



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 27.03.2018
DELIVERED ON : 04.06.2018
CORAM

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD).Nos.1461, 1591, 1592, 2032 to 2039 of 2014
and M.P. (MD)Nos.1,1,1,1,1,1,1,1,1 & 1 of 2014 and
M.P. (MD)Nos.2, 2,2,2,2,2,2,2,2,2 & 2 of 2014

W.P. (MD).Nos.1461 of 2014:

1. The Superintending Engineer,
Dindigul Electricity Distribution Circle,
Tamil Nadu Electricity Board, Dindigul.
 2. The Assistant Engineer,
Tamil Nadu Electricity Board,
Ramarajapuram Section,
Dindigul District.
- ... Petitioners

Vs.

- 1.The Inspector of Labour,
Dindigul.
 - 2.R.Kalyanasundaram
- ... Respondents

WP. (MD).Nos.1591, 1592 & 2032 to 2039 of 2014:

1. The Superintending Engineer,
Dindigul Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Dindigul.
 2. The Assistant Engineer,
Tamil Nadu Electricity Board,
Palani North Section,
Palani.
 - 3.The Assistant Engineer
Tamil Nadu Electricity Board,
Chinthalavadanpatti, 11 KV SS Section (west),
Dindigul Electricity Distribution Circle,
Chathirapatti,
Palani Taluk.
- ... 1st Petitioner in all WPs.
- ... 2nd Petitioner in WP.(MD) Nos.1591 & 1592/14
- ... 2nd Petitioner in WP.(MD) Nos.2032 to 2039/14

Vs.

- The Inspector of Labour,
Dindigul.
- T.RAJAGOPAL
- M.HARIHARAN
- P.SASIKUMAR
- P.DEVADOSS
- B.SENITHIRUKUMAR
- K.MATHIYALAGAN
- ... Respondent in all WPs.
- ... 2nd Respondent in WP(MD). 1591/ 2014
- ... 2nd Respondent in WP(MD). 1592/ 2014
- ... 2nd Respondent in WP(MD). 2032/ 2014
- ... 2nd Respondent in WP(MD). 2033/ 2014
- ... 2nd Respondent in WP(MD). 2034/ 2014
- ... 2nd Respondent in WP(MD). 2035/ 2014



R.NAGARAJ

... 2nd Respondent in WP(MD). 2036/ 2014

K.BALAKRISHNAN

... 2nd Respondent in WP(MD). 2037/ 2014

P.MARIMUTHU

... 2nd Respondent in WP(MD). 2038/ 2014

K.PANNEERSELVAM

... 2nd Respondent in WP(MD). 2039/ 2014

Common Prayer: Writ Petition filed under Article 226 Constitution of India, to issue a Writ of Certiorari, calling for records in pursuant to the impugned order passed by the first respondent in C.P.S.Nos.1 of 2008, 24, 27, 18 to 23, 25, 26 of 2009 respectively dated 10.12.2010 and quash the same.

(in all W.Ps)

For Petitioners	: Mr.Anand Gopalan for M/s.T.S.Gopalan & Co.
For R-1	: Mrs.S.Srimathi, Special Government Pleader
For R-2	: Mr.G.Sankaran

C O M M O N O R D E R

In all these Writ petitions, the Superintending Engineer, Dindigul Electricity Distribution Circle, Tamil Nadu Electricity Board, Dindigul, and the Assistant Engineer, Tamil Nadu Electricity Board, Dindigul, are the Writ petitioners. The orders passed by the Inspector of Labour, Dindigul, conferring the status of permanency on the private respondents in these Writ petitions is under challenge.

2. The private respondents in these Writ petitions filed claim petitions before the Inspector of Labour, Dindigul, claiming conferment of the status of permanency. Counters were filed opposing the said prayer. The stand of the Management was that the claim petitioners/workmen were not directly employed by the Tamil Nadu Electricity Board and that they are contract labour and that the Tamil Nadu Electricity Board is not their principal employer. Since the workmen were apparently engaged through contract labour, the Management is not maintaining records in this regard. It is therefore not possible to find out whether they worked for a period of 480 days in 24 consecutive months. The Writ petitioners also questioned the very applicability of the Tamil Nadu Industrial Establishments(Conferment of Permanent Status to workmen) Act, 1981. Before the authority constituted under the Tamil Nadu Industrial Establishments(Conferment of Permanent Status to workmen) Act, 1981, the workmen examined themselves as witnesses and marked documents such as Petty Cash Book details and Chit agreements. On the side of the Board, no documents were marked. But an Electricity Board official was examined. The first respondent passed orders dated 10.12.2010, allowing the claim petitions and directing the



Management to make the claimants as permanent workmen on the date of completion of 480 days in 24 consecutive months. Assailing the said orders, these Writ petitions have been filed.

