

(2014) 09 MAD CK 0136

In the Madras High Court

Case No : Writ Petition Nos. 37257 of 2004 and 6344 of 2009

Tamil Nadu Electricity Board

APPELLANT

Vs

Tanjaore District Podhu Thozhilalar Sangam

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Industrial Disputes Act, 1947 — Section 17A, 2(k), 2(s), 9(A)

Citation : (2014) 4 LLJ 386 : (2015) 1 SCT 423

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Judgement

S. Vaidyanathan, J.—While W.P. No. 37257 of 2009 has been filed by the Tamil Nadu Electricity Board (hereinafter referred to as "the Board"), challenging the award by the labour Court in I.D. No. 42 of 1996, W.P. No. 6344 of 2009 has been filed by the workman, challenging the order of the 2nd respondent Board dated 28.03.2009 and for a direction to the Respondents to give him permanent status and absorption with all consequential benefits on par with 18 workmen covered under the Award passed in I.D. No. 42/96. The facts leading to the filing of these cases are that earlier, the Kumbakonam Rural Electric Co-operative Society was supplying electricity to the people in Kumbakonam and the nearby rural areas, by purchasing electricity from the Tamil Nadu Electricity Board. For the supply of electricity, the said Society employed various categories of workmen and staff. For assessing the units consumed by the consumers, preparation of receipts/bills and collection of the bill amounts from the consumers, the said society employed number of assessors. They were paid wages once in a month, on piece-rate basis on the number of consumers they attended. The Assessors were continuously employed, however, they were not made permanent even after long years of service. Aggrieved by the same, 16 among them approached the labour court demanding regularization, which was accepted by the labour Court by award dated 13.11.1993 in I.D. No. 18/92, which was also implemented. Following the said award, by an independent

proceedings, the Society made 10 other assessors also permanent. Though the remaining 20 assessors, the petitioners herein were similarly placed to that of the above workers, who have been made permanent, they were not given permanent status by the Society, by changing the billing period. Therefore, the assessors made a demand to withdraw the change, but the Society has not come forward to settle the issue. Therefore, the Union/petitioner in W.P. No. 35257 of 2009 has raised an industrial dispute against the illegal change effected by the Society and consequential denial of permanency and demanded for continuous employment to the Assessors. The said issue was referred for adjudication to the labour Court, Cuddalore by G.O.(D) No. 757, dated 20.08.1996 and the same was taken on file in I.D. No. 42/96. During the pendency of the dispute, the said Society was taken over by the Board. The labour Court, on hearing both sides, passed an award dated 15.04.2004 and directed the Board to make 18 out of 19 assessors, except one Mr. Vaidhyanathan, who has left the employment, permanent and also directed to fix them in the scale of pay of assessor with effect from the date on which the award became enforceable. The said award became enforceable under Section 17-A of the Industrial Disputes act, with effect from 29.08.2004. Aggrieved against the said award, the Board has preferred the above W.P. No. 35257 of 2004.

2. Further, this Court by order dated 15.12.2004 has granted an interim stay as against the award and when the workmen moved vacate stay application through the Union, this Court issued an interim direction on 15.02.2008 directing the Board to pay current wages as per the settlement of the year 2005, in terms of the award from February, 2008 and made the stay absolute. However, only by order dated 20.01.2009, the Board had issued directions to implement the order. It is the case of the petitioner in W.P. No. 6344 of 2009 that though pursuant to the order dated 28.01.2009, his case along with other assessors were considered and they were made permanent and absorbed with effect from 01.02.2008 with scale of pay and arrears, by the impugned order, the absorption given to him was cancelled. By contending that he is also a similarly placed person like that of other persons in whose favour the award was passed in I.D. No. 42 of 1996 and he should be given the same benefit, the petitioner has approached this Court by filing W.P. No. 6344 of 2009.

3. The learned counsel for the Board/petitioner in W.P. No. 37257 of 2009 submitted the case of the Board that 18 workers concerned in the writ petition, who have raised a dispute through the 1st respondent Union in I.D. No. 42 of 1996 have been directed to regularize their services in the pay scale of Assessors by the Labour Court in its award dated 15.04.2004 pursuant to the reference made in G.O.D. No. 757, Labour and Employment Department dated 20.08.1996. In the said I.D., the Union claimed that 19 workmen in the reference were all employed as Assessors and they were said to be disengaged by the Management, but they could not be regularized in service as the Board has taken over the Rural Electric Co-operative Society at Kumbakonam, a registered Society under the Tamil Nadu Co-operative Societies Act. The learned counsel for

