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WP.No.10545 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.10545 of 2017
& WMP.No.11457 of 2017

The General Secretary, Kalpakkam
Atomic Contract Workers & Labour
Union, No.150, School Street,
Mulikolathur & Post,
Thirukazhukundram Taluk,
Kancheepuram-603109.

...Petitioner

Vs

- 1.The Station Director, Madras
Atomic Power Station,
Kalpakkam-603102.
- 2.The Special Officer, Kalpakkam
Industrial Cooperative Service
Society Ltd. (KINCOSS),
MAPS Campus, Kalpakkam.
603102.
- 3.The Presiding Officer, Central
Government Industrial Tribunal-
cum-Labour Court, Shastri
Bhavan, Haddows Road,
Chennai-6.

...Respondents



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PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the common award dated 13.1.2017 passed by the third respondent - Central Government Industrial Tribunal-cum-Labour Court, Chennai in I.D.No.98 of 2014 and complaint No.3 of 2016, quash the same and consequently direct the first respondent to make all the 54 members of the petitioner's union permanent and to absorb and regularize the services of 54 workmen concerned as Helper-A and also to re-designate them as Work Assistant-A on par with 25 workmen, who have already been absorbed from the second respondent society with effect from the date, on which, those 25 workmen were absorbed and re-designated with same scales of pay, grade pay, pay and allowances and all other attendant benefits and facilities as extended to those 25 workmen with arrears and all other consequential benefits and also to continue the services of the remaining workmen till they attain and complete 60 years of age.

For Petitioner	:	Mr.V.Ajoy Khose
For R1	:	Mr.V.Vijay Shankar
For R2	:	Mr.Balan Haridas

ORDER

This is a petition filed by the petitioner seeking to quash the award dated 13.1.2017 made in I.D.No.98 of 2014 and complaint No.3 of 2016 on the file of the third respondent and consequently direct the first respondent



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to absorb and regularize the services of 54 workmen concerned as Helpers-A and also to re-designate them as Work Assistant-A on par with 25 workmen, who have already been absorbed from the second respondent society with effect from the date, on which, those 25 workmen were absorbed and re-designated with same scales of pay, grade pay, pay and allowances and all other attendant benefits and facilities as extended to those 25 workmen with arrears and all other consequential benefits and also to continue the services of the remaining workmen till they attain and complete 60 years of age.

2. The facts leading to filing of this case are as follows :

(i) All the atomic power stations and units were under the control of Department of Atomic Energy. In 1987, all the nuclear power stations and projects were brought under the control of Nuclear Power Corporation of India Limited. Thereafter, the first respondent started the second respondent society. Initially, two of the officials of the first respondent were nominated as the Board of Directors of the second respondent and the other two directors in the Board were the workmen representatives. Though 260 workmen were in the rolls of the first respondent on direct HR payment,



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only 155 workmen were taken as members of the second respondent, out of which, only 54 workmen remain as members of the second respondent as on 2011 and they are carrying out the same work as carried out by 25 persons, who were absorbed as Helpers-A.

(ii) Since many of the seniors, who were members of the second respondent, were not considered for absorption while considering the case of juniors, the 64 affected senior workmen filed W.P.No.4199 of 1999 challenging the order dated 23.2.1999 passed by the first respondent and sought a direction to the first respondent to appoint them as Helpers-A in the existing vacancies based on their seniority. However, it came to be dismissed by order dated 15.10.2004. This order was put to challenge in W.A.No.2015 of 2005, which was dismissed as infructuous on 09.11.2005 granting permission to withdraw the writ petition itself and liberty to raise an industrial dispute.

(iii) Since the first respondent had not considered the request of the workmen, who were members of the second respondent society, the petitioner initiated conciliation proceedings, in which, the first respondent filed their reply. In the meanwhile, the petitioner filed W.P. No.12116 of



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2011 seeking to direct the first respondent to appoint the 25 workmen, who were called for interview, but were not issued with appointment orders as Helpers-A and it was disposed of by order dated 04.5.2011 directing the petitioner to submit a fresh representation to the first respondent. Further, the first respondent rejected the request made by the petitioner by order dated 15.6.2011. Ultimately, the conciliation ended in failure and that is how the industrial dispute came to be filed by the petitioner before the third respondent. In that, the first respondent filed a counter and the petitioner also filed a rejoinder. The second respondent also filed a counter to that.

