

(1999) 08 MAD CK 0094

In the Madras High Court

Case No : Writ Petition No. 14169 of 1999 and W.M.P. No's. 20442 and 20443 of 1990

Thiruvalluvar Pokkuvarathu Kazhaka Anna Sumai Thookuvar
Pothu Nala Sangam

APPELLANT

Vs

State Express Transport Corporation and Another

RESPONDENT

Date of Decision : 27-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 2, 25F, 9A

Citation : (2000) 1 LLJ 1507 : (2000) WritLR 190

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : K. Chandru, for P.M. Subramaniam, for the Appellant;

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—The Petitioner-Sangam, claiming to be a registered Society had prayed for the issue of writ of certiorarified Mandamus to call for the records connected with proceedings No. 38173/E1/A/V/Poka/99 dated May 21, 1999 passed by the first respondent and quash the relevant rules in so far as it transfers the duty of weighing from Porter Workers to the conducts and further direct the respondent Corporation to regularise the services of all their workmen from the date of completion of 480 days of service as per Section 3 of the Tamil Nadu (Conferment of Permanent Status) Act, 1981.

2. Heard Mr. K. Chandru, Senior counsel appearing for Mr. P.M. Subramaniam for the Writ Petitioner Sangam. According to the petitioner-Sangam, the first respondent-Corporation was previously known as the Thiruvalluvar Transport Corporation. In all the respondent-Transport Corporation namely at Trichi, Madurai, Tirunelveli, Coimbatore and Bangalore Bus Stands there were about 180 porters who were employed by the respondent-Corporation from June 5, 1967, the date of establishment of the said Corporation. The details of persons

have been set out in the annexure of the affidavit.

3. It is also the case of the petitioners that to begin with the first respondent received Rs. 510 as caution deposit from the individual Porters and they were allowed to work as authorised Porters. Each of the authorised Porters was asked to pay licence fee of Rs. 10/-which licence is subject to renewal annually. Each Porter was given a specific authorisation authorising the individual Porter to work freely without any hindrance. All the Porters were given Identity Cards. Each Porter had to wear a Green Over Shirt. Otherwise, they will not be allowed to work as Porters. According to the petitioner a separate staff was appointed as Duty Officer who will allot Porters for each shift. The system of porting the luggage was duly notified to the public. The rate for luggage was notified.

4. It is the further case of the petitioner-Sangam that the passengers have been informed to make a complaint against the Porters in case of any violation of the rules. According to the petitioner-Sangam, they have been making demands to absorb the Porters as permanent employees and also demanding for payment of Dearness Allowance, Gratuity, Bonus and Earned Leave etc. It is the further case of the writ petitioner-Sangam that all the Porters have put in more than 480 days of service in 24 calendar months and they are entitled for permanency u/s 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act, 1981.

5. It is claimed by the petitioner-Sangam that many of the members have put in continuous service from 1967 and therefore they should have been placed on a time scale of pay for the work done by them. It is also pointed out that the nature of work is perennial in nature and any private employment by a Porter or any other system by directly dealing with the passengers would unduly harass the passengers. The petitioners have given the break up particulars of various porters in para 5 of the affidavit at various places or terminals.

6. It is also claimed by the petitioner that the Porters are being paid specific wages and the rate of wages are being fixed by the Corporation. The petitioners claimed that their services should be regularised and they should be absorbed in the services of the respondent-Corporation. While so, the respondent-Corporation has issued rules of tariff for luggage on May 21, 1999 and fixed tariff for rates for each and every item of luggage likely to be taken by the passengers and the same has been with a view to introduce improvement by adopting new standardisation in the existing system of loading and unloading the luggage. The said proceeding was approved by the Board of Directors on March 19, 1999 which has to be effective from August 1, 1999.

7. It is contended by the petitioners that the respondent- Corporation has no power or authority to transform the existing system of loading and unloading in the form of rationalisation or standardisation and that would ultimately render the 180 employees jobless. It is also contended that if the proposed action is allowed it would amount to violation of Section 9A of the Industrial Disputes Act

and it would even contravene Section 25F of the Act. Hence the present writ petition.

8. According to the writ petitioners, the porters whose names find a place in the annexure to the affidavit are employees of the respondent-Corporation and they should be regularised and further the notification issued on May 21, 1999 has to be quashed as it interferes with the conditions of service of the members of the petitioner-Sangam. The learned senior counsel for the writ petitioner also relied upon the decisions of the Apex Court in *Gulab Singh and Others Vs. Delhi Administration and Others*, *Gulshan Kallu and Others Vs. Zila Parishad, Etawah, U.P. and Another*, *National Federation of Railways Porters, Vendors and Bearers Vs. Union of India and others*, as well as *M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad*, .

9. Though tall claims have been made by the petitioners it is seen from the material papers placed by the writ petitioners that the members of the petitioner-Sangam are licenced Porters simpliciter. They have been granted licences by the first respondent-Corporation and which have been renewed from time to time. For the luggage which a Porter handles while loading or unloading a luggage accompanied by a passenger or unaccompanied, the respondent had fixed the rate of fee to be collected. Since the Transport Corporation operates Buses throughout the day, they have also authorised a set of Porters to operate during a particular shift.

