

(2012) 03 MAD CK 0124

In the Madras High Court

Case No : Writ Petition No's. 7638 to 7648, 7654 to 7662, 7666 to 7676, 7680 to 7689, 7693 to 7717, 7740 to 7764, 7781 to 7804 and 7831 to 7841 of 2012 and M.P.Nos.1 (126 nos.) and 2 (126 nos.) of 2012

The Superintending Engineer, Tamilnadu Generation and Distribution Corporation Limited, Cuddalore

APPELLANT

Vs

V. Ethiraj and Others and The Inspector of Labour, Cuddalore

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 — Section 3

Citation : (2012) 4 LLJ 612

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S.G. Mohamed Yousuf, for the Appellant;

Judgement

Honourable Mr. Justice K. Chandru

1. These batch of writ petitions is a clear manifestation of an abuse of process of the Court indulged by a subordinate officer of the Tamil Nadu Generation and Distribution Corporation Limited, Cuddalore (for short TANGEDCO). These writ petitions came to be filed challenging the orders passed by the Inspector of Labour, Cuddalore on claims made by the workers (contesting respondents) who were represented by the TNEB Retired Employees Association. The impugned orders were given on various dates from 09.03.2005 to 28.6.2007. The said Association representing for daily rated workers engaged in the operation and maintenance wing of TANGEDCO, claimed that they have been working for over a decade. They have not been made permanent in terms of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 (for short Tamil Nadu Act 46 of 1981). The Inspector of Labour, Cuddalore (R-2) after due notice to the petitioner directed the petitioner to grant permanent status to the workmen represented by the union.

2. Even after 5 to 7 years have elapsed, the petitioner did not prefer writ petitions challenging those orders. On the contrary, the aggrieved workmen moved this court with various writ petitions seeking for a direction to the petitioner to implement the said order. This Court after due notice to the petitioner had passed a final order directing the Board to implement the orders vide its order dated 7.3.2011. A perusal of the order showed that the company, i.e., the TANGEDCO, the Chief Engineer (Personnel) and the present writ petitioner were shown as respondents including the Inspector of Labour, Cuddalore.

3. In one such order, this court had directed as follows:

2. When the matter came up before this Court, Mr. M. Vaidyanathan, learned Standing Counsel for the Tamil Nadu Electricity Board took notice. It was contended by him that for the purpose of grant of 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. But, however, it must be stated that in the present cases, in the absence of any challenge to the order passed by the competent authority under the Tamil Nadu Act 46 of 1981, it is not clear as to what are the further details required by the respondent Board.

3. In any event, it is now brought to the notice of this Court that in identical circumstances, in W.P.Nos.29694 to 29696, 29964 to 29973 of 2010 dated 7.2.2011, this Court directed the respondent Board to comply with the orders passed by the 4th respondent within a time frame. The learned Standing Counsel for the respondent Tamil Nadu Electricity Board says that they require 12 weeks time to comply with the order.

4. In the light of the stand taken by the respondent Tamil Nadu Electricity Board, the present Writ Petitions are disposed of with direction to the respondents Tamil Nadu Electricity Board to comply with the order passed by the 4th respondent Inspector of Labour, Cuddalore under the Tamil Nadu Act 46 of 1981 as referred to in the affidavit filed in support of the writ petitions. However, there will be no order as to costs. The connected Miscellaneous Petitions are closed.

(Emphasis added)

4. Even after the expiry of the period by which the petitioner had agreed to comply with the order, since no compliance was made, the aggrieved workmen filed contempt petitions before this court. It is only when directions were given to the Standing Counsel to take notice and to get instructions in those contempt petitions and after taking several adjournments, these writ petitions came to be filed.

5. Heard the arguments of Mr. S.F. Mohamed Yousuf, learned counsel appearing for the petitioners. This court do not find any case made out to interfere with the impugned orders.

6. First of all, the Board did not explain the inordinate delay of 5 to 7 years in

moving this court with these writ petitions. The petitioner is guilty of delay and laches. These writ petitions are liable to be rejected on this short ground.

7. Even otherwise, a division bench of this court presided by P.K. Misra, J. (as he then was) vide judgment 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*, 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 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.

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 Vs Pooran Chandra Pandey and others* reported in 2007 AIR 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.....This situation has been substantially considered in the decision of the learned single judge in Superintendent Engineer, Vellore Electricity Board Distribution Circle, Vellore -Vs- 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 Vs. FCI 2000 (IV LLJ) Supplement 355; APSRTC Employees Union Vs. 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 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.

8. Apart from this, when the batch of writ petitions for the issuance of writ of mandamus to comply with the statutory orders passed by the Inspector of Labour, Cuddalore came to be made, the Board did not take a stand that they want to challenge the orders. On the other hand, as noted above, the Standing Counsel had agreed on behalf of the petitioner to comply with the orders and he only sought for further extension of 12 weeks time. Therefore, the Board cannot take a different stand and that they are estopped from doing so. Even in the affidavits, there are no averments that such submissions were made by the Standing Counsel without instructions from the Board. Under these circumstances, this court do not want to entertain the writ petitions.

9. Finally, when a writ in the nature of mandamus was issued to the petitioner Board to comply with the order and if it had become final, there is no scope for the petitioner to come forward to challenge an order for which directions were issued to comply. In essence, when writ petitions in the nature of mandamus came to be filed before this court, the Board should have woken up and sought

for time to challenge the order passed by the Inspector of Labour. On the other hand, not only they did not challenge the order passed by the Inspector of Labour, but also allowed the direction issued in the writs to become final. Once the writ in the nature of mandamus was issued by this court and if it became final, even by a parliamentary law, the right accrued to the parties cannot be denied.

10. In this context, it is necessary to refer to a judgment of the Supreme Court in *Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others*, and in paragraphs 9 and 32, it was observed as follows:

9..... Here, the judgment given by the Calcutta High Court, which is relied upon by the petitioners, is not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. But it is a judgment giving effect to the right of the petitioners to annual cash bonus under the Settlement by issuing a writ of mandamus directing the Life Insurance Corporation to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the writ of mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year April 1, 1975 to March 31, 1976 to Class III and Class IV employees.

32.I may, however, observe that even though the real object of the Act may be to set aside the result of the mandamus issued by the Calcutta High Court, yet, the section does not mention this object at all. Probably this was so because the jurisdiction of a High Court and the effectiveness of its orders derived their force from Article 226 of the Constitution itself. These could not be touched by an ordinary act of Parliament. Even if Section 3 of the Act seeks to take away the basis of the judgment of the Calcutta High Court, without mentioning it, by enacting what may appear to be a law, yet, I think that, where the rights of the citizen against the State are concerned, we should adopt an interpretation which upholds those rights. Therefore, according to the interpretation I prefer to adopt the rights which had passed into those embodied in a judgment and became the basis of a mandamus from the High Court could not be taken away in this indirect fashion."

11. The above judgment came to be subsequently followed by the Supreme Court in *Ishwar Dutt Vs. Land Acquisition Collector and Another*, , it was observed as follows:

29.Furthermore, a writ of mandamus is required to be obeyed unless a judgment is overruled or a legislation by way of a validating statute is brought into force.

In the light of the above, there is no case made out. Accordingly, all writ petitions will stand dismissed. No costs. Consequently connected miscellaneous petitions stand closed.