

(2010) 09 MAD CK 0109

In the Madras High Court

Case No : Writ Petition (MD) No's. 990, 1676 and 1687 of 2010 and M.P. (MD) No's. 1 and 2 of 2010

The Superintending Engineer, Tamil Nadu Electricity Board
and The Assistant Executive Engineer, Tamil Nadu Electricity
Board Distribution

APPELLANT

Vs

The Inspector of Labour and M. Thirupathi
The
Superintending Engineer and The Assistant Executive
Engineer, Tamil Nadu Electricity Board, Construction and
Improvement Section, Madurai East Division Vs The Inspector
of Labour and R. Mariappan
The Superintending
Engineer, Tamil Nadu Electricity Board and The Executive
Engineer Vs The Inspector of Labour and Others

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1)
Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen)
Act, 1981 — Section 2(4), 3, 3(1)

Citation : (2011) 2 LLJ 122

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Panneer Selvam, for the Appellant; Avanti Pagtel, for V.
Raghavachari, in W.P. (MD) No. 990 of 2010, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard Mr. V. Panneerselvam, learned Counsel appearing for Mr. V. Kasinathan, for the petitioner and M/s. Avanti Patel,

learned Counsel appearing for Mr. V. Raghavachari, for the second respondent in W.P.(MD) No. 990 of 2010. In the other Writ Petitions, the

respondents have not nor served and here no one is before this Court on their behalf.

2. W.P.(MD) Nos. 990/2010 and 1687 to 1689 of 2010 arose out of a common

order passed by the Inspector of Labour, Madurai, dated 04.08.2009. The respondents workmen in these four Writ Petitions were employed by the Tamil Nadu Electricity Board (for short "TNEB") and they were working under the control of Assistant Executive Engineer, Tamil Nadu Electricity Board. The respondents workmen approached the authority with an application u/s 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 (Tamil Nadu Act 46 of 1981) [hereinafter referred to as "the Act"] seeking grant of permanent status in their employment. The authority constituted under the Act, on receipt of the application made by the respondents workmen in various proceedings in Na. Ka. Nos. 1075 to 1078/2008, issued notices to the TNEB.

3. On behalf of the TNEB, it was contended that the workmen were not given any employment directly by the Board. In respect of each section office, though there must be field workers, at present, there are four contract workmen and two are temporary workmen and one is Mazdoor, altogether, there were seven field workers from February, 2008. Even they were not employed regularly and, therefore, the statement made by the workmen to the contra is not valid. The TNEB also contended that in respect of temporary contract workers, on the basis of their qualifications, appointments were granted. They were also paid gratuity, provident fund, holidays and earned leave. With reference to the respondents workmen, from February, 2008, no work was assigned to them and, therefore, if at all any employment is given, it was given only on the basis of K2 chit agreement. Since they have never worked either directly or on continuous basis, the provisions of the Act will not apply.

4. Upon receipt of the objection statements made by the TNEB, the respondents workmen submitted 20 documents, which were marked as

Exs.P.1 to P.20. There was no oral evidence on both sides. Curiously, the Board did not produce any document in support of their contentions.

5. The authority, on the basis of the documents made available before him, came to the conclusion that the provisions of the Tamil Nadu Act 46 of

1981 are applicable to the Board. The respondents/workmen will come within the meaning of Section 2(4) of the Act, and are entitled to maintain

such applications u/s 3(1) of the Act. The authority also found that the workmen

are having Service Certificates and they had worked in the Distribution Circle K.K. Nagar, as per the tabular statement annexed to the order without any break. They were paid wages from and out of petty cash book and they have also worked on the basis of K2 Chit agreement. There was no contractor having licence to engage these workmen and the TNEB has no licence to engage contract workers. In the absence of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, not being followed and in the presence of the documents furnished by the workmen, the authority rendered a finding that they have worked for more than 480 days continuously within a period of 24 Calendar months and are entitled to get declared as permanent workmen in terms of the Act. These orders dated 04.08.2009 are under challenge in these Writ Petitions.

