

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2016

CORAM:

THE HON'BLE Mr. JUSTICE SATISH K.AGNIHOTRI
and
THE HON'BLE Mr. JUSTICE V. BHARATHIDASAN

W.A. No.504 of 2016 and C.M.P. No.6871 of 2016

- 1 Tamil Nadu Electricity Board
Anna Salai
Chennai 600 002
represented by its Secretary
- 2 Ennore Thermal Power Station
Ennore
Chennai 600 057
represented by its Chief Engineer
- ..Appellants/Petitioners
- vs.
- 1 S. Sivaraman
- 2 P. Ravi
- 3 The Presiding Officer
Industrial Tribunal Tamil Nadu
Chennai 600 104
- ..Respondents/Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent
challenging the order dated 30.10.2015 passed in M.P. No.1 of
2011 in W.P.No.23857 of 2010.

PRAYER IN W.P.No.23857 OF 2010:- Petition praying that in the
circumstances stated therein, and in the affidavit filed
therewith, the High Court will be pleased to Direct the
Respondents to pay the Wages under Section 17-B of the
Industrial Dispute Act, to the Petitioners/Respondents, the
salary applicable to the Post of Helper who absorbed in the year
1999 in the Board, as on the date of award i.e. 31.12.2009, (In
MP.NO.1/2011) pending (IN WP.NO.23857/2010).

For Appellants :Mr. V. Karthik, Sr. Counsel
for M/s. T.S. Gopalan & Co.

For RR 1 & 2 :Ms. Vaigai, Sr. Counsel
for Mr. S.N. Ravichandran

JUDGMENT

(delivered by SATISH K.AGNIHOTRI, J.)

With the consent of learned counsels for parties, the writ appeal is taken up for final hearing at the admission stage itself.

2 For the sake of brevity, the parties are referred to as per their litigative status in the writ appeal.

3 Questioning the legality and validity of the order dated 30th October, 2015 passed in M.P.No.1 of 2011 in W.P.No.23857 of 2010 by the learned Single Judge, the instant intra-court appeal is filed by the appellants / management.

4 The indisputable facts in brief are that a dispute arose in respect of disengagement of the first respondent and second respondent from service from 1st October 1998 and 2nd October, 1998 respectively. The Government of Tamil Nadu vide G.O.(D)No.815, Labour and Employment (A2) Department, dated 24th November, 2006, referred the dispute to the third respondent Tribunal for adjudication, wherein the question framed was as to whether the first and second respondents workmen are entitled to re-employment and also regularization thereafter. The Tribunal, vide Award dated 31st December, 2009, directed re-employment / reinstatement of the workmen and regularization thereafter with effect from 5th January, 1998.

5 Feeling aggrieved, the appellants/management preferred the writ petition, questioning the justifiability of the aforesaid Award. The learned Single Judge, while issuing notice, directed the appellants /management to provide last drawn salary to the respondents 1 and 2 under the provisions of Section 17-B of the Industrial Disputes Act, 1947 (herein-after referred to as "I.D. Act"), by the impugned order. Thus, this intra-court appeal.

6 The main plank of contention of Shri V.Karthik, learned Senior Counsel, representing M/s.T.S.Gopalan and Co., for the appellants is that since there is an element of regularization after re-employment, the workmen are not entitled to benefits under the provisions of Section 17-B of the I.D. Act, pending adjudication before the writ court.

7 In support of this contention, the learned Senior Counsel relies on three decisions of the Division Bench of the High Court of judicature, Jharkhand, i.e., (i) Employers in relation to the Management of Bhuli Township Administration of M/s.B.C.C.L., Ltd. and another Vs. Presiding Officer, Central

Government Industrial Tribunal No.2 and another¹, (ii) Bharat Coking Coal Ltd., Dhanbad Vs. Regional Labour Commissioner(C), Dhanbad-cum-Appellate Authority under the Payment of Gratuity Act, 1972 and others², and (iii) Employers in relation to the Management of Rajrappa Washery Central Coalfields Ltd. Vs. Their workmen, rep through Bihar Colliery Kamgar Union, Rajrappa³ and a decision of the Division Bench of the Calcutta High Court in Texmaco Limited Vs. State of West Bengal and others⁴.

8 The learned Senior Counsel would further submit that a direction to re-employ and regularise the services of the respondents 1 and 2 is patently illegal. In such an event, the respondents 1 and 2 are not entitled to last drawn wages under the provisions of Section 17-B of the I.D. Act.

9 Ms.R.Vaigai, learned Senior Counsel appearing for the respondents 1 and 2/ workmen, in riposte, would support the impugned order of the learned Single Judge.