(iv) The second respondent amended the special by-law and fixed the age of superannuation as 60 years. This was communicated to the first respondent and they were requested to continue the services as the members of the petitioner union till they attain the age of 60 years. In spite of the said amendment, the first respondent refused to give entry pass to the workman pending the above dispute nor allowed him for work. Hence, the petitioner filed a complaint under Section 33A of the Industrial Disputes Act, 1947 and it was taken on file as Complaint No.3 of 2016.

(v) Ultimately, after contest, the third respondent passed the



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impugned award dismissing both the industrial dispute and the complaint on the ground that the contract was not sham and nominal. Challenging the same, the petitioner is before this Court.

(vi) According to the petitioner, at the time of reference, the total number of workmen concerned were 54. After the reference, four more persons were denied employment on the ground that they attained the age of 58 years. Further, nine more persons were to attain the age of 58 years.

3. Learned counsel appearing for the petitioner union would submit that the main grievance of the petitioner is that the above said 25 persons who were absorbed from the 2nd respondent society are getting around Rs.25,000/- per month apart from various other benefits and facilities where as the 54 workmen who are still remaining in the 2nd respondent society are getting only around Rs.15,000/- per month without any other benefits and facilities. Aggrieved by which, the petitioner union submitted a charter of demands claiming permanency, equal pay for equal work and other benefits, however, the management had failed to settle the demands and hence, the union had raised the Industrial Dispute. Further, no notice under Section 9A



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of the Industrial Disputes Act, 1947 at the time when the second respondent society was formed and when the 54 workmen were made members of the second respondent society though there was an alteration in the conditions of service. Accordingly, he prayed for allowing the Writ Petition.

4. The first respondent filed a counter wherein it has been stated as follows :

(i) The petitioner union had no locus standi to demand for appointment of their members on regular basis in the pay rolls of the first respondent. Such a demand went contrary to the Contract Labour (Regulation & Abolition) Act (for short, the Act). From the inception, the second respondent had been taking up different types of work on contract basis. The jobs awarded to the members of the second respondent were not perennial in nature and such works were executed on the terms and conditions of the contract. The role of the first respondent as a principal employer was limited and strictly in accordance with the provisions of the Act. With the intention to streamline the work carried on in the industry by using a parallel force to attend to intermittent works, the Ministry of



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Industry, Government of Tamil Nadu formed the second respondent.

(ii) No person was nominated as the director of the second respondent on behalf of the first respondent. The members of the second respondent were the workmen as well as owners. The activities assigned to the members of the second respondent were of short duration and occasional in nature. The second respondent was not only depending upon the jobs of the first respondent, but was free to carry out the works of other units of the Department of Atomic Energy.

(iii) The second respondent was a cooperative society and a body corporate within the meaning of Section 39 of the Tamil Nadu Cooperative Societies Act, 1983. As a welfare measure and in order to improve the economic condition of the members, the first respondent had been awarding contracts on nomination basis to the second respondent. Such contracts were being executed as per the terms and conditions of the respective contract. It was the sole responsibility of the second respondent to execute the works by employing sufficient workmen as per the conditions of the contract.

(iv) The first respondent had no control over the second respondent. The entire affairs of the second respondent were looked after by the Board of



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Directors and the Managing Directors, whose services were spared by the Industries Department, Government of Tamil Nadu. The members of the petitioner were not having prescribed qualifications and the services rendered by them were not comparable to the services rendered by the regular employees. However, the first respondent ensured payment of wages much higher than the notified minimum wages.

(v) The employees of the second respondent were deputed only in non-core areas like maintenance and servicing jobs. The members of the second respondent were the employees of the cooperative society and the first respondent was, in no way, liable to appoint them on regular basis. The issuance of notice under Section 9A of the Industrial Disputes Act, 1947 was applicable only to regular employees of the first respondent.

(vi) Time and again, the Supreme Court upheld that persons engaged on daily wages or on contract basis could not be treated equally with other regular employees. The amendment made in the by-law did not bind the first respondent and as far as the first respondent was concerned, the age of retirement of the members of the second respondent was 58 years as per the provisions. The members of the petitioner were the members of the second



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respondent.

