

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.811, 812, 814, 816 & 817 of 2014

The Superintending Engineer,
Tamil Nadu Generation and Distribution Corporation Limited,
Villupuram Electricity Distribution Circle,
Villupuram. Petitioner in all WPs

Vs.

Respondents in WP.No.811/2014

1. V.Muthukumarasamy
2. The Presiding Officer,
Labour Court,
Cuddalore.

Respondents in WP.No.812/2014

1. Chandrakumar
2. The Presiding Officer,
Labour Court,
Cuddalore.

Respondents in WP.No.814/2014

1. R.V.Selvakumar
2. The Presiding Officer,
Labour Court, Cuddalore.

Respondents in WP.No.816/2014

1. R.V.Nanthakumar
2. The Presiding Officer,
Labour Court,
Cuddalore.

Respondents in WP.No.817/2014

1. K.Srinivasan
2. The Presiding Officer,
Labour Court,
Cuddalore.

Prayer in WP.No.811/2014 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the award passed by the second respondent made in C.P.No.17 of 2010 dated 31.05.2012 and quash the same.

Prayer in WP.No.812/2014 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the award passed by the second respondent made in C.P.No.43 of 2010 dated 28.07.2011 and quash the same.

Prayer in WP.No.814/2014 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the award passed by the second respondent made in C.P.No.22 of 2010 dated 31.05.2012 and quash the same.

Prayer in WP.No.816/2014 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the award passed by the second respondent made in C.P.No.18 of 2010 dated 31.05.2012 and quash the same.

Prayer in WP.No.817/2014 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the award passed by the second respondent made in C.P.No.268 of 2009 dated 18.06.2012 and quash the same.

For Petitioner : Mr.Anand Gopalan
(in all WPs) for M/s.T.S.Gopalan & Co.

For R1 : Mr.R.T.Shyamala
(in WP.No.811/2014)

For R1 : No Appearance
(in WP.Nos.812, 814, 816 & 817/2014)

For R2 : Labour Court
(in all WPs)

C O M M O N O R D E R

These writ petitions are filed to quash the orders dated 31.05.2012 passed in C.P.No.17 of 2010, 28.07.2011 passed in C.P.No.43 of 2010, 31.05.2012 passed in C.P.No.22 of 2010, 31.05.2012 passed in C.P.No.18 of 2010, 18.06.2012 passed in C.P.No.268 of 2009 respectively.

2. The Labour Court passed the award granting ex-gratia payments as well as the Golden Jubilee award in all writ petitions. The ex-gratia payment once awarded then the

employee may be eligible for permanent absorption. However, the fact remains that the first respondent/workman in all writ petitions were employed as the contract labourers on daily wages basis.

3. The writ petitioner is the Tamil Nadu Electricity Board states that the first respondent/workman in all writ petitions filed the claim petitions before the Labour Court for grant of ex-gratia payments as well as the Golden Jubilee award. Such payments are sought for, in view of the fact that the workmen received ex-gratia may be qualified for inclusion of their names in the list for permanent absorption.

4. The case of the first respondent/workman in all writ petitions are that they are the contract labourer and they have served more than 240 days in a year, therefore, they are entitled to get bonuses and for ex-gratia payments and also the Golden Jubilee award. The very purpose of claiming ex-gratia and Golden Jubilee award is for the purpose of including the names of the workmen in the list of the eligible persons for permanent absorption as they claimed that they have served 240 days in one year.

5. The petitioner/Management states that the first respondent/workman in all writ petitions worked as the contract labourers, would have claimed the benefit of 12(3) Settlement entered into by the writ petitioner/Management with unions, which was followed by B.P.No.44 dated 06.09.2007. The first respondent/workman in all writ petitions are not at all the contract labourers and therefore, they are not entitled for any grant of ex-gratia payments. The first respondent/workman in all writ petitions admitted the fact that they did not appear before the committees constituted for the purpose of identifying contract labours for grant of ex-gratia payment. Thus, they have not fulfilled the conditions implicated for grant of ex-gratia payments and therefore, the execution petitions filed by the first respondent in all writ petitions are untenable.