10. There is no other control except licensing the Porters and regulating the Porter's fee or rate for the luggage. As seen from the averments, there is no relationship of employer and employee between the members of the writ petitioner-Sangam and the respondent-Corporation. It is too much on the part of the petitioner to claim that they have been employed by the respondent-Corporation and that they should be regularised. If the members of the petitioner-Sangam claim to be the employees of the respondent-Corporation, nothing prevented them from raising an industrial dispute on the basis of the averments set out in the affidavit as well as the materials placed before this Court. It is too much to claim that a Porter is a Workman employed by the Respondent-Corporation. A licensed Porter will not satisfy the definition of Workman as defined in the Industrial Disputes Act.

11. It is seen that there is no relationship of employer and employee between the members of the Petitioner-Sangam and the Respondent-Corporation. It is clear that the members of the petitioner-Sangam are only licenced Porters and they have nothing further and they have been authorised to load or unload luggage for a particular rate to be collected from the passengers. It may be that during such authorisation certain amount of control as a regulatory measure had been exercised by the Respondent- Corporation, that by itself will not confer the status of employee or a contract of employment between the two.

12. The learned senior counsel for the petitioner relied upon the decision of the

Apex Court in N.F. of R.P., V & B v. Union of India and Ors. (supra) wherein a direction has been issued to the Railways to absorb the Porters working on contract basis for several years in the vacancies that may arise on a perennial basis in the stations they were working and they should be placed in a minimum scale of pay. The Apex Court in the writ moved under Article 32 of the Constitution held thus at pp 714-715:

"5. We have carefully examined the above report of the Assistant Labour Commissioner and his findings recorded therein. The facts disclosed in the report and the findings recorded therein stand unrebutted. Though we have heard at length the learned counsel appearing for the respondents in the present writ petitions including the representative of the societies supplying contract labour to Railways, they were not able to point out to us any valid reason why the present writ petitions should not be allowed in terms of the Order dated April 15, 1991 made by this Court in similar Writ Petition No. 277 of 1988, already adverted to by us, particularly when in the matter of absorption of contract labour by a public undertaking on a permanent basis, an order is made by a three-Judge Bench of this Court in R.K. Panda v. Steel Authority of India (1997) III LLJ 1202 (SC) in the following terms:

"All the labourers, who have been initially engaged through contractors but have been continuously working with the respondents for the last 10 years on different jobs assigned to them in spite of the replacement/change of the contractors, shall be absorbed by the respondent as their regular employees subject to being found medically fit and if they are below 50 years of age, which is the age of superannuation to under the Respondent".

6. However, when in the course of the arguments addressed before us in the present writ petitions we questioned the learned counsel for the petitioners whether the petitioners in the writ petitions would be satisfied by regularisation of a few of them only, if the Railway Administration concerned is not able to absorb all of them on regular basis having regard to the insufficiency of parcel handling work in a Railway Station concerned, the learned counsel for the writ petitioners told us in categorical and unequivocal terms that the petitioners are ready and willing for absorption only a few of them as Railway Parcel Porters on a permanent basis at the cost of others losing their employment, whenever the Railway Administration comes to the conclusion that all the Railway Parcel Porters working in the particular Railway Station on contract basis will not have sufficient work for employing them on a permanent basis and the decision of the Railway Administration made in that behalf will not be questioned. The claim of the writ petitioners for absorption as Railway Parcel Porters on a permanent basis by the concerned Railway Administration, being considered as above and regard being given to the fact that the Railway Administration concerned has in most of the Railway Stations of the country employed Railway Parcel Porters on regular and permanent basis, and Railway Stations left out without such Porters are hardly a few, we have thought it most just and appropriate to issue the following

directions to the respondent-Union of India and its Railway Administration Units:

- 1) That the Unit of the Railway Administration having control over the Railway Stations where the petitioners in the present writ petitions are doing the work of Railway Parcel Porters on contract labour should be absorbed permanently as regular Railway Parcel Porters of those Stations, the number to be so appointed being limited to the quantum of work which may become available to them on a perennial basis.
- 2) When the petitioners in the Writ Petitions on any of them are appointed as Railway Parcel Porters on permanent basis, they shall be entitled to get from the dates of their absorption the minimum scale of pay or wages and other service benefits which the regularly appointed Railway Parcel Porters are already getting.
- 3) The Units of Railway Administration may absorb on permanent basis only such of those Railway Parcel Porters (Petitioners) working in the concerned Railway Stations on contract labour who have not completed the superannuation age of 58 years.
- 4) The Units of Railway Administration are not required to absorb on permanent basis such of the Contract Labour Railway Parcel Porters (Petitioners) who are not found medically fit for such employment.
- 5) That the absorption of the petitioners in the writ petitions on a regular and permanent basis by the Railway Administration as Railway Parcel Porters does not disable the Railway Administration from utilising their services for any other manual work of the Railways depending upon its needs.
- 6) In the matter of absorption of Railway Parcel Porters on contract labour as permanent and regular Railway Parcel Porters, the persons who have worked for longer periods as contract labour shall be preferred to those who have put in shorter period of work.
- 7) The report dated August 31, 1993 of the Assistant Labour Commissioner (Central) can be made the basis in deciding period of contract labour work done by them in the Railway Stations. Further, as far as possible, the Railway Stations where the writ petitioners are working should be the places where they could be absorbed on permanent and regular basis and the information available in this regard in the report dated August 31, 1993 of the Assistant Labour Commissioner, could be utilised for the purpose.
- 8) The absorption and regularisation of the petitioners in the writ petitions, who could be appointed as permanent Railway Parcel Porters shall be done according to the terms indicated above and on such other terms to which they may be subjected to according to the rules or circulars of the Railway Board as expeditiously as possible, not being later than six months from today, those who have put in longer periods of work as Railway Parcel Porters on contract labour getting preference in the nature of earlier appointment."

