

(2014) 05 MAD CK 0008

In the Madras High Court

Case No : W.P. (MD) No. 13038 of 2011, W.P.(MD) No. 9549 of 2012 and M.P. No. 1 of 2011 in W.P. (MD) No. 13038 of 2011

The Executive Engineer

APPELLANT

Vs

The Inspector of Factories

RESPONDENT

Date of Decision : 22-05-2014

Acts Referred:

Constitution of India, 1950 — Article 46
Industrial Disputes Act, 1947 — Section 5

Citation : (2014) 05 MAD CK 0008

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Judgement

S. Vaidyanathan, J.—These Writ Petitions arise out of the order, dated 11.7.2011 passed by the Inspector of Factories, Sivagangai, in and by which, the services of the temporary workers/petitioners in WP 9549 of 2012, came to be ordered to be regularized from the date of their respective dates of joining. Questioning this order, the Executive Engineer, Tamil Nadu Water Supply and Drainage Board, Desalination Plant, Narippayur, Kadaladi Taluk, Ramnad District, has come forward with a Writ Petition in WP No.13038 of 2011, whereas, the workers whose services have been directed to be regularized, have come forward with a Writ Petition in WP No.9549 of 2011, seeking for implementation of the above said order.

2. Since the issue involved in these writ petitions is common, both the writ petitions are taken up together and being disposed of by this common order. For the sake of convenience, the parties will be hereinafter referred to as they were mentioned in WP No.9549 of 2011, viz., the workmen as "petitioners/workmen" and the management as "respondent/Board."

3. According to the petitioners/workmen, they were engaged on consolidated pay in various categories, such as Electrical Operator, Mechanical Operator, Chemist, Fitter, Electrician, Helper, Watchman, etc., for serving in De- Salination Plant

which was initiated by the Tamil Nadu Water Supply and Drainage Board at Naripaiyur, Kadaladi taluk, Ramanathapuram District. Even after a lapse of ten years, as they were not absorbed in regular time scale of pay, the petitioners moved a petition before the Inspector of Factories, Sivagangai, praying for conferment of permanent status from the date of completion of two years service of their respective dates of joining. On consideration of facts and circumstances and the evidence put forth by the petitioners/workmen and the respondent/Board and after making a detailed enquiry, by his proceedings No.AA/1690/2009, dated 11.07.2011, the Inspector of Factories, Sivagangai allowed the claim of the petitioners/workmen by ordering conferment of permanent status. Since the above said order has not been complied with by the respondent/Board, the petitioners have come forward with the writ petition in WP 9549 of 2012.

4. According to the respondent/Executive Engineer, TWAD Board, De- salination Plant, a de-salination plant has been initiated by the Board, at Narippayur, Ramanad District under a contract to undertake the operation and management of the plant. The contractor is M/s.Doshion Private Limited, which undertakes the operation and management works of the said plant as per the terms of the contract and the payment being made on the basis of quantum of drinking water supplied by them. Except this contract, the respondent/Board has no direct relationship with the petitioners/workmen or other management affairs of the plant. The petitioners were directly employed by the contractor and not the Board. While, the petitioners had approached the Inspector of Factories, to confer permanent status to their employment, without conducting proper enquiry and without appreciating the facts, the Inspector of Factories, by order, dated 11.07.2011, ordered conferment of permanent status to the petitioners. Therefore, the respondent/Board has come forward with W.P.No.13038 of 2011, praying to set aside the said order.

5. The learned counsel appearing for the petitioners/workmen would contend that even assuming there were contracts, the contractors changed, but the workmen remain the same. The case of the petitioners/workmen is that they have rendered more than 10 years of service and their job is perennial in nature. The work was extracted under the dictates of the Management herein between August 2003 and March 2004 and the wages have been directly paid to these 21 workmen by the respondent/Board. They further contended that ever since the De-salination Plant was started, these petitioners/workmen have been working and as they had completed 480 days in a period of 24 calendar months and as such, they are deemed to have attained permanent status under the respondent/Board. They also contended that they are not contract labourers and that the respondent/Board has not registered itself as principal employer under the Tamil Nadu Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter called "1970 Act") and there was no licence taken by the so-called contractor, namely M/s.Doshion Private Limited. It is a camouflage /device to deprive the workers of permanent status as contemplated under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status of Workmen) Act, 1981

(hereinafter referred to as "1981 Act").