3. The learned counsel appearing for the Writ petitioners raised a number of contentions. His principal submission is that the Tamil Nadu Act 46 of 1981 will not apply. Because there are regulations which lay down the manner of recruitment. In this regard, he drew the attention of this Court to the following decisions:-

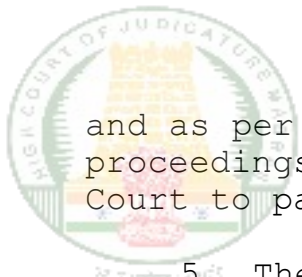
(i) L.Justine V. Registrar of Co-operative Societies, Chennai - 2003 1 LLN 315

(ii) Uma Rani V. Registrar of Co-operative Societies, Chennai - 2004 7 SCC 112

(iii) Secretary, State of Karnataka V. Uma Devi - 2006 4 SCC 1

He also pointed out that the issue of regularization of such workmen was the subject matter of litigation before the Hon'ble Supreme Court which appointed a retired Judge, Hon'ble Mr.Justice V.Khalid and submitted a report providing for absorption of more than 18,000 contract workers. The Hon'ble Supreme Court passed an order forbearing the Board from making any appointment till all the employees identified by the Commission were absorbed. A Settlement Deed dated 10.08.2007 was also entered into between the Board and the unions which provided for absorption of 21000 contract workers. The issue attained finality on 24.10.2008, when the Hon'ble Division Bench of this Court disposed of the batch of matters in W.A.(MD) Nos.1302 of 2003 etc. The Hon'ble Division Bench sustained the settlement entered into between the Management and the unions. The Hon'ble Division Bench directed all the parties to work out their rights in terms of the settlement. In this case, the claim of the petitioners is anterior to the date of settlement, namely, 10.08.2007. Therefore, their claim can be considered only in terms of the settlement and not de-hors the same. He also pointed out that the Board proceedings No.9 was issued providing for absorption of eligible contract employees. The Management had constituted Committees in this regard. Therefore, the remedy open to the workers who were left out earlier was to go before the Committee.

4. He further contended that on the date of filing of claim petitions before the first respondent, they were not in service of the Tamil Nadu Electricity Board. He drew the attention of this Court to the Circulars issued by the Chairman which restrained the Junior Engineers and Assistant Engineers from issuing service certificates to contract labour. In this case, the case of the workers stood accepted only in the light of such certificates which were issued in violation and defiance of the Board circulars. The learned counsel also submitted that similar Writ petitions were filed by the Management before the Principal Bench and that they were closed by recording the memo submitted by the learned counsel to the effect that the cases of workmen could be considered as per the Judgment of the Hon'ble Division Bench rendered on 24.10.2008

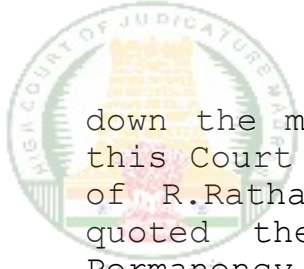


and as per the Settlement Deed dated 10.08.2007 and as per the Board proceedings No.9 dated 09.01.2008. The learned counsel wanted this Court to pass a similar order.

5. The aforesaid submissions of the learned counsel for the petitioners were vehemently contested by the learned counsel for the workmen. The learned counsel for the workmen produced typed set of papers which contained the details showing that they had worked for more than the statutory period. The decision rendered by the Hon'ble Division Bench of this Court in W.A.(MD)No.774 of 2012, dated 01.02.2013 and W.A.(MD)Nos.339 and 340 of 2015, dated 24.11.2016 were heavily relied upon. It was also pointed out that the Judgment made in W.A.(MD)No.774 of 2012, dated 01.02.2013, was not upset by the Hon'ble Supreme Court, when the Tamil Nadu Electricity Board Management filed S.L.P. It is pointed out that the contentions now raised were already rejected by the Hon'ble Division Bench of this Court by Judgment dated 24.11.2016 in W.A.(MD)Nos.339 and 340 of 2015. The learned counsel appearing for the private respondents have filed typed set of papers enclosing these decisions rendered by the Hon'ble Division Benches of this Court.

