

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.02.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO.910 OF 2011

Tamil Nadu Electricity Board
Thozhilalar Aykkia Sangam
No.34, V.M. Street, Chennai - 14
rep. By its General Secretary
M.Subramanian .. Petitioner

- Vs -

1. Tamil Nadu Electricity Board
rep. By its Chairman
800, Anna Salai, Chennai - 2.
2. The Chief Engineer (Personnel)
Tamil Nadu Electricity Board
800, Anna Salai, Chennai - 2. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondents to pay regular scale of pay to the helpers who possess ITI qualifications and appointed through Employment Exchange treating them as regularly appointed helpers from the date of their respective appointments as represented by the petitioner in their representation dated 1.6.2010 and 22.7.2010.

For Petitioner : Mr. V.Prakash, SC, for
Mr. S.Elamurugan

For Respondents : Mr. P.R.Dhilipkumar

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ORDER

The petitioner is the Trade Union representing the workers employed in the respondent Board. The grievance of the petitioner herein is that its members, who are workers of the respondent Board had been directly recruited as helpers after being sponsored by the employment exchange, but instead of appointing them in the regular time scale of pay of Rs.3050 - 5070 in the year 2009, but they were appointed as Helper

Trainees on a consolidated wages of Rs.2,500/= per month for a period of two years. Challenging the action of the respondent in appointing them as Helper Trainees initially for a period of two years, the Union is before this Court by filing the present writ petition.

2. Mr. V.Prakash, learned senior counsel, appearing for the petitioner herein submits that the Electricity Board, as it then was, was directed to regularise and absorb thousands of casual employees, who were working as helpers for a number of years on the basis of the commission constituted by the Hon'ble Supreme Court of India called the Justice Khalid Commission. Justice Khalid Commission had made recommendations over a period of time for absorption of thousands of casual employees, who were employed for number of years consecutively. While on the one hand, the vacancies were being filled up with the casual employees, who were working already with the Board, the qualified ITI diploma holders, who were made to wait in the queue by registering their names in the Employment Exchange, as scope of their employment with the Board was shrinking in view of large scale absorption of existing casual employees.

3. In the above situation, the members of the petitioner Union, who were ITI Diploma Holders approached this Court in a batch of writ petitions and on the basis of the intervention of this Court, 4000 vacancies were notified for filling up the post of Helper by direct recruitment. The initiation by the Board was also in furtherance of the last settlement dated 10.08.07 arrived at between the Board and the representatives of the workmen. The Board had issued a letter to the Commissioner of Employment & Training on 7.9.07 seeking sponsorship of candidates for appointment to the post of Helper against 2500 vacancies and the appointment was proposed in the time scale of pay of Rs.3050 - 5070. In the letter, it was clearly mentioned that the appointment was to the post of Helper and there was no mention about any training as such.

4. Thereafter, a selection was conducted and the members of the petitioner Union came to be appointed in the year 2009. Unfortunately, when they were appointed, the Board had termed their initial appointment as Helper Trainee on a consolidated wages of Rs.2,500/- per month for a period of two years. On completion of the period of two years, they were placed in the regular time scale of pay as that of a Helper.

5. Learned Senior counsel further submits that although the appointment letter termed the appointment of the workers as Helper Trainee, nevertheless, no iota of training was imparted to these workers. In the name of classifying them as Trainees, the Board had, in fact, denied them the regular wages as

applicable to the post of Helper. Learned Senior counsel also submits that the workers were all ITI certificate holders and, therefore, the question of imparting any on-job training does not arise at all. Even factually, no training was imparted to them. With the same breath, learned senior counsel submits that the Board itself had counted the initial two years service on consolidated wages for the purpose of promotion to the next higher cadre, which meant that for all purposes, the initial appointment was regular. Learned senior counsel, therefore, submitted that classifying the workers, who are ITI certificate holders as trainees in the special recruitment was per se illegal, unreasonable and cannot be countenanced both in law and on facts. According to the learned senior counsel, the letter written to the employment exchange was a sequel to the decision taken by the Board in the settlement dated 10.08.07 as per which the appointment envisaged in the settlement was in the post of Helper and there was no mention about Helper Trainee. The very initiation for the purpose of appointment was only in regard to appointment as Helper, but unfortunately, when the appointment was made, it turned out to be Helper Trainee.

6. Per contra, learned standing counsel appearing for the respondent Board submits that the call letter, which was issued to all the candidates had clearly mentioned that the initial recruitment was only against the post of Helper Trainee on consolidated wages of Rs.2500/= per month. Only on successful completion of the training, the employee would be regularly appointed as Helper in the regular time scale of pay of Rs.3050 - 5070. the employees, who were aware of the above position, had participated in the selection and consciously accepted the appointment letter, which also had clearly mentioned that the initial appointment was only as a Helper Trainee on consolidated wages of Rs.2,500/- per month for a period of two years. Having accepted the appointment letter, the employees concerned were estopped from agitating the issue and ask for more benefits. Once the training was part of the employment, it was the policy of the Board to prescribe the training period of two years before their eventual absorption in regular service. Learned counsel, therefore, submitted that the claim of the petitioner is without any justification and, therefore, the writ petition is without merits and liable to be rejected.

7. To the above submission, learned senior counsel submits that the respondent Board has not specifically stated anywhere as to what kind of training was imparted to the employees concerned. Merely designating them as Helper Trainee cannot result in denial of regular benefits to the employees concerned. In support of his contention, attention of this Court was drawn to the decision in National Small Industries Corporation Ltd. - Vs - I Addl. Labour Court, Madras & Anr. (2005 (3) LLN 719),

more specifically, para 14 to 18, which is extracted hereunder for better clarity :-

"14. In the present case, in view of the findings of the Labour Court that the respondent herein was not undergoing training, we are of the opinion that although he was designated as apprentice, in fact he was not an apprentice but was an employee doing full time work in the establishment and not undergoing training.

