

(2002) 03 MAD CK 0043

In the Madras High Court

Case No : Writ Petition No. 8220 of 1995 and W.M.P. No. 13160 of 1995

The Superintending Engineer, Tamil Nadu Electricity Board,
Kuzhithurai

APPELLANT

Vs

K. Vargheese, K. Rajamony, S. Sundaresan, K. Arjunan, C.
Sukumaran, C. Appukuttan, The Presiding Officer, Labour
Court, Tirunelveli

RESPONDENT

Date of Decision : 28-03-2002

Acts Referred:

Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen)
Act, 1981 — Section 3

Citation : (2002) 03 MAD CK 0043

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

Bench : Single Bench

Advocate : V. Radhakrishnan, for the Appellant; A. Selvaraj, for the Respondent

Judgement

P.K. Misra, J.—This writ petition has been filed on behalf of Tamil Nadu Electricity Board challenging the award passed by the Labour

Court directing absorption of the present respondents 1 to 6 as helpers under the Board.

2. Respondents 1 to 6 in their claim petition in I.D.No.15 of 1986 alleged that

. . . they had been doing various electrical works in the construction II section of Kuzithurai of the respondent employment for more than four

years from 1980 onwards and they had done a lot of electrical works under the above construction section such as erection and stringing of 11

KV and L.T. lines and erection of transformer structure, service connection, etc. These items of work can be provided only by the respondent

Management as the Electricity System is controlled only by the Tamil Nadu Government and these kinds of work could not be provided by any

other private managements and so the petitioners had been completely working under the control and supervision of the employee engaged by the respondent and the staff and officers of the respondent Management.

3. It was further asserted that they had worked for more than 480 days and as such should have been conferred permanent status u/s 3 of the

Tamil Nadu Industrial Establishment (conferment of permanent status to workmen) Act, 1981. It was further claimed that the Management refused

to engage the respondents 1 to 6 with effect from 23.5.1983 and certificates were issued on 31.5.1983. It was further asserted that though the

respondents approached the junior Engineer Thiru N. Natarajan, Construction Section II, Tamil Nadu Electricity Board, Kuzhithurai and Sub-

Junior Engineer Ashok for giving work to the present respondents, no action was taken. By way of amendment to the claim petition, the

respondents also referred to a decision of the Supreme Court in Re.S.L.P.No.1820 of 1990 and the subsequent report of Justice Khalid

Commission which had been entrusted by the Supreme Court to look into the matter. On the basis of the aforesaid allegations, the respondents

claimed that they should be reinstated in service with full backwages and should be absorbed permanently.

4. In the counter affidavit filed before the Labour Court on behalf of the Board, the allegations made in the claim petition were denied. It was

specifically stated that the present respondents were not employed under the Board.

5. The Labour Court relying upon the certificate issued by N. Natarajan, Junior Engineer, Tamil Nadu Electricity Board, held that the Management

had not examined the Engineer to prove that the claimants had not worked under the said section and since the Management had not adduced any

evidence against the contentions made by the claimants, there was no other way than to accept their contentions. The Labour Court also referred

to the report of Justice Khalid Commission and gave directions to the Management to engage the claimants as helpers without any backwages.

6. A perusal of the award passed by the Labour Court makes it clear that the Labour Court has primarily relied upon the certificate issued by one

N. Natarajan, purporting to be the Junior Engineer of the Board. The Labour Court has observed that the Management had not examined the said

engineer and had not adduced any evidence against the contentions made by the claimants. It has to be borne in mind that the Management had all along taken the stand that the claimants were not employed by the Board and had even stated that N. Natarajan was not a junior engineer working under the Board during the relevant time and had no authority to give any certificate. When the existence of relationship of employer and employee had been denied, the onus was on the shoulder of the claimants to prove that they were engaged by the Board. If the claimants were directly engaged by the Board on daily wage basis and were subsequently terminated without following the procedure contemplated under law, the question was required to be determined keeping in view the provisions contained in The Industrial Disputes Act and also in accordance with the provisions contained in Tamil Nadu Industrial Establishment (conferment of permanent status to workmen) Act. On the other hand if the claimants were engaged as labourers under a contractor, the question to be determined was whether they were entitled to be absorbed on permanent basis in accordance with Justice Khalid Commission Report.

