

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

WP NOS.26479 AND 31327 OF 2017
& WMP.No.15152 of 2020

WP NO.26479 / 2017

D.Kathirvel,
*State President, Tamil Nadu Electricity Board
Anna Podu Thozhilalar Sangam, [Reg.No.MDS/1916],
No.3/2, V.V.Koil Street, Vellala Teynampet,
Chennai-600 086.

(Cause title Amended vide order dated 21.12.2021 made in
WMP.15152/2020 in WP.26479/2017 and WP.31327/2017)

.. Petitioner

Versus

- 1.The Management of
Chairman,
Tamil Nadu Electricity Board
800, Anna Salai,
Chennai - 600 002.
- 2.The Presiding Officer
Industrial Tribunal, Tamil Nadu,
High Court Buildings,
Chennai - 600 104.
- 3.The President
Anna Thozhir Sanga Peravai
275, Avvai Shanmugam Salai,
Royapettai, Chennai - 600 014.

4.Tr.Sankaralingam

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records and papers from the file of the 2nd respondent Tribunal in I.D.No.36 of 2007 and quash the Award made therein dated 18.08.2017 insofar as the 2nd respondent Tribunal has rejected the claim made by the petitioner Union in I.D.No.36 of 2007.

Fm0083430

For Petitioner : Mr.K.M.Ramesh
For Respondent-1 : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.
For Respondent-4 : Mr.Praveen Sethia
For Respondents 2 & 3 : No Appearance

WP NO.31327 / 2017

K.S.Sankaralingam

.. Petitioner

Versus

1.The Management of Tamil Nadu Electricity Board
Rep. by its Chairman
No.800, Anna Salai,
Chennai - 600 002.

2.The Presiding Officer
Industrial Tribunal Tamil Nadu
High Court Buildings,
Chennai - 600 104.

3.The President
Anna Thozhir Sanga Peravai
275, Avvai Shanmugam Salai,
Royapettai, Chennai - 600 014.

4.D.Kathirvel

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the I.D.No.36 of 2007 from the second respondent Tribunal and quash the award made therein dated 18.08.2017.

For Petitioner : Mr.Praveen Sethia
For Respondent-1 : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.
For Respondent-4 : Mr.K.M.Ramesh
For Respondents 2 & 3 : No Appearance

COMMON ORDER

The above writ petitions are directed against the Award dated 18.08.2017 passed by the Industrial Tribunal, Tamil Nadu, Chennai, in I.D.No.36 of 2007.

2.The writ petitions are filed by two individuals claiming themselves as the President of Tamil Nadu Electricity Board Anna Podhu Tholizhalar Sangam.

3.Instead of delving into the issue as to who is the elected President of the Union and who is entitled to maintain the writ petition, this Court is inclined to discuss the main issue as to whether the Award passed by the Tribunal is sustainable or not.

4.The admitted facts are that the Tamil Nadu Electricity Board at its initial period engaged Contract Labourers for the purpose of executing the projects. At one point of time, the volume of the Casual Labourers, Temporary Workers, Contract Labourers exceeded limit and therefore, the Electricity Board decided to stop the recruitment. Thereafter, G.O.Ms.No.1177 dated 28.11.1980 was issued for the purpose of fixing the pre-requisite qualification for appointment to the lowest post. Accordingly, the first respondent issued proceedings in B.P.MS (FB) No.38 dated 23.05.1986 amending the service regulations by prescribing qualification for the post of Helper. It was decided to fill up 7000 vacancies of Helper by direct recruitment with prescribed qualification. This was challenged by the Contract Labourers and the Unions and also writ petitions were filed for regularisation of the Contract Labourers. On 10.04.1990, the Hon'ble Supreme Court in SLP No.1820 of 1990 appointed Hon'ble Mr.Justice V.Khalid to go into that issue. Justice V.Khalid's commission finding it as human problem rather than deciding on the validity of the prescription of the qualification and non-regularisation, submitted a report on 11.02.1991. In that report, it was observed that 18006 Contract Labourers, as per the list submitted by the Unions participated shall be regularised along with fresh candidates possessing qualification in the ratio of 1:1.

5.Accepting the report, 18006 Labourers as well as 7000 fresh candidates were recruited in a phased manner in the ratio of 1:1. This process was completed during March 1998. The report also observed that once the regularisation / appointment of the members in the list submitted by 3 Unions was completed, liberty was granted to the Board to recruit candidates with prescribed qualification.

