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Court : Chennai

Decided On : Sep-13-1999

Reported in : (2001)IIILLJ584Mad

Judge : E. Padmanabhan, J.

Acts : Industrial Disputes Act; Industrial Establishment Conferment of Permanent Status to Workmen Act; Constitution of India - Article 226

Appeal No. : W.P. No. 6142 and 12690/1999 and W.M.P. Nos. 8872, 18174 and 18175/1999

Appellant : John A. and Seven ors.

Respondent : Indian Rare Earths Ltd. and ors.

Judgement :
ORDER

E. Padmanabhan, J.

1. In W.P.No. 6142 of 1999, A. John and seven others were permitted to join together and file a single writ petition praying for the issue of writ of mandamus directing the second respondent, the Indian Rare Earths Limited to comply with the order passed by the 4th respondent in Letter No. A4/3618/95, dated January 19, 1998 and further direct the 2nd respondent to reinstate the petitioners in service

with all back wages and consequential benefits forthwith.

2. The second respondent in W.P.No. 6142 of 1999 filed W.P.No. 12690 of 1999 praying for the issue of writ of certiorari to call for the records connected with letter No. A4/3618/95 dated January 19, 1996 on the file of the second respondent, the Revenue Divisional Officer, Padmanabhapuram and quash the same.

3. Both the writ petitions were ordered to be consolidated and a writ of mandamus has been prayed for to enforce the proceedings of the Revenue Divisional Officer in letter No. A4/3618/95 dated January 19, 1996 by the eight workers, while to quash the very same proceedings, the employer had filed W.P.No. 12690 of 1999.

4. With the consent of counsel appearing for the petitioners and the respondents both the writ petitions were taken up for final disposal. The maintainability of the writ petitions are not in dispute. The eight workers who are the petitioners in W.P.No. 6142 of 1999 and who are also the respondents 3 to 10 in W.P.No. 12690 of 1999 have submitted representations to the District Collector complaining non-employment by Indian Rare Earths Limited, a Government of India Undertaking hereinafter referred to as the 'employer'. The eight workers will be referred to as the employees. The employees claim that they have been employed by the employer between 1969 and 1975 and they made a demand for employment along with others in the adjoining villages.

5. The District Collector, to avoid confrontation, called for a meeting and advised the parties to furnish particulars with necessary proof regarding their earlier appointments to the Revenue Divisional Officer, Padmanabhapuram. The Revenue Divisional Officer, had in turn, forwarded the representations given by the eight employees. The employer sent a reply disputing the claims of all the employees and also informing that those persons cannot be engaged besides intimating that the fishermen from those villages could be engaged for various contracts through contractors as and when such work arises and that they would receive the minimum wages.

6. Despite such objection, the Revenue Divisional Officer by letter dated July 7, 1995 and July 29, 1995 called upon the employer to attend the Meeting held on

July 14, 1995 and August 18, 1995 as to how three other persons were appointed while these eight employees were not considered. The employer put forward his objections and politely pointed out that neither the Collector nor the Revenue Divisional Officer has got the jurisdiction to go into the claims, and besides pointed out that the eight persons who claim to be the workmen had not put in 240 days in any of the years and also during the total claim period from 1969 to 1973.

7. On considering the details, the legal position and the details submitted by the employer, the Revenue Divisional Officer had passed an order dated January 19, 1996 signed on January 29, 1996 holding that the nine persons are eligible to get employment with the employer only on humanitarian grounds and also proceeded further by adding that the employer had not explained the reasons for not considering the request of the 9 persons. The Revenue Divisional 1 Officer did not accept the statement of the management that 3 persons were given employment based on the fact that they worked even after 1973 and their issue was taken up by the Union and a settlement was entered between the management and the Union,

8. The Revenue Divisional Officer and the first respondent insisted for employment of the 9 persons, who submitted representations and required the employer to take a positive view to create goodwill among the people in the locality. The employer raised objections and further requested the Revenue Divisional Officer to intimate the 9 employees to enlist themselves with the local Employment Exchange so that they could be considered in any future vacancy if they are eligible.

9. According to the employer the 8 persons have no right whatsoever either on the basis that they had worked for 240 days or having been appointed on a casual basis and cannot claim employment with the employer. Despite pointing out the legal and factual position according to the employer, the second respondent issued the said direction by his letter dated A4/3618/95 dated January 19, 1996. To enforce the said letter the 8 employees have filed W.P.No. 6142 of 1999 and to quash the very same letter the employer had filed W.P. 12690 of 1999.