6. The learned counsel appearing on behalf of the writ petitioner/Board stated that for grant of permanent absorption, the Tamil Nadu Electricity Board is bound by their own service regulations which will prevail over the general laws. The legal principles to be followed is that whenever there is a special enactment regarding the service regulations or rules of a "State", then the said service regulations will prevail over the general laws. The service regulations of the Tamil Nadu Electricity Board constituted under Section 79 of the Electricity Supply Act, 1948 will hold goods in respect of the grant of benefits to the employees of the Tamil Nadu Electricity Board and the said regulations will prevail over all other general laws. Thus, the very application of the Conferment of Permanent Status Act, made by the workmen are untenable. The provisions of the Conferment of Permanent

Status Act would not be applicable in such cases where the special enactments are in force.

7. In the present case, the service conditions were formulated by the Board by virtue of the powers conferred under Section 79 of the Electricity Supply Act, 1948. Therefore, the service regulations framed under the special statute will prevail over the general laws and therefore, this Court is of the considered opinion that the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen Act, 1981) is not applicable in respect of the employees, who all are claiming to be the servants of the Tamil Nadu Electricity Board.

8. The scheme of the service regulations issued by the Tamil Nadu Electricity Board is akin to that of the service condition formulated by the Government of Tamil Nadu to its employees. It is pertinent to note that the reservation in appointments are provided in the service regulation, which is a constitutional mandate. The mode of recruitment and the communal rotations, rosters are also contemplated under the service regulations. In the event of granting such permanent absorption without reference to the Rules & Regulations, the same would be in violation of the constitutional mandates and its provisions. The benefit of regularization or permanent absorption are ought to be granted strictly in accordance with the recruitment Rules in force. The Regulations are constituted by virtue of the powers conferred to the Competent Authorities under the Electricity Act. The service regulation which all are in force are akin to that of the service rules, as applicable to the Government employees in the Government of Tamil Nadu. The Tamil Nadu Electricity Board being an instrumentality of a State are following the service regulations framed under the statute and therefore, the said service regulations will prevail over the general laws and the regulations are to be applied for the purpose of grant of regulation on permanent absorption.

9. It is relevant to cite the judgements of the Division Bench of this Court in the case of "L. Justine Vs. Registrar of Co-operative Societies" reported in "2003 (1) L.L.N. 315". The Division Bench framed the Issue No. (ii) as follows :-

"13. The Permanency Act of 1981 is also an Act enacted by the State and received the President's assent. Section 3 of the Act contains non obstante clause and provides protection to workmen, who are in continuous service for a continuous period of 480 days in a period of 24 calendar months in an industrial establishment, thus conferring a status of permanency. 'Industrial establishment' is defined in subSection (3) of Section 2 of the Act and in clause (e) thereof,

an ' establishment' as defined in clause 2 (6) of the Tamil Nadu Shops and Establishments Act, 1947, is defined to be an industrial establishment. If we go to Section 2 (6) of the Tamil Nadu Shops and Establishments Act, it is clear that the word 'establishment' therein takes in cooperative society also. As such, there cannot be any doubt regarding the applicability of the Permanency Act of 1981. The word, 'industry' defined in Section 2 (j) (q) under the Industrial Disputes Act, 1947 also makes the cooperative societies susceptible to the Act of 1947. Thus, all such workmen belonging to a class and are afforded protection, are entitled for the benefits of the Permanency Act of 1981 as also the Industrial Disputes Act of 1947."

10. With reference to the above issue, the Division Bench made an observation that "The provisions of either the Permanency Act of 1981 or of the Industrial Disputes Act, 1947, cannot also be pressed into service when the appointments are ipso facto illegal and unauthorized. We cannot accede to the contention that even if the appointment is illegal and unauthorized, merely on the passage of time and completion of the stipulated period of 480 days under the Permanency Act, 1981 or 240 days under the Industrial Disputes Act, 1947 an indefeasible right accrues to an employee. Such an argument is clearly untenable.

