

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.15174 of 2008
and
M.P.No.1 of 2008

N.Kumaresan

...Petitioner

Vs

1.Tamil Nadu Electricity Board,
Rep. by its Chairman,
800, Anna Salai,
Chennai-600 002.

2.The Commissioner of Labour,
Chennai-600 006.

...Respondents

Prayer:- Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring that the terms 9,11,16,17,18 and 19 of Memorandum of Settlement dated 10.08.2007 under Section 12(3) of the Industrial Disputes Act, 1947 reached between the 1st respondent Board and the Unions representing Workmen of the Tamil Nadu Electricity Board before the Commissioner of Labour in B2/45846/07 as unconstitutional, void, forbidden by law, fraudulent and opposed to public policy and pass further orders.

For Petitioner : Mr.R.Parthiban

For Respondents : M/S. Thangavadhana Balakrishnan
Additional Govt. Pleader for R2
: Mr.Anandgopal for R1

for M/s.T.S.Gopalan & CO

ORDER

The Writ Petition has challenged certain clauses in a settlement made under Section 12(3) of the Industrial Disputes Act. Similarly, the writ Petition has been filed and the petitioner prays for a Writ of Declaration or any other appropriate Writ, Order or Direction declaring that the terms 9,11,16,17,18 and 19 of Memorandum of Settlement dated

10.08.2007, under Section 12(3) of the Industrial Disputes Act, 1947 reached between the 1st respondent Board and the Unions representing Workmen of the Tamil Nadu Electricity Board before the Commissioner of Labour in B2/45846/07 as unconstitutional, void, forbidden by law, fraudulent and opposed to public policy and passed further orders.

2. The petitioner was working as a Contract labourer in Tamil Nadu Electricity Board, in Kanyakumari District. The petitioner found that his service has not been absorbed in the Electricity Board as a regular workman. Hence the petitioner and others filed an Application under Rule 6(4) of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act and Rules framed thereunder. The said application was filed before the Inspector of Labour, Tuticorin and the Inspector of Labour directed the authorities to appoint the petitioner and others as permanent workers. There were batch of Writ Appeals pending before this Court in W.A.No.446 of 2002.

3. In the meanwhile a settlement was entered into under Section 12(3) of the Act, between the authorities and the impugned Clauses which are in dispute are as follows:

9. The Contract Labourers to be absorbed as Mazdoors, Helpers, Helper-cum-Meter Reader/Assessor-Grade-II are to be appointed as Temporary casual Labourers, and to be engaged as contract labourers on daily wages, as the case may be, shall not make any claim including E.P.F. with retrospective effect by virtue of their engagement as contract labourers in the past.

11. The Temporary causal labourers as well as the Contract Labourers will be covered by Contributory Pension Scheme with effect from 01.12.2007.

16. The claim for E.P.F. contribution with retrospective effect in respect of the Contract Labourers covered in the 7A proceedings initiated by various E.P.F. authorities will be given up. Both the Management and the Trade Unions shall approach the E.P.F. authorities for passing appropriate orders so as to release the Board from any or all liabilities arising under E.P.F. and M.P. Act 1952. Both Management and Trade Unions shall approach E.P.F. authorities to get refund of money obtained E.P.F. Authorities by freezing Board's Bank Account.

17. The Contract Labourers covered by this

settlement will be covered by Contributory Pension Scheme prospectively with effect from 01.12.2007.

18. In view of the above terms and conditions and as the Board will maintain attendance Register for Contract Labourers the Unions have agreed to withdraw all the cases pending before Industrial Tribunal, and other Legal forums.

19. In the light of the above terms and conditions both Management and Trade Unions have agreed to approach the E.P.F. authorities to drop further proceedings initiated under Section 7A of E.P.F. and M.P.Act 1952."

4. The petitioner contended that the settlement has been entered into by depriving the petitioner's valuable right under the statutory enactment, and aggrieved by the way in which the same was entered into, the same was challenged before this Court regarding the terms in 9,11,16,17,18 and 19.

