

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2019

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.23215 of 2014
and
M.P.No.1 of 2014

The Superintending Engineer,
TNEB, Kanchipuram Electricity Distribution Circle,
Kanchipuram. .. Petitioner

-vs-

1.The Inspector of Labour,
Thiruvallur.

2.T.Ravi

3.R.Veeraraghavan ... Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari to call for the
records of the 1st respondent, relating to his proceedings
No.P.A.Mu No.4767/2005 dated 20.10.2008 and quash the same as
illegal and without jurisdiction.

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

For Respondents: R1 - Mr.J.Ramesh,
Additional Government Pleaders

: RR2 & 3 - Mr.Durai Gunasankaran

ORDER

The order dated 20.10.2008, passed by the 1st respondent in
proceedings No.P.A.Mu No.4767/2005 is sought to be quashed in
the present writ petition.

2.The writ petitioner is Tamil Nadu Electricity Board. The
facts in brief contended by the writ petitioner are that the
respondents/workmen filed an application before the Inspector of

Labour, under Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 with a prayer that they should be conferred permanent status as workmen in the Tamil Nadu Electricity Board. The claims of the workmen were that they have completed 480 days of service and therefore, they must be granted the benefit of the respective services. It is stated that these workmen had completed 480 days of service in 24 Calendar months.

3.The writ petitioner/Electricity Board disputed the said contentions of the employees on the ground that these respondents/workmen did not figure in the list of 18,006 contract labourers prepared by the Hon'ble Justice Khalid Commission and hence they cannot be granted with the benefit of permanent absorption under the Permanent Status Act. The petitioner/Board was not aware of the particulars of these respondents/workmen, more specifically, the date of joining, nature of work performed and they have completed 480 days within a continuous period of 24 calendar months. The Tamil Nadu Electricity Board gave certificates only to those contract labourers, who had worked under the contractors. Thus, the contention of the workmen that the Tamil Nadu Electricity Board had extracted work from the contract labourer is false and incorrect. It is contended that there is no record in possession of the Tamil Nadu Electricity Board to show that the respondents/ workmen have worked 480 days in 24 calendar months as per their claim. Some of the works of the respondents/workmen were performed through award of tenders to the contractors and the amounts are paid to the respective contractors. The wages as applicable were not paid directly to the workers to the Tamil Nadu Electricity Board. Thus, the claim of the respondents/workmen cannot be entertained at all.

4.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 principle 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 confirmed 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.

5. In the present case, 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 workman) Act, 1981, is not applicable in respect of the employees, who all are claiming to be the servants of the Tamil Nadu Electricity Board.

6. 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 benefits 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 regulations, 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, is following the service regulations framed under the statute and therefore, the said service regulations will prevail over the general laws and regulations are to be applied for the purpose of grant of regularization or permanent absorption.

7. It is relevant to cite a judgement 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, wherein the Division Bench framed 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."

8. 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".

9. 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."

10. 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 (hereinafter referred to as "Umadevi Case"). The Constitution Bench also reiterated that the benefit of regularization or permanent absorption cannot be granted in violation of the recruitment

Rules in force.

11. 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 (cited supra), which was 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 (cited supra) and for better appreciation, paragraph Nos. 24 to 41 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."

12. In Umadevi Case, 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 have entered into. Contrarily, mere length of service cannot be taken as a ground for granting the benefit of regularization or permanent absorption. Thus, engaging an employee in an illegal or irregular manner by some authorities or if 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 workman Act, 1981 and such a claim cannot be considered by the authorities concerned as well as by the High Courts. In such circumstances, the entire constitutional scheme is violated.

13. The Constitutional scheme of appointments are 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 regulation, undoubtedly is in violation of the Constitutional scheme of appointments and such a situation would amount to an unconstitutional act and therefore, Courts cannot consider such benefit of regularization or permanent absorption, merely on the ground that they have completed 480 days of service or served for a considerable length of time.

14. The learned counsel appearing on behalf of the petitioner/ Board 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."

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

16. 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.

17. 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 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. Lakhs and lakhs of youth of this great Nation are burning their midnight lamp for securing public employment by participating in the open competitive process. The constitutional right of all these 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.

18. 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 regulation constituted by virtue of the powers conferred under the Electricity Act, which would 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 order of the Inspector of Labour is 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.

19. The practice now prevailing in respect of grant of permanent absorption in Government Departments as well as in the Boards and Corporations are that the Contract Labourers / Temporary employees / Daily Wage employees, on completion of 240 days of services or 480 days of services, approaching the Inspectors of Labour, under the provisions of the Conferment of Permanent Status Act. The Inspector of Labour is also not considering the legal implications and the principles settled by the Constitutional Courts. They are routinely passing orders, granting Conferment of Permanent Status by verification of certain service certificate or the Attendance Registers. Few set of employees are directly filing writ petitions before the High Court under Article 226 of the Constitution of India. The High Courts also on some occasions, issued directions to consider

their representations. Such directions would do no service to the cause of justice. Those litigants are back again before the Court by way of another writ petition. Ultimately, these back door appointees were attempting to get regularization and permanent absorption, one way or other in an irregular manner by abusing the process of law or on extraneous considerations before the authorities competent. Such a practice undoubtedly would amount to violation of the Constitutional mandates and further, infringe the rights of all other eligible citizens, who all are aspiring to secure public employment through open competitive process in accordance with the recruitment rules in force.

20. Uniformity in appointments, more specifically, in public services are to be scrupulously maintained by the authorities competent. The prevailing situation is that the authorities, at their whims and fancies and by way of Favouritism and Nepotism, engaging such Contract Labourers / Temporary employees and allowing them to continue even after the expiry of the project or for a considerable length of time by providing a false hope and those labourers are approaching the Inspector of Labour or the High Courts or the Government for regularization and permanent absorption.

