

(2015) 10 MAD CK 0179

In the Madras High Court

Case No : W.P. No. 25206 of 2011 and M.P. No. 1 of 2011

The Tamil Nadu Electricity Board Workers Progressive Union APPELLANT
Vs

Tamil Nadu Generation and Distribution Corporation and RESPONDENT
Others

Date of Decision : 26-10-2015

Acts Referred:

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

Citation : (2015) 10 MAD CK 0179

Hon'ble Judges : C.S. Karnan, J.

Bench : Single Bench

Advocate : K. Selvaraj, for the Appellant; P.R. Dilipkumar, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The petitioner submits that he is the Circle Secretary of the petitioner Union and its Registration No. is 38/CPT. The petitioner Union is established for the protection of the rights of its members who are working in the Tamil Nadu Electricity Board. The petitioner further submits that 162 members of the petitioner Union are working as contract labourers in the Tamil Nadu Electricity Board for several years. Though the members of the petitioner Union and the petitioner made several representations requesting to make them permanent in their service, the respondents have not considered their grievance and genuine claim. Therefore, the members of the petitioner Union through the Union Representation filed petitions before the Labour Inspector, Namakkal and Salem under Section 4 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act, 1981. After an elaborate enquiry, the authority under the Act, was pleased to direct the respondents to give permanent status to the members of the petitioner-Union who are working as contract labourers in the Namakkal / Mettur / Salem Electricity Board Distribution Circle. The petitioner further submits that the respondents by the Board Proceedings in B.P. No. 9, dated 09.01.2008, had constituted a committee for the purpose of considering

the regularization of the services of these contract labourers and the Committee has been directed to decide about the settlement of the said dispute. As per the Board Proceedings, the Committee has to consider the case of contract labourers individually taking note of long services rendered by them as contract labourers and also their experience gained by them. In spite of specific direction in the Board Proceedings, the Committee has not considered the case of the Members of the petitioner Union whose list is annexed in the typed-set, for more than two years.

2. The petitioner further submits that the Hon"ble Division Bench of this Court by a common order dated 24.10.2008 in W.A. No. 1302 of 2003 (batch) was pleased to direct the respondents to consider the case of the contract labourers under the 18(1) Settlement. The petitioner further submits that since the respondents did not consider the case of the members of the petitioner-Union as per the B.P. No. 9, dated 09.01.2008 for more than eight years, the petitioner-Union was constrained to send a detailed representation dated 28.10.2009 to the respondents requesting the respondents to implement the B.P. No. 9, dated 09.01.2008 as per the decision of this Court, dated 24.10.2008 in W.A. No. 1302 of 2003 (batch) and make the members of the petitioner-Union as permanent employees of the Board under the provisions of the Section 18(1) Settlement. Though the respondents have received the representation of the petitioner Union, the respondents have not considered the same and have not passed any orders on the same. The petitioner further submits that the petitioner-Union has filed a writ petition in W.P. No. 5226 of 2010 praying for the issue of a writ of mandamus directing the respondents to forthwith direct the Committee constituted as per the Board Proceedings in B.P. No. 9 dated 09.01.2008 to complete its enquiry for the purpose of regularizing the services of the Members of the petitioner- Union within a stipulated period by considering and passing orders on the representation of the petitioner-Union, dated 28.10.2009. This Court, by order dated 11.08.2010 was pleased to direct the respondents to place the petitioner's representation dated 28.10.2009 before the Committee, to consider the case of the Contract Labourers mentioned in the representation for absorption as per the B.P. No. 9 on merits and in accordance with law within a period of 10 weeks from the date of receipt of a copy of that order.

3. The petitioner further submits that the petitioner has sent the copy of the order to the respondents by RPAD on 02.09.2010 and the respondents have also received the same on 14.09.2010. Though the time granted by this Court had expired on 28.11.2010, the respondents did not obey the orders of this Court and did not pass orders for absorption of the Members of the petitioner-Union. Therefore, the petitioner has filed a contempt petition No. 1734 of 2010. After taking notice in the contempt petition and after getting several adjournments, the respondents produced a copy of the order dated 10.08.2011 before this Court on 11.08.2011 stating that the Committee has decided not to regularize the services of 13 persons who have break in service for more than three months and 79 persons who have not at all worked in the Board. After receiving the

