

The Chief Engineer. Vs. the Presiding Officer

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Court : Chennai

Decided On : Jun-05-2012

Judge : K.Chandru, J.

Acts : [Industrial Disputes Act, 1947](#) - Section 2(k); [Constitution of India](#) - Articles 226

Appeal No. : W.P.NO.29112 OF 2007 AND M.P.NO.1 OF 2007

Appellant : The Chief Engineer

Respondent : The Presiding Officer

Advocate for Def. : Mr.V.Ajoy Khose, Adv.

Advocate for Pet/Ap. : Mr.P.R.Dhilip Kumar, Adv.

Judgement :

PRAYER: Writ Petition filed under Article 226 of the [Constitution of India](#) praying for the issuance of Writ of Certiorari, to call for the records relating to I.D.No.16 of 2004 and quash the order of the Labour Court, Salem dated 08.03.2005.

ORDER

1. Heard both sides.

2. This writ petition is filed by the Chief Engineer, Mettur Thermal Power Station, Tamil Nadu Electricity Board, Mettur Dam, challenging the award dated 08.03.2005 passed by the Labour Court, Salem in I.D.No.16/2004. By the impugned award, the Labour Court directed the Tamil Nadu Electricity Board to absorb the workman Selamban with effect from 28.10.1999 and to grant backwages.

3. The writ petition was admitted on 05.09.2007. Pending the writ petition, this Court granted an order of interim stay.

4. It is seen from the records that the workman Selamban was entered as Contract Labour. Subsequently, he was absorbed as Helper. By an order dated 28.10.1999, he was stopped from work for the reason that the name of his father differs and there is a discrepancy in the identification of the petitioner. The said order was passed by the Assistant Executive Engineer, PCR, Mettur Dam. The dispute was taken up by the second respondent Trade Union under Section 2(k) of the [Industrial Disputes Act, 1947](#), before the Labour Officer, Salem. As the Labour Officer could not bring about any settlement, he sent a failure report to the State Government. The State Government vide order in G.O.Ms.No.144, Labour and Employment Department, dated 15.12.2003 referred the dispute for adjudication, by the first respondent Labour Court. The Labour Court, Salem registered the dispute as I.D.No.16/2004 and issued notice to the parties. The second respondent Trade Union filed a claim statement dated 03.03.2004. The petitioner Management filed a counter statement dated 16.07.2004.

5. Before the Labour Court, on the side of the second respondent Trade Union, 21 documents were filed and marked as Exs.W1 to W21. On the side of the petitioner Management, 5 documents were filed and marked as Exs.M1 to M5 and no oral evidence was let in.

6. It was an admitted fact that the Contract Labourers on daily wages of Mettur Thermal Power Station were stopped from work with effect from 01.05.1999. In the meanwhile, the Tamil Nadu Electricity Board decided to absorb the services of the Contract Labourers, who were engaged in the Thermal Power Station beyond the period of 480 days out of 24 calendar months. Those employees records were

verified with reference to their age, name, educational qualification and service details, by the Selection Committee. On the basis of the Selection Committee's report, eligible persons were regularised as Helpers, with retrospective effect from 01.05.1999. The workman Selamban, who was working as a Casual Labourer also selected in the list. All the contract labourers were also required to produce necessary certificates subject to condition that if any discrepancy in the certificates furnished by them is apparent, their appointment order will be cancelled.

7. According to the Tamil Nadu Electricity Board, Selamban has submitted his certificates by stating that his name was wrongly cited in the list as Chellappan and thus, he changed his name before the Selection Committee and produced the certificates to that effect in respect of his educational qualification. On verification, it was found that he not only changed his name, but also changed his father name leading to his termination. As he intending to stay in the name of Chellappan S/o.Kuppusamy, who is the real contract labourers, the appointment which is meant for Chellappan S/o.Kuppusamy was sought to be grabbed by the petitioner, whose name was only Selamban S/o.Chandragounder. The workman produced the certificates stating that his father Chandragounder also known as Kuppusamy and he got two names and for that purpose, he also produced the certificate issued by the Zonal Deputy Tahsildar, Mettur, stating that his father's original name was Chandragounder and he is also known as Kuppusamy and therefore, the person who is called as Chandragounder is also known as Kuppusamy. He has also submitted an undertaking before the Selection Committee. But on scrutiny, the Board ascertained that the said Selamban has produced bogus certificates at the time of appointment and thus, he has committed criminal offence. In the records of the Board, his father's name has been shown as Kuppusamy and therefore, his name was not included in the selection list and he was removed from the Contract Labourer's service with effect from 28.10.1999.

8. The Labour Court found that if the dispute is only with reference to the name of the father of the workman, then the certificate obtained from the Tahsildar and produced by the workman could be accepted. Though the original name was shown as Chellappan S/o.Kuppusamy, the Board has agreed that the word Chellappan S/o.Kuppusamy has not been wrongly written, instead of Selamban.

The only question is as to whether the word Kuppusamy is also referred as Chandradragounder. Once the workman produced such a certificate, it is obligatory for the Board to accept the same in the absence of any other material.

9. Mr.V.Ajoy Khose, learned counsel for the second respondent also submitted that similar question arose when the Honourable Supreme Court appointed one Commission headed by Justice V.Khalid to go into the question of absorption of Contract Labourers into the Tamil Nadu Electricity Board. The Commission recommended absorption of 18,006 workers. When the matter was taken to the Supreme Court at the instance of several other Unions, the Supreme Court passed several judgments and vide its judgment in T.N.ELECTRICITY EMPLOYEES AND CONTRACT LABOUR UNION AND OTHERS VS. T.N.ELECTRICITY BOARD AND OTHERS [1995 (II) LLJ (SUPP) 342] a direction was issued to employment. On behalf of the second respondent Trade Union, it was submitted before the Supreme Court that there may be cases where workers may be wrongly made unfit on account of various factors and therefore, a forum must be evolved to find out the genuineness of the grievance of the workers and to rectify the mistakes committed by them. The Supreme Court, in para 8 of its judgment, has held as follows:

"8.Ms Indira Jaising, appearing for the Central Organisation of Tamil Nadu Electricity Employees, has prayed that in case of the workers who were found unfit by the Selection Committee earlier, or who might be so found hereinafter, a forum should be made available to the petitioner-Unions to be approached in case they were of the view that the workers in question were/are not really unfit. We find force in this submission and order that in such a case it would be open to the Union concerned to approach the Commissioner of Labour concerned whose decision in the matter shall be final and binding on all concerned....."

10. Pursuant to the said judgment, several representations were made before the Commissioner of Labour and the Commissioner of Labour, after enquiring into the matters, passed orders directing the Tamil Nadu Electricity Board to absorb the workers. In the orders passed by the Commissioner of Labour, there are also cases of workers, who committed mistakes with respect to spelling, name of the

father and residential address etc. According to the Board, the Board has implemented the orders passed by the Commissioner of Labour in this regard.

11. In the present case, when the Labour Court found that the demand of the workman was justified, there is no reason as to why the Board has come forward with the present writ petition challenging the award passed by the Labour Court. This stand of the second respondent Union is fully justified and the Board ought not to have challenged the award passed by the Labour Court granting relief to the workman Selamban.

12. In view of the above, there is no case made out and hence, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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