

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23-09-2019

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.36614 of 2003

Thirumayam Rural Electric Co-operative
Society, Represented by its Special Officer,
Thirumayam,
Pudukkottai District.

.. Petitioner

vs.

1.Thirumayam Rural Electric Co-operative
Society, (Affiliated to T.N.Elec. Workers
Central Organisation) Represented by its
Secretary, Thirumayam.

2.The Presiding Officer,
Labour Court,
Trichy.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorari, calling for the records of the second respondent-
Labour Court relating to its order dated 30.09.2002 passed in
I.D.No.46 of 1999 and quash the same as illegal and without
jurisdiction.

For Petitioner : Mr.Anand Gopalan for
M/s.T.S.Gopalan and Co.

For Respondent-1 : Mr.V.Ajoy Khose

For Respondent-2 : Labour Court

ORDER

The Award of the Labour Court dated 30.09.2002 passed
in I.D.No.46 of 1999 is sought to be quashed in the present writ
petition.

2. The writ petitioner is Thirumayam Rural Electric
Co-operative Society, which is a Co-operative Society registered
under the provisions of the Tamil Nadu Co-operative Societies
Act. The main object of the writ petitioner-Society is to

undertake distribution of electric energy in and around the areas of Thirumayam town, within the territorial limits of Thirumayam Taluk. The Writ petitioner-Society has been getting electric supply on a contract rate basis from the Tamil Nadu Electricity Board (TNEB) and has been distributing the same on par with the policy of the State Government.

3. The first respondent-Union had filed a claim petition in C.P.No.46 of 1999 before the Labour Court, Trichy on behalf of five Selection Grade Assessors, who are the members of the first respondent-Union. According to the first respondent-Union, its members Tvl.Lakshmanan, Nellah, Periyasamy, Elavarasan and Muthiah have been working as Selection Grade Assessors and as per Section 12(3) of the Industrial Disputes Act, 1947, a Settlement was entered into between the management and the employees. As per the Settlement, these the workmen are entitled to be paid on pro-rata basis and that the management had failed to implement the terms of the Settlement in paying the wages to the aforesaid five Selection Grade Assessors. Thus, the first respondent-Union filed the claim petition praying for computation of money value payable to its aforesaid five members.

4. The writ petitioner-Society also filed a detailed counter and additional counter-statements resisting the claim of the first respondent-Union. With reference to the payment of pro-rata wages, the same was not implemented nor was acted upon at any point of time. It is stated that condition No.20 of the said Settlement dated 03.11.1995 provided for payment of pro-rata wages to the Assessors for the excess work done beyond the work load relying upon a Memorandum of TNEB issued in Memo No.005575/C.B Cell/Admn. Branch/85-11, dated 31.01.1985. The Memo would clearly show that it does not mention the norms or basis for payment of pro-rata wages. It is a mere clarification/modification to the Settlement dated 05.12.1984 arrived under Section 12(3) of the Industrial Disputes Act, between TNEB and its workmen. Therefore, the writ petitioner-Society did not act upon the condition No.20 of the Settlement as it could not be implemented by the writ petitioner-Society. That apart, if the above referred Memo is to be adopted for implementation of condition No.20 of the Settlement of TNEB, the same has to be declared as applicable to the workmen of the writ petitioner-Society. In that case, the entire terms of the Settlement between TNEB and its workmen has to be given effect to.

5. It is also stated that with reference to the service conditions of the Assessors employed by the writ petitioner-Society and the Assessors working in TNEB are not similar and there is a vast difference between their work load. In so far as TNEB is concerned, it is the duty of the Assessors

to take meter reading, enter the reading in the white meter card on the spot of service enter in the reading register, enter in the green meter card maintained in the Section Office, prepare pre-receipts, prepare bill book abstract and collect the current consumption charges and remit the same into the Bank. All these works are carried out by one and the same Assessor to the service are as allotted to him. However, in the case of Assessor working in the writ petitioner-Society, the existing practice is that the Assessor is used to take meter reading, prepare the abstract of service numbers and the amount to be collected from the consumers. Preparation of pre-receipts, collection of amount and remittance of the money into the bank are done through outside Agencies subject to payment of charges at the rate of 1.25 per service. In the above circumstances, condition No.20 of the Settlement dated 03.11.1995 was neither implemented nor given effect to the members of the said Society.

6. The learned counsel appearing on behalf of the first respondent disputed the contentions of the learned counsel for the writ petitioner-Society by stating that as per condition No.20 of the said Settlement, the writ petitioner-Society agreed to pay pro-rata wages to the Assessors for the work done over and above the number of connection fixed, as per the practice prevailing and fixed in Tamil Nadu Electricity Board under Memo No.005575/CP.Cell/Admn/Branch/850 dated 31.01.1985 on basic and dearness allowance.

