

(2015) 10 MAD CK 0078

In the Madras High Court

Case No : R.A. Nos. 89, 103 to 192 of 2015

The Superintending Engineer, Tamil Nadu Generation and
Distribution Corporation Ltd.

APPELLANT

Vs

P. Kothandam and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

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

Citation : (2016) LabIC 741 : (2015) 4 LLJ 736 : (2015) 4 LLN 510

Hon'ble Judges : M. Sathyanarayanan and T.S. Sivagnanam, JJ.

Bench : Division Bench

**Advocate : S.F. Mohammed. Yousuf, for the Appellant; N. Suresh, for the
Respondent**

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.

1. The Superintending Engineer, Tamil Nadu Generation and Distribution Corporation, TNGEDCO, (hereinafter referred to as applicant/Board) is the appellant in all these Review Applications and they are directed against the judgment of the Division Bench of this Court in W.A. Nos. 1340 & 1341 of 2012, dated 10.07.2012 and W.A. Nos. 1342 to 1363 of 2012, dated 11.07.2012. As against the order passed by the Division Bench, the Review Applicant preferred Special Leave Petitions before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) Nos. 24740-24741 of 2012.

2. The Hon'ble Supreme Court while dismissing the Special Leave Petitions by order dated 08.04.2013, observed that the dismissal of the Special Leave Petitions will not preclude the Applicant to apply to the High Court for review concerning the matter where the Applicant alleges that the awards passed by the Inspector/s of Labour, Cuddalore, Villupuram, Madurai, Erode, Nagapattinam,

Theni Division and Salem are forged. It is thereafter TNGEDCO has filed these Review Applications.

3. Since the facts in all these Applications are identical, it would suffice to take note of the facts in Review Application No. 89 of 2015. The first respondent herein and other similarly placed persons filed claim petitions before the Inspector of Labour under Section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 (Act). They contended that they have been working as contract labourers of the Board for more than 480 days continuously over a period of 24 calendar months and are entitled to be made permanent. The authority under the said Act accepted the contention of the respondent and passed orders individually as well as collectively to grant permanency to them.

4. It is not in dispute that the awards were not challenged by the Board at the relevant point of time. Since the awards were not implemented by the Board, some of the respondents filed Writ Petitions before this Court in W.P. Nos. 13458 of 2011 etc., batch for issuance of Writ of Mandamus to direct the Board to implement the order passed by the Inspector of Labour and absorb them as permanent employees. The Writ Petitions were disposed of by common order dated 16.09.2011, directing the Board to comply with the orders passed by the Inspector of Labour, as there was no challenge to the order at the instance of the Board and the order has attained finality. Similar directions were issued in the Writ Petition filed by the other respondents as well and the Board was required to implement the orders passed by the respective Inspector/s of Labour. As the directions were not complied with, Contempt Petition No. 1223 to 1303 of 2011, were filed, which was heard by one of us (M.SATHYANARAYANAN, J) and an order was passed on 02.03.2012, setting out the background facts under which statutory notice of contempt was issued to the officials of the Board and noting that in the counter affidavit filed by the Chief Engineer (Personnel) on 02.03.2012, it is stated that the respondents have obtained orders from the Inspector of Labour, Cuddalore by producing fake and forged documents claiming that they were employed as contract labourers, when they were not actually working in such capacity. A submission was made on behalf of the Board that the Review Petitions have been filed against the direction issued to implement the awards and separate Writ Petitions have also been filed challenging the awards. Therefore, prayer was made on behalf of the Board to adjourn the Contempt Petitions and accordingly, the same were adjourned and are pending.

5. The Board filed W.P. Nos. 7638 of 2012 etc batch., challenging the awards passed by the Inspector of Labour, granting permanency to the respondents. The said Writ Petitions were dismissed by common order dated 27.03.2012 and while doing so, the Court observed that the Writ Petitions are a clear manifestation of abuse of process of Court indulged by subordinate officers of TANGEDCO. It was noted that even after five to seven years, the Board did not prefer Writ Petitions challenging the orders of the Inspector of Labour and the Workmen moved the

Court by filing various Writ Petitions to implement the order and after due notice to the Board, final orders were passed in the Writ Petition to implement the order granting permanency. Further, it was noted that in the said Writ Petition, the TANGEDCO and the Chief Engineer (Personnel) were shown as the respondents including the Inspector of Labour, Cuddalore.

