
(2008) 10 MAD CK 0089

In the Madras High Court

Case No : W.A. No. 1302 of 2003, W.P. No. 45517, 46964, 46965, 46966, 46967 and 46968 of 2002, W.P. No's. 46996 46997, 46998 46999/02, W.P. No's. 127, 128, 129, 130, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 241 242, 243, 244 , 245, 246, 247, 30

The Superintending Engineer, Nagapattinam Electricity
Distribution Circle, Tamil Nadu Electricity Board and The
Executive Engineer, Operation and Maintenance, Tamil Nadu
Electricity Board

APPELLANT

Vs

The Inspector of Labour and D. Athmanathan

RESPONDENT

Date of Decision : 24-10-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 309
Electricity (Supply) Act, 1948 — Section 79C, 79K
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A
Industrial Disputes Act, 1947 — Section 10, 12(3), 18(1), 33(1), 33(2)
Tamil Nadu Electricity Board Services Regulations — Regulation 91(2), 94

Citation : (2009) 4 MLJ 472

Hon'ble Judges : P.K. Misra, J;K. Kannan, J

Bench : Division Bench

Advocate : Balan Haridoss, P.S. Raman, A.A.G. for M. Vaidyanathan, in W.P. No. 18192 of 1999, R. Muthukumarasamy for S. Elamurugan in WP. Nos. 27714 to 27716/ 07, R. Krishnamurthy, Sr Counsel for S. Elamurugan, in W.P. Nos. 37068 and 21855/05, D. Hariparanthaman, in W.P. 1231/2000 and WP. No. 1033 of 2006, K. Thiruvalluvan, in WP. No. 4214 of 2008, A. Abdul Hameed, in W.P. No. 3870 of 2001, S.N. Ravichandran, in W.P. No. 13222 of 2003, V.S. Surendar, in WP. Nos. 18402 to 18405 of 2008, K.S. Elangovan, for Achari and Antoni Association in W.P. 18855/08 and Ravi, in W.P. Nos. 2236/06, 4146/06 and 6825/00, for the Appellant; Hema Sampath for R. Meenal, in W.P. No. 27714/07, C.K. Chandrasekaran, for Row and Reddy and Respondent No. 11 in W.P. 27714/07, R. Sunil Kumar, for Respondent No. 12 in WP.27714/07, S. Vaidyanathan, in WA. No. 1604 of 2004 and S.N. Ravichandran, for Respondents 5 to 33 and 35 in W.P. No. 10932 of 2003, for the Respondent

Judgement

K. Kannan, J

I. THREE CATEGORIES REQUIRING ADJUDICATION:

1. This batch of cases are identified as falling within three broad categories:- (i) Writ Petitions challenging the Memorandum of Settlement dated

10.08.2007 between the Tamil Nadu Electricity Board and Trade Unions u/s 18(1) of the Industrial Dispute Act, on the ground that the settlement

is in brazen violation of the decisions of Supreme Court relating to absorption of contract labour in earlier proceedings involving the Tamil Nadu

Electricity Board; (ii) Validity of Board proceedings, 36 and 37 of the Administrative Branch dated 29.10.2005 prescribing the modes of

appointment of mazdoor through their absorption and (iii) Enforcement of orders of Labour Inspectors and the claims of workers, who seek for

permanent status and the Tamil Nadu Industrial Establishments (Conferment of Permanent Status) Act, 1981.

2. The three categories seem to confluence to a single stream to catch our attention to the most vital starting point when the Electricity Board set

down qualifications for the posts of ""helpers"" and other lower categories of employees which came to be challenged by a batch of Writ Petitions

before this Court, before ultimately traversing up to the Supreme Court when Mr. Justice Khalid (Retired) was appointed to examine and

recommend the criteria to be applied to ""helpers"" covered by the judgment of this Court under appeal to the Supreme Court and to suggest if

relaxation of their qualifications of National Trade Certificate (NTC)/National Apprenticeship Certificate (NAC) prescribed by the Board could be

made in respect to the said helpers having regard to their experience. II. FACTORS LEADING TO APPOINTMENT OF KHALID

COMMISSION

3. It is a matter of public knowledge that the Electricity Board is involved in generation and distribution of electricity through hydro electric power,

thermal power generation, gas turbines and windmill generation. While electricity board employed labour through sanctioned post for carrying out

works directly connected with generation and distribution, it began employing unskilled persons for field work on nominal muster roll. The post of

helpers were sanctioned only when they were required to assist the engineers and other staffs in the discharge of technical work.

4. Under the powers conferred u/s 79(C) and (K) of the Electricity Supply Act,

the board framed its own service regulations which came into effect on 10.06.1967. Annexure-I to the Service Regulations enumerated various categories of employees for which posts could be created and appointments made. The regulations also stipulated qualifications required and the method of recruitment to such posts. The posts of Mazdoors which were in existence up to 1974 was abolished and all the jobs like, digging pits, carrying ladders, stringing of conductors, etc were being carried out by "helpers". Initially the qualifications prescribed for the post of "helpers" was a mere pass in IV Standard with one year's practical experience in the type of work concerned. Later, the qualification was enhanced to VIII Standard with a year's experience. On 28.11.1980, the Government of Tamil Nadu issued G.O.Ms. No. 1177 prescribing NTC (National Trade Certificate)/ NAC (National Apprenticeship Certificate) as the qualification for the lowest post. Pursuant to this, the board entered in to a settlement with recognized Unions on 17.05.1984 which spelt out NTC/NAC as the prescribed qualification for the post of helpers. The Board agreed to fill up 7000 post of helpers by direct recruitment from amongst candidates possessing the qualifications as aforesaid. The service regulations were consequently amended by BP (FB) 38 dated 23.05.1986.

5. In the year 1988, there was a spate of writ petitions challenging the qualifications prescribed for the post of helpers and seeking for regularisation of the services of persons who had been working as helpers. The writ petitions upheld the board's power to enforce the regulations as framed and the aggrieved workers and unions took the matter to Supreme Court in SLP. No. 820 of 1990. By an order dated 10.04.1990, Mr. Justice V. Khalid had been appointed to do the work.