6.In the interregnum period, during 1997-1998, there was a demand for Bonus, which was resisted by the Management and the Unions requested at least for ex-gratia payment. Thereafter, the Board decided to pay ex-gratia to those Contract Labourers who were in continuous engagement for five years or more as on 31.03.1997. A Committee was constituted to identify those people

Fm0083432

who have completed five years or more as on 31.03.1997. Accordingly, 8400 Labourers were identified as eligible for receiving ex-gratia payment.

7. It is also noted that there were certain anomalies in regularising the Contract Labourers, for, there was a post of Mazdoor Trainee, which was abolished. Thus, Mazdoors, who does not require any qualification were also not regularised. Thereafter, in the year 2005, the post of Mazdoor Grade - II was revived to accommodate those Mazdoor Grade-II (Trainee) appointed for two years and thereafter, absorbed as Mazdoor. Out of 8500 Contract Labourers, 2500 were appointed as Mazdoor Grade-II during October 2005.

8. In the meanwhile, on 28.06.2005, there was a demand made by the Unions for further absorption of Contract Labourers. Thereafter, negotiations were held between the Management and the Unions and during the conciliation in front of the Commissioner of Labour, a settlement was arrived at. Accordingly, a Settlement under Section 12(3) of the Industrial Disputes Act, 1947, was entered into on 10.08.2007 and the respondent Electricity Board agreed to absorb 21,600 Contract Labourers, which includes those 6,000 Labourers, who were identified by the Committee to receive ex-gratia payment in a phased manner. Accordingly, on 06.09.2007, B.P.(CH) No.44, Admin Branch was issued absorbing the 21,600 Contract Labourers including the 6,000 identified Labourers, who have completed five years of service as on 31.03.1997. It is pertinent to note that the petitioners' Union had also participated in the negotiations, but refused to sign the agreement. However, other Unions have signed the agreement and the Settlement was finalised. Thereafter, on 09.01.2008, a Committee was constituted to examine the claims of Contract Labourers not covered by the Settlement under Section 12(3) of the Act.

9. It is also pertinent to note that the respondent Electricity Board engaged some Contract Labourers on need basis even prior to 05.01.1998 and continuously engaged them. Thereafter, orders were issued by the Board on 20.02.2008 and 04.03.2008 to absorb them. Accordingly, in the year 2012, 4037 Contract Labourers were absorbed as Mazdoor (Trainee).

10. While the matter stood thus, the Contract Labourers working in the Distribution Circle have approached the Commissioner for Workmen Compensation for conferment of permanent status and claimed permanency. The Commissioner for Workmen Compensation has also granted the relief in favour of them. When the prescribed qualification under the Settlement dated 10.08.2007 was insisted by the respondents, writ petitions were filed challenging the 12(3) settlement as well as for

Fm0083433

further regularisation of the Contract Labourers. Ultimately, the issue was decided by a Division Bench of this Court on 24.10.2008 in W.A.Nos.1302 of 2003 etc., batch, wherein the Division Bench has upheld the 12(3) settlement entered between the parties and the Contract Labourers, who obtained orders from the Commissioner of Workmen Compensation for permanency, were directed to work out their remedies in the light of the 12(3) Settlement dated 10.08.2007.

11.The members of the writ petitioners' Union have raised the dispute and the conciliation ended in failure. On the basis of the failure report, a reference was made by the Government of Tamil Nadu in G.O.(D) No.389, Labour and Employment Department, dated 23.05.2007 to the Tribunal.

12.The main contention of the writ petitioners is that the Settlement reached between the other Unions will not bind the petitioners' Union. The learned counsel for the petitioners would contend that the Hon'ble Supreme Court in G.M. ONGC, SHILCHAR VS. ONGC CONTRACTUAL WORKERS UNION [2008 (12) SCC 275] has held that applying Uma Devi's case in all cases mechanically is not correct. The precedential value of a decision depends of facts and circumstances of each and every case. It cannot take away the rights of workers indiscriminately based on sham and nominal contracts. Further, in the judgment of the Hon'ble Supreme Court in STEEL AUTHORITY OF INDIA LTD. AND OTHERS VS. NATIONAL UNION WATER FRONT WORKERS AND OTHERS [2001 (7) SCC 1] it has been held that after introduction of Contract Labour Regulation and Abolition Act (CLRA) no automatic absorption of the Contract Labourers working in the establishment was ordered, but after finding the contract to be sham and nominal error as camouflage, the absorption was ordered.