6. The Court referred to an order passed in one of the said Writ Petitions wherein TANGEDCO submitted that for the purpose of granting regularisation of contract labourers, a High Power Committee has been appointed by the Board and the Committee has to decide the claims of each workman and in the absence of any challenge to the order passed by the competent authority under Tamil Nadu Act 46 of 1981, it is not clear as to what are the further details required by the Board. It was further pointed out that Board has not explained the inordinate delay of five to seven years in moving the Court and the Board is guilty of delay and laches and the Writ Petitions are liable to be rejected on this short ground. Further reference was made to the judgment of the Division Bench 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, , wherein extensively a similar questions were considered and rejected. The relevant paragraph of the judgment of the Division Bench has been quoted in para 8 of the order, which reads as follows:--

"8. Even otherwise, a division bench of this court presided by P.K. Misra, J. (as he then was) vide judgment in Superintending Engineer, Nagapattinam Electricity Distribution Circle, TNEB, Nagapattinam and others v. Inspector of Labour, Pedari Koil Street, Thiruvarur and others reported in , 2009 (4) MLJ 472 had extensively dealt with similar questions and rejected the contentions of the then Electricity Board. It is necessary to refer to the following passages found in paragraphs 16,21 to 23 of the said judgment which reads as follows:

"16..... The learned counsel also referred to the several rulings of the Supreme Court and in particular, to the decision of the Supreme Court in 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.

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 reopened. 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 *U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others*, 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..... 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..... 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 proactive 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."

7. Further it was pointed out that the Writ Petitions were filed by the Workmen to implement the order of the Inspector of Labour, the Board did not take a stand that they wanted to challenge the order and the Board agreed to comply with the order within a period of 12 weeks and accordingly, the Writ Petitions were disposed of and the order has become final and therefore, it was held that the Board cannot come forward to challenge an order for which directions were already issued by this Court to comply with the same. In this context, reference was made to the decision of the Hon"ble Supreme Court in Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, , which was followed in Ishwar Dutt Vs. Land Acquisition Collector and Another, , observing that a Writ of Mandamus is required to be obeyed unless a judgment is overruled or a legislation by way of validating statute is brought into force. With the above observations and findings, all the Writ Petitions filed by the Board challenging the orders of Inspectors of Labour, were dismissed by common order dated 27.03.2012.

8. The Board preferred Writ Appeals, which were heard by the First Bench of this Court to which one of us was a party [T.S. SIVAGNANAM, J], in W.A. Nos. 1340 & 1341 of 2012, while dismissing the appeals by judgment dated 10.07.2012, it was pointed out that though the award was passed in favour of the workmen during 2005-07, the appellant Board kept idle and challenged the award in 2012 by filing the Writ Petitions and therefore, the learned Single Judge rightly prefaced by stating that the Writ Petitions are a clear manifestation of abuse of process of Court indulged by a subordinate officer of the appellant. A contention was raised on behalf of the appellant that though the awards were passed during 2005-07, there was settlement with various workers Union during 2007 and the award passed is deemed to have merged with the settlement. This contention was also rejected after perusing the settlement entered in 2007, as there was no specific reference to the award passed in favour of the respondent, while entering into the settlement. The decision in W.A. No. 1302 of 2003, dated 24.10.2008, relied on by the appellant was held to be not applicable, since in those cases, there was a memorandum of settlement, dated 10.08.2007, under Section 18(1) of the Industrial Disputes Act, which was subject matter of challenge and the other category of cases, were filed questioning the validity of B.P. Nos. 36 & 37, dated 29.10.2005, prescribing the modes of appointment of Mazdoor through their absorption and the third category where enforcement of awards or orders of Labour Inspector was sought for and the Division Bench dismissed the Writ Petitions challenging the settlements under Section 18(1) of the I.D. Act and challenge to the Board Proceedings by judgment dated 24.10.2008. The First Bench noted that those Writ Petitions were filed in 2005 and in the case on hand, the Board filed the Writ Petitions after five to seven years of awards and there was no explanation for the inordinate delay. Ultimately, the order passed by the learned Single Judge was confirmed and the Writ Petitions were dismissed by judgment dated 10.07.2007. Following the said