6. The Commission submitted its report on 11.02.1991 and took pragmatic note of the fact that the practical experience would always aid the persons to effectively discharge their duties and was a sure guide of assess the suitability. The initial minimum educational qualification prescribed for the various posts was undoubtedly a factor to be reckoned with and it was so at the time of initial entry in to the service. Once, the appointments were made as daily rated workers and they were allowed to work for considerable length of time, it would be hard and harsh to

deny the confirmation in their respective posts on the ground that they lacked the prescribed educational qualifications. The pronouncement

expressed through a three member bench of the Supreme Court in *Bhagawati Prasad v. Delhi State Mineral Development Corporation* AIR 1990

SCC 371 found expression through the report of Justice Khalid who also noted that his report ought to address the claims of not only the existing

workers but also the skilled workers who were not before him. The Commission said, "After giving my anxious consideration, I decide that after

the issue of appointment orders to 7000 existing workers, the board shall thereafter appoint the remaining existing workers from the list and the

skilled workers in the ratio of 1:1. The existing workers will be selected by the Selection Committee and the ITI helpers by the Board."

7. The commission formulated a scheme for filling up the 18006 posts which provided for absorption of 4500 existing workers and 4500 ITI

holders in three phases, i.e., on or before 30.04.1992, 31.08.1992 and 31.12.1992. The commission concluded that by the process prescribed

11, 500 (7000 + 4500) existing workers and 4500 ITI holders would be recruited, still leaving 2000 vacancies to be filled up. The commission

prescribed the same ratio 1:1 for filling up such vacancies before 31.12.1992. The commission's report was accepted by the Supreme Court and

it was expected that it would be given full interpretation.

III. THE LITIGIOUS JOURNEY TO THIS COURT

8. The Khalid Commission report provided for selection and appointment of 12, 500 existing workers up to 31.12.92 but the total number of

workers awaiting regularisation, as stated above was 18, 006. The remaining 5506, the Commission noted, had to wait for future vacancies to

arise but to protect their interests also, it directed that a panel shall be prepared before 31.3.1993 and sent to the Board for selection in the ratio of

1:1 between ITI trained men and the workers in the list. The Supreme Court noted in its order dated 19.1.95 that the implementation of the Report

by the Board was tardy and unsatisfactory and that the numbers fixed by Justice Khalid was not liable for variation or alteration. It said, ""It (the

Board) shall not make any appointment in future till all the employees are absorbed"". This direction was vacated by the Supreme Court on

15.2.99, when the Supreme Court terminated all proceedings for contempt

initiated at the instance of some Unions and individual workers who had secured directions from the Labour Commissioners for their absorption and while adverting to some grievances of ITI certificate holders in the light of Labour Commissioners' decisions. The Supreme Court counseled that their grievances could be addressed by independent proceedings taken before the High Court.

IV. THE BOARD'S ACTIONS SUBSEQUENT TO KHALID COMMISSION'S REPORT

9. If the Board had carried out the directions of the Khalid commission in full and had resorted to filling up the posts in the manner indicated by satisfying the claims of ITI trained persons along with the other unskilled persons in the ratio 1:1, they ought to have taken on board at least 4500 ITI trained persons. It is admitted before us that the board did not fill up vacancies from the persons holding ITI qualification, resulting in the claims being wholly unheeded. A certain amount of ad hocism that the Electricity Board has systematically practised over a period of time in the manner of employment of various types of men to do pure manual activities like digging up trenches, laying wires, carrying ladders, etc., without going through a process of selection after laying down proper qualifications for being considered has been responsible for the situation that has come to pass. What was meant to be a matter of one time relaxation, taking note of a pragmatic realisation that experience hands down skills for persons, even what academic qualifications could fail to deliver, has come to be a recurrent theme of application for the Electricity Board. We may not have come to this sorry state of affairs with spate of litigations at various types of adjudicatory forums, such as the Inspector of Labour, Labour Courts and the High Court, if only a clear cut formulation of an employment policy had been put in place and strict observance of their norms of employment had been kept up.

10. There was a rightful indignation on the part of various categories of workmen, when the board continued to adopt a dubious method of having the service of unskilled persons directly to get over their own Regulations relating to educational qualifications and employing persons in cadres that had not been provided for, by resort to employing them at various levels below "helpers" through contractors in brazen violation of the Contract Labour (Regulation and Abolition Act), 1970 . This action was at once contrary to

the regulatory law in respect of certain classes of workers who could not be engaged through contract labour system, as laid down in Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], . While some workers at the basin bridge, Narimanam and some other places were regularised, they were scores of men running into thousands in other places where their services were not regularised. They were several persons who had approached the Supreme Court even when they were some cases pending before it soon after the Khalid Commission's report had been filed. Although, the constitution of the commission had been given wide spread publicity and several of the major unions had participated giving out lists of workers whose services were required to be regularised, several other persons approached the Supreme Court seeking for its intervention, to all whom the Supreme Court made way by directing them to approach the High Court for independent consideration of their claims.

V. THE CLAIMS OF CONTRACT LABOURERS REJECTED:

11. A batch of writ petitions in W.P. Nos. 12869/91 and other cases came to be examined by this Court when some contract workmen engaged as helpers claimed that they had a right to be considered for regular appointment on the basis of criteria evolved by the report of the Commission.

Shri.Jayasimha Babu.J dealing with the issue in the judgment said:

28. The law laid down by the Supreme Court in its Judgment dated 3.8.94 in W.P.92/92 and connected petitions in A. Hamsaveni v. State of

Tamil Nadu squarely applies to the case of the petitioners herein. It was incumbent on the petitioners to have approached the Commission by way

of individual applications if their names were not sponsored by the unions before the Commission. The petitioners had the opportunity of appearing

before the Commission but did not avail of it. The proceedings of the Commission having concluded, the issue relating to absorption of contract

labourers in the posts of helpers by relaxing the prescribed qualifications, cannot now be re-opened.

