
(1977) 02 MAD CK 0037
In the Madras High Court

Vellore Electricity Corporation Ltd.

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 18-02-1977

Acts Referred:

Industrial Disputes Act, 1947 — Section 18

Citation : (1978) 1 LLJ 229

Hon'ble Judges : Mohan, J

Bench : Single Bench

Judgement

Mohan, J.—The facts relating to these writ petitions are shortly as follows: The third respondent in each case were employed either as assistant or junior assistant in the Vellore Electricity Corporation (hereinafter referred to as the Electricity Corporation). Industrial dispute arose between the employees and the Electricity Corporation. Discussion took place on various dates. A settlement u/s 18(1) of the Industrial Disputes Act was entered into on 26-11-1973. Clause 6 of the settlement which is important for our purposes reads that "the wages, dearness allowance, house rent allowance and other benefits will be extended, as and when the same are revised or sanctioned by the Tamil Nadu Electricity Board from time to time, to the employees".

2. The Electricity Corporation was taken over by the Tamil Nadu Electricity Board (hereinafter referred to as the Electricity Board) under the Tamil Nadu Electricity Supply Undertakings (Acquisition) Act of 1973 (Tamil Nadu Act XXX of 1973 hereinafter referred to as the Act) on and from the 6th of January, 1974. As a result of the same, u/s 6 of the Act a statutory vesting of the Electricity Corporation took place in favour of the Government. u/s 15 of the erstwhile employees of the Electricity Corporation became the employees of the Electricity Board of the same terms and conditions till they were duly altered by the Government or the Board.

On 21-3-1974, the following order was passed by the Electricity Board under Board's proceedings (MS) No. 360:

According to the settlement secured with the union employees of the Board, the D.A. to the workmen of the T.N.E.B. has been revised every year from 1-4-1970 and the D.A revision falls due on 1-4-1974.

The employees of the Board have been making representations for revision of D.A. on account of the appreciable increase in the cost of living. After detailed discussions with the representatives of unions and careful consideration, the T.N.E.B. orders as follows:

(i) In modification of the orders regulating the D.A. to the employees of the Board contained in E.P. Ms No. 1010 dated 28-5-1970, the D.A. to the workmen of the T.N.E.B. will be revised with effect from 1-10-1973 on quarterly basis with reference to All India consumer price index numbers.

(ii) The revised rate of D.A. based on the above procedure will be indicated below:

For the period from 1-10-73 to 31-12-73:

There is an increase of 44 points in the All India Consumer Price Index for the quarter ending during 7/73 on that of the annual average of the A.I.C.P. Index numbers for the year 1972. The revised rates of D.A. based on the above increase of 44 points work out as follows:

Pay limit Existing rate of D.A. Revised rates of D.A. from 1-10-73 to 31-12-73

Rs. P. Rs. p. Below Rs. 90; 108 25 141 25 Rs. 90 and above but below Rs. 150; 121 25 154 25 Rs. 150 & above; but below Rs. 210 145 25 178 25 Rs. 210 & above; but below Rs. 400; 169 25 202 25 Rs. 400 & above; but below Rs. 450; 133 25 216 25 Rs. 450 & above; but below Rs. 500; 187 25 220 25 Rs. 500 & above; but below Rs. 544; with pay will equal Rs. 544: with pay will equal Rs. 687 25 Rs. 720/- Rs. 143 25 Rs. 76/-

for the period from 1-1-1974 to 31-3-1974:

There is a further rise in the average A.I.C.P. Index number for the quarter ending 12/73 by 12 points over that of the quarter ending 9/73.