decision, another batch of Writ Appeals in W.A. Nos. 1342 to 1363 of 2012 and W.A. Nos. 1390 of 2012 etc batch, were dismissed by the First Bench by judgment dated 11.07.2012. The Board preferred Special Leave Petitions against the judgment, dated 10.07.2012 in W.As. No. 1340 & 1341 of 2012. The Hon''ble Supreme Court by order dated 08.04.2013, dismissed the Special Leave Petitions. Taking note of the submissions made on behalf of the Board, an observation was made that the dismissal of the Special Leave Petitions will not preclude the Board to apply to this Court for review concerning the matters, where the Board alleged that the awards are forged. This is how these Review Petitions have been filed and after the delay in filing was condoned, they were heard at length.

9. The learned counsel appearing for the Board elaborately referred to the factual details and submitted that since there was several persons claimed to be contract labourers, the higher officials of the Board made a in-depth study and found that the awards of the Inspector of Labour were obtained fraudulently, filing inadmissible and fabricated documents and the workmen did not work 480 days continuously over a period of 24 calender months to claim permanency in service. It is further submitted that the Board having suspected foul play in respect of the awards passed, addressed a letter to the Inspector of Labour, Cuddalore on 19.09.2014 and 17.10.2014 and they received a reply on 23.09.2014 and 31.10.2014, stating that particulars sought for with respect to 21 awards were not issued by his office, which is inclusive of Review Applications filed in cases pertaining to Award Nos. E/5042/2003, E/909/2004, E/3237/2004, dated 09.03.2005; E/8596/2004, dated 04.08.2005; E/2535/2005, E/5529/2005, dated 20.04.2007 and E/1015/2006, E/6532/2006, dated 28.06.2007. Further, it is submitted that a letter was sent by the Inspector of Labour that the files in respect of certain awards are not traceable and in the counter affidavit now filed before the Court, a stand has been taken that the awards were issued by his office only. Further, it is submitted that the Board has filed nine volumes of typed set of papers with respect to the claim petition of the workmen and the documents relied on by them and it is evident that they are fabricated documents. It is further submitted that the contradictory stand taken by the Inspector of Labour, Cuddalore, throws suspicion over the genuine nature of the award.

10. Further, by referring to the signature of one Mr. George Edington, Inspector of Labour, Cuddalore, it is stated that the signature is different from each of the awards, when compared with the admitted signatures. It is further submitted that in this regard criminal complaint has also been lodged and a case has been registered in Crime No. 26 of 2015 on the file of the District Crime Branch, Cuddalore against 960 persons, who are covered under the 22 awards and four Trade Unions. Further, it is submitted that in two of the awards, dated 15.06.2007 and 08.06.2007, number of the claimants shown in the award exceeded the number of actual claimants. Thus, it is the submission that there is a misrepresentation, ambiguity and fabrication of records on the part of the

workmen. Reliance was placed on the decision of the Hon"ble Supreme Court in the case of Ram Chandra Singh Vs. Savitri Devi and Others, , stating that misrepresentation itself amounts to fraud. Reliance has been placed on the decision of the Hon"ble Supreme Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , for the proposition that a judgment or decree obtained by playing fraud on the Court is a nullity and non-est in the eyes of law. Reliance has also been placed on the decision of the Hon"ble Supreme Court in the case of State of Orissa Vs. Fakir Charan Sethi, , for the proposition that the slightest of doubt or even prima facie proof of fraud, the matter must be thoroughly investigated by the Court to arrive at the truth. On the above submission, the learned counsel for the applicant seeks for review of the order passed by the Division Bench.

11. It has to be pointed out that during the course of arguments, the learned counsel appearing for the applicant sought to raise a new plea in deviation of by stating that awards themselves are forged, when the initial stand was that the awards were based on forged document.