13.The Hon'ble Supreme Court in MAHARASHTRA STATE ROAD TRANSPORT CORPORATION AND ANOTHER VS. CASTERIBE RAJYA P. KARMACHARI SANGHATANA AND OTHERS [2009 (8) SCC 556] has categorically held that the judgment in Uma Devi's case will not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of MRTU & PULP Act to order permanency of the workers, who have been the victim of unfair labour practice on the part of the employer under item 6 of Schedule IV where the posts on which they have been working exists.

14.Relying on the rationale laid down by the Hon'ble Supreme Court in the above judgments, learned counsel for the petitioners would contend that the engagement of Contract Labourers is sham and nominal and all the members of the petitioners' union were working directly under the principal employer. Therefore, they are entitled to absorption. The

Fm0083434

so-called Settlement dated 10.08.2007 will not bind them as they were refused to sign the agreement. According to the learned counsel, the Tribunal has not applied its mind to the oral and documentary evidence in proper perspective.

15. On the other hand, it is noted that from the contention of the learned counsel for the respondents, 19 witnesses were examined on the side of the workers and Exs.W1 to W99 were marked, particularly Exs.W12, W22, W23, W24 and W31 and exhibits marked on the side of the Management Ex.M9 and M10 inter alia admits the criteria fixed for absorption. The Settlement reached by the Unions and the Management under Section 12(3) of the Act, dated 10.08.2007 is binding on all aspects viz., number of Contract Labourers to be absorbed, their qualification among other things. Once the prescription of the qualification is admitted and that the Settlement dated 10.08.2007 was upheld by the Division Bench, the petitioners are not entitled to seek any relief contrary to the judgment of this Court and the Settlement dated 10.08.2007.

16. This Court has perused the Award passed by the Tribunal. It has to be seen as to whether the Tribunal has exercised its power in proper perspective, applied its mind, adhered to the principles of natural justice and given its finding based on the evidence placed before it, while passing the impugned Award.

17. It is noted that the Tribunal has considered the oral evidence of 19 witnesses presented before it. It is also observed that most of the witnesses have stated that they have not at any point of time received any ex-gratia payment. It is pertinent to note that at the first instance, by virtue of the report submitted by Justice V.Khalid's Commission, 18006 Contract Labourers were absorbed in a phased manner till 1998. During the interregnum period, 8500 Labourers were identified as having put in five years of service as on 31.03.1997 and were paid ex-gratia payment. Later, on 10.08.2007, a Settlement was reached pursuant to the conciliation in front of the Commissioner of Labour under Section 12(3) of the Act. Even though the petitioners' Union states that they have refused to sign the agreement and it was signed by all other Unions and further contend that it is not binding on them, the legal position is that the said agreement reached between the parties and signed by majority Unions under Section 12 (3) of the Act, it is a binding Settlement on all the workmen of the establishment and also the future employees.

18. Clause-I of the terms of settlement prescribes certain qualifications for appointment to the posts of Assessor Grade - II, Helper, Meter Reader and Mazdoor. This settlement

Fm0083435

was signed by the Board and majority of the Unions.

19. The Hon'ble Supreme Court in P.VIRUDHACHALAM AND OTHERS VS. MANAGEMENT OF LOTUS MILLS AND ANOTHER [1998 (1) SCC 650] has categorically distinguished the agreements under Section 18(1), 18(3) and 12(3) of the Industrial Disputes Act, 1947. Para 8 of the said judgment reads as under:

"8. The aforesaid relevant provisions of the Act, therefore, leave no room for doubt that once a written settlement is arrived at during the conciliation proceedings such settlement under Section 12(3) has a binding effect not only on the signatories to the settlement but also on all parties to the industrial dispute which would cover the entire body of workmen, not only existing workmen but also future workmen. Such a settlement during conciliation proceedings has the same legal effect as an award of Labour Court, or Tribunal or National Tribunal or an arbitration award. They all stand on a par. It is easy to visualise that settlement contemplated by Section 12(3) necessarily means a written settlement which would be based on a written agreement where signatories to such settlement sign the agreement. Therefore, settlement under Section 12(3) during conciliation proceedings and all other settlements contemplated by Section 2(p) outside conciliation proceedings must be based on written agreements. Written agreements would become settlements contemplated by Section 2(p) read with Section 12(3) of the Act when arrived at during conciliation proceedings or even outside conciliation proceedings. Thus, written agreements would become settlements after relevant procedural provisions for arriving at such settlements are followed. Thus, all settlements necessarily are based on written agreements between the parties. It is impossible to accept the submission of learned counsel for the appellants that settlements between the parties are different from agreements between the parties. It is trite to observe that all settlements must be based on written agreements and such written agreements get embedded in settlements. But all agreements may not necessarily be settlements till the aforesaid procedure giving them status of such

Fm0083436

settlements gets followed. In other words, under the scheme of the Act, all settlements are necessarily to be treated as binding agreements between the parties but all agreements may not be settlements so as to have binding effect as provided under Section 18(1) or (3) if the necessary procedure for giving them such status is not followed in given cases. On the aforesaid scheme of the Act, therefore, it must be held that the settlement arrived at during conciliation proceedings on 5-5-1980 between Respondent 1-management on the one hand and the four out of five unions of workmen on the other, had a binding effect under Section 18(3) of the Act not only on the members of the signatory unions but also on the remaining workmen who were represented by the fifth union which, though having taken part in conciliation proceedings, refused to sign the settlement. It is axiomatic that if such settlement arrived at during the conciliation proceedings is binding on even future workmen as laid down by Section 18(3)(d), it would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under Section 12(3) of the Act."

20. Even the Labourers who were represented by the petitioners' Union though having taken part in the conciliation proceedings, refused to sign the Settlement, still it will be binding on them. It cannot be denied that it will not be binding on minority Union.

21. The Hon'ble Supreme Court has also laid down the ratio in the above judgments that all agreements may not actually be the settlement till the procedure laid down for the purpose is followed. But all the settlements are necessarily to be treated as binding agreements between the parties, particularly, the agreements reached between the parties under Section 12(3) of the Act and also the agreements reached between the parties, written agreements would become settlement contemplated by Section 2(p) read with Section 12(3) of the Act when arrived at during conciliation proceedings or even outside conciliation proceedings. Thus, written agreements would become settlement after relevant procedural requirements for arriving at such settlements are followed.

Fm0083437

22. In the instant case, it is admitted that a 12(3) settlement was arrived at between the parties before the Commissioner of Labour on 10.08.2007. Therefore, it is binding on all the parties including those appointed in the future also. It is also relevant to note that the above said Settlement dated 10.08.2007 has been upheld by a Division Bench and a direction was issued to the Contract Labourers to work out their remedies in terms of 12(3) Settlement. As found by the Tribunal, except WW17, all other candidates did not receive ex-gratia payment and they would affirm the same in their oral evidence. Admittedly, all these Contract Labourers were not qualified as prescribed under the 12(3) Settlement dated 10.08.2007. Therefore, it goes without saying that the petitioners are not entitled to claim absorption outside the scope of 12(3) Settlement.

23. As observed above, at the risk of repetition, I reiterate that the 12(3) Settlement is binding upon all the workmen including the writ petitioners. Therefore, the claim for absorption shall be within the terms of Settlement dated 10.08.2007.

24. In the instant case, the petitioners failed to prove that they are qualified and eligible to get absorption. The petitioners' Union has not come out with a clear case that as to how many members of their Union had completed five years of service as identified by the Committee constituted by the respondent Board. It is also not specified as to how many number of Contract Labourers engaged on need basis prior to 06.01.1998 and continued in service. Even WW1 would state that he was engaged till 1998 after that he did not work. The Union could give exact details as to the number of workmen who were engaged on need basis prior to 06.01.1998. Further, the Tribunal has gone into the representation made by the Union, wherein at the first instance, vide Ex.W3 dated 29.01.2001, it was mentioned as 10,442 Contract Labourers / Mazdoors. In Ex.W4 dated 16.02.2001, it was mentioned as 10,489 Contract Labourers / Mazdoors. In Ex.W5 dated 09.03.2001 it was mentioned as 10,551 Contract Labourers / Mazdoors, in Ex.W6 dated 05.04.2001, it was mentioned as 10,586 Contract Labourers / Mazdoors, in Ex.W7 dated 12.04.2001 it was mentioned as 10,592 Contract Labourers / Mazdoors. But the petitioners' Union could not specifically state out of this 10,592 Contract Labourers / Mazdoors, how many of them were absorbed as per the Settlement dated 10.08.2007 possessing the prescribed qualification and how many of them were absorbed as Mazdoors and how many of them were not engaged for want of prescribed qualification. Without there being any clear picture, the Union claims absorption of all the workmen.