11. In paragraph No.16 of the said judgement, the Division Bench made an observation that "There is a lot of difference between the irregularity and illegality. The appointments here are not irregular but illegal. Irregular is something which is done in an authorized manner but while doing so, there is some procedural irregularity. Illegality is altogether different. An action is illegal if it is contrary to law. The law in the instant case is so clear that the appointments cannot be beyond the permissible cadre strength."

12. This Court would like to consider the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court in the case of "Secretary, State of Karnataka and others Vs. Umadevi and others" reported in "(2006) 4 SCC 1". The Constitution Bench also reiterated that the benefit of regularization or permanent absorption cannot be granted in violation of the recruitment Rules in force.

13. Let us look into the spirit of the judgement little later. Coming back to the judgement of the Division Bench in the case of "L.Justine Vs. Registrar of Co-operative Societies" is that the matter went to the Apex Court and in the case of "Uma Rani Vs. Registrar of Co-operative Societies"

reported in "(2004) 7 SCC 112", the Apex Court also confirmed the views of the Division Bench in the case of "L. Justine Vs. Registrar of Co-operative Societies" and more specifically in paragraph Nos. 24 to 41 and the same are extracted hereunder :-

"24. Let us now consider the extent to which the provisions of the 1981 Act would apply to the fact of the present case.

25. The 1981 Act applies only to industrial establishments. Industrial Establishment has inter alia been defined to mean "an establishment as defined in clause (6) of Section 2 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act 36 of 1947)".

26. Establishment has been defined in Section 2(6) of the Tamil Nadu Shops and Establishments Act, 1947 as under:

"2. (6) 'Establishment' means a shop, commercial establishment, restaurant, eating house, residential hotel, theater or any place of public amusement or entertainment and includes such establishment as the State Government may by notification declare to be an establishment for the purpose of this Act."

27. Mr. Balakrishnan urged that the cooperative societies are Commercial Establishments.

28. Whether a Cooperative Society would be a commercial establishment or not would essentially be a question of fact. It cannot be said keeping in view the legislative intent that all cooperative societies would be 'commercial establishments' within the meaning of the Tamil Nadu Shops and Establishments Act, 1947. It, therefore, appears that the impugned Government Order has been issued by the State without proper application of mind. It has furthermore not been stated in the impugned Government Order that all the cooperative societies are commercial establishments within the meaning of Section 2(6) of the Tamil Nadu Shops and Establishments Act, 1947.

29. The Cooperative Societies and the Land Development Banks are governed by the statutes under which they have been created as also the Rules and bye laws framed thereunder. The cooperative societies are obligated to follow the cooperative principles as laid down in the Act and the Rules framed thereunder.

30. The State had framed rules in exercise of its power conferred upon it under Section 180 of the 1983 Act in the year 1988. Rule 149 of the 1988 Rules provides for a complete code as regard the mode and manner in which appointments were

required to be made and the process of appointments is required to be carried out. In terms of the said Rule, requirements to possess educational qualification and other qualifications had been laid down. One of the essential qualifications laid down for holding certain posts is 'undergoing cooperative training and previous experience'.

31. At this juncture, we may notice some of the provisions contained in Rule 149 of the 1988 Rules.

32. Sub-rule (3) of Rule 149 read as under:

"149. (3) (a) No appointment by direct recruitment to any post shall be made except by calling for from the societies applications from their employees who possess the qualifications for the post and unless the Government have accorded special sanction for recruitment by advertisement in dailies, by also calling for a list of eligible candidates from the Employment Exchange.

(b) Where the Employment Exchange issues a non-availability certificate or the Government have accorded special sanction for recruitment by advertisement in dailies, the society shall invite applications from candidates including those working in other societies by advertisements in one English daily and two Tamil dailies having circulation within the area of operations of the society approved by the Government for the purposes of issue of Government advertisements.