29. The undertaking given by the Board to the Supreme Court to abide by the report of the Commission and to relax the prescribed qualifications

is limited to the persons who were before the Commission, and cannot be extended to those who did not avail of the opportunity to approach the

Commission. No person whose names, was not included in the lists before the Commission can claim any right, by reason of anything contained in the report of the Commission.

30. The Commission was not constituted for the general purpose of laying down criteria, with reference to which each and every contract labourer could claim benefits. The criteria that were laid down by the Commission in its report was meant to be applied for the purpose of determining the eligibility as also the identify of the persons whose names were found in one or other lists furnished to he Commission by the parties to the proceedings before the Commission. The report of the Commission was not meant to be a launching pad from which to launch a series of claims for employment under the respondent-Board.

31. The petitioners therefore do not have any legal right to ascertain claim that a valid and binding regulation should be relaxed for the purpose of employing them in the post of helpers or claim parity in treatment with those workmen whose names were included in the lists which form a part of the report of the Commission; even after they had neglected to plead their claims before the Commission.

32. For some of the petitioners, an argument was advanced that since the petitioners were members of one or more of the Unions, which were before the Commission they must be deemed to have been present through these unions before the Commission, and therefore, the benefit of the directions given in the report of the Commission should be extended to them also. This argument overlooks the fact that the report given by the Commission is not one regarding the rights of all the members of the unions who were before the Commission, but it is a report concerning only the claims of contract labourers, whose names were included or found in the lists furnished to the commission, and whose identify and record of service were to be verified by the selection committee constituted by the Commission. The Commission did not recognise a right in every contract labourer to claim a right to absorption de hors the rules solely on the ground that he was a member of one or other of the unions who were petitioners before the Commission. The identity of the worker was to be ascertained with reference to the lists which had been furnished by the unions to the Commission and no more.

33. It was contended for some of the petitioners that the records in the possession of the petitioners, as also the records of the Board, would disclose that they had in fact, worked as contract labourers in the past for period ranging from one to ten years, and therefore, after verifying that service they should be given the same treatment, as was given to those who had put in similar number of years of service and whose recruitment was directed by the Commission, in the order of priority laid down in paragraphs 100 and 104 of the report of the Commission. This argument has to be rejected, as the question now is not whether any of the petitioners had worked as contract labourer in the past. The only relevant question now is whether the claim of that person had been put forward before the Commission and his name is to be found in one or other of the lists which form part of the Report of the Commission.

34. It may well be that some of the contract labourers whose experience though similar, to those whose names are found in the lists which form part of the report, may not get the benefit which those whose names are found in the lists are likely to get. But that is the consequence of their past inaction. As pointed out by the Supreme Court, inaction on the part of such workmen has resulted in their forfeiting any claim for consideration on the basis of a relaxation of the rule in their favour. In these circumstances, no question of violation of any right of such workmen under Article 14 of the Constitution can arise. It is settled law that failure to assert a right within the period of limitation, renders the person claiming such a right, ineligible to move the court to enforce such a right. Unfortunately for the petitioners, even if they had in fact worked as contract labourers, the right which they could otherwise have claimed had they appeared before the Commission are now lost.

36. Some of the learned Counsel appearing for the petitioners submitted that the rights of the petitioners to agitate their claims, after the Board absorbs all the workmen in the lists before the Commission, should be left open so that they may re-agitate the same at a future date and if necessary before the Industrial Tribunal, or Labour Court, I do not see any justification for accepting to such a request. As noticed more than once earlier in the course of this order, the rights if any of the petitioners have been lost due to their inaction in not appearing before the commission, that

issue cannot be reopened now or in the future. The question of reserving liberty to them to agitate their rights in other proceedings in future therefore, does not arise.

37. Some argument was advanced by counsel with reference to certain figures mentioned in the order of the Supreme Court dated 5.5.1995. It

was submitted that there is a short fall of about 2000 workmen in the categories I to V mentioned at paragraph 100 of the report of the

Commission, from along whom the Board was required to recruit 7000 employees, within the time schedule laid down by the Commission, and the

petitioners/ could be accommodated to the extent possible within that number, The Supreme Court in the course of that order has held that the

Board had satisfactorily explained the shortfall The argument as now advanced is also misconceived. The number required to be recruited by the

Board is to be determined only with reference to the lists which formed part of the Report of the Commission, and not by travelling outside the

lists. If as a matter of fact, it is found that some of the persons whose names are in the lists are either unfit or are not interested in being absorbed, it

can only result in the chances for those lower down the lists being accelerated and no more.

38. Even if by the time the list is exhausted it is found that the number of vacancies filled from among persons in the lists is less than 18006 on

account of overlapping of names, death, persons being found unfit or not being interested in absorption, then also it would be wholly impermissible

to travel outside the lists. After the list is exhausted, only skilled helpers who possess the qualification prescribed under the statutory rule, are to be

recruited.

12. The learned Judge dismissed the writ petitions holding that once the contract labourers furnished in the list before the commission were fully

accommodated, the board was bound to engage only skilled workers in future and that it would have been against public interest to direct the

relaxation of the rules that would have the effect of the report to completely annihilate the board regulations prescribing qualifications and would be

tantamount to giving an one time relaxation an all time relaxation of eligibility and qualifications.