The revised rates of D.A. on account of this 12 points rise will be as follows:

Pay limit Revised rates of D.A. from 1-1-74 to 31-3-1974:

Below as Rs 90: 150 25 (141 25 -- 00) Rs. 90 & above, but below Rs. 150: 163 25 (154 25 -- 9 00) Rs. 150 & above, but below Rs. 210: 187 25 (178 25 -- 9 00) Rs. 210 & above, but below Rs. 400: 211 25 (202 25 -- 9 00) Rs. 400 & above, but below Rs. 450: 225 25 (216 26 -- 9 00) Rs. 450 & above, but below Rs. 501: 229 25 (220 25 -- 9 00) Rs. 544 & above, but below Rs 750: Amount which together with pay will equal Rs. 729-25 (Rs. 720-25 9-00) Rs. 185-25-- (Rs. 176-25 9.00) Pay includes special pay, personal pay, and charge allowance but excluding compensatory allowances such as dearness allowance, city compensatory allowance, house rent allowance, etc.

(iii) The temporary casual labourer workman who works for full month excluding weekly holidays will be paid in addition to their normal wages, a sum of Rs. 30 with effect from 1-10-1973 and there will be proportionate cut if the number of days of work of the T.C.I. falls short of the minimum number of working days in the month.

(iv) The increase in the variable D.A. ordered in para 2(ii) above and the ad hoc payment ordered in para 2(iii) above that may be paid after 30-11-74 will be adjusted against the new wages structure to the evolved and adopted from 1-12-74

(v) The revision of D.A. due on 1-4-74 shall be worked out on the same quarterly basis with reference to the A.I.C.P. Index points of the proceeding quarter ending 31-3-74.

Thereafter, the erstwhile employees preferred petitions claiming various benefits including the increase of dearness allowance with effect from 1-10-1973. The Electricity Corporation contested the liability to pay stating that on and from 6-1-1974 there was a statutory vesting and as a result of the same, there was a snapping of the relationship between the Corporation and the employees and, therefore, the Corporation was not liable. The Electricity Board contended that the vesting took place only on 6-1-1974 and any liability prior to that date has to be discharged only by erstwhile Corporation and a retrospective liability cannot be imposed upon the Electricity Board. The Labour Court held that both the Corporation and the Board are liable to meet the demands of the employees. Thus, it answered the computation petitions u/s 33C(2) in favour of the employees. The present writ petitions, viz., (Writ Petition Nos. 5155 to 5163 of 1975) are by the Electricity Corporation.

3. It is the contention of Mr. M.R. Narayanaswami, learned Counsel for the Petitioner, that once a statutory vesting had taken place u/s 6 of the Act, there is a snapping of the relationship between the Corporation and the employees on the date the employees became the employees of the Electricity Board as provided for u/s 15. Normally, they would be entitled to retrenchment compensation, but that is denied to those employees u/s 15(3) of the Act. This would clearly show that if the Electricity Board had chosen to pass an order 21-3-1974 thereby conferring certain additional benefits on the employees, all of them would be entitled to the same. Therefore, the Corporation cannot, in any manner, be made liable. To put it shortly, a retrospective liability cannot be foisted upon the Corporation by a subsequent order made by the Board on 21-3-1974.

4. Mr. K.K. Venugopal, learned Counsel for the respondents would urge that the liability would still be that of the Electricity Corporation since formerly the employees were working under the Corporation.

5. The learned Government Pleader appearing for the Electricity Board would, however, contend that the liability of the Board arose only on 6-1-1974, on the

date on which the employees became the employees of the Board and, therefore, any liability relating to monetary benefit prior to that date will have to be met only by the Corporation. In support of this submission, learned Counsel relies upon Bihar State Road Transport Co. v. State of Bihar (1) and South Arcot Electricity Distribution Co. v. Md. Khan (2). Therefore, it is his contention that in so far as the Labour Court has fixed the liability of the Government for the period prior to 6-1-1974, that part of the order is liable to be quashed, and that is why Writ Petition Nos.6439 to 6447 of 1975 have been preferred to quash the order of the Labour Court made in the various claim petitions, since that part of the award affects the Board directly.

6. In order to appreciate the controversy in issue, it is necessary for me to refer to a few sections of the Act. Section 4 speaks of the power of the Government to acquire any undertaking. That lays down that the Government may, by order in writing, declare that any undertaking shall vest in them on the dates specified in such an order. The date of vesting, in the interest case, is 6-1-1974. Section 6 speaks of the effect of vesting. Clause (5) of that section reads as follows:

The Government may, by notification, provide for the transfer to, and vesting in, the Board, in such manner and subject to such conditions as may be specified in the notification, of the property, rights, liabilities and obligations which have vested in the Government under this Act and thereupon, such property, rights, liabilities and obligations shall stand transferred to, and vest in, the Board.

