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W.P.(MD) No.5710 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.5710 of 2016

and

W.M.P.(MD) No.5146 of 2016

The Superintending Engineer
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
Trichy Electricity Distribution Circle
Trichy

... Petitioner

-VS-

1.Inspector of Labour
Trichy

2.V.Sebastin Anton

3.Y.Soosaisahayaraj

4.S.Michel Raj

5.P.Thangaraj

6.K.Pandiyaarajan

7.M.Ranjith

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records in pursuant to the impugned order passed by the first respondent in Na.Ka.No.A580/2008, dated 20.11.2014 and quash the same.

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

For Respondents : Mr.P.Thambidurai
Government Advocate for R1
Mr.R.Maheswaran for R2
No appearance for R3
Mr.Jana @ Janath Ahmed for R4 to R7

ORDER

The order passed by the first respondent-Inspector of Labour under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 is under challenge in this Writ Petition.

2. The petitioner states the respondents 2 to 7 were the applicants before the Inspector of Labour, Trichy and they filed an application on the



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basis that they were working as Contract Labourers under the control of the Superintending Engineer, Trichy Electricity Distribution Circle and they have put in service of 480 days within a continuous period of 24 calendar months. Thus, they are entitled for conferment of permanent status under Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

3. The learned counsel for the petitioner mainly contended that there was no adjudication before the Inspector of Labour. It was not established before the first respondent that the respondents 2 to 7 had completed the service of 480 days. In the absence of any such adjudication, the Inspector of Labour has no authority to pass an Award granting permanent status, which would run counter to the provisions of the Board's Rules and Regulations. In the absence of adjudication of facts, the authority ought not to have arrived at a conclusion that the respondents-workmen served for 480 days. Such a presumptive decision regarding the services rendered by the respondents 2 to 7 are untenable.



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4. The Hon'ble Division Bench of this Court elaborately considered the same issue in a batch of Writ Petitions filed by **The Superintending Engineer, Erode Electricity Distribution Circle, Tamilnadu Electricity Board Vs. Inspector of Labour and others** reported in **(2022) SCC OnLine Mad 1003**, wherein it was held as follows:-

"22. In view of the above, while we are of the view that the Labour Inspector has the power to issue appropriate order to grant permanency to the workmen, it cannot be by adjudicating the complicated questions of fact and law. A perusal of the Act of 1981 does not provide power in Labour Inspector of the nature given to the Industrial Adjudicator, i.e., the Industrial Tribunal or Labour Court, as complete framework with procedure for it has been given under the Act of 1947. Certain provisions of the Civil Procedure Code have been made applicable therein for proper adjudication which does not exist under the Act of 1981.

*23. If the facts of this case are taken into consideration, we find that the Labour Inspector has recorded his finding in reference to the Act of 1970 while adjudicating the issue. Such powers have not been conferred on him, rather he can pass appropriate order after summary enquiry. The view expressed by the Single Judge of this court in the case of **Superintending Engineer, Vellore Electricity Distribution Circle, Vellore and***



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others, supra, is not in conflict with the view aforesaid, rather in paragraph 35 of the said judgment, the difference between the power of Labour Inspector and Labour Court or Industrial Tribunal under the Act of 1947 has been made. Paragraph (35) of judgment, referred supra, is extracted hereunder:

*"35. Therefore, I am unable to accept the submission made on behalf of the Board that the exercise of the power by the Inspector of Labour in conferring permanent status after holding necessary enquiries contemplated under S. 5 read along with rule 6(4) should be construed as arrogating to himself the powers available to the other adjudicatory forums created under the provisions of the Industrial Disputes Act, 1947. **It will have to be stated that while the exercise of powers vested with the Inspector under the provisions of the Act is summary in nature, the one under the provisions of the Industrial Disputes Act may be an elaborate one. Nevertheless the same does not mean that by exercising the power under the provisions of the Act the Inspector of Labour would be trespassing into the adjudication process contemplated under the provisions of the Industrial Disputes Act.** In this context, if the judgment of the Supreme Court in *Nirchiliya* case [1990 (2) L.L.N. 4] (vide supra) is applied, it can be safely held that where there is no prohibition under the*