21. The Courts have repeatedly held that the terms and conditions of the appointments as far as the Government departments, Boards and Corporations are concerned, it must be unambiguous and clear. Ambiguity would create unnecessary issues and would result in unconstitutionality. Thus, terms and conditions of appointment, even if a temporary appointment or a Contract appointment to fulfill the needs of the project or the scheme, must be specific and the employee must understand that he cannot claim any right over and above the terms and conditions, which he had accepted at the time of appointment. This exactly is the reason why the Constitution Bench also reiterated that the Back door appointments must be stopped at once.

22. In paragraph 54 of the Umadevi Case, the Constitution Bench in unequivocal terms, held that any other judgment running counter to the principles laid down in 'Umadevi Case' are denuded to lose its status as a precedent. Thus, those judgments rendered subsequently can have no binding effect for the purpose of granting the relief of regularization or permanent absorption.

23. Large number of writ petitions are filed even before the High Courts based on the orders passed by the Inspectors of Labour under the provisions of the Conferment of Permanent Status Act. Perusal of those orders reveal that none of the legal grounds as well as the judgments of the Constitutional Courts were considered by the Inspectors of Labour. Contrarily, they are passing orders in a mechanical manner and based on which, the Contract Labourers are claiming permanent absorption. No doubt, the Courts sometimes, may take a lenient view, considering the plight of these Contract Labourers. Equally, the Courts are bound to consider the Constitutional rights of all other young people of this great Nation, whose rights are infringed. Those young people of this great Nation will get frustrated. If the appointments to the public services are not regulated and, if the back door appointments are allowed to be continued, then the very constitutional scheme of appointments are diluted and thereby, we are creating an unconstitutionality in perpetuity, where young minds will lose their hope for their future.

24. Thus, this Court is of an opinion that such a practice of granting confirmation of services must be stopped. All appointments are to be regulated. Appointments are to be made only under the constitutional schemes. Equal opportunity in public employment is the Constitutional mandate. All eligible persons must be provided with an opportunity to secure employment through recruitment process. The appointments are to be made by following the Rule of Reservations. As per the rules, all these aspects are to be scrupulously followed, then only the system of Constitutional scheme of appointments can be restored in its entirety and all such irregularities, illegalities in appointments can be stopped at once.

25. In the present writ petition on hand, the Contract labourer was engaged by the Private Contractors and the Tamil Nadu Electricity Board entered into an agreement with those Private Contractors. However, a one time measure was taken to confirm the services of the Contract labourers, who were engaged by Private Contractors. However, there is no possibility of merit assessment. There is no possibility of implementation of Rule of Reservation or other recruitment rules. If such appointments are made in a large scale, then Rule of Reservation is violated. Constitutional provisions are violated and most importantly, the efficiency level in public administration is compromised. Neutralizing the effective public administration is unconstitutional. The Constitution itself contemplates that efficiency level in public administration must be maintained.

Only if the appointments are regulated in accordance with the constitutional schemes, then alone, the efficiency level in public administration can be maintained. Therefore, all such back door appointments are to be stopped and grant of Conferment or Permanent absorption now cannot be granted in violation of the legal principles settled by the Constitution Bench of the Apex Court of India.

26.This Court also reiterated in many number of judgments that all such back door entries must not be considered for the purpose of granting confirmation. However, in respect of the Contract labourers of the Electricity Board, Justice Khalid Commission has made certain recommendations 28 years back. Those recommendations were implemented and the eligible Contract Labourers were granted with the benefit of Confirmation. Now, after a lapse of more than 28 years, the same recommendations cannot be continued for the purpose of granting confirmation of services. Eligible candidates during the relevant point of time were shortlisted and the benefit of confirmation was extended and therefore, the said benefit cannot be extended indefinitely even after a lapse of three Decades. Thus, this Court is not inclined to grant any such relief of regularization, permanent absorption or confirmation of services as the same is in violation of the Constitutional principles as well as the legal Precedent settled by the Constitution Bench of the Hon'ble Supreme Court of India.

27.In the present case, the application is filed before the Inspector of Labour and the grounds raised by the writ petitioner in respect of the application of the Act as well as the service regulations in force in the Tamil Nadu Electricity Board were not considered and the Inspector of Labour has passed the order without considering all these legal grounds and thus, this Court has no hesitation in coming to the conclusion that the order of the Inspector of Labour is perverse and not in consonance with the legal principles settled by the constitutional Courts across the country as well as by the Apex Court of India.

28.However, it is made clear that the cases of the respondent/ workmen are also to be considered with reference to the judgment of the Hon'ble Division Bench of this Court rendered in the case of Superintending Engineer, Nagapattinam Electricity Distribution Circle Vs. Inspector of Labour, Pedari Koil Street, Thiruvarur, reported in 2009 (4) MLJ 472 and the 12 (3) Settlement dated 10.08.2007 and also in the light of B.P. (Chairman)No.9, Administrative Branch, dated 09.01.2008. If the respondent/ workmen are otherwise eligible and qualified with

reference to the terms and conditions of the 12(3) Settlement as well as the Board proceedings, their cases are to be considered by verifying the eligibility criteria and other requisite qualifications as prescribed in the above orders.

29. Under these circumstances, the order passed by the Inspector of Labour No.P.A.Mu No.4767/2005 dated 20.10.2008, is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

(abr)

To

The Inspector of Labour,
Thiruvallur.

+1cc to M/s.T.S.Gopalan & Co, Advocate sr.97717
+1cc to Mr.Durai Gunasankaran, Advocate sr.97852
+1cc to Government Pleader SR.NO. 98016

W.P.No.23215 of 2014

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