VI. SUCCESSFUL CLAIM TO PERMANENT STATUS

13. Many persons who were jettisoned by the judgment of this Court had a second fling through another ingenious method of skirting the regulations by resort to T.N. Industrial Establishments (Conferment of Permanent Status) Act. The resort of many persons to the above Act was a last straw, as it were, to secure regularization by pointing out that they had been in employment for more than 480 days and were hence entitled to be regularised. This contention found acceptance with the Labour Inspectors in many areas especially when the Electricity Board did pretty little to dispute the evidence tendered by them that they were directly employed under the board and not through any contractors. The Board did not still relent in spite of specific directions of the Labour Inspectors and this gave rise to two types of litigations, principally canvassed through counsel, Shri.Balan Haridoss and Shri.S.Vaidhyanathan on the one hand and Shri.D.Hariparanthaman, on the other:

1. Writ petitions seeking for issue of writ of mandamus to give effect to the orders of Labour Inspectors and another set of writ petitions filing at the instance of the Electricity Board itself and seeking for issue a writ of certiorari challenging the orders passed by the Labour inspectors the latter type of cases were taken up in a batch case before a single judge of this Court who, in Superintending Engineer, Vellore Electricity Board Distribution Circle, Vellore v. Inspector of Labour reported in 2004 3 LLN 598 dated 19.12.2003 in writ petition Nos. 1513/02 and batch upheld the orders of the Labour Inspectors on appreciation of facts which according to him were un-refuted before the Labour Inspectors that all those persons had all men directly employed by the Electricity Board, though loosely referred as having been employed as contract labours holding that the board was bound to pass appropriate orders relating to the concerned workmen in any existing category of employment but taking in to account the nature of jobs hither to perform by them and that they should be fitted in any other post with corresponding scales of wages and other benefits available to them to be prescribed by the Board.

2. There is yet another category of persons who did not follow the avenue of grievance by redressal through Labour Inspectors but raised industrial disputes for failure of the board to regularise them. The Government declined reference originally in G.O.Ms. No. 766 and the Union

filed W.P. No. 15268 of 1996 which was allowed on 25.06.1999 directing the reference to be made. A reference was therefore made in ID. No.

106 of 2000 and the petition is still pending. It concerns the interest of about 21,692 workmen owing allegiance to Central Organisation of Tamil

Nadu Electricity Employees (COTEE, for short) .

VI. BOARD'S NEW DISPENSATION THROUGH B.Ps, Section 18(1) SETTLEMENTS & FRESH ROUND OF LITIGATIONS

14. (a) Sensing that the Board was contemplating to absorb contract laborers as Mazdoor/ helpers without reference to Khalid Commission's

recommendations, an Association of ITI trained men filed W.P.21885/2005 for a writ of mandamus to forebear the Board from such a mode of

appointment. When the writ petition was pending, on 29.10.2005, the Board issued B.P. (FB) No 36 reviving the post of Mazdoors Gr II under

the following terms:

Prior to 1974 the category of Mazdhor was in existence in a separate scale of pay of Rs. 65-3-95-4-115-5-125. In the B.P., read above orders

were issued for abolition of certain categories of posts, including Mazdoors.

2. The qualification prescribed in the service Regulations for both Mazdoors and Helpers prior to 1986 was 5th std. Subsequently, in Per B.P.

(FB) No. 38 (Adm.Branch) dated 23.5.86 orders were issued revising the qualification for the post of Helpers as N.T.C./N.A.C, . (I.T.I.). It is

now considered by the Board that for certain jobs like digging of pits, stringing of conductors, etc., in Distribution Circles, which do not require

personnel with basic technical qualification, a new category of personnel below the Helper level may be created. Inasmuch as the category of

Mazdoor was in existence prior to 1974, the Board has decided that the category of Mazdoor may be revived for attending to certain works in the

Operation and Maintenance Sections of the Distribution Circles. Taking into account the existing scale of pay for the post of Helpers, the Board

has decided to fix the scale of pay for the post of Mazdoor Grade-II as Rs. 2570-60-3050-75-3950.

3. The qualification and method of appointment to the category of Mazdoor Grade-II will be the same as existed already. However, for the

present the Board has decided to make appointment to the post of Mazdoor Grade-II through absorption of Contract Labourers in relaxation of

rules relating to qualification and age, wherever necessary.

4. Accordingly the Tamilnadu Electricity Board hereby passes the following orders:

a) The category of Mazdoor Grade-II shall be revived.

b) The scale of pay for the category of Mazdoor Grade-II will be Rs. 2570-60-3050-75-3950.

c) The appointment to the post of Mazdoor Grade-II shall be made through absorption of Contract labourers in relaxation of rules relating to qualification and age wherever necessary, for the present.

(b) On the same date, B.P. (FB) No 37 was issued directing the absorption of 2500 contract laborers as Mazdoor Grade II on consolidated

payment of Rs. 2500 per month on the following terms: The Hon''ble Justice Khalid Commission, Hon''ble Supreme Court of India and the

Hon''ble High Court/Madras have ordered that after the compliance with the report of Justice Khalid Commission, the Board shall make

appointment to the post of Helpers, which is a initial level category, only by qualified hands as prescribed in Regulation 94 of the Tamil Nadu

Electricity Board service Regulations viz. N.T.C./N.A.C. and Vocational Trade in any one of the Trades as specified therein (I.T.I.).

2. In para-36 of the orders of the High Court (batch) 2nd read above, the High Court has ordered that as the rights, if any, of the Contract

Labourers (Petitioners) who claim for absorption have been lost due to their inaction in not appearing before the Commission, that issue cannot be

reopened now or in the future.

3. However, large number of Contract labourers have filed claim petitions before the Inspectors of Labour claiming permanent absorption into

Board's service. The Inspectors of Labour have passed orders directing the Board to absorb the petitioners into Board's service. The Board has

challenged the orders of the Inspectors of Labour before the Hon''ble High Court in a batch of writ petitions/writ appeals and obtained orders of

stay of High Court against the award of orders of stay of High Court against the award of Inspectors of Labour. Apart from this, with reference to

the orders issued by the Government in G.O.(D) No. 616, (Labour and Employment) Department, dated 18-07-2000 referring the dispute with

reference to the issue whether the demand of the Union to regularise the service of Contract Labourers, who have put in 3 to 10 years is

reasonable, to the Industrial Tribunal, Chennai for adjudication, the Central Organisation of Tamil Nadu Electricity Employee which has raised

dispute which has been registered as I.D. No. 106/2000 on the file of Industrial Tribunal, Chennai, in which the Tamil Nadu Electricity Workers

Progressive Union and Tamil Nadu Electricity Employees & Contract labourers Union have also impleaded, is pending before the Industrial

Tribunal.