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provisions of either the Industrial Disputes Act or the Act, exercise of the power in the manner in which it can be done by the Inspector of Labour under the Act cannot be found fault with. It will have to be stated that such an exercise would be well within the statutory limitations provided under the Act. In fact, in the above-referred to judgment of the Hon'ble Supreme Court, the question for consideration was whether the workmen who initially raised an industrial dispute under the Industrial Disputes Act and who did not pursue it till its logical end when chose to move the authority under the then Madras Shops and Commercial Establishment Act, the Hon'ble Supreme Court held that in the absence of any prohibition under either of the enactments, such a course adopted by the workmen cannot be faulted. Therefore, applying the said ratio to the case on hand, it can be safely held that the concerned workmen here were placed in a better footing when they chose to straightaway move the Inspector of Labour under the Act, inasmuch as according to the workmen, having regard to the facts prevailing as on date, they were entitled for the conferment of permanent status as provided under the Act. If such a claim of the workmen was not factually maintainable, it was for the Board to have resisted the said claim with all available materials and could have convinced the Inspector of Labour as the claim ought not to have been countenanced. The Board having miserably failed to



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perform its duties in the manner expected of it, it cannot be now allowed to contend or complain against the powers exercised by the Inspector of Labour which was within the provisions of the Act. In this context, if the judgment of the Division Bench of this Court in Metal Powder Company, Ltd. case [1985 (2) L.L.N. 738] (vide supra), is applied, then also it can be safely held that the Inspector of Labour was well within his jurisdiction in holding the proceedings in the manner it was held and in passing the order by directing the petitioner/Board to confer permanent status on the workmen."

[emphasis supplied]

24. The Labour Inspector vested with the power under the Act of 1981 is said to be having a summary power of enquiry, while an elaborate adjudication of questions of fact and law can be only under the Act of 1947.

25. In view of the above, we can safely hold that the Labour Inspector can exercise jurisdiction only in the nature of summary enquiry, while a case involving complicated question of fact and law to be left for its adjudication under the Act of 1947. The Labour Inspector can exercise his power under the framework of the Act of 1981. He has no power to adjudicate the issue in reference to other statutes, which includes the Act of 1970.



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26. Since we have analyzed the issue aforesaid, we would like to refer to the impugned order of the Labour Inspector to find out as to whether he has caused a summary enquiry or has travelled beyond his jurisdiction to adjudicate the questions of fact and law pertaining to the other statute.

27. A perusal of the order passed by the Labour Inspector in the case on hand shows an adjudication of the issue in reference to the Act of 1970 also, though it was not within his competence. He is not having powers to comment on the nature of employment and the policy adopted by the petitioner corporation. He was required to simply see whether the workman has rendered continuous service for 480 days in 24 calendar months. Thus, on the aforesaid issue, the interference therein may require to be made.

28. The other ground for challenge to the order of the Labour Inspector is that without any discussion to show continuous service of an employee for 480 days in 24 calendar months, the finding has been recorded. The order under challenge does not refer to the 24 calendar months of each workman to record its finding about his continuous working for 480 days therein by giving details of the days and months.



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29. From a perusal of the order of the Labour Inspector, we find that after referring to the testimonies of the parties and the documents, a finding has been recorded, without disclosing the period of 24 calendar months and 480 days working of each workman therein. The finding has been recorded in a superficial manner. The aforesaid could not be contested by learned counsel appearing for the workmen. However, it is submitted that while setting aside the order passed by the Labour inspector, the matter may be remanded with a direction for fresh enquiry with liberty to the workmen to produce the material.

30. After going through the order passed by the Labour Inspector, we find that the Labour Inspector has not recorded his finding in reference to each workman about his continuous service for 480 days in 24 calendar months. Thus, we need to cause interference with the order.

31. As we recorded a finding about the jurisdiction of the Labour Inspector and applicability of the Act of 1981, we accept the argument of learned counsel for the respondents to remand the case for fresh enquiry by the Labour Inspector to find out the continuous working of each employee for continuous period of 480 days in a period of 24 calendar months for passing the appropriate orders.



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32. At this stage, learned counsel for the petitioner submitted that even if the matter is remanded, it should be with a clarity of the fact that the benefit under Section 3 of the Act of 1981 be given only if the workman is still in employment and not otherwise. It is also keeping in mind the terms of settlement and thereby the benefit may not be extended beyond what has been provided in the settlement.