6. During the time of enquiry, the petitioners/workmen demanded the contract agreement entered into between the respondent/Board and the so-called contractor and also the list of employees engaged under the said contract agreement. Pursuant to the same, though the respondent/Board has produced the contract agreement, but failed to furnish the list of employees. The workmen examined 5 witnesses and also produced the document pertaining to the period between 22.8.2003 and 5.3.2004, wherein, the officials of the respondent/Board have signed. During the course of examination, the workmen witnesses have stated that there were no appointment orders directly issued by the Board. The respondent/Board contended that the work of de-salination plant was entrusted to a contractor mentioned above and they have been taking care of work since 2004 onwards and payments were made on the basis of quantum of drinking water supplied by them. The said contractor has been maintaining Attendance Register for the workmen concerned and it was the contractor who was paying the salary from their pocket as the work was done by the contractor and there is every possibility of work coming to an end when the contract comes to an end. The Verification Register maintained by Board was mis-construed as Attendance Register and that the workers have admitted that they have been employed and supervised by the contractor, hence the order of Inspector of Factories ordering conferment of permanent status to the petitioners/workmen, is liable to be set aside.

7. Heard the learned counsel appearing on either side and perused the entire record.

8. The Authority, viz., Inspector of Factories, after analyzing the evidence both oral and documentary available on record, came to the conclusion that the respondent/Board has not produced any Registration Certificate or Licence to establish that the employees were engaged as contract labourers. The Authority has also rendered a finding that even assuming there were contracts, contractors may change, but the workmen remain the same and hence by tearing the mask of innocuousness, it is clear that the petitioners/workmen are employed by the respondent/Board. There is no dispute as to the fact about the completion of 480 days in a period of 24 calendar months and that there is no contra evidence by the respondent/Board that without the work of these workmen, the work could take place and hence the job is not of perennial nature. It is also not in dispute that the workmen are employed for more than a decade and that there is a specific Board's order that the work of the petitioners/workmen have to be supervised and records have to be scrutinized by the Board, which amply establishes the case of the petitioners/workmen.

9. It is the case of the petitioners/workmen that even assuming that there is a contract, they are not at all contract labourers, it has to be noted that the contractors change, but the workmen remain the same.

10. The pleading of the petitioners/workmen in their claim petition before the Inspector of Factories, is very clear that M/s.BHEL and thereafter M/s.Doshian Private Limited were doing the contract work and that the petitioners/workmen continued to work without any break. They have also pleaded that both the aforesaid companies have not taken licence as per 1970 Act. When it is the specific case of the petitioners/workmen that they were not employed under the contractors, nothing prevented the Management/Board in impleading M/s.Doshian Private Limited, so-called contractor, as a party to the proceedings and establish their case that there is a genuine contract system and that the Authority has no jurisdiction to decide the issue on hand. Generally, the person who pleads, has to establish his case and in this case, the petitioners pleaded that they are not contract labourers, whereas, the respondent Board has pleaded that the petitioners are the contract labourers, a duty is cast upon the respondents to establish its case by impleading the so-called contractors as party to the proceedings and by adducing necessary documentary evidence as contemplated under the 1970 Act. If there is a genuine contract, the remedy for the workmen is not under the 1981 Act. The remedy is only to seek under the Contract Labour (Regulation & Abolition) Act, 1970. If the contract labour system is sham and nominal, the authorities are empowered to decide the issue and grant appropriate relief. In its decision, reported in Mamundiraj N. and others Vs. Bharat Heavy Electricals Ltd., Trichy and another , the Principal Bench this Court, while allowing the case of the workmen therein, has observed as follows in para 26:

26. In view of the observations made above, what is required to be determined by the authorities is not the question what Hon"ble single Judge with respect posed but the following questions :

(i) Whether the appellants have worked for 480 days in preceding 24 calender months :

(ii) Whether the interrupted period of service, if any or cessation of work if any, about is an unfair labour practice. Keeping in view the observations made in the earlier part of the Judgement, if the answer is in affirmative, the worker would be entitled to the conferment of the status of permanent employee with effect from the date of termination of service with all other consequential reliefs following from such a declaration. The second respondent is directed to determine the above referred questions within three months, from the date of receipt of a copy of this Judgment, after affording an opportunity of being heard to both the parties.

11. From the above, it is very clear that the Authority is empowered to decide whether there is unfair labour practice as per the provisions of the Industrial Disputes Act, 1947. Similarly, he can decide whether there is a genuine contract system or not. In the above said decision, it has been held as under in para 7(4), 7(5), 9, 12, and 16:

7(4). (4) Conferment of a permanent status on an employee or a workman is intended to bring about an improvement in the conditions of the labourer/workman thus fulfilling the constitutional mandate of providing justice to poor oppressed class of society apart from meeting the requirements of the interest of the general public to maintain tranquillity and peace in the industrial world besides the development of the industry.