12. The learned counsel appearing for the respondent/workmen while seeking to sustain the order passed by the Division Bench submits that the Review Applications are abuse of process of Court and the subordinate officers of the Board knowing fully well about the orders passed by the Inspector/s of Labour, has made false statement alleging that the awards are forged. It is submitted that in none of the Review Applications, Applicant has stated that the awards are forged and in ground No. 10 of the Review Application, it is stated that the second respondent passed the impugned order directing the Board to give permanency in service based on presumptions and assumptions. Therefore, it is his submission that in the absence of a single ground stating that the awards are forged, the Review Applications are liable to be dismissed. It is further submitted that the Review Applications are based on letters written by the Inspector of Labour on 23.09.2014 and 31.10.2014 alleging that 21 awards were not issued by his office and the Review Applications concern only the following awards issued by the Inspector of Labour, Cuddalore:--

"Award Nos. E/5042/2003, E/909/2004, E/3237/2004, dated 09.03.2005;

Award Nos. E/8596/2004, dated 04.08.2005;

Award Nos. E/2535/2005, E/5529/2005, dated 20.04.2007 and

Award Nos. E/1015/2006, E/6532/2006, dated 28.06.2007."

13. It is further submitted that the Inspector of Labour has filed a detailed counter affidavit before this Court stating that in view of the pressure put on him by the Board, he was constrained to say that the awards were not issued by the Inspector of Labour, Cuddalore which would mean that the awards are not available on the file of the Inspector of Labour, Cuddalore, which may not be taken to mean that there was no award proceedings and no award has been

passed. It is further stated in the counter affidavit that he has taken efforts to trace out 21 awards passed during the year 2005-07 and the files are available.

14. We may point out at this juncture, the learned Special Government Pleader produced the original files in this regard and we have also perused the same. Further, it is submitted that the documents, which have been filed by the workmen, would show that the awards were actually issued and were implemented by the Board in respect of the some of the workmen and some of the award Nos. being 909/2004, 3237/2004, 5042/2003, 8596/2003.

15. Thus, the learned counsel appearing for the workmen sought to demonstrate before us that the awards are validly passed and the present plea that the awards themselves are forged was never the stand taken by the Board earlier nor in this Review Applications and it is wholly untenable. Further by referring to certain notings in the file of the Superintending Engineer, it is submitted that the awards were brought to the notice as early as 2008. It is further submitted the allegation that the signature of Mr. George Edington, Inspector of Labour, Cuddalore, was forged is a false plea, since in the enquiry conducted, it was clearly established that Mr. George Edington, had signed in the note sheets and the orders were also passed and signed by him. Therefore, it is submitted that the applicant has come forward with a false case and the applications are liable to be dismissed. Reliance has been placed in the decision of the Hon"ble Supreme Court in the case of Dalip Singh Vs. State of U.P. and Others, , and Oswal Fats and Oils Limited Vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and Others, .

16. The short issue which falls for consideration is as to whether the awards passed by the Inspector of Labour, Cuddalore, are forged. As pointed out earlier, a submission was made by the Board before the Hon"ble Supreme Court that the awards are forged. Though before the Hon"ble Supreme Court, the applicant Board took a stand that awards passed by various Inspectors of Factories were forged, the issue raised before us is confined only to those awards passed by the Inspector of Labour, Cuddalore. While dismissing the Special Leave Petitions, it was observed that the dismissal will not preclude the Board from applying to this Court for review as the Board alleges the awards are forged. In the Review Applications, there is no specific stand stating that the awards are forged, rather the stand was initially taken was that the awards were based on forged documents. However, this could not be established by the Review Applicants before this Court by any material evidence. The Board takes a stand that the awards are forged based on two letters, which have been written by the Inspector of Labour, Cuddalore, stating that the awards were not issued by his office. Therefore, the applicant Board heavily places reliance on those communication to state that the awards are forged.