4. Further the Board has been paying ex-gratia payment to those contract Labourers, who have completed 5 years as on 31.3.97 and identified by

a Committee of Officers on 08.08.98 as ordered in the memo 3rd read above.

5. Representations have been received from a large number of Contract Labourers who have received ex-gratia payment since 1995-96

requesting for permanent absorption into Board's service. These representations have been carefully considered by the Board. With reference to

the award of Justice Khalid Commission and the orders of High Court and Hon'ble Supreme Court, that the Contract Labourers, who do not

possess the qualification of N.T.C./N.A.C. and (I.T.I.) prescribed in the service Regulations for appointment to the post of Helpers are not eligible

to be considered for absorption as Helpers. Further, most of these contract Labourers, who have received Ex-gratia payment are covered under

para-36 of the order of High Court 2nd read above. Therefore, the Board has considered the representations of the contract labourers, who were

identified as on 8.8.98 and who are received ex-gratia payment for the year 2004-2005 sympathetically and has decided to absorb 2, 500

Contract Labourers as Mazdoor Grade-II on Consolidated payment of Rs. 2500/- per month for a period of 2 years as trainee without prejudice

to the pendency of various writ petitions/writ appeals pending in the High Court, the I.D. No. 106/2000 pending before the Industrial Tribunal,

Chennai and the claim petitions pending before the various Inspectors of Labour. On satisfactory completion of 2 years period of training as

Mazdoor Grade-II, they will be appointed as Mazdoor Grade-II in the scale of pay of Rs. 2570-60-3050-75-3950. Accordingly, the Tamil Nadu

Electricity Board hereby passed the following orders:

a) 2, 500 posts of Mazdoor Grade-II shall be created for the absorption of Contract Labourers.

b) Out of the Contract Labourers, who have completed 5 years as on 31.3.1997 and identified by the committee of Officers on 8.8.98, 2, 500

Contract Labourers shall be considered for permanent absorption based on the seniority with reference to date of enrollment as Contract

Labourer.

c) These Contractors' Labourers shall be absorbed as Mazdoor (Trainee) on consolidated payment of Rs. 2, 500/- per month for a period of 2

years. On satisfactory completion of 2 years period of training they will be appointed as Mazdoor Grade-II.

d) The absorption ordered above is subject to the specific conditions that these contract Labourers engaged by Contractors should have regularly

reported for work in the respective Section Office in the last 12 months as on 30.09.05.

e) The Contract Labourers absorbed as Mazdoor (Trainee) as per these proceedings shall not made any claim, what-so-ever, in future by virtue of

their engagement as Contract Labourers in the past." Close on heels to the above, came the State Electricity Minister's announcement that about

6000 contract laborers were going to be regularized. Pressured by persistent demands from a large body of workmen, their Unions and a spate of

litigations at the High Court, Industrial Tribunal and before the Labour Inspectors, the Board entered into a memorandum of settlement dated

10.8.2007 u/s 18(1) under the following terms:

TERMS OF SETTLEMENT:

It is hereby agreed that

1) The Contract Labourers already identified during 1998 by the committee consisting of officers of the Board not exceeding 6, 000 Nos. will be

absorbed into Board's service with effect from 15.9.2007 in the following manner:

a) The contract labourers with S.S.L.C. and higher academic qualification will be appointed as Assessor Grade-II in the Helper Time Scale of Pay

of Rs. 3050-4590, who will do the Meter Reading and Assessment Works for full month.

b) The Contract Labourers with I.T.I. qualification in the Trades specified in the Service Regulation of the Board and those with Diploma

qualification will be appointed as Helpers-cum-Meter Reader in the time scale of

pay of Helpers. They will do the field work and also according to need they will do the Meter Reading and Assessment Work.

c) The contract labourers with other qualification or Nil qualification will be appointed as Mazdoor in the Time Scale of Pay of Rs. 2570-3950.

2) Similarly the Contract labourers already absorbed as Mazdoor trainees with reference to Per B.P.(FB) No. 37 (Adm.Br) dtd.29.10.2005 will

also be appointed in the time scale of pay as Mazdoor/Helper-Cum-Meter Reader/ Assessor-Grade-II with effect from 15.9.2007 in the above

manner. They will be seniors to the Contract Labourers now proposed to be absorbed and appointed.

3) The remaining contract Labourers not exceeding 15, 600, who are paid ex-gratia will be identified by a committee of Officers to be deputed

from Headquarters to various Circles.

4) The Committee will be asked to submit its report before 31.10.2007.

5) Based on the report of the Committee, the Circle-wise list of Contract Labourers with reference to date of entry will be arrived at and 6000

contract Labourers will be appointed as TCLs with effect from 01.12.2007 for a period of one year and then they will be absorbed as Mazdoor in

the scale of pay with effect from 1.12.2008.

6) Consequent on absorption of 6000 T.C.Ls as Mazdoor on 1.12.2008 the next 6000 Contract Labourers will be appointed as TCLs with effect

from 1.12.2008.

7) The remaining 3, 600 contract labourers will be engaged as contract labourers on daily wages with effect from 1.12.2008 and they will be

appointed as Temporary casual labourers on daily wages with effect from 1.12.2009 for a period of one year and then considered for appointment

as Mazdoor.

8) The Contract Labourers who do not satisfy the general conditions for appointment prescribed in the Regulation 91(2) will not be considered

for absorption or appointment as Temporary casual labourers or for engagement as contract labourers.

9) The contract Labourers to be absorbed as Mazdoors, Helpers, Helper-cum--Meter Reader/Assessor-Grade-II and to be appointed as

Temporary casual labourers, and to be engaged as contract labourers on daily

wages, as the case may be, shall not make any claim including

E.P.F. with retrospective effect by virtue of their engagement as contract labourers in the past.

10) The TCLs as well as the Contract Labourers identified by the Committee will be given photo identity card. Attendance Register will be

maintained for T.C.Ls and Contract Labourers in each Section.

11) The Temporary casual labourers as well as the Contract Labourers will be covered by Contributory Pension Scheme with effect from

1.12.2007.