7(5). The legislations while conferring the permanent status on a workman has taken note of all the malpractices prevalent in the industrial establishments to the effect that the workmen though in employment for long period of time are deprived of the benefits which a permanent workman gets, as they are treated not permanent or are treated as temporary labourers by using the terminology of temporary or casual labourers, depriving the workmen of the monetary benefits which are incidental to the status of a permanent workman. The legislations had attempted to fulfil the mandate of Art. 46 of the Constitution of India and taken a step forward that the same is not frustrated.

9. It is well-settled that a social welfare legislation has to be liberally and broadly construed. Though a Judge must not alter the material of which the Act is woven, but he can and should, iron out the creases by construing the statute so that the intention of the Legislature may not be treated in vain or left to operate in air though a word of caution has been that a statute cannot be extended to improve a case for which no provisions have clearly and, undoubtedly been made. Hyper-technical analysis cannot be pushed to the point of defeating justice. Law has to be interpreted to meet different situations and facts keeping in view that the enactments are not drafted by divine, procedure and with perfect clarity as it is not possible to foresee various controversies and the legislature does not deal with specific controversies and the treacherous human ingenuity to break the law for greed.

12. The principles of fairness as imbedded in our Constitution is fundamental to the Rule of law. It ensures the Rule of Law is observed and not abused. The authority is used for proper and not for improper purpose. It further ensures that the authority is not misguided by extraneous or irrelevant considerations. "That justice should not only be done but seem to be done" is the essence of the fairness. Rule of fairness has no set form or procedure. It depends on the facts and circumstances, expects a standard of conduct from the exploited to the exploitee. Rule of fairness eliminates the arbitrariness.

16. The Hon''ble Supreme Court while elaborating the principles of purposive interpretation observed :

Principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights legislation are not to be put in procrustean beds or shrunk to Liliputian dimensions. In constructing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and

reduced. Judges ought to be more concerned with the "Colour", the "Content" and the "context" of such statutes (we have borrowed the words from Lord Wilbertforce's opinion in *Prenn v. Simmonds*). In the same opinion Lord Wilbertforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic consideration. In one of the cases cited before us, i.e. *S. K. Verma v. Central Government Industrial Tribunal Cum Labour Court* we had occasion to say.

Semantic luxuries are misplaced in the interpretation of "bread and butter" statute. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kind of mischief, the Court is not to make inroads by making etymological excursions." It was further observed that, "Francis Bennion in his *Statutory Interpretation*, 2nd Edition, has dealt with the Functional Construction Rule in Part (sic) of his book. The nature of purposive construction is dealt with in part XX at page 659 thus :

"A purposive construction of an enactment is one which gives effect to the legislative purpose by :

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this code called a purposive and literal construction) or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)." At page, 661 of the same book, the author has considered the topic of purposive construction in contrast with literal construction. The learned author has observed as under :

"Contrast with literal construction". Although the term purposive construction" is not new, its entry into fashion betokens a swing by the appellate Courts away from literal construction. Lord Diplock said in 1975 : If one looks back to the actual decisions of the (House of Lords) on questions of salutatory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the Purposive construction of statutory provision. The matter was summed up by Lord Diplock in this way :- "I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a Court of justice is engaged remains one of construction, even where this involves reading into the Act which are not expressly included in it."

It was observed that interpretation of Item I of Schedule IV of the Maharashtra Act as canvassed by the learned counsel for the appellant and the intervenors would frustrate the very scope and ambit of the Act in effectuating the prevention of the alleged unfair labour practice, while on the other hand, if a wider interpretation is placed on the relevant provisions apart from not straining

the language which even may become permissible on the rule of purposive construction, the said construction would fructify the very purpose for which the Act was enacted.

12. Thiru Justice F.M.Ibrahim Kalifulla, in the Judgment reported in "2004(3) LLN 598 (Superintending Engineer, Vellore Electricity Distribution Circle, Vellore and others Versus Inspector of Labour, Perambalur and others)", while dealing with the similar so-called contract labour issue, has held as follows in para 35:

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 u/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 reported in "Nirchiliya and Others Vs. Management of Safire Theatre and Another, is applied, it can be safely held that where there is no prohibition under the 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 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 reported in Metal Powder Co. Ltd., Tirumangalam

and Another Vs. The State of Tamil Nadu and Another, 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.