Section 15 makes provisions for existing staff of licensees. Clause (1) of that section reads as under:

Every person on the staff of the licensee immediately before the vesting date shall become, on that date, an employee of the Government and upon the transfer under Sub-section (5) of Section 6 to the Board, of the property, rights, liabilities and obligations of the Government become an officer or a servant of the Board and shall hold his office or service under the Government or the Board, as the case may be, on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if the undertaking had not vested in the Government and continue to do so unless and until his employment under the Government or the Board is terminated or until his remuneration, terms and conditions of service are duly altered by the Government or the Board....

(Proviso omitted as unnecessary)

Clause (3) is to the following effect:

Notwithstanding anything contained in the Industrial Disputes Act, 1947 (Central Act XIV of 1947), or any other law for the time being in force or any contract or agreement, the transfer of any person on the staff of the licensee immediately before the vesting date to the Government or the Board under Sub-section (1) shall not entitle him to any compensation and no such claim shall be entertained

by any Court, Tribunal or other authority,

In the instant case what has happened is that after 6-1-1974, the employees of the erstwhile Corporation became the employees of the Electricity Board. In other words, they have come into the main stream. An order was passed on 21-3-1974 in Board's Proceedings (Miscellaneous) No. 360, which I have extracted above. That contains a revision of dearness allowance, an additional benefit. After the erstwhile employees of the Corporation have become the employees of the Board, is it possible for the Board to make a distinction between those originally employed by the Board and those who have been taken over from the erstwhile Corporation? In my view, it cannot at all be done for the simple reason, there is only one category of employees.

7. The effect of Clause (6) of the agreement made on 26-11-1973 is nothing more except saying that so long as the employees happen to be under the employment of the Electricity Corporation, they would be given the same benefits as are applicable to the employees of the Board as revised from time to time. But, that does not mean a retrospective liability can be foisted upon the Corporation. This is precisely what is contended for by the learned Government Pleader appearing for the Board. I am in total disagreement with this argument. The Labour Court also committed the error on this aspect of the matter. The two decisions relied on by learned Counsel, viz., Bihar State Road Transport Corporation Vs. State of Bihar and Others, , and The Board of Directors of the South Arcot Electricity Distribution Co., Ltd. Vs. N.K. Mohammed Khan etc., , have no application to the facts of this case, since the specific order made on 21-3-1974 treats all the employees as one category, which also is the correct view. In my opinion, once there is a vesting on 6-1-1974, rightly, as contended by Mr. M.R. Narayanaswami, there is a snapping of the relationship between the erstwhile Corporation and its employees and thereafter, the employees will have only to look to the Board. This is also clear if reference is made to Section 15 Clause (3) of the Act, which contains a non obstante clause and that clause disentitles the employees to any compensation.

8. Learned Counsel appearing for the Board is not right in relying upon the first half of Sub-section (1) of Section 15, which reads that every person on the staff of the licensee immediately before the vesting date shall become on that date (emphasis applied an employee of the Government...etc...since this argument ignores the latter part of the said sub-section which says that the employees shall be governed on the same terms and conditions of service until duly altered. The Board's proceedings No. 360(MS) dated 21-3-1974 is one such alteration, the benefit of which can be claimed by the erstwhile employees of the Corporation who have become employees of the Board. Therefore, I quash the order of the Labour Court in so far as it holds that the Corporation is liable for the liabilities arising out of the Board's proceedings No. 360 (Ms) dated 21-3-1974 and I further hold that it is only the Tamil Nadu Electricity Board that is liable. Accordingly, Writ Petition Nos. 5155 to 5163 of 1975 are hereby allowed

and the rule nisi are made absolute, while Writ Petition Nos.6439 to 6447 of 1975 are hereby dismissed. I make no order as to costs in any of these petitions.