12) The Temporary casual Labourers will be paid daily wages of Rs. 70/- on the days of their working and they will be provided job for a

minimum period of 20 days in a month.

13) The contract Labourers will also be paid daily wages of Rs. 70/- on the date of their working and they will be engaged on need basis.

14) The Assessor-Grade-II, Helpers, Helper-cum-Meter Reader and Mazdoors to be appointed/absorbed as per this settlement shall render a

minimum period of service for promotion or conversion of cadre, wherever applicable, as indicated below:

Sl. No. Category Minimum Service

1) Assessor-Grade II 5 Years

2) Helper 5 Years

3) Helper-cum-Meter 5 Years

Reader

4) Mazdoor 2 Years

15) 2500 candidates with NTC/NAC(ITI) will be recruited through employment exchange during this year and they will be appointed as Helper in

the scale of pay of Helpers, subject to rendering of minimum period of service for 5 years in the Helper post for promotion.

16) The claim for E.P.F. contribution with retrospective effect in respect of the Contract Labourers covered in the 7A proceedings initiated by

various E.P.F. authorities will be given up. Both the Management and the Trade Unions shall approach the E.P.F. authorities for passing

appropriate orders so as to release the Board from any or all liabilities arising under E.P.F. and M.P.Act, 1952. Both Management and Trade

Unions shall approach E.P.F. authorities to get refund of money obtained by E.P.F. authorities by freezing Board's Bank Account.

17) The Contract Labourers covered by this settlement will be covered by Contributory Pension Scheme prospectively with effect from

1.12.2007.

18) In view of the above terms and conditions and as the Board will maintain attendance Register for Contract Labourers the Unions have agreed

to withdraw all the cases pending before Industrial Tribunal, and other Legal forums.

19) In the light of the above terms and conditions both Management and Trade Unions have agreed to approach the E.P.F. authorities to drop

further proceedings initiated u/s 7A of E.P.F. and M.P.Act, 1952." This prompted the filing the third category of cases:

3. WP 37068/2006 challenging both the B.P.s to issue a writ of certiorarified mandamus calling for the records relating to the proceedings of the

respondents 1 to 3 made in Per.B.T(FB) No. 36, Admn.Branch dated 29.10.2005 and the consequential FB No. 36 Admn.Branch dated

29.10.2005 of the first respondent, quash the same and set aside the appointment made by way of absorption of contract labourers in pursuant to

these proceedings and direct the respondents 1 and 2 not to make any point through the method of absorption of contract labourers except by

open competition and by direct recruitment. COTEE filed their own independent writ petition in W.P. No. 1033 of 2006 who sought for the relief

of forbearing the respondents 1 and 2 from altering the conditions of service of contract workmen concerned in I.D.106 of 2000 by filling the

helpers" posts by direct recruitment or in any other manner till the I.D. No. 106 of 2000 before the Industrial Tribunal is adjudicated by the third

respondent. Their challenge takes care of the subsequent event of the settlement also and arises on a different basis, unlike the claims of ITI trained

persons, who attack the settlement on the ground that it is violative of the Supreme Court decision following the Khalid committee

recommendations as well as the regulations prescribing the qualifications, that it altered the terms of labour and made without prior permission of

the Tribunal and hence violative of Section 33(1)(a) of the Industrial Dispute Act. Yet another writ petition was filed in W.P.27714 of 2007 which

was filed by ITI Padicha Velai Vaipatrur Sangam seeking for a writ of declaration, declaring that the decision of the respondents 1 and 2 in

resorting to absorb the contract labourers in the Board's services has entered into a memorandum of Settlement dated 10.8.2007 is

unconstitutional and consequently direct the respondent Board to make appointment to the post of Mazdoor, TCI, Helpers, Assessors Grade

II/Meter Reader as per the recruitment rules and by notifying the vacancies to the Executive Engineer and by paper publication.

15. Mr. R.Krishnamoorthy, Senior Counsel, while challenging BP 36 and 37 pointed out to the Khalid commission's recommendations and how it

was meant to be only a one time application for relaxation of rules and therefore the regulations prescribing NTC/NAC qualification could not be

whittled down by issuing mere proceedings by resurrecting mazdoor Grade II post which had been abolished earlier while even retaining the

eligibility criterion in the regulations. The board proceedings were in conflict to the statutory regulations and hence were liable to be quashed. This

argument is countered by several counsel including Mrs.Hema Sampath, learned Senior Counsel appearing in a batch of writ petitions who, while

referring to the board standing orders of Tamil Nadu Electricity Board, pointed out that the classification of workmen included "temporary" and

"casual laborers" and it was not illegal to appoint them. She also pointed out that Service Regulations themselves provided in Category 8 several

categories, such as Mazdoor Gr I, Gr II, Gurkha watchmen, gardeners, sweepers, et al that there were several classes of persons such as

sweepers, watchman, etc., who fell below the line of helpers in respect of whom there was no requirement for an ITI qualification and the

regulations did not completely rule out their employment status.

16. Mr. R.Muthukumarasamy, Senior Counsel supported the claim of ITI trained persons and argued at length on the invalidity of the settlement

especially with reference to the judgment of Hon'ble Mr. Justice Jayasimha Babu dated 17.09.1995 referred to above. He dwelt at length the

observations of the learned Judge as to how all the claims of unskilled workers have been fully addressed by the Khalid Commission not merely of

persons who were before him but also the persons whose rights could be affected and therefore after eliciting that they were no more categories

left out, it had given a time frame for regularisation and made clear that all future vacancy would be done only with reference to adopting the eligible

criterion referred to in the regulations. The regulations stood un-amended in so far as the categories of workmen and the qualifications there for.

The claims are over 5, 00, 000 - ITI trained persons who stand registered in the employment exchange cannot be thwarted by the attempted back

door entry of untrained and unskilled men who were seeking regularisation that was at once in conflict with the Judgment of the Supreme Court

following Khalid Commission. The learned Counsel also referred to the several rulings of the Supreme Court and in particular, to the decision of

the Supreme Court in the Secretary, State of Karnataka and Others Vs. Umadevi and Others, and the decision of the Supreme Court in A.