6. In W.P.(MD) No. 1387 of 2010, the Superintending Engineer, Madurai, Electricity Distribution Circle, once again has challenged the another order passed by the authority constituted under the Act, viz., the Inspector of Labour Madurai. In that Writ Petition, there are four workmen, viz., Mr. M. Murugavel, Mr. A. Chandrasekaran, Mr. M. Mayandi and Mr. K. Muthuraman. The facts set out in the earlier batch of cases are also applicable, inasmuch as identical objection statement was filed by the Electricity Board. But, no documents were filed and no oral evidence was let in by the Electricity Board. On behalf of the workmen, in that case, 11 documents were filed and were marked as Exs.P.1 to P.11 and the authority rendered identical finding in respect of those cases by common order dated 04.08.2009. Their cases were also allowed.

7. In W.P.(MD) No. 1676 of 2010, the very same TNEB has challenged the another order dated 04.08.2009 passed by the same authority under identical circumstances. In that case, there are 18 workmen, who had approached the authority and before the authority, on their behalf, two documents were filed and marked as Exs.P.1 and P.2. On the side of the Board, there was no document filed and no oral evidence was adduced. Under these circumstances, the authority considered the case of workmen and held that they are eligible for grant of conferment of permanent status in terms of Section 3 of the Act.

8. In the course of the order, the authority also referred to the judgment of this Court reported in 2004 (3) LLN 598 between the Superintending

Engineer, Vellore Electricity Board Distribution Circle, Vellore v. Inspector of Labour. He had also referred to the subsequent judgment of the

Division Bench of this Court. Hence, it is necessary to refer to the judgment of the Division Bench, presided by P.K. Misra, J (as he then was)

reported in The Superintending Engineer, Nagapattinam Electricity Distribution Circle, Tamil Nadu Electricity Board and The Executive Engineer,

Operation and Maintenance, Tamil Nadu Electricity Board Vs. The Inspector of Labour and D. Athmanathan, In that case, the Division Bench

confirmed the orders passed by various Inspectors of Labour under identical circumstances.

9. In the order of the Division Bench, it was held as follows:

(a) The Tamil Nadu Electricity Board is covered by the provisions of the Tamil Nadu Act 46 of 1981.

(b) The workmen were not engaged by any contractor. The workmen were covered by K2 chit agreement, are also workmen eligible to have the benefit of the Act.

(c) The fact that they are not having any regular appointments and not entitled for terminal benefits will not dis-entitle the workmen from having recourse to the provisions of the Act.

(d) The judgment of the Supreme Court in Secretary of State of Karnataka v. Uma Devi reported in 2006 (2) MLJ 326 and A. Umarani Vs.

Registrar, Cooperative Societies and Others, will have no application and these employments are not through backdoor.

(e) In view of the statutory enactment which was peculiar to the State of Tamil Nadu, reliance placed upon those two judgments are misconceived.

10. With these findings, the Division Bench dismissed all the Writ Appeals filed by the Electricity Board and confirmed the orders passed by the

Inspectors of Labour. Those orders have become final.

11. However, Mr. V. Panneerselvam, learned Counsel appearing for the petitioners submitted that the said judgment of the Division Bench has no

application for two reasons. The first reason is that in that case, there was a settlement u/s 18(1) of the Industrial Disputes Act, 1947. The second

reason is that in some cases, the Board itself had granted regularization and that cannot be cited as precedent. These two contentions raised first

time before this Court cannot be accepted. In fact, the Board had raised similar

contentions even before the Division Bench. Further, in the grounds found in the affidavit, it is stated that ultimately, the Board is the authority to decide the nature of permanency that can be granted to workmen and such temporary casual employees cannot get themselves observed by virtue of the provisions of the Act. These contentions were squarely dealt with by the Division Bench and were rejected.

12. It is unfortunate that the Board must once again raise the very same issues, which are covered by the order of the Division Bench. In any event, in the present case, after notices were issued by the Inspector of Labour, the Board did not lead any evidence or no documents were produced.

Therefore, the Court will have to proceed on the basis of the allegations made by the workmen which were accepted by the authority including the documentary proof produced by them. Further, the very same issues have also been answered in the judgment of the Division Bench in S.E.

Nagapattinam Electricity Distribution Circle's case (cited supra) and it had become final.

13. Under such circumstances, this Court do not find any case made out to interfere with the orders passed by the authority below. The Writ Petitions are misconceived and bereft of legal reasons and hence, they will stand dismissed. Consequently, the connected miscellaneous petitions stand closed. However, there will be no order as to costs.