7. It is stated that the Secretary of the first respondent-Union and other Assessors achieved and completed assessment of readings over and above the targets fixed. Thus, the Secretary of the first respondent-Union and other Assessors made claim for pro-rata wages as per the Settlement for the work done over and above the target as per the Settlement dated 03.11.1995. In view of the fact that the entitlement of the workmen was not paid, they were constrained to file a computation petition under Section 33-C(2) of the Industrial Disputes Act, 1947 through the first respondent-Union.

8. This Court is of the considered opinion that the nomenclature of the Assessors of the Tamil Nadu Electricity Board as well as the nomenclature of the Assessors working in the writ petitioner-Society were distinct and different. During the year 1995, admittedly 12(3) Settlement was entered into between the writ petitioner-Management and the first respondent-Union. However, the first respondent-Union had not established at any point of time, the said condition No.20 of the Settlement was implemented in respect of the workmen.

9. Contrarily, the Tamil Nadu Electricity Board issued a memo dated 31.01.1985, which clearly shows that it does not

mention the norms or basis for payment of pro-rata wages. The said Memo is a clarification/modification to the Settlement dated 05.12.1984 and therefore condition No.20 of the Settlement could not be implemented by the writ petitioner-Society.

10. It is brought to the notice of this Court that many number of employees had not insisted upon the said condition No.20 of the Settlement and the said benefit of pro-rata wages were not granted as it was not possible for the writ petitioner-Society to settle those claims during the relevant point of time.

11. Even condition No.20 of the Settlement says that the Assessors, who all are performing more services, are eligible for pro-rata wages on par with the Assessors in the Tamil Nadu Electricity Board. In this regard, it is contended that the Assessors working in the Tamil Nadu Electricity Board cannot be compared with the Assessors working with the writ petitioner-Society. The duties and responsibilities attached to those Assessors are distinct and different. Therefore, the very comparison itself is unsustainable and based on such comparison, pro-rata wages cannot be paid to the five employees. All other employees accepted the wages as fixed and the entire wages were settled. However, the first respondent-Union filed the computation petition only in respect of five workmen based on condition No.20 of the Settlement, which was not implemented at any point of time.

12. Even it is contended that in respect of the disputed claims, an adjudication is mandatory in view of the fact that condition No.20 cannot be construed as a pre-existing right, the computation petition filed under Section 33-C(2) of the Industrial Disputes Act, is not maintainable and the rights were not crystallised. Based on condition No.20 of the Settlement, which was not implemented for many years, the Labour Court cannot compute the value of the wages and accordingly, direct the Management to pay such wages.

13. When the writ petitioner-Society established that the Assessors working in the writ petitioner-Society cannot be compared with the Assessors working in the Tamil Nadu Electricity Board as the duties and responsibilities are distinct and different and further at no point of time, condition No.20 of the Settlement was implemented by the writ petitioner-Society in respect of any employee/Assessor in the writ petitioner-Society and further the writ petitioner-Society disputed the entitlement of the workmen regarding the payment of pro-rata wages, adjudication of such disputed issues are certainly essential. In respect of the disputed issues, the Court cannot come to the conclusion that the rights of the

workmen are crystallised. Only in the case of existence of pre-existing right, petition filed under Section 33-C(2) of the Industrial Disputes Act, 1947 can be entertained and not otherwise.

14. This being the principles to be followed, the disputed facts adjudicated by the Labour Court were perverse and such disputed facts cannot be adjudicated in a computation petition. Only if the disputed facts are settled and the rights of the parties are crystallised, then alone the computation petition under Section 33-C(2) of the Industrial Disputes Act, 1947 can be entertained and in all other cases, adjudication must be the first course of action and only after establishing the rights, consequential computation petition can be filed. This being the Scheme of the Industrial Disputes Act, 1947, filing a computation petition in respect of the disputed facts and circumstances cannot be entertained nor be adjudicated by the Labour Court, so as to crystallise the rights of the workmen in the computation petition.

15. Under these circumstances, this Court is of an opinion that the findings of the Labour Court is perverse and accordingly, the Award of the Labour Court dated 30.09.2002 passed in I.D.No.46 of 1999 is quashed and consequently, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Svn

To

The Presiding Officer,
Labour Court,
Trichy.

+1cc to Mr.T.S.Gopalan & Co, Advocate, S.R.No. 81756
+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No. 81729

W.P.No.36614 of 2003

SR(CO)
GN(30/10/2019)