
(2011) 04 MAD CK 0281

In the Madras High Court

Case No : Writ Petition No. 10489 of 2006

The Senior Administrative Officer, Sugarcane Breeding
Institute

APPELLANT

Vs

The Presiding Officer, Central Government Industrial Tribunal-
cum-Labour Court, The General Secretary, Sugarcane
Breeding Institute and The Secretary, Sugarcane Breeding
Institute

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2011) 04 MAD CK 0281

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : M.T. Arunan, ACGSC, for the Appellant; R. Yashod Vardhan, for K. Raja Srinivas, for R2 and V. Ajoy Khose, for R3, for the Respondent

Judgement

M. Jaichandren, J.—This writ petition has been filed praying that this Court may be pleased to issue a Writ of Certiorari to call for and quash the award of the first Respondent Industrial Tribunal-cum-Labour Court, dated 24.6.2005, made in I.D. No. 103 of 2002.

2. It has been stated that the Petitioner institution is functioning under the administrative control of the Indian Council of Agricultural Research, which is an autonomous body, under the Department of Agricultural Research and Education. The Petitioner institution has been functioning from the year, 1912, with the following objectives:

- i) To assist in evolving improved varieties of sugarcane by way of providing genetic variability to the sugarcane research systems in the country.
- ii) To conduct research in Genetics, Cyto-genetics, Physiology, Bio-chemistry, Pathology, Entomology, Agronomy, Agricultural Chemistry, soil Science, Nematology, Extension and Biometrical aspects of sugarcane in relation to

breeding and varietal evolution.

iii) To conduct basic and applied research for evolving strategies for integrated pest and disease management, with special emphasis for tropical India.

iv) To impart post-graduate training in Sugarcane Research and Development.

3. The main activities of the Petitioner institution are in the form of research and they have no commercial applications, directly, The Petitioner institution is not a service centre for any developmental work. Its research findings are not patented and commercially exploited. Hence, the Petitioner institution is not an industry, as it is only a Research Institute, engaged, purely, in the service of sugarcane farming. It has also been stated that the members of the second Respondent Union are only having a temporary status, as casual labourers, employed by the Petitioner institution, even though they have been making various claims for their absorption in permanent posts, by regularization of their services.

4. It has also been stated that the members of the third Respondent Union are Minimum Wage category casual workers and they have been making similar demands like the members of the second Respondent Union. While so, the third Respondent Union had raised an industrial dispute, in I.D. No. 23 of 1993, on the file of the first Respondent Industrial Tribunal-cum-Labour Court. The first Respondent had passed an award directing reinstatement of the members of the third Respondent Union in the service of the Petitioner institution.

5. Challenging the said award, the Petitioner had filed a writ petition before this Court, in W.P. No. 17847 of 1997. Even though an order of interim stay of the said award had been granted by this Court the Petitioner institution had agreed to take the workers back in service, conferring temporary status on the casual workers, who were on the rolls of the Petitioner institution, on 1.9.1993 and who had completed 240 days of service in the preceding one year. However, the second and the third Respondent Unions had raised an industrial dispute, demanding the regularization of the services of their members.

6. After enquiry the first Respondent Industrial Tribunal-cum-Labour Court had passed an award, dated 24.6.2005, holding that the members of the second and the third Respondent Unions are entitled to be regularized in service, on completion of 240 days of service, from the date of their joining the Petitioner institution. It had also been held that they were entitled to all the monetary benefits and other consequential reliefs.

7. The learned Counsel appearing on behalf of the Petitioner had submitted that the award of the first Respondent is not sustainable in the eye of law as the casual workers, on the completion of 240 days of service in a year, are not entitled to be conferred with permanent status, as the Petitioner institution does not have the power to regularise their services. Further, the service rules applicable to the Petitioner institution do not contemplate the absorption of

casual employees and those with temporary status, automatically, especially, when there are no vacancies available in the permanent posts or in the newly, created additional posts.

8. As the Petitioner institution is functioning under the administrative control of the Indian Council of Agricultural Research it cannot go beyond the service rules applicable to it. The Petitioner institution cannot be directed to regularize the services of the members of the second and third Respondent Unions, by creating additional posts, which cannot be done, without the sanction of the Indian Council of Agricultural Research and the Government of India. Further, it is not the case of the members of the second and third Respondent Unions that they had been appointed, either on temporary or on casual basis, in vacant posts, which had been duly sanctioned, by the authorities concerned.