Umarani Vs. Registrar, Cooperative Societies and Others, and State of U.P. Vs. Neeraj Awasthi and Others, . The thrust of his arguments was

that even in the teeth of Industrial Regulations (Conferment and Permanent Status to Workmen) Act, persons who had put in 480 days of

continuous work could not be regularised if the initial employment was illegal and violative of Regulations; the Act would not in such a case be

applicable at all.

17. According to him, after the passing of the Contract Labour (Regulation and Prohibition) Act 1970, it was inconceivable that a contract labour

system could be adopted for the type of work assigned to different categories of workmen by the board. The Act itself stipulated maintenance of

registers for principal employers and contains penal provisions for violation by the failure to obtain such entries. Admittedly, the board had not

registered itself as employing contract labour and evidently it is only on account of the fact that it has over a period of time flouted its own

regulations and without resorting to a proper mode of recruitment and regularising the service of persons which were not temporary in nature,

indulged in exploitative tactics by employing workmen directly for posts lower than helpers and keeping them on daily rated basis and paying them

through contractors so called. It was more a devise of convenience for disbursal of salaries and lessening the financial burden than a matter of industrial rectitude and employment norms.

VII. EXTENT OF VALIDITY OF BPs & SETTLEMENT

18. The first BP 36 dated 29.10.2005 has been issued taking note of the fact that for certain jobs like digging of pits, stringing of conductors, etc in

Distribution Circles do not require personnel with basic technical qualification, a new category below the level of helper is to be created. The

revival of a cadre which had been in existence till 1974 is the prerogative of the board and ITI trained persons could not vie in competition for such

posts nor could they be heard to say that they alone should be considered for the posts in the proposed revived cadre. The absorption of contract

labour for filling up these posts in relaxation of rules relating to such posts shall apply in so far as it recognizes the statutory principle of conferring

permanence to persons who have served as such for a period of 480 days. This way, we will make a happy marriage with the policy desired to be

followed through BP 37, when it seeks to recognize the existing reality of several directions through Inspectors of Labour and the decision of the

High Court in the batch of writ petitions decided by the learned single judge (reported in 2004 3 LLN 598 We affirm the direction of the learned

judge in so far as it provides that the conferment of permanent status in the services of the Board shall be in the appropriate position befitting the

nature of employment hitherto performed by the concerned workmen and the board shall issue appropriate orders relating to the concerned

workmen in any existing category of employment or by virtue of the nature of jobs hitherto performed by them, they shall fitted in any other post

with the corresponding scale of wages/scales, benefits, etc that may be prescribed by the board. By the latter BP, the board seeks to absorb 2500

contract labourers as Mazdoor Gr II (Trainee) on consolidated payment of Rs. 2500 per month for a period of 2 years and on completion of the

period successfully, they shall be absorbed as Mazdoor Gr II to which we endorse our affirmation comprehensively.

19. The rules framed by proviso to Article 309 of the Constitution would prevail over executive instructions and if the regulations laid down some

qualifications, they would prevail over the board proceedings which were

rendered inconsistent with their own regulations. (vide the Judgment reported in Union of India (UOI) and Others Vs. Somasundaram Viswanath and Others, . If we notice that impugned settlement u/s 18(1) renders certain classes of persons below the category of helpers to be regularized in their service, the extent of challenge itself is limited in restricting it to instances where there is clear illegality or want of bona fides. The challenge under Article 226 itself may not be out of place and it has been held by several decisions and particularly a Bench decision of this Court reported in 1984 1 LLJ 349 (Britannia Biscuit Company Ltd., Employees Union v. Assistant Commissioner of Labour, Madras) that a writ petition against a settlement under the I.D. Act could be entertained.

20. There is always a presumption that settlement arrived at in conciliation proceeding is just and fair as held in National Engineering Industries Ltd. Vs. State of Rajasthan and Others, . Mr. Sunder Narayan, counsel appearing for some workers seeking for regularization referred to I.T.C. Ltd. Workers Welfare Association and Another Vs. The Management of I.T.C. Ltd. and Others, for the proposition that a settlement made u/s 12(3) could not be interfered with, unless it is grossly unjust. The scope of judicial review will be restricted in such a case only to dispute whether a settlement is not bonafide and the same was arrived at on account of fraud, misrepresentation, concealment of facts or corruption or other inducement which could be a subject matter for further industrial dispute, referable to Section 10. Adverting to this proposition a Division Bench of this Court in decision S & S Power Switchgear Ltd Employees Union represented by its Secretary v. The State of Tamil Nadu in W.A. No. 1544 of 2006 (per S.J. Mukhopadhyaya and V. Dhanapalan JJ dated 07.06.2007) held that while writ petition challenging the settlement is maintainable, it had given liberty to raise a industrial dispute challenging the settlement and for direction to the Labour Court to adjudicate on such an issue. A. Umarani Vs. Registrar, Cooperative Societies and Others, actually dealt with the issue of regularization under labour law of persons who had been appointed in violation of mandatory provisions of statute and in particular, including the minimum educational qualification and other essential qualifications particularly with reference to the provisions of the Tamil Nadu Co-operative Societies Act and in the context of granting permanent

status of workmen under Tamil Nadu Industrial Establishments (Conferment and Permanent Status Workmen) Act 1981. The Supreme Court had

held that appointments made out of consideration against statute, which were illegal, could not operate to attract the provisions of the Tamil Nadu

Industrial Establishments (Conferment and Permanent Status to Workmen) Act 1981. The Supreme Court had held that regularization could not

be give permanence to the employee whose services were purely ad hoc in nature.