6. This Court may observe at the very outset that it would be too late in the day for the Writ petitioners to contend that the provisions of the Tamil Nadu Industrial Establishments(Conferment of Permanent Status to workmen) Act, 1981, will not apply to the Tamil Nadu Electricity Board. As early as in the year 2003, a learned Judge of this Court, in the decision reported in 2004 (3) LLN 598, in the case of the Superintending Engineer, Vellore Electricity Distribution Circle, Vellore, held that the Inspector of Labour is having the power and jurisdiction to direct the Electricity Board to confer permanent status to the eligible workmen as per Section 3 of the Act. It is true that questioning the said decision, the Tamil Nadu Electricity Board filed a Writ Appeal. But when the same was taken up along with the other cases, the Hon'ble Division Bench of this Court in its Judgment dated 24.10.2008, in W.A.(MD)No.1302 of 2003, observed that by entering into the Settlement dated 10.08.2007, the said appeal had been rendered infructuous. The said decision was also heavily relied upon in W.A.(MD)Nos.339 and 340 of 2015, dated 24.11.2016, by the Hon'ble Division Bench of this Court which rejected the contentions of T.N.E.B./T.A.N.G.E.D.C.O. Therefore, being bound by the aforesaid decisions, this Court cannot even consider the contentions of the learned counsel for the petitioners that the Act would not apply to the Tamil Nadu Electricity Board. But this does not conclude the matter. Applicability is one thing, manner of application is another.

7. The stand of the Writ petitioners is that in the case of L.Justine Vs. Registrar of Co-operative Societies, Chennai, reported in 2003 1 LLN 315 which was confirmed in Uma Rani V. Registrar of Co-operative Societies, Chennai, reported in (2004) 7 SCC 112, it was held that the Permanency Act of 1981 cannot be pressed into service, when there are statutory regulations which lay

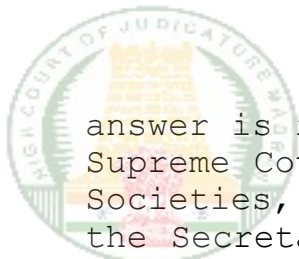


down the manner of recruitment. In fact the Hon'ble Full Bench of this Court in the decision reported in (2007) 5 CTC 369, in the case of R.Rathakrishnan V. The Deputy Registrar, also approvingly quoted the ratio of Justine that the non-obstante clause in Permanency Act of 1981 will have to be read down in consonance with the legal principles enunciated by the Hon'ble Supreme Court, in Aswin Kumar's case. It was further observed that if the initial appointment is illegal and unauthorised, merely on the passage of time and completion of the stipulated period of 480 days under the Permanency Act of 1981 or 240 days under the Industrial Disputes Act, 1947, indefeasible right will not accrue to the employee.

8. This Court, therefore finds considerable force in the submission of the learned counsel for the petitioners that a mechanical approach in these matters would virtually subvert the rule of law. The Hon'ble Division Bench of this Court while disposing of W.A.(MD)Nos.1302 of 2003 etc., batch, on 24.10.2008, had already given an answer to the question now raised. After referring to the case of Uma Rani V. Registrar of Co-operative Societies, Chennai, reported in (2004) 7 SCC 112 and the case of Secretary, State of Karnataka V. Uma Devi, reported in (2006) 4 SCC 1, the Hon'ble Division Bench held that the decision of the Hon'ble Supreme Court which was an immediate sequel to Justice Khalid Commission ought to be understood as applicable in the cases of contract labours claiming regularisation as helpers, but not generally to persons who were directly employed by the Electricity Board itself on temporary basis, but who continued in employment for more than 480 days and who belonged to the class of persons below the rank of helpers. In the case of the helpers, minimum qualifications had been set forth in the regulations. They need to possess minimum educational qualifications such as National Trade Certificate(NTC)/National Apprenticeship Certificate(NAC) etc.

