

(2011) 09 MAD CK 0166

In the Madras High Court

Case No : Writ Petition No. 8262 of 2009

The Executive Engineer TWAD Board, Maintenance Division
(Siruvani), Ragupathy Layout 2nd Street Saibaba Colony,
Coimbatore - 11

APPELLANT

Vs

The Labour Inspector, Coonoor, Nilgiris and Others

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 12

Citation : (2011) 09 MAD CK 0166

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Mr. Sudarshana Sundar, for the Appellant; Mr. R.M. Muthukumar, for 1st Respondent and Mr. M. Muthupandian, for Respondents 2 to 38, for the Respondent

Final Decision : Allowed

Judgement

The Honourable Mr. Justice K. Chandru

1. The writ petition is filed by the Executive Engineer, Tamil Nadu Water Supply and Drainage Board, Maintenance Division, Siruvani at Coimbatore. In this writ petition, the Petitioner challenges the order passed by the first Respondent/Inspector of Labour at Coonoor dated 9.2.2009. By the impugned order, the first Respondent directed the conferment of permanent status on Respondents 2 to 38, holding that they had completed 480 days of service within a period of 24 calendar months and they are eligible for grant of conferment of permanent status in terms of Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (for short "the Tamil Nadu Act 46 of 1981").

2. The writ petition was admitted on 29.4.2009. Pending the writ petition, this Court granted interim stay. The contesting Respondents have filed a vacate stay application in M.P. No. 1 of 2010 together with the supporting counter affidavit

dated 2.8.2010.

3.1. In the present case, each of the contesting Respondents filed an application before the first Respondent, being the Inspector notified under the Tamil Nadu Act 46 of 1981, stating that they are working under various capacities with the Petitioner and despite this Court holding that such of those employees are eligible to be made permanent, these Respondents have not been made permanent.

3.2. On receiving notice on these applications, the Petitioner filed a counter statement dated 18.8.2007 stating that he had never employed anyone of the contesting Respondents and he has also not disbursed their salaries and he has No. control over those Respondents and there was No. employer-employee relationship between the Petitioner and the contesting Respondents. The maintenance of the Combined Water Supply Scheme was entrusted to individual contractors, who in turn carried out the distribution and other works engaging their own men and the salaries of these workers were also distributed through the contractors concerned and it is for the contractors to engage them and look after their contract work and as the contract system was in force, the Petitioner was not maintaining any records in respect of these workmen. It was also contested that they are not the principal employer.

3.3. When the matter was pending before the first Respondent, the contesting Respondents filed an application on 20.8.2007 for production of documents relating to contract agreement, the number of workers employed in the maintenance work, the number of workers who are engaged in the capacity of Fitters, Electricians, Pump Operators, Lineman, the wages paid to them and the log book for the year 2001-2007. The contesting Respondents also filed a rejoinder statement dated 20.8.2007 stating that they have been working on a work of regular nature and even the so-called contractors have not applied for licence under the Contract Labour (Regulation and Abolition) Act and since the Petitioner is part of the Tamil Nadu Water Supply and Drainage Board, which is a Government owned company, they cannot observe unfair labour practice.

3.4. It is also noted that before the first Respondent, who is the Inspector appointed under the Tamil Nadu Act 46 of 1981 and who is also bound to conduct a summary proceedings, No. oral evidence was let in and No. documentary evidence was let in, except to the extent that the contesting Respondents produced on their own the log book maintained in their section in which their names were found, which were countersigned by the Assistant Engineer. The Assistant Engineer's signature was shown to the management and they did not give any reply. Therefore, the authority took adverse notice on the ground that the denial by the Executive Engineer that he does not maintain any accounts cannot be accepted and since they have not filed the muster roll and the details of contract, he has presumed on the basis of the log book that the contesting Respondents have worked for a period of 480 days. He also believed the certificate issued by the local body authorities and the statement given by them.

In the absence of any statement made by the Petitioner/Board, he had come to the conclusion that the contesting Respondents have worked 480 days of service within a period of 24 calendar months and they are eligible for grant of permanent status.

4. In the affidavit filed in support of the writ petition, it was stated that even the log books are maintained in the pump stations only by the contractors and it contains details relating to the power factor, volts, amps, required pressure, head and quantity of the water pumped and other instructions and merely countersigning those log books does not establish any master and servant relationship between the Petitioner/Board and the contesting Respondents. It is also stated that the authority did not take note of the defence taken by the Petitioner/Board before him.

5. In the counter affidavit filed on behalf of the contesting Respondents, it was stated that the method and mode of recruitment is not relevant in deciding the claim made under the Tamil Nadu Act 46 of 1981. When they pleaded that they were directly employed by the Petitioner/ Board and produced documentary evidence, in the absence of any further evidence, the authority is bound to accept the statement made by the contesting Respondents. In paragraph (9) of the counter, it is stated that the contractors do not have licence in terms of Section 12 of the Contract Labour (Regulation and Abolition) Act and therefore, in the absence of such evidence, even if there was any change of the so-called contractors, they were continuously employed.

