

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.09.2019
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.16659 of 2010

S.Isaac

...Petitioner

vs.

1. The Presiding Officer
Labour Court,
Salem.

2. The Chief Engineer,
Mettur Thermal Power Station,
Tamil Nadu Electricity Board,
Mettur Dam- 636 406

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent pertaining to the award dated 12.09.06 made in I.D.No.94/01 and quash th esame as illegal and without application of mind and consequently, direct the 2nd respondent to reinstate the petitioner with backwages and continuity of service.

For Petitioner : G.Anand Kumar

For Respondents : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co
for R2.

O R D E R

The award dated 12.09.2006 passed in I.D.No.94 of 2001 is under challenge in the present writ petition.

2. The writ petitioner was engaged as Contract labour at the Fire alarm system, Security duty civil maintenance division and Operation and Efficiency Division under the control of the 2nd respondent Board. The writ petitioner states that he was engaged as a contract labourer for a considerable length of time and consequently, he was terminated from service on 01.05.1999 without any notice or charge memo or any enquiry. Consequently, the writ petitioner filed a petition before the Labour Officer

and the same ended in failure. Thereafter, the petitioner raised an Industrial Dispute in I.D.No.94 of 2001 before the first respondent under Section 2 A (2) of the I.D.Act, praying for reinstatement into service with backwages and continuity of service. The 1st respondent by common award dated 12.09.2006, dismissed the Industrial Dispute filed by the petitioner. The said award was notified by the Labour Officer by an order dated 28.12.2006.

3. The main contention of the writ petitioner is that though they were engaged as Contract Laborers, all such similarly placed contract laborers were absorbed by Mettur Thermal Power Station and therefore, the claim of the writ petitioner is also to be considered for reinstatement and permanent absorption in the second respondent.

4. The learned counsel for the writ petitioner states that the writ petitioner was performing the duties as per the instructions of the officials of the Mettur Thermal Power Station and therefore the benefit of absorption, as provided to other employees must be extended to the writ petitioner also. This apart, he was terminated from service without following the principles of the natural justice and on that ground, the writ petitioner is also entitled to get the reinstatement into service with back wages and continuity of service, since he reached the age of superannuation, final compensation is to be paid in lieu of reinstatement.

5. The learned counsel appearing on behalf of the respondents disputed the contentions raised by the writ petitioner by stating that the writ petitioner was not engaged as an employee of the Tamil Nadu Electricity Board. Therefore, raising an Industrial Dispute under Section 2 A(2) of the I.D. Act itself is not maintainable. The writ petitioner was employed under contract and such contract employees were engaged by the Tamil Nadu Electricity Board for its work. At no point of time, the Tamil Nadu Electricity Board had issued any order of termination or order of absorption. Admittedly, the policy decision taken by the Tamil Nadu Electricity Board to absorb those contract Laborers, was subject to the fulfillment of the terms and conditions stipulated in the policy. The contract labourers who were in service during the relevant point of time in Mettur Thermal Power Station were absorbed after verifying the eligibility criteria, in accordance with the terms and conditions of the policy. The second respondent/Tamil Nadu Electricity Board found that the writ petitioner was not eligible to avail the scheme of the absorption and accordingly, the benefit of the permanent absorption was not extended to the writ petitioner.

6. This Court is of the considered opinion that the writ petitioner was not appointed by the Tamil Nadu Electricity Board. Further, the writ petitioner was not directly engaged by the Tamil Nadu Electricity Board. Admittedly, he was engaged by the private contractor, and by virtue of the agreement between the Tamil Nadu Electricity Board and the private contractor, the contractor was allowed to perform in the Tamil Nadu Electricity Board and the job allotted to the contractor was being implemented by the contractors through their labourers and therefore, there is no direct appointment or employment as far as the Tamil Nadu Electricity Board is concerned. This being the factual situation, this Court is of the considered opinion that the writ petitioner cannot be construed as an employee of the Tamil Nadu Electricity Board for the purpose of raising an Industrial Dispute under Section 2 A(2) of the Industrial Dispute Act.

7. This being the factum, the writ petitioner raised a dispute against the Tamil Nadu Electricity Board, assailing the order of termination. However, in the present case, the Electricity Board had not issued any order of termination and the writ petitioner has also not established before the Labour Court that the order of termination was issued by the Tamil Nadu Electricity Board or its officials. This being the factum, the Industrial Dispute raised by the writ petitioner under Section 2 A(2) of the I.D.Act is not maintainable. This apart, the benefit of the regularization or permanent absorption cannot be granted in violation of the policy decision taken by the Board. Undoubtedly, the board granted the benefit of the absorption in respect of the contract labourers who are all otherwise eligible and falling within the scheme of permanent absorption. As the Labour Court found that the petition filed by the writ petitioner itself is not maintainable for any relief, this Court is of the considered opinion that there is no additional legal grounds or other circumstances arising for this Court to consider the case of the writ petitioner. Accordingly, the award passed by the Labour Court dated 12.09.2006 passed in I.D.No.94/01 is confirmed and the writ petition stands dismissed. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

ssb

To

1. The Presiding Officer
Labour Court,
Salem.
2. The Chief Engineer,
Mettur Thermal Power Station,
Tamil Nadu Electricity Board,
Mettur Dam-636 406.

+1 cc to Mr.G.Anandkumar Advocate sr78201
+1 cc to M/s.T.S.Gopalan & Co Advocate sr77194

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ss(co)
aa21/10/2019