order dated 10.08.2011, this Court was pleased to close the Contempt Petition No. 1734 of 2010 with liberty to the petitioner to challenge the order of the second respondent. The impugned order of the respondents dated 10.08.2011 is totally arbitrary, unreasonable and against the provisions of B.P. No. 9, dated 09.01.2008 and also against the decisions of the Hon"ble Division Bench of this Court dated 24.10.2008 in W.A. No. 1302 of 2003 (batch). It is also against the proceedings of the respondents dated 20.02.2008 and proceedings of the respondents dated 04.03.2008, 21.07.2009 and 12.05.2010. In the proceedings dated 20.02.2008, the respondents have stated that as per the order dated 13.09.2007, the number of contract labourers to be absorbed shall not exceed 21,600 and the Officers who engage the contract labourers in excess as permitted by the Board will be personally liable for the consequences. Therefore, the Officers, in obedience to the order of the Chairman, dated 13.09.2007, refused to engage the contract labourers in excess of the numbers permitted by the Board.

4. The petitioner-Union further submits that however, in the order dated 20.02.2008, the respondents pursuant to the interim order of this Court directed the Officers to engage the contract labourers who are covered by the orders of the Inspector of Labour but not covered by the 12(3) settlement and it has been further ordered by the respondents that several contract labourers who are not covered by the 12(3) settlement dated 10.08.2007 and who have been engaged as contract labourers on "Need basis" for number of years may also be continued to be engaged as contract labourers on "Need basis" on daily wages of Rs. 70/-. Though the respondents have passed this order dated 20.02.2008, directing their subordinates to engage the contract labourers including the members of the petitioner-Union and who are not covered by the 12(3) settlement on "Need basis", the subordinate officers of the respondents, in view of the earlier order dated 13.09.2007 of the Chairman, refused to engage the said 13 Nos. and 64 Nos. Members of the petitioner-Union whose names have been listed for reasons best known to them from 13.09.2007. However the said persons have continuously worked for the period from 1997 to 13.09.2007, that is, nearly 10 years.

5. The petitioner further submits that though it is stated in the impugned order dated 10.08.2011 that 23 contract labourers covered under the representation have already been absorbed as Mazdoors, Assessor Grade- II and Helper-cum-Meter Readers, the respondents have not absorbed the 2 members of the petitioner Union, viz., K.Anabalagan (Serial No. 55 in the list given by the Superintending Engineer, Nammakal Electricity Distribution circle and M.Periasamy (Serial No. 111). Though it is stated in the impugned order dated 10.08.2011, that 79 persons have not at all worked in the Board and no records are available for their engagement as contract labourers by the Circle Officer and in view of the decision of the Committee, their case cannot be considered for absorption, 15 persons out of 79 persons have already been absorbed by the respondents during the year 2008 itself. Therefore, it is wrong to state that 79

persons of the petitioner-Union have not at all worked in the Board and they could not be considered for absorption. The petitioner further submits that by order dated 04.03.2008 the respondents directed all the Superintending Engineers to follow the order dated 20.02.2008 and to engage the contract labourers, who have got orders from the Inspector of Labour on daily wage basis. In spite of the order of the respondent dated 20.02.2008 and 04.03.2008, the Superintending Engineers have refused to engage the contract labourers including the members of the petitioner-Union. Therefore, several representations have been made by the Union and individuals to the respondents requesting the respondents to engage them till the final decision is taken by the Board as per B.P. No. 9. Based on the representation, the respondents have passed an order dated 21.07.2009 directing all the Superintending Engineers to follow the earlier order dated 20.02.2008 and 04.03.2008 to engage the contract labourers who are not covered by the 12(3) settlement and further ordered that if any lapses in this regard is brought to the notice, it would be viewed seriously.