21. The oft-quoted decision of the Supreme Court reported in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, , has within

even a brief period of time, met with several instances of exceptions. The judgment itself contains in paragraphs 53 of the Judgment a permission to

the Union of India and State Government and its instrumentalities to take steps to regularize as one time measure the service of irregularly

appointed persons who had worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and

should further ensure that recruitments were undertaken to fill those vacant sanctioned posts that required to be filled up in cases where the

temporary employees or daily wagers were now being employed. The Judgment also sought to clarify that regularization, if any that had already

been made and not sub-judice did not need to be re-opened. This Judgment was set in the context of expounding the law relating to appointment

in public service and would not strictly govern the labour jurisprudence where special rules of State law might exist granting permanent status to

classes of persons depending wholly on the length of service. It was in situation of this type where the Supreme Court had itself held in *UP State*

Electricity Board v. Pooran Chandra Pandey and Ors. reported in AIR 2007 SCW 6904 that sought to distinguish *Uma Devi*, while upholding the

claims of regularization of certain workmen employed by the erstwhile UP Cooperative Electricity Supply Society that had been taken over by the

UP State Electricity Board, employed before a particular date and who were discriminated against claims of similarly placed persons who were in

employment of the state electricity board before the merger of the society with the board.

22. The decision of the Supreme Court which was an immediate sequel to *Justice Khalid Commission* ought to be understood as applicable only to

cases of contract labours as helpers, whose minimum qualifications had been set forth in the Regulations but not generally to persons who had

directly employed by the Electricity board itself on temporary basis but who continued in employment for more than 480 days, and who belonged

to the class of persons below the rank of helpers for whom alone the Regulations prescribed a minimum educational qualification of National Trade

Certificate (NTC)/National Apprenticeship Certificate (NAC) courses. This situation has been substantially considered in the decision of the

learned single judge in *Superintending Engineer, Vellore Electricity Board Distribution Circle, Vellore v. Inspector of Labour* reported in 2004 3

LLN 598 . This decision itself is the subject of challenge before us but the board has, by entering in to the settlement which is in challenge, has

literally made the appeals infructuous by giving in to the claims of the workmen and endorsing the correctness of the judgment. The actual status of

several of the workmen had been dealt with in the judgment of the learned Judge in paragraphs 33 and 34 that adverted to the factual findings

rendered by the Labour Inspector that all those workmen so called as contract labourers were actually appointed directly by the board and

therefore, the applicability of the Tamil Nadu Industrial Establishments (Conferment and Permanent Status of Workmen) Act were clearly

attracted. The Supreme Court has also held that creation of new posts, even if such exercise reduces chances of promotion to the existing cadre,

could not be objected *Bakhshish Singh Vs. Union of India (UOI) and Others*, . Instances when additional cadres have been created, when Courts

have expressed themselves in favour of such exercises have been in, *Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others*, ;

Dharampal v. FCI 2000 (IV LLJ) Supplement 355; *APSRTC Employees Union v. APSRTC* 1995 2 SLT 761.

23. If this was only a case of adjudication of whether the status of workmen was as directly employed by the Electricity Board or they were

employed only as contract labourers, we would have directed that the objection should be considered and an adjudication made in the industrial

dispute raised u/s 33(2)(b) of the Industrial Dispute Act. The argument advanced by *Shri. Hariparanthaman* is that the fate of more than 21, 000

workmen was being adjudicated before the Labour Court in I.D. No. 106 of 2003 and that would be the appropriate forum of adjudication. He

urged that the petitioner in W.P. No. 27714 of 2007 and connected writ petitions ought to have been directed only to challenge the agreement

before the Industrial Tribunal and not by means of writ petition. We have already seen that remedy by writ petition itself is not barred and if the

board as an employer has conceded to their status as workmen to whom the provisions of the T.N. Industrial Establishments (Conferment of

Permanent Status Act) could be applicable, there is no warrant for directing the parties to seek adjudication before the Industrial Tribunal. We

cannot hold that the agreement itself is tainted with any fraud or mala fides. As Shri. P.S. Raman, the learned Additional Advocate General

appearing for the Electricity Board says that it is simply a case of the board not allowing itself not to be tied up in knots over a period of time in

having ad hoc policies of recruitment and feels upstaged when a problem of gigantic proportion has arisen where claims to thousands of men and

women were required to be addressed. A public body employing several thousands of persons could not be blind to realities and engage them in

long litigations and if it is found that pragmatism dictated that there ought to be a finality to litigations and when it had already a judicial decision of a

Single Judge directing permanent status to workmen under the Act, the pro-active poser to conclude all litigations by an agreement could not be

challenged either as fraudulent or as illegal. Revival of cadre or increase of cadre strength and specifying lesser qualifications commensurate with

the nature of work through Board Proceedings could not be faulted, so long as the Regulations provided for creation of such cadre.

24. Under the circumstances, we are convinced that the settlement entered in to by the board with workmen and union is valid and enforceable.

We, however, qualify the same that it shall be subordinated only to the extent that the claims of ITI trained workmen that the Regulation demands

for the post of "helpers" are not discarded.

25. We therefore, direct that persons who ought to have been taken in employment against vacancies that were directed to be filled by the

Supreme Court pursuant to Khalid Commission's report shall first be filled up before other vacancies are undertaken to be filled up. The writ

petitions challenging the 18 (1) settlement will stand dismissed, except to the extent mentioned in paras 23 and 24 above. Age relaxation, wherever

necessary to accommodate them shall be given. Similarly, the writ petitions challenging the board proceedings 36 and 37 of the Administrative

Branch dated 29.10.2005 will also stand dismissed. The claims of persons before the Labour Inspectors which have been allowed and who have

come before this Court seeking for issue a mandamus for enforcement will now be considered under the 18 (1) settlement. The writ petitions filed

by the Electricity Board challenging the orders of the Labour Inspectors will now be dismissed as infructuous having regard to the 18 (1)

settlement. The appeals filed by the board against the decision of the learned single will also stand dismissed. The claims of the workmen in W.P.

No. 1033 of 2006 and the connected batch will not stand affected by the decision of this Court and the Labour Court will decide on their claims in

I.D. No. 106 of 2003 in the light of what we have observed, in so far as they are relevant and independently of the same on factual issues whether

they have been directly employed by the Electricity Board or not. The Writ Petitions and Writ Appeals are disposed of accordingly. No costs