15. Learned Senior Counsel for the appellant submitted that the respondent had accepted the order dated 26.4.1990 designating him as apprentice.

16. In our opinion the whole approach of Industrial Law is that the employer and employee do not stand on an equal bargaining position. Industrial Law recognises that the workers are in a weaker position than the employers who have financial resources, management skills, connections etc. Hence the whole object of Industrial Law is to help the weaker section in the society (the workmen) and give them protection from exploitation. In our opinion, there can be no estoppel against a person who accepts his designation as an apprentice, but later on raises a plea that in fact he was not an apprentice but was doing the work of a workman.

17. It is the actual work which a person is doing which must be seen, and not the designation. Thus in S.K.Maini v. Carona Sahu Co. Ltd., 1994 II LLJ 1153, the Supreme Court observed : -

"The designation of an employee is not of much importance, and what is important is the nature of duties being performed by him". The same view was taken in Ananda Bazar Patrika v. Its workmen, 1969 (II) LLJ 670, Syndicate Bank Ltd. v. Its Workmen, 1966 (II) LLJ 194, May & Baker Ltd. v. Its workmen, 1961 (II) LLJ 94, Lloyds Bank Ltd. v. P.L.Gupta, 1961 (I) LLJ 18, etc."

18. If we accept the contention of the learned Senior Counsel for the appellant that once a person accepts an appointment order he cannot challenge the designation mentioned in that order then the employer can always exploit the workers by giving them designation as apprentice though in fact taking regular work from them. This would be contrary to the whole approach of Industrial Law, and hence we cannot accept this submission."

8. Learned senior counsel, therefore, submits that the designation of Helper Trainee is only a ruse to deny the workmen concerned the regular benefits to which they were otherwise entitled to.

9. Heard the learned senior counsel appearing for the petitioner and the learned standing counsel appearing for the respondent and perused the materials available on record and the judgment to which this Court's attention was drawn.

10. From the materials and the pleadings available on record, it could be clearly seen that the original settlement dated 10.08.07, arrived at between the Management and the Employees Unions envisaged appointment to the post of Helpers by direct recruitment of ITI certificate holders in the regular time scale of pay. On the basis of the directions of this Court and also on the basis of the settlement dated 10.08.07, the employment exchange was approached by the officials of the Board and in their letters addressed to the employment exchange dated 7.9.07, it is clearly mentioned in para-2 of the letter that the recruitment was to the post of Helper on regular time scale of pay of Rs.3050 - 5070. The same position has also been reiterated in para-9 of the said letter.

11. In response to the said letter addressed to the Commissioner of Employment & Training, candidates were sponsored by the employment exchange and on the basis of the sponsorship, the employees concerned came to be eventually recruited and appointed. Unfortunately, while appointing the employees, the Board has strangely termed their initial appointment as Helper Trainee for a period of two years and put them on a consolidated wage of Rs.2,500/- per month. Such action on the part of the Board in terming the appointment of the employees as trainee for the initial period of two years cannot be countenanced either in law or on facts for the simple reason that no training was ever imparted to the employees concerned. Nowhere in the pleadings or any materials brought on record on behalf of the respondent Board reveal that any training was imparted to the employees. In the absence of such materials, terming the initial appointment of the employees as Helper Trainee cannot stand the test of judicial scrutiny even for a second.

12. Moreover, as the facts would disclose, the initial period of two years of appointment and the consolidated wages paid was counted for the purpose of promotion to the next higher grade. This fact has also not been disputed by the Board. When the said service has been counted for the purpose of promotion to the next higher grade, this Court is unable to appreciate as to how the Board could treat the first two years of appointment

as training. The services of the employees cannot have a different character, one for the purpose of promotion and another for the purpose of fixation of pay scale and allowances. Therefore, this court has to come to an irresistible conclusion that the intention of the Board to term their initial appointment as Helper Trainee was to only deny the regular time scale to the workmen for a period of time.

13. This Court is further of the view that merely terming an employee as a trainee cannot result automatically in denying the regular benefits as applicable to other regular and similarly placed employees. Unless the Management is in a position to establish that the first two years during the period of employment of the employees was spent on training and no regular work was extracted, it is not open to the Management to call them trainee. Therefore, in all fours, this Court is of the view that designating the employees as Helper Trainee is without any justification and the same cannot be legally sustained.

14. For the reasons aforesaid, this writ petition is allowed. The respondents are directed to treat the employees, who possess ITI qualification as regular employees from the date of their respective initial appointment and grant them the regular time scale of pay with all consequential and attendant benefits, including arrears, arising on such grant of regular time scale of pay. The respondents are directed to comply with the above directions of this Court within a period of twelve weeks from the date of receipt of a copy of this order. However, in the circumstances of this case, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

GLN

To

1. The Chairman
Tamil Nadu Electricity Board
800, Anna Salai, Chennai - 2.

2. The Chief Engineer (Personnel)
Tamil Nadu Electricity Board
800, Anna Salai, Chennai - 2.

+1cc to Mr.P.D.Dhilip Kumar, Advocate SR.No.11127

+1cc to Mr.S.Elamurugan, Advocate SR.No.10600

W.P. NO. 910 OF 2011

KS (CO)
GMY (12/03/2019)



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