6. The petitioner further submits that in spite of the orders of the respondents dated 20.02.2008, 04.03.2008 and 21.07.2009, the Superintending Engineers did not employ the contract labourers who are not covered under the 12(3) settlement. Therefore, the respondents by order dated 12.05.2010 directed all the Superintending engineers to furnish the details of left out contract labourers who are not covered under the 12(3) Settlement and the details of the contract labourers who have not been engaged and obtained the order of the Inspector of Labour for the purpose of regularization of their services as per B.P. No. 9, dated 09.01.2008. It is clearly mentioned in the Annexure-II that the details of the contract labourers who have not been engaged and who have obtained orders of the Inspector of Labour should also be given for absorption. These facts would clearly establish that the subordinates of the respondents have willfully and wantonly failed to follow the order of the respondents and thereby they did not engage the above said members of the petitioner-Union. The petitioner further submits that in the B.P. No. 9, dated 09.01.2008, one of the terms of reference to the Committee constituted is to examine the claims of the contract labourers not covered by the 12(3) Settlement dated 10.08.2007 and to examine the claims of the contract labourers who have obtained the orders of the Inspector of Labour but not paid ex-gratia and not covered by the Settlement. Admittedly, the members of the petitioner-Union have approached the Inspector of Labour and obtained orders from the Inspector of Labour for absorption. Therefore, all the members of the petitioner-Union including the 13 persons, 64 persons and k.Anbalagan and M.Periyasamy are also entitled for absorption since they have also obtained orders from the Inspector of Labour for their absorption. There is no condition stipulated in the B.P. No. 9, dated 09.01.2008 that the contract labourers should have been continuously engaged for their absorption. Therefore, the order of the respondent dated 10.08.2011 is against the earlier proceedings of the respondents. The Members of the petitioner-Union, viz., 13 + 64 + 2 = 79 members have put in more than 10 years of continuous service as

contract labourers. The details of their employment are still available with the respondents and their officers. In fact, they have established the same in the case before the Inspector of Labour and obtained orders from the Inspector of Labour. Therefore, the respondents are bound to implement the order of the Inspector of Labour and B.P. No. 9, dated 09.01.2008.

7. The petitioner further submits that the Superintending Engineer in each Circle engage contractors for carrying out the works and the contractors in turn engage the labourer for carrying out the work. Therefore, the details about the contract labourers and the service particulars of the contract labourers are available only with the contractors who have been engaged by the Superintending Engineers. The Board has no records in respect of the service particulars of the contract labourers who have been engaged by the contractors. Therefore, the respondents while absorbing the service of contract labourers have given a printed undertaking to the contract labourers and directed them to sign and hand over the undertaking for absorption. In the printed undertaking it has been specifically mentioned that the contract labourers have obtained salaries from the contractors and the details of the services rendered by the contract labourers are not available with the Board and not maintained by the Board. Therefore, it is an established fact and admitted fact by the respondents that they do not have the service particulars of the contract labourers, viz., the salary, attendance and other details of the contract labourers. Therefore, it is totally wrong on the part of the respondents to state in the impugned order that since they do not have the service particulars of the Members of the petitioner-Union, they could not be absorbed in service. The petitioner further submits that in the list provided along with the impugned order, it has been mentioned that K.Anbalagan in Serial No. 55 has been given the work of 2nd Grade Assessor at Chennai, wherein the said K.Anbalagan who is the member of the petitioner-Union has not been given any work and his services has not been regularized till date. The petitioner further submits that in the impugned list, it is stated that M.Periasamy in Serial No. 111, has been given the work of second Grade Assessor at Tirupur, whereas the said M.Periasamy has also not been given any work till date and his services has also not been regularized till date. Therefore, the services of the above said two persons who are eligible for absorption should also be regularized and absorbed in the Board service. Hence, the petitioner entreats the Court to allow the above writ petition.

8. The respondents have filed a counter statement and resisted the above writ petition. The respondents submit that the contention of the petitioner that 162 members of the petitioner's Union are working as contract labourers in the Tamil Nadu Electricity Board for several years and though the members of the petitioner's Union and the petitioner made several representation requesting to make them permanent in their services, the respondents have not considered their grievances and genuine claim, are strictly denied. The respondents further submit that the contention of the petitioner that the respondents by Board's proceeding in B.P. No. 9, dated 09.01.2008 had constituted a committee for the

purpose of considering the regularization of the services of these contract labourers and the committee has been directed to decide about the settlement of the said dispute are not true. It is pertinent to state here that, as the contract labourers not covered by the 12(3) settlement were frequently representing, stating that there is omission, the Board after careful consideration has decided to examine the cases of such contract labourers who are left out, but were continuously working till the date of settlement dated 10.08.2007 signed by the representatives of the Board and the Union for payment of ex-gratia. Further, based on the several representations, orders vide memo dated 20.02.2008 were issued to engage the left out contract labourers who have worked continuously prior to 05.01.1998 to the date of settlement (i.e. 10.08.2007). In continuation the contract labourers who have obtained awards prior to the date of settlement, if continuously working were also instructed to be engaged vide orders dated 04.03.2008.

