

(2014) 01 MAD CK 0214

In the Madras High Court

Case No : Writ Petition No. 20897 of 2012

R. Rajagopal

APPELLANT

Vs

The Chief Engineer/Personnel, The Superintending Engineer
and The Executive Engineer/O and M, Tamil Nadu Generation
and Distribution Corporation Ltd.

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3)

Citation : (2014) 1 LLJ 698 : (2014) LLR 512

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : S. Doraisamy, for the Appellant; M. Fakkir Mohideen, for the Respondent

Final Decision : Disposed Off

Judgement

M. Venugopal, J.—The Petitioner has focused the instant Writ of Mandamus praying for issuance of an order by this Court in directing the Respondents 1 and 2 to consider and pass orders on his representation dated 25.01.2012 and to regularise his service as per the list submitted by the Second Respondent to the First Respondent in pursuance of the Memo No. 047/007443/SED/Adm.2/A.2/F.C.L./2008 dated 25.03.2008 on the file of the Second Respondent and Memo No. 128688/G.582/2009-1 dated 12.05.2010 on the file of the First Respondent. According to the Petitioner, he is working as a Contract Labourer on and from 05.02.2003 continuously in the Respondents Corporation under the control of the Assistant Engineer (O & M), SIPCOT, Division II, Hosur, without any blemish. The Second Respondent issued a Memo in reference No. 047/007443/SED/Adm.2/A.2/F.C.L./2008 dated 25.03.2008 directing all the Executive Engineers of the Circle to submit the details of left out Contract Labourers, who were not covered u/s 12(3) settlement of the Industrial Disputes Act, 1947 and engaged continuously and further the details of the Contract Labourers who are not engaged etc., Pursuant to the Memo dated 25.03.2008 issued by the Second Respondent, the

Third Respondent had instructed all the Assistant Executive Engineers to furnish the details in the enclosed statement on or before 27.05.2010 without fail.

2. The specific case of the Petitioner is that he is working as a Contract Labourer on and from 05.02.2003 continuously and his name was included by the Assistant Engineer (O & M), SIPCOT, Hosur, on 29.05.2010 showing that he was a left out Contract Labourer and not covered u/s 12(3) of the Industrial Disputes Act, 1947 and engaged continuously along with others. The report was submitted to the Third Respondent and the same was forwarded to the Second Respondent. It appears that no regularisation orders were issued pursuant to the Memo issued by the Second Respondent dated 25.03.2008. He along with two others made a representation to the Respondents 1 & 2 on 25.01.2012 making a request to regularise his service. However, no order is passed by the Respondents till date.

3. It is to be borne in mind that Section 2(4) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 defines "workman" as follows:--

(4) "workman" means any person employed in any industrial establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied (and includes a badli workman),

but does not include any such person,....

a. who is employed in the police service or as an officer or other employee of a prison; or

b. who is employed mainly in managerial or administrative capacity; or

c. who, being employed in a supervisory capacity, (draws wages exceeding three thousand and five hundred rupees per mensem) or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

(Explanation.--"Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment).

4. In this connection, it is needless for this Court to make a significant mention that a workman, who had rendered a continuous service of 480 days in a period of 24 calendar months, should be conferred with the permanent status in an establishment. It is to be pointed out that every employer is supposed to maintain in Tamil language or in English language a Register of workmen in Form-1 prescribed under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and also prepare and exhibit the list of workmen with sufficient details for perusal by the workmen. It may not be lost sight of that, such list ought to be sent to the Inspector within a fortnight from

the close of each half-year with a declaration that it has been exhibited in the establishment for perusal by the workmen. The employer should send an half-yearly return in Form-2 at the end of each half-year.

5. If an employee who learns/who comes to know that his name has not been entered in the list or finds that the entries have not been made correctly or properly or if he finds that though entries regarding his service have been made correctly but he has not attested the entries in the register maintained by the employer, may make a representation to the Inspector concerned, who after examining the representation or after making enquiries, may issue suitable directions to the employer for the rectification of the register of workman or for the issue of orders conferring permanent status to the concerned workmen.

6. In the decision in *S. Vijayalakshmi Vs. Tamil Nadu Water Supply and Drainage Board*, , this Court has held thus:--

A bare perusal of the S. 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, casts an obligation on the employer to confer permanent status on an employee who has completed 480 days work in course of two years. During the life time of the husband of the Petitioner, no such permanent status was actually conferred by any order of the management. It is true that jurisdiction has been conferred on the Inspector to conduct enquiry if necessary to find out whether an employee has completed 480 days or not. However, merely because no such enquiry had been conducted by the Inspector, the Petitioner's husband cannot be denied the benefits of the Act. In view of the mandatory nature of the provision, it shall be taken that an employee who had completed 480 days in a period of two years was permanent.