(c) Every appointment by direct recruitment shall be made by holding written examination and interview or by holding only interview as decided by the board and on the basis of the rank given with reference to the marks obtained in the written examination, if any, and the marks awarded in the interview:

Provided that nothing contained in this sub-rule shall apply to any of the posts for the recruitment of which a Recruitment Bureau has been constituted under section 74 or in respect of which common cadre of service has been constituted under section 75;

Provided further that nothing contained in this sub- rule shall apply to appointments of dependents of the employees of any society who died or medically invalidated while in service."

33. Sub-rule (4) of Rule 149 mandates that no person shall be appointed to the service of a society if he has on the date on which he joins the post, attained the age of thirty years and in the case of persons belonging to Scheduled Castes

and Scheduled Tribes thirty-five years.

34. Sub-rule (25) of Rule 149 provides that the principle of reservation of appointment for Scheduled Castes/ Scheduled Tribes and Backward Classes followed by the Government of Tamil Nadu for recruitment to the State shall apply.

35. No appointment, therefore, can be made in deviation of or departure from the procedures laid down in the said statutory rules.

36. The terms and conditions of services are also laid down in the said rules.

37. The 1983 Act was furthermore amended in the year 1995 providing for cadre strength which is directly relatable to the income of the cooperative societies.

38. Provisions of the Act and the Rules framed thereunder reflect the legislative recruitment policy. The said provisions are, thus, mandatory in nature.

39. Regularisation, in our considered opinion, is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a Statutory Act or the Rules framed thereunder. It is also now well-settled that an appointment made in violation of the mandatory provisions of the Statute and in particular ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation. (See State of H.P. Vs. Suresh Kumar Verma and Another, (1996) 7 SCC 562).

40. It is equally well-settled that those who come by backdoor should go through that door. (See State of U.P. and Others Vs. U.P. State Law Officers Association & Others, (1994) 2 SCC 204)

41. Regularisation furthermore cannot give permanence to an employee whose services are ad-hoc in nature."

14. In the case of "Secretary, State of Karnataka and others Vs. Umadevi and others", the Constitution Bench also reiterated by holding that equal opportunity, being a constitutional mandate, the irregular or illegal appointments cannot be confirmed. The persons entered into public services through back door must be allowed to go from the door through which they entered into. Contrarily, mere length of service cannot be taken as a ground for granting the benefit of regularization of permanent absorption. Thus, engaging an employee in an illegal or irregular manner by some authorities or the engagement is through some contractors then they cannot claim permanent status in service by virtue of the general Act viz., the Conferment of Permanent Status to Workmen Act, 1981

and such a claim cannot be considered by the authorities concerned as well as by the High Court. In such circumstances, the entire constitutional scheme is violated.

15. The Constitutional scheme of appointments ought to be followed scrupulously by the authorities competent while undertaking the process of selection and appointment. In the event of engaging persons on temporary or casual basis, thereafter, granting the benefit of confirmation in violation of the service regulations, undoubtedly is in violation of the Constitutional scheme of appointments and such a situation would amount to an unconstitutional act and therefore, the Court cannot consider such benefit of regularization on regularization or permanent absorption, merely on the ground that they have completed 480 days of service or for a considerable length of time.

16. The learned counsel appearing on behalf of the writ petitioner contended that the Tamil Nadu Electricity Board is not an Industrial Establishment defined under the provisions of the Act itself. Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 states that the Act applies to every industrial establishment. The word 'Industrial Establishment' is defined in Section 2(3) of the Act which reads as under :-

"(a) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (Central Act LXIII of 1948) or any place which is deemed to be a factory under sub-section (2) of section 85 of that Act; or

(b) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (Central Act LXIX of 1951); or

(c) a motor transport undertaking as defined in clause (g) of section 2 of the Motor Transport Workers Act, 1961 (Central Act 27 of 1961); or

(d) a beedi industrial premises as defined in clause (i) of section 2 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (Central Act 32 of 1966); or

(e) an establishment as defined in clause (6) of section of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947); or

(f) a catering establishment as defined in clause (1) of section 2 of the Tamil Nadu Catering Establishments Act, 1958 (Tamil Nadu Act XIII of 1958); or

(g) any other establishment which the Government may, by notification, declare to be an industrial establishment for the purpose of this Act."