(vii) There was no abolition of contract labour in the area of operation where the first respondent was located and so long as the contract labour was not abolished by the Appropriate Authority, the members of the petitioner could not claim the relief for absorption. There were no sanctioned posts for the works performed by the members of the second respondent. In the absence of availability of sanctioned posts, the claim for regularization had no merit. Ultimately, the first respondent sought to dismiss the writ petition.

5. The second respondent filed a counter wherein it has been stated as follows :

(i) The workmen concerned in this case were initially employed by the first respondent. The first respondent paid wages to them directly and the entire control and supervision of the employees were only by the first respondent. After formation of the Nuclear Power Corporation of India Limited, the first respondent formed the second respondent. All the workmen employed in the first respondent were directed to work under the



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second respondent. However, the nature of work discharged by them remained the same even after formation of the second respondent.

(ii) The second respondent amended its by-laws by enhancing the age of retirement from 58 to 60 years with effect from 28.8.2015. This was informed to the first respondent with a request to continue the services of the members of the petitioner beyond 58 years. But, the first respondent stopped some of the workmen from entering into the work place on the pretext that they completed 58 years. The action of the first respondent in not allowing the members of the second respondent on the ground that they completed 58 years of age was not correct, as the employees of the first respondent retire only at the age of 60. Providing continuous employment to them upto 60 years with back wages from the date of amendment of the by-law of the second respondent i.e 28.8.2015 would only render justice.

(iii) The members of the second respondent were allotted work in three groups namely (i) maintenance wing; (ii) technical unit; and (iii) operation wing and all the works in the said three groups were in core area only. The officers of the first respondent alone were preparing the estimate towards payment for carrying out the above works and the wages were paid



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on monthly basis.

(iv) Except receiving the amount from the first respondent for payment of wages to the concerned workmen, the second respondent had no role to play. The workmen concerned were working for more than 30 years. They were doing perennial nature of work under the direct supervision and direction of the first respondent. The second respondent had no role to play with regard to the nature of work to be discharged by the workmen except for payment of wages.

6. This Court heard the learned counsel appearing on either side and perused the materials available on record.

7. The petitioner union raised an industrial dispute on behalf of the 54 workmen who are the members of the union and also the members of the second respondent society. It is submitted that initially the workmen concerned were the direct employees of the 1st respondent and only after formation of the 2nd respondent society, they became the members of the 2nd respondent. The main grievance of the petitioner is that the workmen



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concerned were not absorbed by the 1st respondent and that they are not equally paid on par with the regular employees.

8. It is the stand of the 1st respondent that the demand of the petitioner union is entirely contrary to the Contract Labour (Regulation & Abolition) Act (for short, the Act) as the members of the petitioner union does not possess prescribed qualifications and the services rendered by them were not comparable to the services rendered by the regular employees. It is seen that the 1st respondent was awarding contracts to the 2nd respondent and thus the 2nd respondent society itself is a contractor.

9. Even in the impugned award, the 3rd respondent Labour Court has observed that the petitioner has not established the direct employer-employee relationship between the workmen concerned and the 1st respondent. In the absence of any relationship between the workmen and the 1st respondent, the claim of the workmen for regularization of service with the 1st respondent is not acceptable. However, it is to be pointed out that though the 2nd respondent society was formed in the year 1996, the workmen



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have raised an industrial dispute only in the year 2014 which is after a lapse of almost two decades. It is seen that even at the time of formation of the society, the workmen concerned have agreed to remain in the 2nd respondent society.

10. Further, pursuant to the repeated requests made by the members of the 2nd respondent for absorption, 49 workmen were interviewed out of which, only 23 were absorbed by the 1st respondent. The said absorption is not absorption simpliciter, but it is a case of recruitment at the request of the members of the 2nd respondent, which cannot form the basis for the other persons to claim equal treatment.

11. Though it is the grievance of the petitioner union that the similarly situated persons were absorbed by the 1st respondent while the workmen of the 2nd respondent society were not absorbed by the 1st respondent, however, no material has been placed by the petitioner union to show that the workmen of the society are doing same kind of work that is done by the regular employees of the 1st respondent. The above facts have been



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elaborately discussed by the 3rd respondent and hence, this Court finds no perversity in the findings rendered by the 3rd respondent which requires no interference.

12. For the reasons aforesaid, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition stands closed.

25.09.2023

Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

NHS

To

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Power Station, Kalpakkam-603102.

2.The Presiding Officer, Central
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cum-Labour Court, Shastri
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