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W.A. No.756 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2023

CORAM:
THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
and
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.A. No.756 of 2023

S. Munirathinam

Appellant

v

- 1 The Presiding Officer
I Additional Labour Court
Chennai
- 2 The Executive Engineer
(Operations & Maintenance)
Tamil Nadu Electricity Board
CEDC North, Ponneri
Thiruvallur District 601 204

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 21.10.2019 passed in W.P. No.7597 of 2016.

For appellant Mr. Ayyathurai
for Mr. A. Baskaran

For R2 Mr. Anand Gopalan
for M/s. T.S. Gopalan & Co.

JUDGMENT

(delivered by S. VAIDYANATHAN, J.)

For the sake of clarity and convenience, the appellant, the first respondent and the second respondent will be adverted to as the workman, the Labour Court and the Electricity Board, respectively.



2 The short facts leading to the filing of this writ appeal are as under:

2.1 The workman joined the services of the Electricity Board as an ordinary employee in 1985 for a daily wage of Rs.20/-. From 1991 to 2007, he was employed through a contractor. In 2007, during which year, he was disengaged from service, he was paid a daily wage of Rs.70/-.

2.2 Hence, he raised an industrial dispute before the Labour Court in I.D. No.784 of 2010 under Section 2-A(2) of the Industrial Disputes Act, 1947, seeking continuity of service, backwages and other attendant benefits.

2.3 Before the Labour Court, the stand taken by the Electricity Board was that even though the workman had joined their services in 1982 as a daily rated wager, he was only under contract employment and was never a direct employee and that too, he had not worked continuously for five years.

2.4 The Labour Court, on hearing either side and considering the evidence on record, *vide* award dated 24.07.2014, came to the conclusion that the workman was working regularly from 1991-1997, but, through a contractor. Further, noting that similarly placed employees had been given the benefit of permanent status and relying on Ex.W.1, considering that the workman had worked for more than a period of five years, *viz.*, from January



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1991 to February 1997, and also by placing reliance on the Khalid Commission report, as per which, a workman who had worked for 480 days continuously, is entitled to conferment of permanent status and also in view of the deeming provision of Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, held that the workman is entitled to conferment of permanent status like similarly placed workmen and disengagement of services of the workman is illegal. The Labour Court further went on to order continuity of service, backwages and other attendant benefits to the workman.

2.5 Aggrieved, the Electricity Board preferred the writ petition being W.P.No.7597 of 2016 questioning the very maintainability of the industrial dispute under Section 2-A(2) of the Industrial Disputes Act, inasmuch as, individual disputes cannot be adjudicated under the said provision.

2.6 The other ground urged before the Single Bench by the Electricity Board was that the workman was only a contract labourer and not a direct employee of the Electricity Board; *qua* contract labourers, an one time scheme was implemented based upon the recommendations of Justice Khalid Commission and accordingly, a settlement under Section 12(3), *ibid.*, was entered into and Board Proceedings No.9 dated 09.01.2008 was also issued; and the Electricity Board may not have grievance if the case of the workman is directed to be considered based on the 12(3) settlement and Board Proceedings No.9 dated 09.01.2008.



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2.7 The Single Bench, relying on the judgment of the Supreme Court in **Bharat Heavy Electricals Ltd. v Anil and others [(2007) 1 LLJ 619]**, set aside the award of the Labour Court on the ground that it was not the proper forum. Further, considering the fact that much water has flown under the bridge by way of Section 12(3) settlement and issuance of Board Proceedings No.9 dated 09.01.2008 and also considering the fact that the workman's name was not considered for permanent absorption owing to a spelling mistake in his name, the Single Bench disposed of the writ petition granting liberty to the workman to clarify the spelling mistake in his name by submitting all the relevant records to the Electricity Board and the Electricity Board was also directed to consider the claim of the workman for grant of permanent absorption in the light of B.P. No.9 dated 09.01.2008 and Section 12(3) settlement, within a period of twelve weeks.

2.8 Calling into question the aforesaid order passed by the Single Bench, this writ appeal has been preferred by the workman.

3 The order passed by the Single Bench is assailed primarily on the ground that the workman who had lost his employment, can invoke only Section 2-A(2), *ibid.* before the Labour Court and that he cannot approach the authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, who can be approached only by in-



service workmen. It is *inter alia* contended by the workman that once he is deemed to have been confirmed in service, his disengagement violating the provisions of Section 25-F of the Industrial Disputes Act, is illegal.

4 In support of his submission that the workman had completed five years of service, the learned counsel for the workman relied on Ex.W.4, statement showing the service particulars of contract labourers who had completed five years of service as on 31.03.1996, signed by the Junior Engineer, Operation and Maintenance, M.E.D.C., North, T.N.E.B., Ponneri 601 204.

5 The contention of the Electricity Board that the Labour Court has no jurisdiction to deal with the industrial dispute is not correct as the workman is entitled to question his non employment under Section 2-A, *ibid.*, and in the event of the Labour Court holding that his non employment is not justified, the Labour Court is empowered to grant permanent status to the workman, as, in case, the Labour Court awards reinstatement with continuity of service, consequential relief is deemed permanent status in terms of Section 3 of the 1981 Act, *supra*, provided the said Act applies to the parties. That apart, in a case arising under the Tamil Nadu Shops and Establishments Act, when there was a violation of Section 25-F, *ibid.*, the Supreme Court, in **Krishna District**

Cooperative v N.V. Purnachandra Rao and others [1987 AIR 1960], held



that violation of other provisions of the Act can be looked into by the authority. Further, a Division Bench of this Court, in **N. Mamundiraj & others v BHEL, Trichy & others [1999 1 LLJ 622]** has held that unfair labour practice can also be gone into by the authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

6 In the present case, admittedly, the workman was employed through a contractor. Once he has been employed through a contractor, he should be placed in the same pedestal like the other workmen employed through contractors, who had the benefit of the Khalid Commission report, apart from the Section 12(3) settlement and two Board Proceedings, viz., B.P.No.44 dated 06.09.2007 and B.P. No.9 dated 09.01.2008.

7 Further, it is pertinent to point out that during the pendency of this writ appeal, a representation dated 09.06.2023 was given by the workman and the Electricity Board has considered the same in terms of the Settlement dated 10.08.2007 and B.P. No.44 dated 06.09.2007 and eventually, concluded that since the workman did not receive *ex gratia* payment, he would not be entitled to absorption. However, the fact that the workman was paid daily wages in 1982 and subsequently, his nomenclature was changed into one of contract labourer is to be taken note of. Further, since there was a camouflage



in changing the nomenclature of the workman from daily rated employee to contract labourer, the Electricity Board cannot be let off lightly.

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8 Though the workman had reached the age of superannuation in June 2017, in order to give a quietus to the matter, we direct the Electricity Board to pay a sum of Rs.2 lakhs as compensation within a period of three months from the date of receipt of a copy of this judgment.

9 The order of the Single Bench and the award of the Labour Court are modified to the above extent. Before parting, we hasten to add that we would have granted the entire relief sought by the workman, but for the settlement under the Industrial Disputes Act, 1947, and the two Board Proceedings, viz., B.P. No.44 dated 06.09.2007 and B.P. No.9 dated 09.01.2008.

This writ appeal stands disposed of accordingly. No costs.

(S.V.N., J.) (K.R.S., J.)
04.09.2023

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S. VAIDYANATHAN, J.
and
K. RAJASEKAR., J.

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To

The Executive Engineer
(Operations & Maintenance)
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