

Vijayakumar P. Vs. Tamil Nadu Electricity Board and ors.

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SooperKanoon Citation : sooperkanoon.com/838747

Court : Chennai

Decided On : Jan-10-2006

Reported in : (2006)IILLJ621Mad

Judge : P. Jyothimani, J.

Acts : [Constitution of India](#) - Articles 14, 21 and 226

Appeal No. : W.P. No. 12712 of 2002

Appellant : Vijayakumar P.

Respondent : Tamil Nadu Electricity Board and ors.

Advocate for Def. : V. Radhakrishnan, Adv.

Advocate for Pet/Ap. : N. Ravichandran, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

P. Jyothimani, J.

1. This writ petition is filed challenging the order of the second respondents dated September 19, 2001 and to direct the second and third respondents to absorb the petitioner as Helper in the North Chennai Thermal Power Station w.e.f. October

27, 1999 with all attendant monetary benefits under the impugned order, the second respondents has rejected the request of the petitioner to absorb him as Helper on the basis that the Forensic Department has confirmed that the signature made by the petitioner differs in various aspects.

2. The case of the petitioner is that he was working as a Group Worker in Stone Picking job in the Coal Handling Plant (CHP) of the North Chennai Thermal Power Station (NCTPS) of the Tamil Nadu Electricity Board between July 21, 1995 to March 31, 1997. From April 1, 1997 to February 23, 1999, the petitioner worked through a contractor, Senthoo Pandi. He was transferred from the Coal Handling Plant to the Control & Instruction (C & I) Division from February 24, 1999. The petitioner was given individual identity card by the North Chennai Thermal Power Station (NCTPS) called contract labour entry pass. This, according to the petitioner was given pursuant to a Board circular dated April 28, 1999. The petitioner was one among the workers identified by the Board and his name also finds in the seniority list but he was not absorbed despite working in the Coal Handling Plant (CHP) by the Committee set up by the Board on October 28, 1999. It is the case of the petitioner that working in the said Coal Handling Plant (CHP), he was not absorbed and he made several representations. Thereafter, he moved this Court by filing a Writ Petition praying for a direction to absorb him as a Helper as per the Circular dated April 28, 1999, giving him due seniority and weightage, apart from paying arrears of salary. This Court, in the order dated March 20, 2001 as directed the respondents Board to consider the representation of the petitioner within 2 months and pursuant to the same the present impugned order came to be passed after undue delay.

3. The respondents have filed the counter affidavit. It is stated by the respondents that the petitioner was not absorbed as Helper due to the reason that he had been a proxy in the name of one P. Vijayakumar, the contractor under whom he worked. Based on that doubt, he was presented the scrutinising Committee specially constituted for examining the cases. The Scrutinising Committee has examined the records and on review of the records such as Gate Pass, acquittance roll for payment of wages, arrears of wages and the bonus, etc., it was found by the Committee that the signatures proved that there was an impersonation. It is also

the further case of the respondents that since the signatures varied with regard to vital aspects in the style, the matter was referred to the Forensic Department for examination. The department has also found the difference in the signatures. It is also the case of the respondents that after the earlier order of this Court, the vigilance officer has investigated into the matter and the Officer reported in the petitioner's favour. However, the report has not exonerated of the petitioner altogether. That apart the other averments by the petitioner in the writ petition were denied. The petitioner has also filed a reply affidavit to that controverting the averments made in the counter affidavit of the respondents.

4. I have heard the learned Counsel for the petitioner and respondents.

5. Learned Counsel for the petitioner would urge that the petitioner has worked for 480 days as contract labourer under the respondents as admitted by the Superintendent Engineer CHP Division in his letter dated January 25, 2000 and during the period when he has received the salary there was no variation in the signature. It is also contended by the learned Counsel that in the seniority list drawn by the respondents the petitioner was shown in serial number 86. That apart, certificates were produced before the respondents to the effect that the Transfer Certificate produced by him from the school is genuine and the same has been verified by the respondents and at this point of time, it is not open to them to deny the signature, which according to the learned Counsel, is only to deny the benefits due to the petitioner. Learned Counsel for the petitioner contended that even assuming that the department found a variation in the signature, there was no proper enquiry and even before passing the impugned order, no notice was given to petitioner for giving him an opportunity to explain.

6. Learned Counsel relied upon the judgment of Supreme Court in D.K. Yadav v. M.A. Industries Ltd. , in support of the contention that any act involving civil consequences by virtue of termination of service would amount to deprivation of the right to livelihood and the same is not fair. In that case, while dealing with the issue of giving reasonable opportunity to the employee on the basis of the principle of natural justice, the Supreme Court has laid down the law as follows at p. 702 of LLJ:

13. It is thus well-settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood, but also the career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice. In *D.T.C. v. D.T.C. Mazdoor Congress* (supra) the Constitution Bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without inquiry offended Article 14. The order terminating the service of the employees was set aside.

7. It is also the contention of the learned Counsel for the petitioner that when the impugned order which is a single line order merely based on the Forensic Experts opinion, the petitioner was refused to be absorbed as a Helper. The respondents cannot be heard to explain in detail in their counter affidavit. To substantiate the said plea, reliance was placed on the judgment of the Supreme Court *Mohinder Singh Gill v. Chief Election Commissioner, New Delhi* : [1978]2SCR272 .