17. Relying on the above provisions, the petitioner states that the Act itself is not applicable in respect of the employees of the Tamil Nadu Electricity Board Act. If they are working in an Industrial Establishment, as defined under Section 2(3) of the Act, then alone the Act would be applicable.

18. The benefit of regularization of these contract labourers were earlier granted by the Tamil Nadu Electricity Board, pursuant to the recommendations of Justice Khalid Commission long back and subsequently, such confirmations are granted strictly in accordance with the terms and conditions of the 12(3) Settlement and not otherwise. This being the procedures followed for grant of confirmation, the Inspector of Labour are mechanically passing such order of confirmation of permanent status without reference to the legal grounds raised by the writ petitioner, even before the Inspector of Labour.

19. All appointments by the 'State' must be made only under the Constitutional scheme and by providing equal opportunity to all the eligible candidates, who all are aspiring to secure public employment through open competitive process. It is not as if the authorities can recruit the persons at their whims and fancies or of their choice and after allowing to such employees to work for a considerable length of time, then provide confirmation, regularization or permanent absorption, which is otherwise in violation of the service Rules of the Tamil Nadu Electricity Board. Such a practice would amount to unconstitutionality and further the equality clause enunciated in the Constitution is defeated. Lakh and lakh of youth of our great nation are burning their midnight lamp for securing public employment by participating in the open competitive process. The constitutional right of all those eligible candidates cannot be denied or deprived by the State or its authorities. In the event of denial of such constitutional rights of all eligible candidates, the entire appointment becomes unconstitutional and in violation of the Constitutional mandate.

20. This being the view to be adopted, this Court is of an opinion that it is not as if the employees can claim confirmation merely on the ground that they have served for 480 days, which is otherwise in violation of the service regulations constituted by virtue of the powers conferred under the Electricity Act, which will prevail over the general laws. The service regulations are constituted under the Constitutional scheme more specifically by providing Rules of reservation, communal rotations and other reservations for the priority categories. In the event of granting confirmation in the routine manner in respect of these employees, the Constitutional Right of all other eligible candidates to participate in the recruitment process is not only defeated

but their rights are infringed. Thus, the orders of the Inspector of Labour are in violation of the constitutional scheme of appointment as well as in violation of the service regulations issued by the Tamil Nadu Electricity Board by virtue of the powers conferred under the Electricity Act and such service regulations are apparently on par with the service regulations of the Government employees of the Government of Tamil Nadu.

21. As far as the present writ petitions are concerned, the first respondent in all writ petitions claims that they have completed 240 days of service and they were the contract labourers and therefore, entitled for grant of ex-gratia payments as well as the Golden Jubilee award. The Labour Court have entertained the claim petitions without considering the fact that no pre-existing right exists for the first respondent in all writ petitions to claim such benefit. This apart, the first respondent in all writ petitions were not appointed by the Board nor identified as the contract labourers for the purpose of grant of permanent absorption.

22. Under these circumstances, the orders passed by the second respondent/Labour Court in C.P.No.17 of 2010 dated 31.05.2012, C.P.No.43 of 2010 dated 28.07.2011, C.P.No.22 of 2010 dated 31.05.2012, C.P.No.18 of 2010 dated 31.05.2012, C.P.No.268 of 2009 dated 18.06.2012 are quashed and the writ petitions stand allowed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Labour Court, Cuddalore.

+1cc to M/s.T.S.Gopalan & Co., Advocate Sr.82247

W.P.Nos.811, 812, 814, 816 & 817 of 2014

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