9. The respondents further submits that the contention of the petitioner that this Court by a common order dated 24.10.2008 in W.A. No. 1302 of 2003 (batch) was pleased to direct the respondents to consider the case of the contract labourers under the 18(1) settlement is denied as false and the petitioner is liable to prove the same and it is pertinent to state here that the Board has absorbed those contract labourers, who have qualified the conditions stipulated under B.P. No. 9, dated 09.01.2008. The respondents further submits that the orders of this Court made in W.A. No. 1302 of 2003 (batch) has been implemented by those C.L's who have represented for absorption as per the said order. The petitioner Union is put to strict proof for providing that he is one of the claimant in the batch case. The respondents further submit that the contention of the petitioner Union that this Court in W.P. No. 5226 of 2010, by order dated 11.08.2010 has directed that the committee constituted as per the Board proceeding in B.P. No. 9, dated 09.01.2008 shall complete its enquiry for the purpose of regularizing the services of the members of the petitioner Union within a stipulated period by considering and passing orders on the representation of the petitioner Union dated 28.10.2009 is incorrect. On verification and analyzing the workers list received from the three circles, viz., Salem, Namakkal and Mettur, it was found that 79 persons have not at all worked and no records are available for their engagement and hence, the Committee has decided not to consider their cases for absorption. In the mean time the petitioner has also filed a contempt petition No. 1734 of 2010 and this Court, on filing of the said report has closed the contempt petition by considering the fact that the eligible hands had been absorbed apart from the above 79 individuals. Hence, the respondents entreat the Court to dismiss the above writ petition.

10. The highly competent counsel Mr.K.Selvaraj appearing for the petitioner-Union / Workforce submits that 162 members are working as contract labourers under the respondent-Board. On behalf of the workers, the Union made several representations to the respondents to make them permanent in their services

since they have completed the qualifying period for being made permanent in the service. The respondent-Board have not considered the request of the Union Members and hence, the Members of the petitioner Union have filed petitions before the Labour Inspector, Namakkal and Salem under Section 4 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act, 1981. The Labour Officer had conducted a comprehensive enquiry in the presence of both parties and also perused the relevant records which have been maintained by the respondent- Board pertaining to the workforce relating to the service particulars and salary particulars etc. and have come to the conclusion that the Union members are eligible to obtain conferment of permanent status.

11. The highly competent counsel appearing for the petitioner submits that the Board has constituted a Committee for the purpose of regularization of the workers, but the committee had not executed the same. The Hon"ble Division Bench of this Court had directed the respondents to consider the case of the contract labourers as per 18(1) Settlement. The respondents Board Proceedings in B.P. No. 9, dated 09.01.2008 had not been implemented so far even after receiving representation from the Union. Subsequently, the Union has filed W.P. No. 5226 of 2010 before this Court. This Court had directed the respondents to consider the contract labourers representation on merits, but the same was not considered within the specified period. Hence, the contempt proceedings had been initiated. Thereafter, the respondents had disclosed that the Committee has decided not to regularize the services of 13 members who have a break in service for more than three months and have stated that 79 persons have not at all worked with the Board. This statement given by the Committee has not been supported by substantial document which has been maintained by the respondents-Board and as such, the Committee has given an arbitrary statement. However, the order of the Inspector of Labour is sustainable under law and suitable for execution. All the members of the Union have been continuously working with the respondent Board from 1997 to 2007, that is around 10 years without any fictitious break. Further, 15 employees out of 79 workers have already been absorbed by the respondent-Board in the year 2008 itself. As such, the respondent's Statement that 79 employees have not at all worked with the respondent-board could only be considered as fictitious opinion and not based on any authenticated records.

12. The highly competent counsel appearing for the petitioner further submits that the members of the petitioner Union have not been absorbed against the provisions of B.P. No. 9, dated 09.01.2008. They are eligible to obtain permanency in their employment as per the proceedings of the Labour Inspector, but the concerned Superintending Engineer have refused to engage the members of the petitioner Union. The respondents ought to have complied with the order of the Labour Inspector, who is the competent authority attached to the Labour Department of the State Government, which is existing and in force. The respondents wantonly and deliberately are evading and avoiding to make the services of the concerned workers permanent and as such, the respondents are

violating the principles of natural justice and fundamental right of the workforce. Hence, the highly competent counsel entreats the Court to allow the above writ petition.