9. The first Respondent ought to have noticed that the workers had been engaged merely on an adhoc basis and as daily wagers. There cannot be any automatic regularization in service, on their completion of 240 days in service. The method of recruitment followed in engaging the members of the second and the third Respondent Unions were not in terms of the service conditions. As such, the award of the first Respondent Industrial Tribunal-cum-Labour Court, dated 24.6.2005, made in I.D. No. 103 of 2002, is liable to be set aside.

10. The first Respondent Industrial Tribunal-cum-Labour Court had held that it would not be open to the Petitioner institution to deny regularisation of the services of the members of the second and the third Respondent Unions on the ground that there are no vacant sanctioned posts. If sufficient workers are available to engage the members of the second and third Respondent Unions it is for the Petitioner institution to create the necessary posts to absorb the temporary and casual workers, who have been engaged, continuously, for many years.

11. The claim made by the Petitioner institution that it is mainly engaged in research activities and without any intention of making a profit from such activities and therefore, it would not be considered to be an "Industry", u/s 2(j) of the Industrial Disputes Act, 1947, had not been accepted by the first Respondent. As such, the first Respondent had passed an award, dated 24.6.2005, directing the Petitioner institution to regularize the members of the second and the third Respondent Unions, on completion of 240 days of service, from the date of their joining the Petitioner institution, along with all the monetary and other benefits which they are entitled.

12. The learned Counsels appearing on behalf of the second and third Respondent Unions had submitted that 115 casual workers had been conferred with temporary status by an office order, dated 17.3.1995, issued by the Petitioner institute, with the assurance that they would be considered for regularization on their completion of 240 days of service, from the date of the conferring of temporary status on them. On 12.12.1996, the Indian Council of

Agricultural Research, New Delhi, had stated that the Directors concerned may propose the creation of posts in the Ninth Plan, for absorption of casual labourers, with the condition that such posts would be co-terminus on the resignation, retirement or death of the casual labourers.

13. It had also been stated that the Central Administrative Tribunal, Chennai, had issued certain directions, while disposing of the original applications, stating that the Respondents shall evolve a scheme to include creation of posts in various grades, consistent with the needs of the institution, to absorb the applicants against the said posts, in a phased manner, on 1.8.1997, in O.A. Nos. 823 and 1410 of 1994.

14. Thereafter, on 24.11.1997, an office order had been passed by the Petitioner institution granting temporary status to 132 casual labourers. On 3.8.1998 a communication had been sent by the Indian Council of Agricultural Research, New Delhi, with regard to regularization of casual labourers with temporary status. On 25.5.1999, a communication had been sent by the Petitioner institute to the Indian Council of Agricultural Research, New Delhi, informing about the proposal for creation of 135 posts of supporting staff and stating that all the casual labourers (Temporary Status) would be considered for the appointment in group 'D' posts. Therefore, the award of the first Respondent Industrial Tribunal-cum-Labour Court, dated 24.6.2005, is in accordance with the relevant provisions of law and the policy decisions of the Indian Council of Agricultural Research, New Delhi, the Government of India and the Petitioner institution. As such, the present writ petition filed by the Petitioner is devoid of merits.

15. At this stage of the hearing of the writ petition an affidavit, dated 27.1.2011, had been filed on behalf of the second Respondent Union. Paragraphs 2, 3 and 4 of the said affidavit read as follows:

2. I respectfully state that the Industrial Dispute in I.D. No. 103 of 2002 raised by the union was referred to the learned Central Government Industrial Tribunal. The Tribunal by order, dated 24.6.2005, had directed the Management of the Institute to regularize the services of all 120 workers belonging to the 2nd Respondent Union and 138 workers belonging to the 3rd Respondent union on completion of 240 days service from the date of their joining in the Institute.

3. I state that with a view to give a quietus to the dispute the members of the 2nd Respondent union are agreeable to receiving the notional benefits of regularization for purposes of superannuation benefits as per the award dated 24.6.2005 from the date of initial completion of 240 days of service and are willing to restrict the actual monetary benefits payable as per the award to the amounts payable from the date of the claim petition filed by the second Respondent.

4. It may be pointed out that out of the total of 120 employees, 21 members of the 2nd Respondent Union had retired during the pendency of these proceedings, 9 members died in the meanwhile. The remaining 90 members are still in the

service of the Petitioner.