This is not the case here. The facts and the situation are totally different in the present case. It is not as if the petitioners were engaged through a contractor, much less continuously. On the other hand, the petitioners are licenced Porters and they are licenced Porters simpliciter and they cannot claim the relationship of employer and employee nor a contract of employment could even be inferred and no question of violation of Sections 9A, 25F, or 25N of the Industrial Disputes Act arises as there is no relationship of employer and employee or a master and servant.

13. It could be pointed out that the members of the petitioner- Sangam are Porters simpliciter and there is no contract of employment between the petitioner-Sangam and the respondent- Corporation. The members of the petitioner-Sangam are licenced Porters and they cannot claim the status of Workman, but that of a licenced Porter. Being a licenced Porter the individual is licenced to carry luggage of a passenger, or unload the luggage of the passenger either accompanied or unaccompanied and the fee for such handling is paid by the passenger or the owner of the consignment.

14. It is not as if the State Express Transport Corporation Buses carry luggage nor it transport consignments on a regular basis. The luggage brought by the passengers are their personal luggage and depending upon the size it is either placed at the top of the bus or inside the bus and for which the licenced Porters are permitted to go inside the express Bus Stand and for such service rendered to the individual passengers who are innumerable the rate of fee to be collected by them is just regulated by the respondent. Such a fixation of fees to be collected by the licenced Porters from the passengers is notified with a view to avoid unnecessary confrontation between the passengers and the Porters. Further to avoid theft and to avoid mishandling, Porters have been licenced, lest anyone would walk away with the luggage which would be detrimental to the passenger and the respondent-Corporation will be failing to provide a service also.

15. The members of the petitioner-Sangam cannot claim to be a workman nor they could claim an appointment or to have been employed by the respondent-Corporation nor they could claim employment on contract. It may be that the employment of contract does not require any particular form and it may be that certain amount of control might have been exercised over the passengers by the respondent as there might have been number of complaints, by the passengers in respect of mishandling of their luggage or over hanging by Porters or other contingency. But on that score the petitioner-Sangam cannot claim contract of employment. The petitioner-Sangam cannot claim to be the workmen employed by the respondent-Corporation. The members of the petitioner-Sangam are not workmen as there is no employment of Porters by the respondent-Corporation in its service. The members of the petitioner-Sangam do collect fee from the passengers whose luggage they are authorised to handle. The members of the petitioner-Sangam do not satisfy the definition of "Workman" as defined in Section 2(s) of the Industrial Disputes Act.

16. It has to be stated and reiterated at the risk of repetition, the conclusion which this Court arrives at is on the basis of the materials placed and it is also equally well settled whether an employee is a Workman or not cannot be normally adjudicated in writ proceedings under Article 226 of the Constitution and proper remedy is to raise an industrial dispute and have it referred for conclusion u/s 10 of the Industrial Disputes Act. Even such a contingency does not arise as a Porter simpliciter, who is licensed to handle luggage carried by passengers, there is no apparent relationship of employer and employee, nor even a contract of employment.

17. This issue involves several disputes questions of fact which may be proved either by oral evidence or documentary evidence and the ultimate decision may depend upon a consideration of the whole of the evidence. When the basic facts are not substantiated and there being no apparent relationship of employer and employee and there being no contract of employment in respect of the Porters, the entire claim has to fail. This Court on the materials placed is clear in its view that the licenced Porters cannot claim the status of a Workman and they are not entitled to the relief prayed for.

18. By the impugned action, the respondent-Corporation had issued certain directions with respect to the weighment to be conducted by the conductor of the Bus which they are entitled to and it cannot be said that the same is without any authority or jurisdiction. Being Porters simpliciter the members of the Petitioner-Sangam also cannot claim violation of Sections 9A or 25F of the Industrial Disputes Act as they are not workmen as defined in Section 2(s) of the said Act.

19. In the circumstances, this Court holds that there are no merits and the writ petition is dismissed. The members of the petitioner-Sangam are not workers of the Respondent-Corporation and hence the members of the petitioner-Sangam are not entitled for any direction much less for regularisation, nor they could claim conferment of permanent status as provided in the Tamil Nadu Industrial Establishments (Conferment of Permanent Status) Act. The Writ Petition fails and it is dismissed, but without costs.

20. Consequently, Writ Miscellaneous Petitions are also dismissed.