9. This Court is of the view that the middle course laid down by the Hon'ble Division Bench of this Court in its Judgment dated 24.10.2008, deserves ought to be followed. It is true that the Tamil Nadu Electricity Board in its original as well as the present avatars is an industrial establishment within the meaning of Section 2(3) of the Act, 1981. But then, one cannot lose sight of the fact that it is a Government undertaking which is governed by a statute. Regulations issued by the Tamil Nadu Electricity Board laying down the manner of recruitment for various posts are statutory in character.

10. Let us take the case of the post of helper. Anybody cannot straightaway become helper. One must possess certain qualifications. Assume that a person who does not possess the requisite qualifications was however asked to work as helper. He continues in that capacity for more than 480 days. The question is whether he could move the Labour Inspector under the Tamil Nadu Act 46 of 1981 and get a declaration that he should be made permanent as helper. The unambiguous answer of this Court would in the negative. If the



answer is in the affirmative, the decisions laid down by the Hon'ble Supreme Court in the case of Uma Rani V. Registrar of Co-operative Societies, Chennai, reported in (2004) 7 SCC 112 or in the case of the Secretary, State of Karnataka V. Uma Devi, reported in (2006) 4 SCC 1, would stand undermined. That is why, in L. Justine's case, the Hon'ble Division Bench observed that in that event, there would be nothing available in law and the concept of rule of law would lose its significance. As already pointed out, these observations were approvingly cited by the subsequent Hon'ble Full Bench reported in (2007) 5 CTC 369.

11. It is also necessary to consider the definition of the term "workman" set out in Section 2(4) of the Tamil Nadu Industrial Establishments (Conferment of permanent status to workmen) Act, 1981, which is as follows:-

"(4) 'workman' means any person employed in any industrial establishment to do any skilled or unskilled, manual supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied [and include a badli workman], but does not include any such person, --

(a) who is employed in the police service or as an officer or other employee of a prison; or

(b) who is employed mainly in managerial or administrative capacity; or

(c) who, being employed in a supervisory capacity, [draws wages exceeding three thousand and five hundred rupees per mensem] or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

12. It is relevant to mention that contract labour is not included in the expression of the term "workman", as defined in Section 2(4) of the Act. That is why, following the Judgment dated 24.10.2008, in W.A.(MD)No.1302 of 2003, this Court also holds that the Tamil Nadu Act 46 of 1981 would apply to those workmen who were directly employed by the Tamil Nadu Electricity Board itself on temporary basis, but who continued in employment for more than 480 days and who belonged to the class of persons below the rank of helpers for whom the statutory regulations prescribe a minimum educational qualification. But then the Tamil Nadu Electricity Board cannot escape from its obligations by merely contending that the claimants/workmen are contract labour and not directly employed by the Tamil Nadu Electricity Board. If it is the case of the management that the claimants are contract labour, it is for the Tamil Nadu Electricity Board to establish that licensed contractors



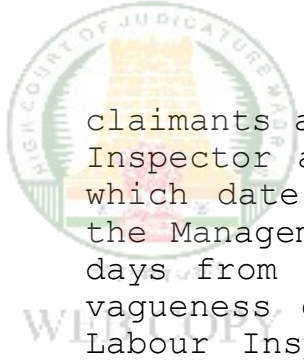
were engaged to carry out the works in question. The defence that the claimants are contract workers cannot be a smoke-screen. In this case, the contention of the workers is that they were directly employed by the Tamil Nadu Electricity Board, but through an artificial arrangement.

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13. Having disposed of the legal contentions raised on either side, this Court will have to focus on the factual matrix. It is seen that the orders are in stereo typed format. There is nothing on record to indicate that the claimants/workmen were actually in service, when they filed claim petitions before the Labour Inspector. The learned counsel for the private respondents have filed an elaborate typed set of papers which set forth the working days as per the Petty Cash Book and the Chit agreement. If as contended by the learned counsel for the respondents, the workmen were employed even during 1999 and 2000, it is not known as to why they were not identified earlier. It is also not clear from the material on record as to why the private respondents herein did not stake claims earlier. If according to the private respondents, they had put in 480 days of service in 24 consecutive calendar months and they were not given employment later, the remedy was to go before the Labour Court. In none of these cases, the Labour Inspector has given any categorical finding that on the date of filing of applications before him under the Act 46 of 1981, the applicants were in the service of the Tamil Nadu Electricity Board. The Labour Inspector has merely given a direction that they should be made permanent. The Hon'ble Division Bench has held that if they do not possess the minimum educational qualification, in the post of helper, they cannot be made permanent. The non-obstante Clause set out in Section 3 of the Act will have to be read down.