10 Having examined the indisputable facts, as evident from the perusal of the documents, pleadings and on consideration of the rival contentions advanced by the learned Senior Counsels, it is luculent that the workmen were disengaged from the service after a long period. The subject matter of challenge before the Tribunal under reference was their removal and the consequential regularization thereafter.

11 Section 17-B of the I.D. Act reads as under :

"17-B. Payment of full wages to workman pending proceedings in higher Courts.-- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court

1 2004 (1) L.L.N. 1140

2 2004-III-LLJ 837

3 2010-III-LLJ 553 (Jhar)

4 (2002) 2 CHN 604 : (2001) 1 SLR 387 (Cal) (DB)

that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period of part, as the case may be."

12 In the case on hand, the question of regularization will arise only when the workmen are already working, not in a case where re-employment / reinstatement of disengaged workmen is directed.

13 The decisions (supra) cited by the learned Senior Counsel appearing for the appellants have no applicability. There is no dispute that the provisions of Section 17-B of the I.D. Act is not applicable in a case where regularisation is directed. In all the cases, the workmen working on job have come up with the case of regularization, wherein the learned Division Benches of the Jharkhand as well as Calcutta High Courts have held that the provisions of Section 17-B of the I.D. Act will have no application in case of Award on regularization. A bare reading of the provision itself indicates that the benefit of Section 17-B of the I.D. Act is available to a case where the Tribunal by its Award directs reinstatement of any workman and the employer prefers any proceedings against such Award in the High Court or in the Supreme Court. In the event the Award, directing reinstatement is not complied with, the employer is liable to pay such workman during the pendency of such proceedings the full wages last drawn by him.

14 The issue as to whether the Award was just, proper and legal is pending adjudication in the writ petition and as such, we are not disposed to make any observation on the merits of the case.

15 In the case on hand, it was a clear case of re-employment / reinstatement. The regularization was a follow-up action. Thus, the dispute squarely falls within the ambit of the provisions of Section 17-B of the I.D. Act. We do not find any irregularity, illegality or infirmity in the order sought to be impugned in this appeal. Accordingly, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

vvk

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

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

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

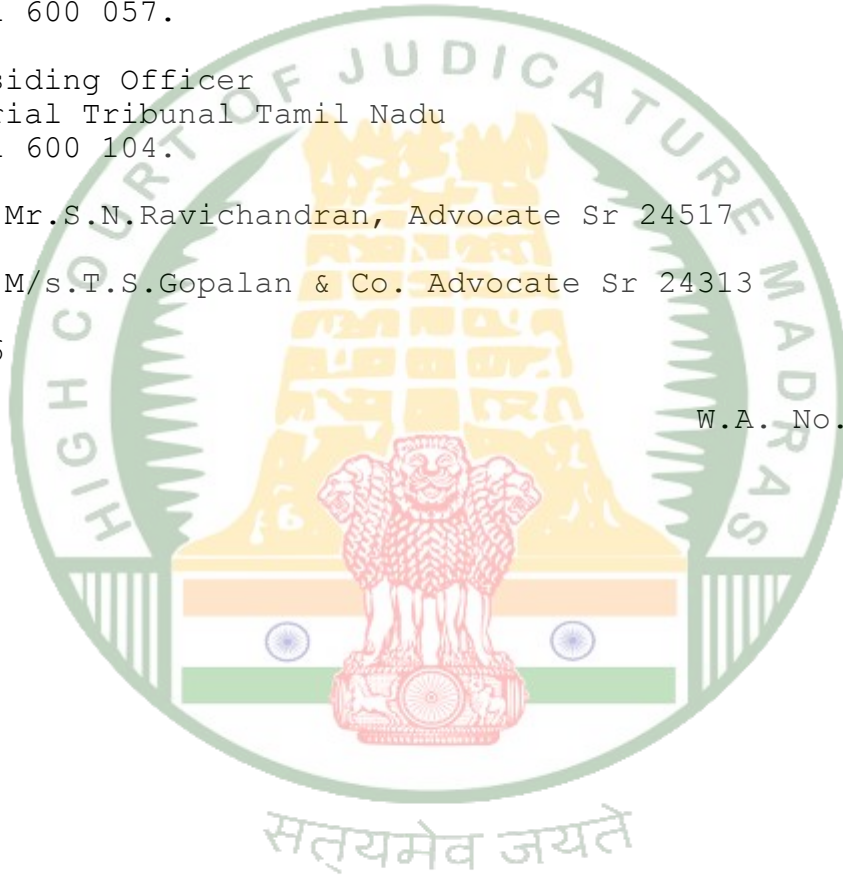
3.The Presiding Officer
Industrial Tribunal Tamil Nadu
Chennai 600 104.

+ 1 cc to Mr.S.N.Ravichandran, Advocate Sr 24517

+ 1 cc to M/s.T.S.Gopalan & Co. Advocate Sr 24313

KR/28/4/16

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