6. Mrs. Sudarshana Sundar, Learned Counsel for the Petitioner submitted that when the trade union representing these workmen raised an industrial dispute regarding grant of permanency before the Industrial Tribunal the names of these workmen were not even shown, which leads to a strong presumption that they were not engaged by the Board, and secondly, such a delicate question relating to the employer-employee relationship or the factum of the contract being sham and nominal cannot be gone into by the authority under the Tamil Nadu Act 46 of 1981.

7. Per contra, Mr. M. Muthupandian, Learned Counsel for Respondents 2 to 38 placed reliance upon the judgment of this Court Tamil Nadu Water Supply and Drainage Board Employees Union v. Tamil Nadu Water Supply and Drainage Board and Ors. 1993 I LLN 449 to the effect that the provisions of Tamil Nadu Act 46 of 1981 will squarely apply to them and the said decision was rendered in respect of the very same Petitioner/ Board. He also relied on the judgment of this Court in A. Palanivel and two others v. Tamil Nadu Khadi and Village Industries Board and Ors. 1998 WLR 271 and referred paragraph (22), wherein it was held that when the Board even after giving opportunity did not fulfill their obligation except filing a counter affidavit, the particulars given by the workmen can be accepted.

8. In the present case, it must be noted that the first Respondent has got a

multifarious role under the Tamil Nadu Act 46 of 1981 and he is not merely an adjudicating authority and is also an Inspector under the Act and primarily under Rule 6 he can examine the representation and after making enquiries can make suitable directions. Under Rule 4, the employer is bound to furnish any information that an Inspector may require for the purpose of satisfying himself as to whether the provisions of the Tamil Nadu Act 46 of 1981 and the Rules have been complied with by the employer. In the absence of maintenance of such records, he is also empowered to sanction prosecution against such employer.

9. In the present case, the Petitioner had stated that the contract under which the contesting Respondents have been employed was not a valid contract in terms of the Contract Labour (Regulation and Abolition) Act and that they were not licenced under the Contract Labour (Regulation and Abolition) Act and even though there was change of contractors, their services have been continued uninterruptedly. When the Petitioner has taken a definite stand that they have No. direct records relating to the employment of the contesting Respondents, the authority has not even referred to the same in the order impugned in the writ petition.

10. Further, the production of log book, as explained by the Petitioner/Executive Engineer, is in relation to the operations carried on by the Board and do not reflect the service particulars of the employees, namely as to whether they were directly employed or through contractors. No. doubt, in the present case, the Petitioner has not discharged their obligation in satisfying the authority that the contesting Respondents were employees of the contractors. But yet only on the basis of the assertion made by the contesting Respondents, the authority cannot direct grant of conferment of permanent status without satisfying himself whether they are employees of the Board or of the contractors. As rightly contended by the Petitioner/Board, the log book only shows the presence of the contesting Respondents in the work spot at the relevant time. In essence, the contesting Respondents pleaded that there was a supervision by the Assistant Engineer employed by the Board and therefore, they are the employees of the Board. Even in cases where they are employees engaged through contractors, there will be certain amount of supervision that will be required by the officers of the principal employer and that by itself will not establish the relationship of master and servant between such employer and the workers and there must be material to show that they were originally employed by the Board and continued to be employed under the service of the Board.

11. The Supreme Court in Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of Tamil Nadu and Others, has held that merely because there was some supervision over the work of the workers, it will not automatically be a conclusive factor for establishing the nature of relationship between the employer and employee.

12. Even the contesting Respondents in their counter affidavit have stated that the contract was sham and nominal and the contractors were not having any

licence under the Contract Labour (Regulation and Abolition) Act. Such disputes are very complex in character and the authority must pass a speaking order with reference to establishment of the following factors: (i) that the contesting Respondents were employed by the Petitioner/Board and the wages are paid by the Board; and (ii) they were direct employees of the Petitioner/Board. In the absence of such finding, the application of the Tamil Nadu Act 46 of 1981 in relation to the Petitioner, who is a principal employer, will not arise. Since the authority mainly went by the production of the log book and the statement given by the workers and did not consider the objections raised by the management, this Court is obliged to interfere with the impugned order.

In view of the above, the writ petition stands allowed and the matter is remanded to the first Respondent for fresh disposal in accordance with law. It is open to both parties to lead appropriate evidence and also to summon necessary documents which are required for the determination of the lis between the parties. No. costs. Consequently, M.P. No. 1 of 2009 and M.P. No. 1 of 2010 are closed.