7. It appears that the Labour Court has not applied its mind on the aforesaid basic aspect regarding nature of employment. As already indicated, the Labour Court has primarily depended upon the certificate issued by N. Natarajan, purportedly the Junior Engineer working under the Board.

Even assuming that the aforesaid Natarajan was Junior Engineer working under the Board at the relevant point of time, the certificate issued by him in respect of the claimants did not indicate that the respondents had worked under the Board as employees. The Labour Court itself has referred to the certificate which is extracted hereunder :-

. . . This is to certify that K. Vargheese, son of Thiru Kochappi Nadar, Karaikkadu Veedu, Vaniyoor, Vaniyoor Post, Kanyakumari District is personally known to me for the past four years. He is able to do the electrical works such as erection and stringing of 11 K.V. and L.T. lines and erection of Transformer Structure, etc. His Conduct and Character are very good . . .

Similar certificates had been issued to the other five claimants.

8. Aforesaid portion as extracted by the Labour Court does not indicate about any employment under the Board. It merely states the ability of the

person concerned to do electrical works such as erection and stringing of 11 KV and L.T. lines and erection of Transformer Structure, etc. The

Labour Court proceeded on the assumption that the Certificate related to the services rendered by the claimants for four years under the Board.

This appears to be a clear error of record as the Certificate does not indicate anywhere about the employment of the claimants under the Board

nor even the length of period of such employment. Merely because the claimants were known to the person for the past four years, it does not

mean that they had worked under the Board for four years. This basic misconception and error on record has vitiated the decision of the Labour

Court.

9. The Labour Court has also referred to the Report of Justice Khalid Commission and extracted paragraph 29 of such report. The Labour Court

seems to have missed the point that the claim of the present respondents had not been agitated before Khalid Commission and the Report had only

recommended absorption for the persons whose cases had been considered by the Commission. Persons who had not agitated their claim before

Justice Khalid Commission had subsequently filed various writ petitions in this court and by the judgment dated 7.9.1995, a learned Judge of this

Court negatived their claim for being absorbed on regular basis.

10. The following observations were made by the learned single Judge in the judgment dated 7.9.1995 in W.P.Nos.12869 of 1991 and other

connected matters :-

. . . 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 name was not included in the lists before the Commission can claim any right, by reason of anything contained in

the report of the Commission.

. . . The petitioners therefore do not have any legal right to assert 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 claim

before before the Commission.

. . . 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 periods 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.

. . . Some of the learned counsel appearing for the petitioners submitted that the right 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 reagitate 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 one

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.

11. Keeping in view the aforesaid observation, it is clear that if the claimants are held to be labourers under contract labour system, their plea for

absorption on permanent basis has to be considered only in the light of the recommendations made by Justice Khalid Commission. On the other

hand if it is found that they were in fact directly employed under the Board on daily wages and had been subsequently refused work, their cases

are required to be considered in the light of the provisions contained in the Industrial Disputes Act and Tamil Nadu Industrial Establishment

(conferment of permanent status to workmen) Act. These aspects should have been kept in mind by the Labour Court while deciding the matter.

12. If the Labour Court finds that the claimants / respondents were directly engaged by the Board, the question of reinstatement / regularisation is

to be considered in accordance with the provisions contained in the Industrial Disputes Act and the Tamil Nadu Industrial Establishment

(conferment of permanent status to workmen) Act. On the other hand if it is found that the respondents / claimants were engaged under the

contractor, the question of their absorption is to be determined keeping in view the report of Justice Khalid Commission as well as the

observations made by the High Court in W.P.Nos.12869 of 1991 and other connected matters.

13. For the aforesaid purpose, the Labour Court would give further opportunity to both the parties to adduce further evidence if they so like. The

matter has to be decided within a period of six months from the date of receipt of the order. To facilitate early disposal, the parties are directed to

appear before the Labour Court on 22.4.2002. There shall be no order as to costs,. Consequently, WMP.NO.13160 of 1995 is closed.