13. The highly competent counsel Mr.P.R. Dilipkumar appearing for the respondents submits that the members of the Union, i.e., 162 members have not worked with the Board for several years. These contract labourers were not covered by the 12(3) settlement, but were frequently representing that there is omission and the Board after careful consideration has decided to examine the cases of such contract labourers who were left out for payment of ex-gratia but were continuously working till the date of settlement dated 10.08.2007 signed by the representatives of the Board and the Union. The highly competent counsel further submits that as per this Court order passed in W.P. No. 5226 of 2010, the respondents after analyzing the workers list received from three circles, viz., Salem, Namakkal and Mettur, and on verification found that 79 persons have not at all worked and no records are available for their engagement and hence, the Committee has decided not to consider their case for absorption. This conclusion had been arrived on the basis of the report from the three Superintending Engineers" of the three circles respectively. All the three Superintending Engineers are authorized persons and therefore, this report is a valid one. The petitioner Union have not produced any authenticated records to prove that the Members of the Union worked with the Board continuously for a period of 240 days. Further, the members of the Union have not received any ex-gratia payment from the Board. Therefore, they are not eligible to be absorbed by the Board in a permanent status. Besides, the petitioners also have not established their case in claiming remedy from the Board. Hence, the highly competent counsel entreats the Court to dismiss the above writ petition.

14. Per contra, the highly competent counsel Mr.K.Selvaraj appearing for the petitioner submits that the members of the Union have filed separate petitions before the Labour Officer, Namakkal, wherein, the respondents have also filed a detailed counter statement and after considering the averments of both parties, the Labour Inspector had framed three issues and decided the case on merits and ordered that the members of the petitioner Union are eligible to obtain permanent status. The Labour Inspector has scrutinized the service records of the employees and conducted enquiry and observed that the entire workforce have completed 480 days of service with the Board out of 24 months, which is the qualifying period for conferment of permanent status in their services. During the enquiry, the employees have furnished their date of birth, educational qualification, date of joining the service and the records. Therefore, the impugned order passed by the Labour Court is suitable for execution as per law. The highly competent counsel further submits that out of the said entire work force, three employees are not pressing the above writ petition since the fifth respondent viz., the Superintending Engineer attached to the Mettur Electricity Distribution Circle has filed the writ petition in W.P. No. 60916 of 2013 and challenged the impugned order of the Labour Inspector pertaining to the three

employees. To that effect, the petitioner Union has filed an affidavit.

15. From the above discussions, this Court is of the view that:-

(i) The Labour Inspector who is the competent authority, attached to the Labour Department of the State have conducted a comprehensive enquiry after recording petitioner's averment and the respondents statements and also framed three issues, besides verifying the status appendix of the employees and passed the order wherein it has been stated that that all the employees are eligible under Section 3(1) of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act, 1981 since they have completed 480 days of services within 24 months which is the qualifying period for getting permanent status in service.

(ii) The details regarding employees educational qualification, date of birth, place of employment, date of joining etc., has been given in the status appendix. The said record has been maintained by the respondents. Therefore, the respondents / Management cannot deny that the concerned servicemen are not their employees.

(iii) It is pertinent to mention that the employees should not be stationed or stagnated in one position for very extended periods as this could cause mental agony to the workers as well as their family members who are dependant on their regular earnings for existence. If a worker is not regularized within a stipulated period, it would result in violation of natural justice and untold misery would be caused to the concerned employees.

(iv) The writ petitioner / Union members are entitled to obtain permanent status except three petitioners viz., Mr.M.Govindaraj, Mr.A.Dhanasekharan and Mr.V.Vadivel since they are not pressing the above writ petition. Further, the impugned order passed by the Labour Inspector is suitable for execution since there is no impediment, shortcomings, lapse, irregularity or illegality.

16. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed-set of papers and the views of this Court as mentioned above as (i) to (iv), this Court allows the above writ petition. Consequently, the letter of the second respondent in Letter No. 089611/G44/G441/2010, dated 10.08.2011 is quashed. This Court directs the respondents to regularize the service of the entire workforce of the petitioner Union except three employees as narrated in this Court's view, within a period of eight weeks from the date of receipt of a copy of this order. There is no order as to costs. Consequently, connected miscellaneous petition is closed.