33. The argument aforesaid has been contested. It is submitted that even if any of the workman is not in service, though stated to be in service, the benefit of permanency under Section 3 of the Act of 1981 being automatic should not be denied to any of the workman if discontinued, rather it should be with liberty to challenge the discontinuance, but till then and for the intervening period, he remained in service after becoming eligible for permanency, consequential benefits may be allowed.

34. We have considered the submission aforesaid and find that the order passed by the Labour Inspector needs to be interfered with remand of the case. It is, however, to be made clear that the Labour Inspector would not cause enquiry beyond the powers given under the Act of 1981 and thereby would not be having jurisdiction to adjudicate the complicated questions of fact and law in reference to any other statute than the Act of 1981. The Labour Inspector may, for the purpose of conducting summary



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enquiry, allow the parties to produce documents and if any of the workmen has completed 480 days of continuous service in 24 calendar months, appropriate directions can be issued for granting permanency. However, even if such an order is issued, it should be with a clear finding about each workman and the number of working days by referring to the period of 24 calendar months. The benefit as to the consequences thereupon would be only for the period of employment and if any of the workman is discontinued or not in service, he would be entitled to the benefit only for the period of service and not beyond that and, that too, after the completion of continuous service of 480 days in 24 calendar months, and not for a prior period. The direction aforesaid is not driven by the settlement for the reason that the workmen herein are those who were not extended the benefit of settlement and, therefore, sought claims by maintaining claim separately. However, it would not preclude both the sides from entering into settlement, if they so choose, during the period of summary enquiry by the Labour Inspector. The issue as to whether the respondents fall within the definition of "workman" is however decided against the petitioner Corporation, as not only a settlement was entered, but adjudication about claim to seek permanency has been decided earlier in reference to similarly placed.

35. With the aforesaid directions, all the writ petitions are disposed of by causing interference with the order passed by the Labour Inspector. The orders passed by the Labour Inspector are



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set aside with remand of the case to the Labour Inspector for passing orders afresh, after summary enquiry."

5. As per the principles laid down by the Division Bench of this Court in the aforesaid case, the respondents-workmen are bound to establish that they have served in the Board's establishment and they are entitled for absorption as per 12(3) Settlement and the Board's proceedings issued based on the settlement.

6. Regarding the terms and conditions of settlement for permanent absorption, the respondents-workmen have to approach the competent Labour Court for complete adjudication of facts and the disputed issues. Therefore, the Inspector of Labour cannot entertain an application and pass an order granting permanent status which is otherwise not in consonance with the 12(3) settlement entered into between the Electricity Board and Workers' Union for the purpose of permanent absorption.

7. Thus, an adjudication under the Industrial Disputes Act became imminent for the purpose of crystallizing the rights of the workmen. Once the rights are crystallized, then only they are entitled for the relief of



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permanent absorption, but not otherwise. Thus, the respondents-workmen are at liberty to adjudicate the issues in the manner known to law.

8. The learned counsel for the petitioner made a submission that as per Form-1 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, the register of a workman is to be maintained by the employer concerned. Column 4 in Form-1 stipulates that "whether permanent, temporary, casual, badli, or apprentice other than those covered under the Apprentice Act, 1961".

9. A perusal of the Form reveals that the Contract Labourers are not even included in the statutory form contemplated under the Conferment of Permanent Status Act. When there is no provision for registration of Contract Labourers under the provisions of the Act, the Inspector of Labour is not empowered to pass an order under the provisions of the Act granting permanent status to the workmen. Thus, the very exercise of power is without jurisdiction and therefore, the order passed by the first respondent is liable to be set aside.



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10. Accordingly, the impugned order passed by the first respondent in the proceedings dated 20.11.2014 is quashed the Writ Petition stands allowed. The respondents-workmen are at liberty to raise a dispute either under Section 2(k) of the Industrial Disputes Act, 1947 or under the Contract Labour (Regulation and Abolition) Act, 1970, before the Industrial Tribunal in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

08.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:
The Inspector of Labour,
Trichy.



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S.M.SUBRAMANIAM, J.

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