25. The Tribunal has categorically applied its mind to the above factum and held that the judgments relied on by the petitioners in ONGC's case (cited supra), Steel Authority's case

Fm0083438

(cited supra) and Maharashtra State Road Transport Corporation's case (cited supra) will not apply to the instant case.

26. It is important to note that the absorption is not made in violation of labour laws. In fact, the agreement was reached between the parties under Section 12(3) of the Act and as per the agreement, the absorption / regularisation / appointments are made. It is also important to note that the said 12(3) Settlement has been upheld by a Division Bench of this Court. In that event, it cannot be said that there is unfair labour practice and the Management is acting upon sham and nominal contracts. Since the petitioners' Union has failed to prove that they are eligible to get absorption as per the Settlement and / or otherwise, it is not entitled to the relief sought for. The Award of the Tribunal does not suffer any illegality or discrepancy and thereby, it is confirmed.

27. However, the learned counsel for the petitioners would contend that many of the members of the Union fulfilled the criteria laid down by the respondent Board. Many of them are qualified to hold the posts and they have put in more than five years of service and received ex-gratia payment. They have material documents to prove their eligibility to get absorption even otherwise.

28. Considering the submissions made, liberty is granted to the Members of the petitioners' Union to submit the relevant materials to the first respondent within a period of four weeks from the date of receipt of a copy of this order and a further direction is given to the first respondent to consider and dispose of the same, on merits and in accordance with law, within a period of six weeks from the date of receipt of such representations.

29. With these observations and directions, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous Petition is ***Ordered**.

Sd/-

Assistant Registrar (CS-VII)

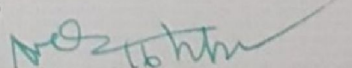
Dated: 10/12/2021

*Corrected as per Order
Dated: 21/12/2021

Sd/-

Assistant Registrar (CS-VII)
Dated: 16/02/2022

//True copy//


Sub Assistant Registrar

Fm0083439

TK

To

1.The Chairman
Management of Tamil Nadu
Electricity Board
800, Anna Salai, Chennai - 600 002.

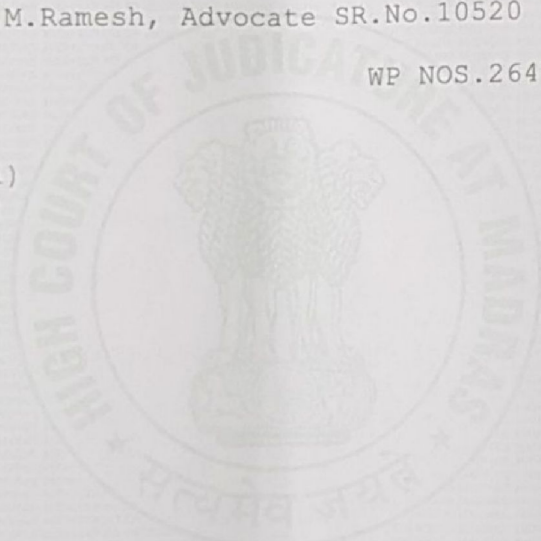
To be substituted to the
Order already despatched
as 16/12/2021

2.The Presiding Officer
Industrial Tribunal,
Tamil Nadu, High Court Buildings,
Chennai - 600 104.

+2ccs to Mr.K.M.Ramesh, Advocate SR.No.10520

WP NOS.26479 AND 31327 OF 2017

RSI(CO)
GMY(13/12/2021)
SB(16/02/2022)



Fm0083440

2

WP 26979/2017

HIGH COURT	MADEAS
S.R. No.	10526
Carbon Copy	22/2/21
Application	16/2/22
Application made ready	16/2/22
Copy made ready	16/2/22
Copy delivered	16/2/22
Sd/- Clerk	