10. Concedingly, neither the District Collector, nor the Revenue Divisional Officer has the authority or Jurisdiction to entertain or decide the dispute raised by the

nine workers which includes the eight writ petitioners. Neither the District Collector nor the Revenue Divisional Officer concerned had been conferred with the authority or jurisdiction to decide the claims of, the 9 employees vis-a-vis the Indian Rare Earths Limited. The Collector and the Revenue Divisional Officer are not competent authorities to adjudicate the claims of the 9 employees as they have not been conferred with the powers under any of the labour legislations, such as Industrial Disputes Act or Industrial Establishment Conferment of Permanent Status to Workmen) Act or Abolition of Contract Labour or any other State or Central enactment. This legal and factual position had been admitted by the Learned Government advocate appearing for the said respondents.

11. Merely because the said two authorities had convened a Peace Committee Meeting to look into the grievance of the locals and they convened such a meeting to consider the representations of the 9 claimants, it is clear that they have no authority or jurisdiction or power to pass the impugned orders compelling the petitioners in W.P.No. 12690 of 1999, the employer to absorb the 8 employees in W.P.No. 6142 of 1999. The entire action is without jurisdiction. The order passed without jurisdiction, without authority of law cannot be enforced by invoking the remedy of writ under Article 226 and that too by issue of writ of mandamus at the instance of the 8 writ petitioners. Hence, W.P. No. 6142/1999 is dismissed.

12. The writ petition in W.P.No. 12690 of 1999 consequently deserved to be allowed and accordingly, the proceedings of the Revenue Divisional Officer in letter No. A4/3618/95 dated January 19, 1996 is quashed.

13. However, this Court has to consider the entire facts and the conduct of either side. Before the Revenue Divisional Officer and the Collector, the Employer had made a concession to afford opportunity of employment to the 9 workmen, but with an amount of reservation, and subject to the procedure prescribed for such employment. The 9 workmen also cannot compel the employer to straightway absorb them or employ them on regular basis as they have not completed 240 days in any one of the years. They were engaged in the clearance at Collachal Port under an independent contract and hence the management had offered that if they register themselves with the Employment Exchange and on any future in any

vacancy they could be considered.

14. It is also admitted by the learned counsel for the employer petitioner in W.P.No. 12096 of 1999, three other persons who were similarly placed as the nine workmen have been absorbed on the intervention of the Labour unions by entering into a settlement. The eight writ petitioners in W.P.No. 6142 of 1999 are not members of any Labour or Trade Unions and none of the Unions probably was willing to take up the cause of the eight employees. The management of Indian Rare Earths Limited had found an excuse to go back from its assurance given before the Revenue Divisional Officer on technicalities on the ground that there is no concluded settlement between the Labour Union and the Management. It is unfortunate that the Management of Indian Rare Earths Limited should conduct itself in such a manner, which conduct deserves to be deprecated. Being a Public Sector it is not expected of it to have taken such decision. After having committed itself before the Revenue Divisional Officer to rehabilitate the nine employees, the Indian Rare Earths Limited has moved this Court under Act. 226 of the Constitution, as it had lost sight of its social obligations to the local population.

15. Merely because the 8 writ petitioners have not associated themselves with a Trade Union there is no justification to deny the same treatment. If the 8 writ petitioners had moved the authorities constituted under the Labour Legislation their position would have been different. In fairness and in the fitness of things, the Management of Indian Rare Earths Limited should have considered the right of the eight writ petitioners in W. P.No. 6142 of 1999 on par with three other workers who had been employed at the behest of Trade Union and afforded them an opportunity of employment.

16. The management of Indian Rare Earths Limited may be technically right in raising the question of jurisdiction, authority and power. But at the same time having accepted before the Revenue Divisional Officer to enlist eight employees, it has no justification to disown the same when it comes to enforcement. This attitude of the Management cannot be appreciated. The management of Indian Rare Earths Limited should have considered the human problem faced by the eight employees who are locals, and they should not have been turned out merely

because they are not members of any Trade Union and no trade union came forward to espouse their cause.

17. Merely because the employees could not substantiate their claim of work of 240 days in a year according to the management of Indian Rare Earthis Limited and merely because the .contractors had not maintained the register, there is no justification to treat the eight writ petitioners in W.P.6142 of 1999 differently.

18. Hence to render substantial justice, the following direction is issued:

'In the circumstances, this Court directs that the 8 employees who are petitioners in W.P.No. 6142 of 1999 and respondents 3 to 10 in W.P.No. 12690 of 1999 do register themselves with the local Employment Exchange, thereafter submit a fresh application to the management of Indian Rare Earths Limited and the said management in commensurate with their age, qualification and physical condition, shall consider their claims on par with the three other contract labourers namely Bright Daniel, Simon and Gopi and orders of appointment shall be issued within a period of one year from the date of this order'.

19. While dismissing the W.P.No. 6142 of 1999 and allowing the W.P.No. 12690 of 1999, there will be a direction in the above terms in both the writ petitions. Consequently, the connected W.M.Ps. are closed. No costs.

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