

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :19.11.2019
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.26316 of 2004

Management of Tamil Nadu Elec. Board,
Rep. by Special Officer(Executive Engineer,
Acquisition, Tamil Nadu Electricity Board
Kumbakonam)

...Petitioner

..Vs..

1.A.Jaganathan

2.The Presiding Officer,
Labour Court, Cuddalore.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the second respondent Labour Court, Cuddalore, relating to its Award dated 04-03-2004 passed in I.D.No.62 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 Respondents: Mr.V.Ajoy Khose for R1
Labour Court - R2

ORDER

The Award dated 04.03.2004 passed in I.D.No.62 of 1999 is under challenge in the present writ petition.

2.The writ petitioner is the Management of Tamil Nadu Electricity Board. The learned counsel appearing on behalf of the writ petitioner made a submission that Kumbakonam Rural Electric Co-operative Society was previously engaged in distribution and supply of Electricity in Kumbakonam Taluk. The Government of Tamil Nadu in G.O.Ms.No.124(Energy) Department, dated 27.06.1997 decided that the Rural Electric Co-operative Society of Kumbakonam, Vandavasi and Thirumayam shall be wound up and that the distribution of power supply in these areas shall be entrusted with the Tamil Nadu Electricity Board. The Government Order further stated that the Chairman, Tamil Nadu Electricity Board is directed to take immediate steps to take over these three rural electric co-operative societies.

Accordingly, these co-operative societies were taken over by the Tamil Nadu Electricity Board.

3.The learned counsel for the writ petitioner/Management mainly contended that as per the terms and conditions of taking over of the co-operative societies by the Tamil Nadu Electricity Board, all the permanent employees of the co-operative societies were absorbed as the employees of the Tamil Nadu Electricity Board. However, those employees who were working as daily wage employees and whose employment was irregular and not regularized by the competent authority under the Co-operatives Societies Act, the Tamil Nadu Electricity Board had not absorbed those employees. In other words, the regular employees of these co-operative societies were already absorbed as the employees of the Tamil Nadu Electricity Board and in respect of other employees of the co-operative society, whose services were not regularized or irregular, the benefit of absorption was not granted.

4.While absorbing the employees of these co-operative societies, the Tamil Nadu Electricity Board has to consider the eligibility with reference to the terms and conditions of the Government Order. On verification and as per the documents filed before the Labour Court, in W.8 and W.9, the first respondent/workman was initially appointed as daily wage employee in the co-operative society and was serving from 01.03.1996 to 12.12.1996. He worked for about 288 days as daily wage employee and therefore, the first respondent has not completed 480 days of service.

5.The first respondent was terminated on 30.05.1998 is the submission made by the learned counsel for the first respondent. The said submission is based on the findings of the Labour Court. However, the statement is disputed by the learned counsel for the petitioner by stating that there is no material evidence to establish the said date of termination. Therefore, that cannot be taken as a ground for the purpose of confirming the Award.

6.The learned counsel appearing on behalf of the first respondent disputed the contentions by stating that the writ petitioner have not adhered to the legal principles to be followed. The provisions of the Industrial Disputes Act have been violated. This apart, the first respondent was serving as a casual labourer in the co-operative society and as per the Government Order, all the employees of the Co-operative society were permanently absorbed as employees of the Tamil Nadu Electricity Board. While so, the same benefit cannot be denied to the first respondent alone. The other similarly placed

persons were already absorbed on permanent basis and the first respondent alone has been denied the said benefit in violation of the provisions of the Industrial Disputes Act. The Labour Court considered all these aspects and arrived at a conclusion that the first respondent is entitled for the relief of reinstatement with back wages. The Labour Court arrived at a conclusion that as per Section 25 B of the Industrial Disputes Act, the first respondent was continuously working with the co-operative society and the conditions stipulated in Section 25 F of the Industrial Disputes Act had not been followed. Therefore, the issue was decided in favour of the workman. The first respondent was working as daily wage employee and the salary was paid on monthly basis. Under these circumstances, the Labour Court passed an Award granting reinstatement with backwages.

7. In support of the said contention, the learned counsel for the first respondent cited the Judgment of the Hon'ble Supreme Court of India in Civil Appeal Nos. 7340 & 7341 of 2013, wherein the Hon'ble Supreme Court held as under:

"we are not able to accept the aforesaid submissions as invalid appointment is not covered in the Exceptions under section 2(00) of the ID Act. Thus, Section 25F of the ID Act is clearly applicable and is attracted."