16. An affidavit, dated 26.1.2011, had been filed on behalf of the third Respondent Union. Paragraphs 7 and 8 read as follows:

I state that out of the total number of 138 workmen who are our members, 103 workmen including me are still continuing in service. Two of them died while they were in service. 32 workmen have already retired and one workmen had gone on VRS. Out of 32 workmen who retired from service, 3 persons have already died. The details in this regard are filed in the annexures to this affidavit.

8. I state that our Union as well as the members of our union do hereby state and agree that we are willing to take monetary benefits flowing from the impugned award in I.D. No. 103 of 2002 either from the date of modified reference, that is from 13.5.2003 or from of filing of claim statement by our union and also we agree to get notional fixation of pay and other benefits as available to Group-D employees in the writ Petitioner institute by counting the entire period from the date of completion of 240 days of service, as regular service.

17. Thereafter, on 18.2.2011, a memo had been filed on behalf of the second Respondent Union, which reads as follows;

It is respectfully stated that the 2nd Respondent union has filed an affidavit agreeing to receive the notional benefits of regularization as per the award for purposes of retiral benefits alone and agreeing to receive the actual monetary benefits from the date of claim petition. In addition to the said affidavit, the second Respondent union files this memo agreeing to forego the monetary benefits even for the period from the date of claim petition to the date of award.

The second Respondent union agrees to the following:

- a) To count the service from the date of completion of 240 days as regular service as directed by the award only for the purposes of computation and grant of retiral benefits.
- b) To waive, upon such regularization, the right to claim the salary and benefits other than retiral benefits, upto the date of the award.
- c) To receive the monetary benefits upon such regularization, namely, salary and benefits other than retiral benefits, from the date of the award in I.D. No. 103 of 2002.

18. The memo filed on behalf of the third Respondent Union on 14.2.1011, reads as follows:

The 3rd Respondent union respectfully submits that they have already filed an affidavit, dated 26.1.2011, agreeing to forego the monetary benefits upto the date of modified reference and to get notional benefits upto that date and to get actual monetary benefits from the date of the modified reference. Now, in

addition the said affidavit, the Petitioner union files this memo agreeing to forego the monetary benefits even for the period from the date of reference/modified reference and agrees to get monetary benefits from the date of award, that is from 24.6.2005 as available to regular Group-D Supporting Staff and agrees to count the service from the date of completion of 240 days as regular service for the purpose of fixation of pay and allowances and also for all terminal benefits.

19. In view of the submissions made by the learned Counsels appearing on behalf of the Petitioner, as well as the second and third Respondents and on a perusal of the records available, this Court is of the considered view that the Petitioner has not shown sufficient cause or reason to set aside the award of the first Respondent Industrial Tribunal-cum-Labour Court, dated 24.6.2005, made in I.D. No. 103 of 2002. The Petitioner has not been in a position to show as to how the award of the first Respondent Industrial Tribunal-cum-Labour Court, dated 24.6.2005, made in I.D. No. 103 of 2002, is illegal and void.

20. The first Respondent, having considered the evidence on record, had rightly held that the members of the second and third Respondent Unions are entitled to be regularized in the service of the Petitioner institute on their completion of 240 days of service. The contention of the learned Counsel appearing on behalf of the Petitioner institute that the members of the second and the third Respondent Unions cannot be regularized in service, merely on the basis that they had continued in service for more than 240 days in the preceding year, especially, when there are no vacant sanctioned posts, cannot be accepted.

21. It is noted that the members of the second and third Respondent Unions had been engaged in the various works by the Petitioner Institute, for a number of years. While so, it cannot be stated that their services cannot be regularized, only on the ground that there are no vacant sanctioned posts. Further, in view of the affidavits and the memorandums filed on behalf of the second and the third Respondent Unions this Court finds it appropriate to direct the Petitioner to implement the award of the first Respondent Industrial Tribunal-cum-Labour Court, dated 24.6.2005, made in I.D. No. 103 of 2002, with the limited liability accepted by the second and the third Respondents.

22. It is also made clear that the posts, in which the members of the second and the third Respondent Unions would be employed, would be co-terminus with the resignation, retirement or death of the concerned workmen. It is also made clear that the monetary benefits payable to the members of the second and the third Respondent Unions would be limited, in accordance with the undertaking given, as per the affidavits and the memorandums filed on their behalf. The award of the first Respondent Industrial Tribunal-cum-Labour court, made in I.D. No. 103 of 2002, shall be implemented by the Petitioner institute, in its modified form, as stated above, as expeditiously as possible. The writ petition is ordered accordingly.

No costs.