17. In order to satisfy ourselves as to whether the awards are available in the office of the Inspector of Labour, Cuddalore, we directed the learned Special Government Pleader to direct the concerned officer to be present in Court and

produce all the original files. This direction has been complied with and 20 original files concerning the awards in E/5042/03, dated 09.03.2005; E/3237/04, dated 09.03.2005; E/909/04, dated 09.03.2005; E/8596/04, dated 04.08.2005; E/2535/05, dated 20.04.2007; E/5529/05, dated 20.04.2007; E/1015/06, dated 28.06.2007; E/6532/06, dated 28.06.2007; E/2455/06, 27.06.2006; E/2211/06, dated 28.06.2007; E/3360/06, dated 04.07.2007; E/6152/05, dated 04.07.2006; E/5176/05, dated 15.06.2007; E/6680/05, dated 18.05.2007; E/8448/05, dated 12.04.2007; E/1558/04, dated 08.06.2007; E/8120/02, dated 04.07.2007; E/2110/02, dated 04.07.2007; E/6159/2000, dated 15.06.2007; E/2114/05, dated 06.08.2007; E/3125/07, dated 06.08.2007 were produced before this Court.

18. Thus, it has to be seen as to whether solely based upon the letters of the Inspector of Labour, Cuddalore, whether it can be concluded that the awards are forged. To make things further clear, we directed a counter affidavit to be filed by the Inspector of Labour. Mr. R. Jaishankar, the Inspector of Labour, Cuddalore, has filed a counter affidavit stating that he joined as Inspector of Labour, Cuddalore on 23.12.2013 and received a communication from the Board dated 19.04.2014 for the copy of the awards and the files could not be traced immediately, as the Record Section is not maintained properly and all bundles are mixed up, papers are not arranged year wise and all awards are dumped together. It is further stated that the files are not traceable, as the Officer was transferred from Kancheepuram and the said Mr. Jaishankar was not holding the office of the Inspector of Labour at material point of time. It is further stated that for this reason, he is not in a position to furnish the copies of the award. It is further stated that in view of the pressure put on by the applicant Board, he was constrained to say that the awards are not issued from the office of the Inspector of Labour, Cuddalore, which would mean that the awards are not available on the file of the office of the Inspector of Labour, Cuddalore, which may not be taken to mean that there was no award proceedings and that no award has been passed. It is further stated that after much efforts, he was able to trace out 21 awards passed during 2005, 2006 and 2007.

19. With regard to the allegation of the signature of Mr. George Edington, it is submitted that he retired in 2007 and the other officer Mrs. S. Indhumathi is presently working in Tanjore and the other incumbent Mrs. G. Sasikala is working as Deputy Commissioner of Labour at Salem. It is further submitted that 21 awards in original are available on the file of the Inspector of Labour, Cuddalore. Further, it is stated that the letter relied on by the applicant Board cannot be sufficient material to say the awards are forged as the award proceedings have not been denied by the Applicant Board at any point of time. Further with regard to the other allegation of fabricated documents being produced, it is stated that the workmen will be liable if they relied on fabricated documents, which is to be established by the Board and the Board cannot say that the award is a fake one having admitted the award proceedings. A prayer has been made in the counter affidavit to treat the counter affidavit as a common counter, as identical

allegations have been made in 91 Review Applications.

20. Thus, it is clear that the stand taken by the Board that the awards are fabricated has not been substantiated. We are not inclined to disbelieve the stand taken by the Inspector of Labour, Cuddalore, in his counter affidavit coupled with production of the original awards. Thus, we reject the stand taken by the Board that the awards are fabricated awards.

21. So far as the allegation that the awards have been obtained based on fabricated documents, this was never the case of the Board, when the appeal was filed nor was such a stand taken before the Hon"ble Supreme Court. Thus, on grounds which have not been raised before the Division Bench, question of entertaining a Review Application does not arise. To exercise review jurisdiction, the Review Applicant has to establish that there was an error apparent on the face of the record. The only liberty granted for the applicant to prefer review is based on the allegation they made before the Hon"ble Supreme Court that the awards are fabricated. Therefore only to that extent the appellant would be in a position to canvass the Review Applications and on facts, we have found that the same has not been established by the applicant.

22. For all the above reasons and in the absence of error apparent and upon failure of the applicant to prove or establish and fraud or fabrication, the Review Applications fail and they are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.