the Board further submitted that by virtue of G.O.Ms. No. 124, Energy Department dated 27.6.1997, the Government decided that the two societies along with aforesaid society were wound up and the distribution of power supply were entrusted to the Board. The learned counsel further submitted that in the Industrial Dispute these 19 persons apart from the petitioner in W.P. No. 6344 are not workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. Further, the learned counsel has submitted that contention of the learned counsel for the workmen that the Management has violated the provision of Section 9(A) is not applicable to the facts of this case. Apart from this, the learned counsel has submitted that these persons were employed on commission basis, engaged as Agents for 10 days in a month. She further reiterated that they were employed as Collection Agents and their services were utilized for preparing the bills and as the consumption charges are collected once in two months, the said 19 persons have no work continuously and hence they were not employed continuously. That apart, the learned counsel for the Board has contended that these persons are contract labourers and they have no legal right to raise a dispute and in the absence of any documentary evidence empowering the Union to raise a dispute, this writ petition is not maintainable and hence the dispute has got to be rejected by the labour Court, unfortunately, the labour Court has not brushed aside this issue and on this sole ground, the writ petition has got to be allowed and the industrial dispute has got to be dismissed.

4. Besides, the learned counsel for the Board has submitted that the case of the Union that 10 similarly placed workmen like these 19 persons who had been absorbed were engaged in the assessment and collection and they have paid the caution deposit and hence these 19 persons are also entitled to similar benefits cannot be accepted for the reason that these 19 workers had never been asked to pay caution deposit and they had never been in the rooms of the Board to be absorbed by them. When that being the case, according to the learned counsel for the Board, the contention of the workers that they have worked for 480 days in 24 calendar months and hence they should be entitled to get permanent status and absorbed in the services of Board cannot be accepted and the Labour Court should have rejected the dispute. That apart, according to the learned counsel, if the employees seek absorption for permanent status they should have gone before the authority under the Tamil Nadu (Conferment of Permanent Status to Workmen) Act, 1981 and the Industrial Dispute forum, is not the appropriate forum to get the relief.

5. That apart, according to the learned counsel for the Board, out of the 19 workers concerned in the industrial dispute, one person by name K. Vaidyanathan was not interested and left the service and hence the dispute was adjudicated in so far as 18 workers are concerned and the relief sought for has been granted by the labour Court, without answering the issue with regard to maintainability of the dispute, as the Union is not competent to raise a dispute on behalf of 19 workers, which is contrary to the provisions of the ID Act. Further, according to her, since the Union has not produced any resolution or

sponsorship to raise a dispute before the labour Court, by taking note of the same, the labour Court ought to have dismissed the industrial dispute on that sole ground.

Based on these, the learned counsel for the Board has sought for allowing of W.P. No. 32527 of 2009 and dismissal of W.P. No. 6344 of 2009.

6. Per contra, the learned counsel appearing for the Union submitted that the employees have been discharging regular work and their work is essential in Industry and they have been discharging the work for the Electricity Board. Their services were sought to be diverted and the Society was directed to be wound up and they fear that the Electricity Board could not take or absorb them in the service. The learned counsel further contended that pursuant to G.O.Ms. No. 124, Energy Department, dated 27.06.1997, the Government decided to wound up the Society and the disbursement of power supply in these areas were entrusted to the Electricity Board. During the pendency of the dispute for absorption, the Society was taken over by the Electricity Board and the Industrial Dispute was originally raised against the Society and since it was taken over by the Electricity Board, the cause title in W.P. No. 37257 of 2009 was changed and the name of the Electricity Board was substituted in the place of the Society. He further contended that similarly placed employees have been absorbed and the petitioner in W.P. No. 6344 of 2009 has also produced a document dated 26.03.2008 before this Court, which is annexed in W.P. No. 6344 of 2009 showing the names of all the 18 (petitioners in W.P. No. 35257/09) + 1 (petitioner in W.P. No. 6344/09) = 19 workers. Further, according to him, the contention of the Board that the Workers are not the employees of the Society and hence they cannot seek any relief against the Board is not correct.

7. Heard both sides.

8. It is not in dispute that the Kumbakonam Rural Electric Co-operative Society was taken over by the Board and the Union has approached the labour Court by raising an industrial dispute with regard to sanction of permanent status in I.D. No. 42 of 1996. Before the Labour Court, on behalf of the workers, 16 documents have been marked and one Santhanam has given evidence on behalf of the workman and one Rangasamy has given evidence on behalf of the Management.

