

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.7597 of 2016

The Executive Engineer
Operations and Maintenance
Tamil Nadu Electricity Board
C.E.D.C.North,
Ponneri-601 204.

...Petitioner

vs.

1. The Presiding Officer
I Additional Labour Court, Chennai.

2.S.Munirathinam ... Respondent

PRAYER: 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 impugned order dated 24.07.2014 of the first respondent in I.D.No.748 of 2004 and quash the same.

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

For Respondents : R1-Labour Court
Mr.R.S.Anandan
for R2.

सतयमेव जयते
O R D E R

The award dated 24.07.2014, in I.D.No.748 of 2004 is under challenge in the present writ petition.

2. The writ petitioner is the Tamil Nadu Electricity Board.

3. The learned counsel for the writ petitioner states that the industrial dispute raised under Section 2A(2) of the Industrial Disputes Act is not maintainable, as individual disputes cannot be adjudicated under the above provisions.

4. The very maintainability of the industrial dispute before the first respondent/Labour Court is questioned by the petitioner mainly relying on the judgment of the Supreme Court of India, which is considered by this Court in W.P.No.24644 of 2004 dated 18.09.2019, the relevant paragraph No.8 is extracted hereunder:

"8. In another judgment dated 05.06.2012 passed in W.P.Nos.35842 and 35843 of 2007, this Court held as follows:

"12. He also referred to the judgment of the Supreme Court in Bharat Heavy Electricals Ltd., vs. Anil and others reported in 2007 (1) LLJ 619 for contending that the Labour Court cannot direct reinstatement of the workmen as against the principal employer that too in a dispute under Section 2-A of the Industrial Disputes Act. In paragraphs 13 and 15, it was held as follows:

"13. An individual dispute which is deemed to be an industrial dispute under Section 2-A concerns discharge, dismissal, retrenchment or termination whereas an industrial dispute under Section 2(1) covers a wider field. It includes even the question of status. This aspect is very relevant for the purposes of deciding this case. In Radhey Shyam v. State of Haryana⁴ it has been held after considering various judgments of the Supreme Court that Section 2-A contemplates nothing more than to declare an individual dispute to be an industrial dispute. It does not amend the definition of industrial dispute set out in Section 2(k) of the Industrial Disputes Act, 1947 [which is similar to Section 2(1) of the said 1947 Act]. Section 2-A does not cover every type of dispute between an individual workman and his employer. Section 2-A enables the individual worker to raise an industrial dispute, notwithstanding, that no other workman or union is a party to the dispute. Section 2-A applies only to disputes relating to discharge, dismissal, retrenchment or termination of service of an individual workman. It does not cover other kinds of disputes such as bonus, wages, leave facilities, etc.

15.We set aside the impugned judgment of the High Court by directing BHEL to re-employ Respondents 1 to 14 directly or through its contractor. This order will, however, not preclude the workmen from raising an industrial dispute claiming status of direct workmen of the Company after joining the recognised union/union concerned in the said reference. This order will not prevent the respondents herein from seeking abolition of contract labour in accordance with law. Accordingly, the civil appeal is disposed of. No order as to costs."

14. But, in the present case, the workmen himself were not very clear about the real employer and at the time of raising a dispute, they have

impleaded both of them as party respondents and during the trial, the Labour Court had accepted the evidence of M.W.1, namely Contractor and found that the claim against the 2nd respondent was not justified. In doing so, the Court also referred to the oral evidence in which the categorical admission was made by the workmen about their relationship with the Contractor. Such a finding of fact cannot be interfered with by this Court, that too in a dispute raised under Section 2-A of the Industrial Disputes Act."

5. The learned counsel for the writ petitioner contended that the second respondent /workman was a contract labourer and he was not a direct employee of the Tamil Nadu Electricity Board. In respect of contract labourers, one time scheme was implemented, pursuant to the recommendation of Justice Khalid Commission. Accordingly, 12(3) settlement was entered and the Board proceedings No.9 was also issued. The Board may not have any grievance, if the grievance of the second respondent is directed to be considered with reference to the Judgment of the Division Bench passed pursuant to the recommendation of Justice Khalid Commission as well as 12(3) settlement and the Board proceedings No.9. Contrarily, the Labour Court adjudicated the issues as an industrial dispute which is impermissible, as the Tamil Nadu Electricity Board is a Principal employer and not a contract employer.

6. In view of the fact that the workman approached a wrong forum for the purpose of getting permanent status, this Court is of the opinion that the order of the Labour Court is infirm. However, the rights of the workman shall be considered with reference to the order of the Division Bench, 12(3) settlement and the consequential Board proceedings issued in this regard. The writ petitioner/Board is empowered to consider the case of the workman, in the light of the board proceedings itself.

7. The learned counsel appearing on behalf of the second respondent/workman also reiterated that all such similar cases were considered by the Tamil Nadu Electricity Board, the colleagues of the second respondent were already absorbed on permanent basis and the case of the second respondent is yet to be considered by the Board, with reference to the recommendation of Justice Khalid Commission as well as subsequent proceedings. The name of the second respondent was not considered, as there was spelling mistake in the name of the second respondent and by citing the spelling mistake, the case of the second respondent was not considered and kept pending without any valid reasons.

8. This being the factum, the second respondent is at liberty to clarify the spelling mistake by submitting all relevant records, so as to establish that he was working as a

contract labourer and his name was included in the list, by the Tamil Nadu Electricity Board, for the purpose of granting permanent absorption. In the event of receiving any such document or record, the writ petitioner is bound to consider the same and verify the documents. Thereafter, consider the case of the second respondent, for granting the permanent absorption, in the light of the board proceedings and 12(3) settlement. However, the award of the Labour Court cannot be insisted upon as it was filed before the wrong forum. Accordingly, the award of the Labour Court dated 24.07.2014 in I.D.No.748 of 2004 is quashed. The writ petitioner is directed to consider the case of the second respondent for grant of permanent absorption in the light of the Division Bench Order, 12(3) settlement and the board proceedings No.9, within a period of 12 weeks from the date of receipt of a copy of this Order. The writ petitioner is at liberty to submit all relevant records to establish his case.

9. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssb
To

The Presiding Officer
I Additional Labour Court, Chennai.

+1cc to Mr.R.S.Anandan , Advocate SR.No. 87669
+1cc to Mr.T.S.Gopalan , Advocate SR.No. 87665

W.P.No.7597 of 2016

A.SK(28/11/2019)

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