows :

"18. When a workman is appointed in terms of a scheme on daily wages he does not derive any legal right to be regularised in his service. It is now well known that completion of 240 days of continuous service in a year may not by itself be a ground for directing regularisation particularly in a case when the workman had not been appointed in accordance with the extant rules."

19. In this case, the initial appointment of all workmen was not in accordance with the rules and they were engaged on daily wages for a particular period and they continued in the employment pursuant to the interim orders of this Court.

20. With regard to the period protected under the orders of the Court, the Hon'ble Supreme Court in State of Rajasthan v.

Daya Lal, reported in (2011) 2 SCC 429, held as follows :
"12. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

...

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right."

21. As per the above ruling, the service in litigious employment will not entitle the workers to claim regularisation. Therefore, the service of 71 workmen under litigious period cannot be included to compute the period to confer permanent status, as per the Act.

22. The contention of the learned counsel appearing for the appellants that 5 other workers, who are not so protected by any order of the Court are also continuing in service and therefore, the workmen herein should not be deemed to have continued in employment only because of the Court order is not sustainable. From the orders of the Court, it is very clear that only because of the order, the service of workmen herein have been protected so far.

23. For the aforesaid reasons, the learned single Judge has rightly quashed the orders of the competent authority, namely, the Deputy Chief Inspector of Factories, dated 25.11.2010 passed in Appln.No.3451/2004 in File No.B/2066/2010 and dismissed the W.P.No.778 of 2011.

24. The learned counsel appearing for the appellants brought to the notice of this Court the letter of the Superintending Engineer, Basin Bridge Gas Turbine Power Station, Chennai to the Convenor of the Committee, Regularisation of Service of Contract Labourers, dated 05.03.2008, wherein it is stated that the Hon'ble Minister for Electricity, Government of Tamil Nadu, announced in the Legislative Assembly that 11029 contract labours will be absorbed in TNEB and out of 105 persons

mentioned against BBGTPS (security works), 74 persons presently available are listed in the Annexure, since they were not absorbed in view of the pending Court case. Though this Court found that 71 workmen are not entitled to seek the permanent status, as per the Act, it is made clear that the Board is at liberty to consider and absorb them in the service as mentioned in the above said letter. With the above observations, these writ appeals are liable to be dismissed.

In fine, both the writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed. However, the first respondent in W.A.No.2896 of 2012 in suitable circumstances if any, is directed to consider and absorb the appellants / workmen in W.A.No.2896 of 2012 as mentioned in the letter, dated 05.03.2008 of the first respondent to the Convenor of the Committee, Regularisation of Service of Contract Labourers.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

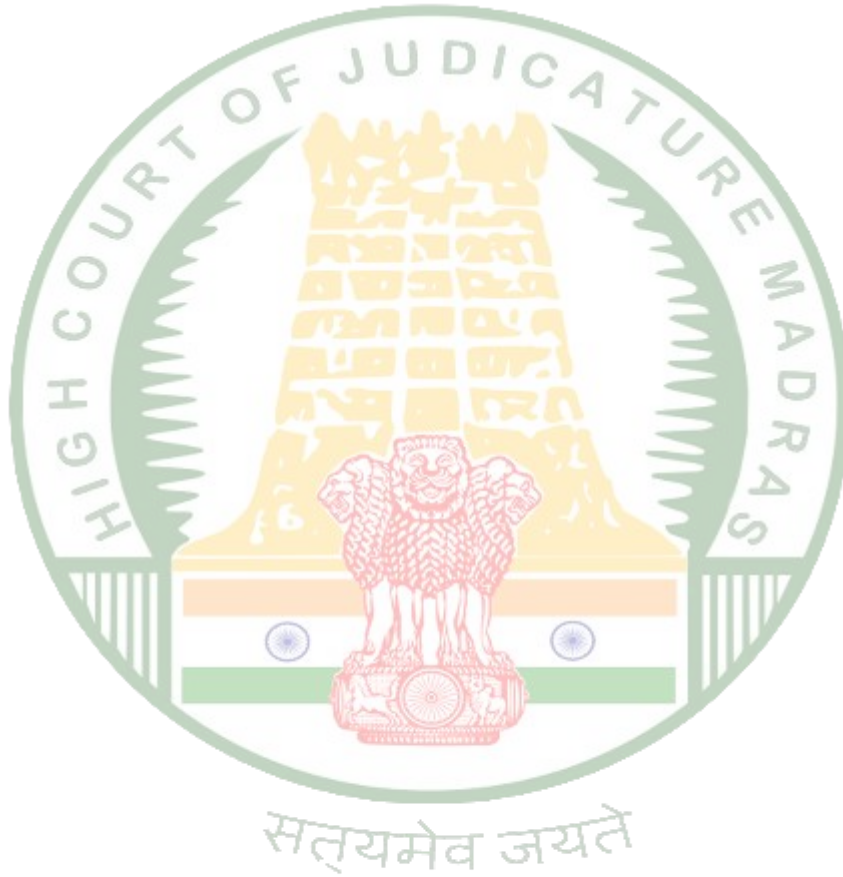
To

1. The Superintending Engineer (Occupier)
Basin Bridge Gas Turbine Station,
Tamil Nadu Electricity Board,
Chennai - 600 012.
2. The Deputy Chief Inspector of Factories
First Division,
Anna Salai, Chennai - 600 006.
3. The Chairman
Tamil Nadu Electricity Board
N.P.K.K.R Maligai,
Anna Salai, Chennai - 2.

4. The Managing Director
Tamil Nadu Generation & Distribution Corporation
N.P.K.K.R Maligai, Anna Salai,
Chennai - 600 002.

+1cc to Mr.K.M.Ramesh, Advocate Sr.43518
+1cc to M/S.R.Varalakshmi, Advocate Sr.43598
+1cc to the Government Pleader sr.43793

W.A.Nos.2896 and 2897 of 2012



WEB COPY