9. After analyzing the evidence on record, the labour Court came to the conclusion that these employees were discharging the regular work and they have rendered several years of service. The labour Court further held that the Electricity Board has not disputed the fact that these 19 persons were employed and their services were utilized for meter reading. The only contention raised by the Board is that they have been employed only for limited days. The labour Court further held that some of these workers have been working from 1998 and some of them from 1992 and 1993 and this fact was also not disputed by the Electricity Board. The labour Court on analyzing the evidence held that similarly

placed employees like the workers concerned in these writ petitions numbering 10 have been made permanent. A document dated 18.02.2004 of the Executive Engineer of the Board was produced before the labour Court, in an by which it is stated that out of 19 workers in the Industrial Dispute 18 persons are continuously working and that the 19 employees concerned have not been disengaged from service and that they have been regularly employed and hence when there is no document to show denying the same, they should be made permanent was the finding of the labour Court. Hence, the labour Court granted relief to the 18 workers out of 19 workers except one K. Vaidyanathan who was not employed on the date of the award. The labour Court held that on and from the date of award coming into force, the 18 employees are entitled to be made permanent and entitled to wages/scale of pay applicable to that of assessors. The labour Court thus answered the reference in the aforesaid terms.

10. The two issues that arise for consideration in the writ petition No. 37257 of 2004 are

"(i) whether the Union is competent to raise an industrial dispute and

(ii) whether the labour Court was right in granting the relief of permanent status to these employees concerned?"

11. With regard to the 2nd issue, as discussed earlier, the facts are very clear and that the labour Court has come to the conclusion that the employees concerned were similarly placed to that of 10 workers who have already been regularized and that it is a finding of fact after analysing the evidence on record. This Court cannot go into the question of fact, however grave it may be.

12. In view of the decision of the Hon"ble Supreme Court reported in Syed Yakoob Vs. K.S. Radhakrishnan and Others, , the relevant paragraphs of which read as follows:-

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can

be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, , *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, and *Kaushalya Devi and Others Vs. Bachittar Singh and Others*, .

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correct by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened".

which has been followed by Kerala High Court in its Judgment reported in Instrumentation Employees Union v. Labour Court, Kozhikode, (1993) 1 LLN 75, I am of the view that the employees are entitled to the relief and it was rightly granted by the labour Court, which cannot be interfered with.

13. As far as the first issue with regard to the maintainability of dispute is concerned, it is an admitted fact that the Electricity Board has raised a plea that the dispute is not maintainable as the Union has not established the membership or produced a resolution before the labour Court showing that there was a general body meeting or Executive meeting in terms of their bye-laws and that the dispute has been sponsored by the Union. Neither the bye-law nor the resolution or a document to substantiate that the Union has locus-standi to raise the dispute has been produced. Though I will have to accept the contention of the learned counsel for the Board that there is no sponsorship for raising an Industrial Dispute by the Union, and that the industrial dispute has got to be rejected on that score, but for the taken over of employees of the Society by the Electricity Board, and that the Union has continued to litigate against the Society, I find justification in the contention of the Society. Now that the Society has been taken over by the Electricity Board and the Electricity Board is a State within the meaning of Article 12 of the Constitution of India and they are amenable to the jurisdiction of this Court.

14. At this juncture, it is useful to refer to a Division Bench of this Court reported in Indian Bank rep. by its Indian Bank Vs. R.S. Thiruvengadam and Another, , wherein the Division Bench, while considering the case of a person employed under the Establishment Act in a nationalized Bank, the jurisdiction of the authority who have entertained and disposed of the appeal under Section 42 of the Establishment Act was considered, and the Division Bench of this Court, has held that even though the authority under the Shop Act lacked jurisdiction in view of the decision of the Hon"ble Apex Court in C.V. Raman Vs. Management of Bank of India and Another, : C.V. Raman Vs. Management of Bank of India and Another, , wherein the Hon"ble Apex Court has held that nationalized banks will not fall under the purview of the Establishment Act and that the authority has no jurisdiction, have exercised its jurisdiction under Article 226 of the Constitution of India, dealing with the validity of the dismissal order in that case as the Bank is a State within the meaning of the Constitution of India and as such amenable to the jurisdiction of this Court in its action. The employees in these cases are similarly placed. In this case, the labour Court had jurisdiction to decide this issue, but ought to have rejected the case on the ground of non establishing of sponsorship by the members of the Union for getting a reference to the labour Court. The argument sounds valid and justifiable, but, since the Electricity Board is a State within the meaning of the Article 12 of the Constitution of India, this Court is empowered to decide the validity of the issue raised in this writ petition, more particularly when there is an admission by the Executive Engineer who has admitted that employees are regularly working and also in view of the document produced by the petitioner dated 26.03.2008 in W.P. No. 6344 of 2009 wherein

the petitioners names found place.