13. From the nomenclature used by the Board, it cannot be construed that the petitioners are the contract labourers. This Court, in the above mentioned judgments, have categorically stated that the Court should adopt purposive interpretation. The intention of the legislators and the object of the legislation is to meet the evil prevalent in the industrial field. The purposive legislation and labour enactments are to ensure that it is a workable legislation. That was the intention of the legislators when it was provided and brought into force. It is well known cannon of construction that no provision in a statute can be held to be redundant and the Inspector of Labour in that case was competent to pass/confirm permanent status to the workmen based on the evidence available as otherwise it would only defeat the whole purpose of the enactment and thereby depriving not only the permanent status to the workmen, but also would make the workers to get far below occupational wages without benefits of DA that are paid to the permanent employees. The learned Judge, while directing the Electricity Board in the case (mentioned supra), to implement the orders of the Inspector of Labour, has observed as under in para 43.

43. Be that as it may, it will have to be held that the conferment of permanent status which has been directed to be accorded by the orders impugned in the writ petitions can only be taken to mean that the status of the concerned workmen which were hitherto a nebulous one would become a permanent one with the petitioner / Board. The question whether such a conferment of permanent status would entitle the concerned workmen to claim regularisation in a particular category in the services of the petitioner/Board requires further consideration by the Board. I am of the view that while the conferment of permanent status would ensure to the concerned workmen their permanent employment with the petitioner/board, in what category or post in which they are to be regularised is a matter which will have to be worked out by the petitioner / board by passing appropriate orders. The conferment of permanent status in the services of the Board in the appropriate position befitting the nature of employment hitherto performed by the concerned workmen as ordered by the Inspector of labour should be appropriately made by the Board. Inasmuch as the Inspector of Labour having crystallised the position that the concerned workmen have acquired the status of permanency in the employment of the petitioner / Board, the consequential details of such permanent status will have to be specified by the petitioner Board by issuing appropriate proceedings. In other words, the petitioner Board will have to pass appropriate orders relating to the concerned workmen be in any existing category of employment or by virtue of the nature of jobs hitherto performed by them, they are to be fitted in any other post with the corresponding scale of wages/scales/etc. and the other benefits available to them to be prescribed by the petitioner Board. In the event of such

proceedings issued by the petitioner / Board creating any controversy or dispute by the concerned workmen therefore the said issue may have to be appropriately thrashed out in the manner known to law. Having regard to the positive directions issued by the Inspector of Labour, it is incumbent on the part of the petitioner/Board to pass appropriate proceedings conferring permanent status to the concerned workmen in accordance with law.

14. As the findings of the Inspector of Factories are not perverse and it is based on the finding of fact, I am not inclined to interfere with such finding rendered by the authority. Even though the procedure is summary nature, the order does not mention as to the number of witnesses examined, names of the witnesses and documents filed by the parties.

15. Before concluding, the employer, like the respondent/Board, which is a prime wing of the State, is expected to adhere to the provisions of law. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act, 1981 has received assent of the President in the year 1981. Board should have scrupulously followed the Legislation and ought not to have driven the workers from pillar to post. The Officials of the TNWSD Board will be superior than the Officer who has passed the order confirming the permanent status to the workmen. The authority did not have problem for passing the orders for confirmation under the 1981 Act. While in case of prosecution, the Authority under the Act may not come forward to do it as he would be controlled by his superiors who will be equivalent in rank with that of Officers under the TNWSD Board. Since the powers are confirmed under the Statute, the Authority in case of any complaint from of the workmen, may make a representation to the concerned Courts contemplated u/s 8 of the 1981 Act empowering the concerned employees to prosecute the matter and bring the issue to the logical end.

16. As per Rule 5 of the 1981 Act, previous sanction of the authority is required for prosecuting the defaulter, namely, the employer. Instead of authority prosecuting the issue before the criminal Court, the authority concerned may sanction prosecution against the officials of the Board with or without making the Board as a party, in case of non-compliance of orders of Inspector of Factories and empower the workman/workmen to prosecute the criminal case so that the issue would come to a logical end.

17. In view of the above discussion, the writ petition filed by the petitioners/workmen in WP No.9549 of 2012 is allowed, directing the respondent/Board to implement the order of the Inspector of Factories, dated 11.7.2011, within a period of two months from the date of receipt of a copy of this order, failing which, it is open to the petitioners/workmen to prosecute officials of the the respondent/Board. The writ petition filed by the respondent/Board in W.P.No.13038 of 2011 fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.