7. Further in the decision in *Metal Powder Co. Ltd., Tirumangalam and Another Vs. The State of Tamil Nadu and Another*, wherein the Division Bench of this Court has held as under:

Permanent status is to be claimed only by a workman who has not only put in continuous service for a period of 480 days but also in service for 24 calendar months.

8. As far as the present case is concerned, the Petitioner seeks only a limited prayer in the Writ Petition, namely for passing of an order by this Court in directing the Respondents to consider his representation dated 25.01.2012 and to regularise his service in terms of the list submitted by the Second Respondent to the First Respondent pursuant to the Memo No. 047/007443/SED/Adm.2/A.2/F.C.L./2008 dated 25.03.2008 on the file of the Second Respondent and Memo No. 128688/G.582/2009-1 dated 12.05.2010 on the file of the First Respondent. From a perusal of the Memo No. 047/007443/SED/Adm.2/A.2/F.C.L./2008 dated 25.03.2008 of the Second Respondent Office addressed to all Executive Engineers of the Circle with copies being marked to the Chief Engineer/Distribution, Vellore-6 and Chief Engineer/Personnel, Chennai-2, it is quite clear that in paragraphs 1 to 5 it is mentioned as follows:--

1. In pursuance to the orders issued under references 2 to 4 cited, all the Executive Engineers are instructed that the Contract Labourers whose names and details were furnished as called for in the Chief Engineer/P1's Memo dated 25.01.2007 under reference (i) cited, Excluding those who are engaged in PSC/RCC Yard, Stores and Civil Wing, who are covered by the 12(3) settlement may be continued to be engaged as Contract Labourers on need basis on daily wages of Rs. 70/- subject to the following conditions:--

a) They should have been engaged before 06.01.1998.

b) The Contract Labourers who got orders of Inspector of Labour and those engaged on need basis previously and covered in the list sent with reference to the CE/P1's Memo dated 25.01.2007 may be continued to be engaged as Contract Labourers on need basis on daily wages of Rs. 70/-.

c) The names of such Contract Labourers should have been included in the list sent with reference to the CE/P1's Memo dated 25.01.2007, 1st cited.

d) The Contract Labourers who are covered by the orders of Inspector of Labour against which the Board has filed Writ Petition/Writ Appeal in the High Court and also the Contract Labourers who got orders of Inspector of Labour for regularisation of service prior to the settlement dated 10.08.2007, which appeal is yet to be filed, but not covered by the 12(3) settlement dated 10.08.2007 and in Per B.P. (FB) No. 44 (Adm.Br) dated 06.09.2007 may be continued to be engaged as Contract Labourers on daily wages, irrespective of their date of engagement, without prejudice to the outcome of the Writ Petition/Writ Appeal filed and to be filed.

2. In this connection, a list of 128 Contract Labourers sent to the Chief Engineer/P1/Chennai with reference to the Memo dated 25.01.2007 under reference (1) cited and list of 901 Contract Labourers covered by the various orders of Inspector of Labour are enclosed herewith for reference.

3. The Assistant Engineer/Asst. Exe. Engineer and Executive Engineer are solely responsible that only genuine Contract Labourers who are omitted by the 12(3) settlement are engaged as per these orders.

4. Any negligence on the part of the above officers, Assistant Engineer/Assistant Executive Engineer/Executive Engineer will attract severe D.P. action.

5. All the Executive Engineers are requested to report the names of Contract Labourers who are engaged as per these orders in the prescribed format communicated along with the Memo under reference (3) cited within a week.

9. Further, in the statement showing left out Contract Labourers, who were not covered u/s 12(3) settlement of the Industrial Disputes Act, 1947 and engaged continuously, the name of the Petitioner is found in Sl. No. 3 as "R. Rajagopal, S/o. Ramakrishnappa, 05.02.03, Engaged continuously till date and Rs. 120/- not paid, Chit Agreement No: & Date : AEE/O & M/Sip/HSR Sl. No. 025/04-05 dt:

19.03.05, Through PCB, The individual is engaged only after 06.01.1998, Nil, Nil, Nil" at Page No. 5 of the typed set of papers.

10. Therefore, taking note of the attendant facts and circumstances of the case and in the light of the Second Respondent's Memo dated 25.03.2008 addressed to all the Executive Engineers of the Circle, this Court on the basis of the Equity, Fair play and as a matter of prudence directs the Respondents 1 and 2 to consider the representation of the Petitioner dated 25.01.2012 in a just, fair, objective and in a dispassionate manner and they are also directed to pass a reasoned speaking order on merits (of course, after providing due opportunities to the Petitioner by adhering to the principles of natural justice) within a period of six weeks from the date of receipt of a copy of this order. With the aforesaid observations, the Writ Petition is disposed of. However, there will be no orders as to costs.