5. When the matter was taken up for final disposal, the learned counsel for the respondents and petitioner would submit that the matter has been dealt with in detail and decided in the batch of Writ Appeals by the Hon'ble Lordships Justice P.K.Misra and Justice K.Kannan on 24.10.2008 and W.A.No.446 of 2002 was also considered in that batch. After hearing the learned Additional Advocate General Shri.P.S.Raman, who appeared for the Electricity Board in that batch of Writ Appeals that the public body employing several thousands of persons could not be blind to realities and engage them in long litigations and if it is found that pragmatism dictated that there ought to be a finality to litigations and when it had already a judicial decision of a Single Judge directing permanent status to workmen under the Act, the pro active poser to conclude all litigations by an agreement could not be challenged either as fraudulent or as illegal, the Hon'ble Division Bench has observed that they are convinced that the settlement entered into by the board with workmen and union is valid and enforceable, however, they should qualify the same that it shall be subordinated only to the extent of ITI trained workmen that the Regulation demands for the post of 'helpers' are not discarded and accordingly, the Writ Petition challenging 18(1) settlement stand dismissed to the extent mention in Para.No.23&24 of the said Judgment, which are as follows:

"23. If this was only a case of adjudication of whether the status of workmen was as directly employed by the Electricity Board or they were employed only as contract labourers, we would have

directed that the objection should be considered and an adjudication made in the industrial dispute raised under Section 33(2) (b) of the Industrial Dispute Act. The argument advanced by Shri.Hariparantheman as that the fate of more than 21,000 workmen was being adjudicated before the Labour Court in I.D.No.106 of 2003 and that would be appropriated forum of adjudication. He urged that the petitioner in W.P.No27714 of 2007 and connected Writ Petitions ought to have been directed only to challenge the agreement before the Industrial Tribunal and not by means of Writ Petition. We have already seen that remedy by Writ Petition itself is not barred if the board as an employer has conceded to their status as workmen to whom the provisions of the T.N. Industrial Establishments (Conferment of Permanent Status Act) could be applicable, there is no warrant for directing the parties to seek adjudication before the Industrial Tribunal. We cannot hold that the agreement itself is tainted with any fraud or male fides. As Shri.P.S.Raman, the learned Additional Advocate General appearing for the Electricity Board says that it is simply a case of the board not allowing itself not to be tied up in knots over a period of time in having ad hoc policies of recruitment and feels upstaged when a problem of gigantic proportion has arisen where claims to thousands of men and women were required to be addressed. A public body employing several thousands of persons could not be blind to realities and engage them in long litigations and if it is found that pragmatism dictated that there ought to be a finality to litigations and when it had already a judicial decision of a Single Judge directing permanent status to workmen under the Act, the pro active poses to conclude all litigations by an agreement could not be challenged either as fraudulent or as illegal. Revival of cadre or increase of cadre strength and specifying lesser qualification commensurate with the nature of work through Board proceedings could not be faulted, so long as the litigations provided for creation of such cadre.

24. Under the circumstances, we are convinced that the settlement entered in to by the board with workmen and union is valid and enforceable. We, however, qualify the same that it shall be subordinated only to the extent that the claims of ITI trained workmen that the Regulation commends for the post of 'helpers' are not discarded."

6. In view of the above Judgment, this Writ Petition challenging the same settlement under Section 123 of the Industrial Dispute Act cannot be interfered with and the said order has to be followed. Based on the above Judgment of the Hon'ble Division Bench, this Court also holds that the writ petition cannot be entertained.

7. Accordingly, the Writ Petition fails and the same is dismissed. Consequently, the connected Miscellaneous Petition is also closed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vji/nsd

To

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

2.The Commissioner of Labour,
Chennai-600 006.

+1cc to Mr.T.S.Gopalan & CO Advocate, S.R.No. 76248

+1cc to the Government Pleader, S.R.No. 76456

W.P.No.15174 of 2008
and

M.P.No.1 of 2008

RV(CO)
GN(11/03/2019)

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