

(2010) 09 MAD CK 0434

In the Madras High Court

Case No : Writ Petition (MD) No. 4178 of 2008 and M.P. (MD) No. 1 of 2008

S. Chinnasamy

APPELLANT

Vs

The Chief Engineer, (Appointing Authority), Tamil Nadu
Electricity Board, The Superintending Engineer, Tamil Nadu
Electricity Board, The Assistant Executive Engineer, Tamil
Nadu Electricity Board and The Assistant Engineer,
(Distribution), Tamil Nadu Electricity Board

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Citation : (2010) 09 MAD CK 0434

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K. appadurai, for the Appellant; V. Kasinathan, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner has filed the present writ petition seeking to challenge the order dated 20.03.2008 passed by the second Respondent in rejecting his request to include his name as part of the workmen who are covered by the report given by Justice Khalid Commission, which was appointed to go into the question of direct recruitment of helpers in the Tamil Nadu Electricity Board.

2. It is the case of the Petitioner that P. Chinnasamy, who is not covered in employment with the assistance of the Justice Khalid Commission award, should be removed and in his place, he should be appointed. In view of the information furnished by the Petitioner, the Board took action against said P. Chinnasamy and removed him from service on finding that he was a person who had gained entry fraudulently.

3. The said P. Chinnasamy filed a writ petition in W.P. No. 11414 of 2001. It is now stated that the said writ petition has been dismissed and P. Chinnasamy is

no longer in employment.

4. In the meanwhile, the Petitioner herein filed a writ petition in W.P.(MD). No. 8651 of 2006. The said writ petition came to be disposed of even at the admission stage on 20.09.2006 directing the Respondent to pass orders in accordance with law within a stipulated period. Subsequently, since the time frame was not adhered to, the Petitioner filed a contempt petition in Cont.P. No. 363 of 2007. The said contempt petition came to be dismissed on 26.03.2008 after recording that the Respondent had complied with the direction issued by this Court. It is pursuant to the said direction the impugned order came to be passed.

5. In the impugned order, the Respondents have stated that the Petitioner's claim that he was the real person whose case was recommended by Justice Khalid Commission was incorrect and the Petitioner's father name and address did not tally with the particulars available in the Commission's Award. With reference to the entry of Serial No. 102, recruitment of P. Chinnsamy, it was stated that a writ petition was pending before the High Court. As stated earlier, the writ petition filed by the said P. Chinnasamy had already been dismissed. The Petitioner aggrieved by the order of rejection has filed the present writ petition.

6. On notice from this Court, the Respondents have filed a counter affidavit dated 30.09.2008. In the counter affidavit, in paragraph Nos. 6 & 8 it was averred as follows;

6. I submit that the Petitioner also claims that he is the person who has been recommended by Justice Khalid Commission. Unfortunately, in the Khalid Commission Report, name found under Sl. No. 102 is S. Chinnsamy, S/o. Surulimuthu, residing at Margaiyankottal, Chinnamanoor via, Theni District. But the Petitioner is S. Chinnasamy, S/o. Sivankalai, residing at Vaigaiputhur, Andipatti. The description of the Petitioner and his address does not correspond with the particulars found at Sl. No. 102 in Justice Khalid Commission Report. In those circumstances, there was delay in collecting all the materials from the Office of the Superintending Engineer, Theni Electricity Distribution Circle and Head Quarters Office. On receipt of the particulars, this Respondent has sought for appropriate orders from the Chief Engineer/Personnel and orders are awaited.

8. I humbly submit that the Petitioner also knew that disciplinary proceedings were initiated by the Superintending Engineer, Theni Electricity Distribution Circle against Thiru. Chinnasamy, S/o. Perumal for impersonation. Knowing all this facts fully well, the Petitioner had deliberately chosen to implead this Respondent in the writ petition instead of impleading the Superintending Engineer, Theni Electricity Distribution Circle, who is the proper person to take any action in respect of Petitioner's claim.

7. In the light of the stand taken by the Respondents, the Petitioner's case cannot be countenanced by this Court. However the learned Counsel for the Petitioner contended that the Board had now only taken such a stand and not in

the earlier writ petition. As noted already, in the earlier writ petition, a direction was given only at the stage of admission and not after filing any counter affidavit. Even otherwise, the case of the Petitioner will have to be considered only in the light of the records available along with the Justice Khalid Commission's Award.

8. It must be noted that before Justice Khalid Commission, three major trade unions had participated. The issue referred to by the Supreme Court was that whether the Board can make direct recruitment to the post of helper who were trained apprentices and whether the contract workers are eligible for absorption in view of the long service and their experience can be taken as equivalent to educational qualification prescribed.

9. After an elaborate trial, the Hon'ble Justice Khalid upheld the claims of the trade unions. He found that the workmen who have been put in long years of service need not be edged out and their experience should be taken into account as equivalent to the educational qualification prescribed by the Board for absorption. Therefore, he recommended for absorption of contract labourers numbering 18,006 workers on the basis of 1:1.

10. The same award came to be challenged by the Board and the other Trade Unions. The Supreme Court upheld the award and subsequently, several other workers, whose cases were not considered by Justice Khalid Commission, had also filed writ petitions as well as SLP before the Supreme Court. Those petitions were also dismissed by the Supreme Court. Thus the Award passed by the Justice Khalid Commission had become final. The award passed by the Justice Khalid Commission was specific with reference to names of workers to be absorbed. A request was made by the Trade Unions that the award should specify not only total number of workmen but also the names of such workers, who are eligible to be recruited so as to avoid bogus claims being made later. Justice Khalid Commission considering the submission of the Unions confined the award only to the list of workers furnished before him and he made it part of the award. Subsequently clarifications were made with reference to the small changes like initial differences or a phonetic changes in the name during English translation and this exercise was also taken to carry out such corrections.

11. It is also to be noted that Justice Khalid appointed Circle Level Committees in which all the trade unions' representatives were allowed to be participated so as to identify the genuine workmen who were eligible for absorption. All these exercises were undertaken over 15 years back. The Petitioner cannot now set up a new case that his name was found in the Justice Khalid Commission Award. In the counter affidavit filed by the Respondents, it is specifically stated that the father's name and address of one Chinnasamy referred to in the Award did not tally with the Petitioner's father name and address.

12. Therefore, the writ petition stands dismissed. Consequently, connected miscellaneous petition stands closed. There is no order as to costs.