8. Citing the above order, the learned counsel appearing on behalf of the first respondent reiterated that there is no infirmity in the order passed by the Labour Court.

9. Two aspects are to be considered by this Court. The peculiar facts in this writ petition is that the distribution of power supply to a particular area was undertaken by the co-operative societies registered under the provisions of the Tamil Nadu Co-operative Societies Act, which is not a State within the meaning of Article 12 of the Constitution of India. Thus, the establishment of the co-operative society is not connected with the establishment of the Tamil Nadu Electricity Board. The Government issued an Order for the merger of the co-operative societies with the Tamil Nadu Electricity Board in order to provide better electricity power supply to the people of that locality. Accordingly, these co-operative societies were taken over by the Tamil Nadu Electricity Board based on the Government Order issued. Thus, the facts are distinguished and there is a change of establishment. Whenever, there is a change of Management, this Court is of the opinion that the terms and conditions as well as the other aspects of the matter is to be considered.

10. Admittedly, the Tamil Nadu Electricity Board had permanently absorbed all the permanent employees of these co-operative societies. It is not disputed by the parties that the employees whose services were regularized in the co-operative societies were absorbed on permanent basis in the Tamil Nadu Electricity Board. In respect of daily wage employees whose appointments were otherwise irregular or illegal and whose services were not regularized, they were not absorbed as permanent employees of the Tamil Nadu Electricity Board.

11. In respect of irregular or illegal employment in the co-operative societies, the Hon'ble Division Bench of the Madras High Court has already settled the legal provisions in the case of "L. Justine Vs. Registrar of Co-operative Societies" reported in "2003 (1) L.L.N. 315". The casual labourers/daily wage employees, who were employed in a co-operative society filed a batch of writ petitions, wherein, the Hon'ble Division Bench held that the employees who all are eligible with reference to the rules alone are entitled to be regularized. Pursuant to the Judgment, the eligible employees were regularized in the respective co-operative societies. Thus, in a co-operative society regularization or permanent absorption is granted in accordance with the recruitment rules.

12. The said Judgment of the Division Bench was upheld by the Hon'ble Supreme Court of India in the case of "Uma Rani Vs. Registrar of Co-operative Societies" reported in "(2004) 7 SCC 112". Under these circumstances, there is every reason for the Tamil Nadu Electricity Board to absorb the employees whose services were already regularized in the co-operative societies. If at all the workman, whose employment as a daily wage employee is otherwise irregular or illegal, then undoubtedly, he cannot be permanently absorbed in the Tamil Nadu Electricity Board services. Contrarily, the benefit of absorption in the Tamil Nadu Electricity Board cannot be claimed if the initial appointment were irregular or illegal or not in accordance with the recruitment rules in force.

13. In respect of the present writ petition, admittedly, the first respondent workman was not brought under the regular establishment nor his services were regularized in accordance with the rules or in consonance with the settled provisions.

14. Under these circumstances, the benefit of absorption denied cannot be held as illegal. The stand of the Tamil Nadu Electricity Board is that all the eligible employees who were holding sanctioned posts as permanent employees were given the benefit of permanent absorption in the Tamil Nadu Electricity Board and in respect of illegal or irregular appointments, grant of benefit of permanent absorption was denied as the same

is in violation of the terms of absorption as permanent employees and in the present case, the Labour Court has not considered all these aspects. Contrarily, the Labour Court, only on the pretext that the daily wage employee was engaged by the co-operative society and he has served for about 240 days, had held that he is entitled for reinstatement with backwages. Such an approach may not be proper in view of the fact that various other complex facts and circumstances as well as legal principles in the matter of permanent absorption and regularization are also to be considered by the Labour Court.

15. Under these circumstances, the Award of the Labour Court is perverse and not in consonance with the settled provisions. Accordingly, the Award dated 04.03.2004 passed in I.D.No.62 of 1999 is quashed. The writ petition stands allowed. No costs.

Sd/-

Assistant Registrar (CS-)

// True Copy //

Sub Assistant Registrar

tsg

To

1. Special Officer (Executive Engineer,
Acquisition, Tamil Nadu Electricity Board
Kumbakonam).

2. The Presiding Officer,
Labour Court, Cuddalore.

+1cc to M/s.T.S.Gopalan and Co., Advocate, SR.No.96266.

+1cc to Mr.V.Ajoy Khose, Advocate, SR.No.96332.

W.P.No.26316 of 2004

MR (CO)

CSR: 27/11/2020

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