14. At the same time, this Court has to necessarily frown upon the conduct of the Tamil Nadu Electricity Board also. The counter filed by the Tamil Nadu Electricity Board are bald. Probably, on account of the indifferent attitude exhibited by the Management, the Labour Inspector proceeded to allow all the claim petitions. The Labour Inspector has however gone square by the certificates issued by the Tamil Nadu Electricity Board officials. In the typed set of papers, the petitioners have enclosed circulars and memos dated 12.06.1987, 13.02.2001 and 09.09.2005, forbearing the Tamil Nadu Electricity Board officials from issuing service certificates. The certificates issued in defiance of such instructions could not have been relied upon by the Labour Inspector. Otherwise, an unscrupulous, the Junior Engineer or Assistant Engineer, for illegal gratification could issue such certificates. Therefore, the case of the workers will have to be examined independently.

15. In this case, the impugned orders of the Labour Inspector have to be quashed because they suffer from more than one defect. It relied on the service certificates issued by the Junior Engineers/ Assistant Engineers of the Tamil Nadu Electricity Board. The impugned orders do not make it clear in which grade, the



claimants are to be made permanent. The awards passed by the Labour Inspector are also vague. It does not take a categorical stand on which date the statutory period got completed. It merely directs the Management to make the claimants permanent on completion of 480 days from the date when they joined service. This is as vague as vagueness can be. The awards are in a stereo typed format. The Labour Inspector has not given a specific finding as to in what capacity, the private respondents herein were employed. The issue has to be faced fair and square.

i) Whether for the post in which the claimants/workmen worked any minimum educational qualification has been prescribed or not.

ii) Whether the claimants were directly employed by the Tamil Nadu Electricity Board or whether they were contract labour.

16. In this case, the Labour Inspector has conducted himself as if he is a Judge. We follow the adversarial system of litigation. If one party failed to discharge the burden of proof cast on him, he has to suffer the consequences. But then, the Labour Inspector has been conferred with certain powers and duties in terms of Section 5 of the Act. Section 5 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to workmen) Act, 1981, reads as follows:-

"5. Powers and duties of Inspectors - Subject to any rules made by the Government in this behalf, the Inspector may, within the local limits for which he is appointed,

(a) enter at all reasonable times and with such assistants, if any, who are persons in the service of the Government or of any local authority as he thinks fit to take with him, any industrial establishment;

(b) make such examination of the industrial establishment and of any registers, records and notices and take on the spot or elsewhere the evidence of such person as he may deem necessary, for carrying out the purposes of this Act; and

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act."

17. Rule 4 the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to workmen) Act, 1981, also reads as under:-

"Information required by the Inspector - The employer of an industrial establishment shall furnish any information that an Inspector may require for the



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purpose of satisfying himself whether any provision of the Act or the rules made thereunder has been complied with or whether any order of an Inspector has been duly carried out. Any demand by an Inspector of any such information if made during the course of an inspection shall be complied with forthwith if the information is available in the industrial premises or if made in writing shall be complied with, within seven days on receipt thereof."

18. In this case, the first respondent has not discharged the duties cast on him. He has dealt with a matter as if the application before him was adversarial in nature.

19. In this view of the matter, the orders impugned in the Writ petitions are set aside. The matter is remitted to the file of the first respondent to undertake a fresh exercise in the light of the observations made in this order. The first respondent shall pass orders afresh in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. Since a direction has been given to the first respondent to invoke the powers conferred under Section 5 of the Act, the Writ petitioners as well as workmen shall be at liberty to place additional material available to them before the first respondent.

20. The Writ petitions are allowed in these terms. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Inspector of Labour, Dindigul.

+1cc to M/S.P.Malini, Advocate SR.No. 66563

+1cc to Special Government Pleader, SR.No. 66953

+1cc to M/S.T.Sekar, Advocate SR.No. 66752

ORDER

MADE IN

W.P. (MD) Nos.1461, 1591, 1592, 2032 to 2039 of 2014

and M.P. (MD) Nos.1,1,1,1,1,1,1,1,1,1 & 1 of 2014 and

M.P. (MD) Nos.2, 2,2,2,2,2,2,2,2,2 & 2 of 2014

04.06.2018