8. Per contra, the learned Counsel appearing for the respondents would contend that the contract labourers like the petitioner were not treated as employees of the Tamil Nadu Electricity Board and such contract labourers has found in some of the places in Tamil Nadu like North Chennai Mottur and other places. Based on the representations made by those persons to absorb them, the Board, in its proceedings dated February 24, 1999, has decided to absorb them as labourers, and from May 1, 1999 onwards, the contract labourer system was abolished in the respondents Electricity Board. As per the proceedings of the Tamil Nadu Electricity Board dated April 28, 1999, while explaining the movement of absorption of contract labourers in Thermal Station as regular employees, a detailed procedure has been laid down that stipulating all contractors should be absorbed as Helpers based on seniority from among the persons who were already identified on January 5, 1998. Out of that seniority, the seniormost would be absorbed as Helper for the Thermal Station and the juniors absorbed as Helpers in the vacancies available in the nearby distribution circles. A list has been prepared for

the said purpose and the said proceedings also states that there will be no contract labourers in view of the supply of manpower. Learned Counsel would also contend that in respect of the petitioner, when it was found that there was a variation in his signature, the same was verified and referred to the Forensic Department and based on the report of the Forensic Department dated August 28, 2001, it was found that there was impersonation. It is also the case of the petitioner that he in fact participated in the enquiry of the Forensic Department by putting his signature. Therefore, it is not open to him to refuse it as he was aware of the enquiry by the Forensic Department. It is also contended by the learned Counsel that in such circumstances, it is not proper for the petitioner to invoke the right under the [Constitution of India](#) so as to make this Court to conduct a roving enquiry about the entire proceedings conducted by the respondents. To support his contention, the learned Counsel relied upon the judgment of the Supreme Court in Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. : AIR 2005 SC2299 . In that case, while discussing the award of a contract, the Supreme Court held that the award of contract is purely a commercial transaction, whether it is to a private party or a public body or a state and therefore, even when some defect is found in the decision making process, the High Court must exercise its discretionary power under Article 226 with great caution and such exercise should only be in public interest and in making out a legal point, the Supreme Court has laid down the dictum as follows:

In Raunaq International Ltd. v. I.V.R. Construction Ltd. : AIR 1999 SC393 , it was observed that the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations, which would include, inter alia, the price at which the party is willing to work, whether the goods or services offered are of the requisite specifications and whether the person tendering is of the ability to deliver the goods or services as per specifications.

The law relating to award of contract by the State and public sector corporations was reviewed in Air India Ltd. v. Cochin International Airport Ltd. : [2000]1SCR505 , and it was held that the award of a contract, whether by a private party or by a

State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the Court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should interfere.

9. Learned Counsel for the respondents would say that the absorption of the contract labourer as Helpers is also synonymous to that and even assuming that there are some defects in the procedure, Article 226 is not the remedy for the petitioner.

10. Learned Counsel for the respondents also relied upon the judgment of a Division Bench of this Court rendered in K.A. Chandrasekar v. Authorised Officer, State Bank of India, SSI Branch, Bhavani Erode District 2005 3 MLJ 488 to the proposition that the direction of a High Court under Article 226 of the [Constitution of India](#) is not akin to an appeal before this Court and has laid down the dictum as follows for exercising the power. 'The High Court does not go into or adjudicate the disputed question of fact, especially the relevant facts are disputed and the dispute calls for an elaborate enquiry, which cannot be done by the High Court in a writ petition'. Reliance is also placed in the judgment of this Court rendered in Commissioner Coimbatore v. A. Thangavelu to the effect that natural justice is not an unruly horse. The rules of natural justice are flexible and are not a strait-jacket formula. In that case there was a factual controversy as to whether the enquiry officer had any conversation with the delinquent and made a statement that the enquiry report was not prepared by him. The Division Bench held that such a serious factual controversy ought not to be decided in writ jurisdiction is not the appropriate forum to decide such serious factual controversies.

11. The learned Counsel for the respondents also placed reliance on many judgments to substantiate his contention that in the case of disputed questions, writ jurisdiction is not a proper remedy since it requires a thorough enquiry.

12. I have considered the contentions of the learned Counsel for the petitioner and the respondents. It is the case of the petitioner that he has worked for 480 days as a contract labourer and at no point of time the genuineness of his signature was disputed. His further grievance is that while it is an admitted fact that his signature was obtained for the purpose of verifying the same by the Forensic Department, the petitioner cannot be heard to say that he was not aware of the same. His contention is that the report is not served on him before passing the impugned order rejecting the claim of the petitioner to absorption as a Helper. Even assuming that such a report is given to the petitioner, it will not be useful for him for the Forensic report requires a deep consideration as to whether the signature put by the petitioner could be referred to the Forensic Department and the signature of the petitioner stated to have been made while he was in service or substantially different or there was a natural variation, etc. really requires a thorough enquiry, which cannot be done by this Court while exercising power under Article 226 of the [Constitution of India](#). It is not as if the petitioner is left with no alternate remedy. It is always open to him to approach the proper forum by filing a suit or by raising a dispute. In such a case, the Civil Court or the Labour Court can make a thorough enquiry and substantial relief can be given to him, even though it is true that the Forensic report has not been supplied to the petitioner before passing the impugned order. As the petitioner has a substantial remedy available, the same cannot be granted by this Court under Article 226 of the [Constitution of India](#), since it requires a factual decision about the analysis of the report for variation of the signature and so on.

13. In these circumstances, giving liberty to the petitioner to approach the appropriate forum by challenging the impugned order of the respondents in refusing to absorb the petitioner as a Helper in the Tamil Nadu Electricity, the writ petition is dismissed. No costs. Consequently, connected W.P.s. are closed.