15. To conclude this issue, I hereby extract the relevant portion from the decision reported in *Indian Bank rep. by its Assistant General Manager, Madras v. R.S. Thiruvengadam* (supra), which reads as follows:-

"37. Generally speaking a plea with regard to lack of jurisdiction, it is well-settled, can be permitted to be raised at any stage of the proceedings and can be allowed to be raised for the first time in appeal, second appeal or even in special leave petition before the Supreme Court. This general principle, however, cannot be applied in abstract and its application depends upon the nature of the proceedings, conduct of the parties and the facts and circumstances of each case. The question of permitting such a plea to be raised at any stage of the proceedings has necessarily to be looked at from the nature of the proceedings and the attendant circumstances of a case. The proceedings in the instant case arises out of a writ petition filed under Art. 226 of the Constitution of India. Writ jurisdiction is undoubtedly, an equitable jurisdiction and while balancing the equities between the parties asserting rival claims, the Court examines the conduct of the parties besides nature of the proceedings with a view to render justice. While exercising writ jurisdiction, the Courts generally make an attempt to reach wherever injustice is so as to render justice. However, the principles of equity must, for ever, remain present to the mind of the Court and those principles are extended to do substantial justice to a party and not get carried away by narrow technicalities which may "legitimate" injustice".

16. Apart from this, a Division Bench of this Court in a decision in *Workmen of Brooke Bond India Limited v. Industrial Tribunal*, (1989) 2 LLN 699 has considered the issue with regard to the espousal of cause of affected workmen, wherein 120 casual workmen out of the total strength of 735 workers demanded permanency and that two Unions did not expose the cause and the Management wants to throw out the reference. The Division Bench has held that it must be a collective dispute and that alone constitute an industrial dispute. The concept of collective dispute should not be construed to mean that all the workmen of the management or a majority of them should sponsor and support the dispute. It would be sufficient, if the industrial dispute has the support of a substantial body of the workmen concerned in the management. The Industrial dispute could be raised even by a minority union or even by an unrecognized union. The above propositions could not be disputed since they are those gleaned from the pronouncements of the highest Court in the land. In this case, though the employees have sought for absorption, only handful of workers viz., 19 in the reference raised a dispute for regularization. There is no evidence about the total strength of workmen in the Establishment when the dispute was raised. Unless the total number of workmen are pleaded and proved, it would be difficult to decide as to whether substantial number of workmen have joined together and raised a dispute. For the sake of convenience, paragraph No. 4 of the above cited decision is extracted below:

"If the facts of the present case are to be assessed in the light of the above propositions, there cannot be any doubt that the industrial dispute raised was a properly raised one and it did not suffer any lacuna on the ground of improper or inadequate espousal of the same. We are of the view that the body of 120 casual workmen is of appropriate strength or in other words forms a substantial number, to raise the industrial dispute. However, there are certain aspects pressed into service by Sri M.R. Narayanaswamy, learned counsel for the second respondent, and we are obliged to deal with them. It was contended by Sri M.R. Narayanaswamy, learned counsel for the second respondent that the petitioner-union did not and could not represent the workmen in the industry and in fact, it has nothing to do with the industry in which the second respondent is engaged. We must straightaway point out that such was not the specific case, either put forth in the claim statement or advanced and argued before the first respondent. Sue was not the case advanced before the learned Single Judge also in the attempt to set at naught the reference. We do not propose to enlarge the scope of the controversy at the writ appellate stage. Even otherwise, here is a case, where we find that 120 casual workmen out of 735 workmen, have joined hands collectively to raise a dispute against the second respondent and their voice is being heard through the petitioner-union. It is their voice and not the voice of the petitioner-union independent of the voice of the 120 casual workmen. Ultimately, the question boils down as to whether these 120 casual workmen, out of the 735 workmen, could be an appropriate or a substantial number to raise the industrial dispute. We have already expressed the view that such a strength would be an appropriate number or in other words a substantial number to raise the industrial dispute. There are pronouncements, which have dealt with different types of cases, where the strength of the body of the workmen, who actually raised the industrial dispute was varying vis-a-vis the total strength of the workmen of the management. We do not want to burden this judgment of ours by making a reference to all the pronouncements. Suffice it to point out that in one case, 5 out of 22, in another case 5 out of 31, in yet another case 4 out of 11, and in yet another case 18 out of 45 were found to be substantial number to raise the industrial dispute. As already noted, each case will have to be decided on its own facts, and in particular taking note of the nature of the dispute. The 120 casual workmen form a class and their grievance is with reference to denial of permanency. Theirs is a collective dispute. Hence, the argument that since the petitioner union does not represent the workmen in the industry, there was no proper espousal of the industrial dispute cannot be countenanced".

From the above, it is clear that there was evidence to establish that there was substantial number of workmen. But, in this case, there is no evidence more particularly when the Management has disputed the locus standi of the Union in raising a dispute. Even though I accept the contention of the Management that the Union has not established the case before the labour Court through evidence about the support of substantial body of workmen concerned in the Management supporting the case of 19 workmen, since the Board is a State within the

meaning of the Article 12 of the Constitution of India, amenable to the jurisdiction of this Court, the relief sought for by the Workmen is to be granted by holding that the decision in Bombay Union of Journalists and Others Vs. The State of Bombay and Another, will not be applicable to the case of the workmen in the case on hand.

17. As far as the petitioner in W.P. No. 6344 of 2009 is concerned, though he has not approached the labour Court or Tribunal through the Union or filed a petition before the Permanent Status Authority claiming permanent status, since his name is reflected in document dated 26.03.2008 of the Superintending Engineer of the Board and that he is similarly placed, the Board is bound to extend the benefit applicable to 18 workers who are parties to the industrial dispute to this petitioner also.

18. The contention of the Board that the workers concerned in the Industrial Dispute are not workmen and that they are contract labourers and they cannot raise any industrial dispute, cannot be accepted as the Apex Court in the decision reported in Devinder Singh Vs. Municipal Council, Sanaur, has held that the definition of workman under Section 2(s) does not make any distinction between full-time and part-time employee or a person appointed on contract basis. For the sake of convenience, Section 2(s) of the Industrial Disputes act, is extracted below:-

Section 2(s) of the Industrial Disputes Act, 1947:

"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six 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".

Unless the employees fall under the exception clause, based on the test of employment on hire or reward for doing specified type of work, the employee

would come under the definition of Section 2(s) of the Industrial Disputes Act 1947. In this case, the employees have been doing the work of Tamil Nadu Electricity Board and the job is of perennial in nature. At this juncture, it is useful to refer to Clause 10 of the V schedule of the Industrial Disputes Act, which reads as follows:-

"To employ workmen as "bad lis" casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent workmen"

19. Even though in all cases there is no need for resolution or substantial or preferable number of workmen, to make a dispute as an industrial dispute, there should be some impression of "collective Will" of substantial or preferable number of workmen. In this Case the Union has established about the substantial or preferable number of workmen, which supported their case.

20. As far as the decision relied on by the learned counsel for the workers reported in 1989 2 LLN 699 is concerned, even though assuming that the workers are the members of the Union and the Union is entitled to raise a industrial dispute, I am not in a position to accept the point raised on behalf of the workers as that is a case with regard to non employment and for raising a dispute, sponsorship by the Union is not relevant. In a case that is falling under Section 2(k) of the ID Act other than cases falling under clause 2A of the ID Act, till an amendment is brought to it, the provisions of the ID Act that sponsorship by the Union is a must and they have to produce the resolution, in case the Management demands it. The position with regard to questioning the locus-stand of the Union is not changed and the dispute will hold and if any point raised it has got to be answered by the Union before the labour Court. Mere filing of document before the Conciliation Officer and that the Conciliation Officer had scrutinized the document and hence the dispute is maintainable is not an answer to the issue raised by the Board.

21. Even though I have to accept the contention of the Board with regard to issue No. 1, in view of the aforesaid observations and in view of the Division bench Judgments extracted above, even though the industrial dispute is not maintainable, as the petitioners have not established their locus, in view of the exhibits filed by the petitioner in W.P. No. 6344 of 2009 and the document filed by the Superintending Engineer dated 18.2.2004 by exhibiting that fact that 18 persons have continuously worked as Assessors, this Court is of the view that the contention of the workers will have to be accepted. In view of the above, this Court directs the Electricity Board to make the employees permanent including the petitioner in W.P. No. 6344 of 2009 on and from the date of publication of award dated 15.04.2004 and grant all other benefits granted by the labour Court. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

The writ petitions are disposed of accordingly. No costs. Connected miscellaneous

petitions are closed.