

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/03/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.38046 OF 2002

Central Organisation of Tamil Nadu
Electricity Employees (CITU),
rep. by its General Secretary,
13, Mosque Street, Chempauk,
Chennai 5. .. Petitioner

-Vs-

1. Tamilnadu Electricity Board,
rep. by its Secretary,
800, Anna Salai, Chennai 2.

2. The Chief Engineer (Personnel),
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai 2. .. Respondents

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Mandamus as stated therein.

For Petitioner : Mr.R. Yashod Vardhan

For Respondents : Mr.V. Radhakrishnan

:J U D G M E N T

The present writ petition has been filed by Central Organisation of
Tamil Nadu Electricity Employees for issuing writ of mandamus directing the
respondents to pay the contract labourers employed on daily wages in the
distribution, generation and other circles the wages according to PWD schedule
of rates applicable to Mazdoor category II and to pay arrears with effect from
1.7.1998.

2. It is not disputed that as per G.O.Ms.No.950 dated 8.8.1990, there
was abolition of engagement of contract labour in the following 19 processes
under the Tamil Nadu Electricity Board :-

1. Fuse off call
2. Maintenance of buildings, quarters etc., (except
annual maintenance)

3. Painting (except painting of intermittent nature)
4. Transformer Maintenance
5. Material stock-yard in Mettur Workshop (except handling of bulk supply of materials from suppliers and stores)
6. Instrumentation
7. Handling of materials in stores
8. Turbine maintenance
9. Boiler maintenance
10. Clerical work including typing
11. Cooling water-system
12. Water treatment plant
13. Water supplies
14. Laboratory
15. Changing of bulbs
16. Labour Supply in fire service
17. Assessment, preparation of bill and card billing
18. Maintenance of street lights and
19. Sick transformers repairing work (excluding the work entrusted to outside agency)

Subsequently, a Commission has been appointed by the Supreme Court to submit a report and suggestion has been given for regularisation of several workmen.

3. It is the case of the petitioner that despite of abolition of contract labour, the first respondent continue to engage workmen on purported contract basis in the distribution, general construction, project and other circles of the Board. It is further alleged that a settlement was arrived at between the Board and the petitioner and Memorandum dated 8.7.1998 was executed. As per the settlement, the contract labourers employed on daily wages in distribution, generation and other circles will be paid wages according to PWD Schedule of rates with effect from 1.7.1998. Thereafter, the Board passed order dated 2 7.7.1998 to the effect that the labourers employed on daily wages in distribution, generation and other circles will be paid wages according to PWD schedule of rates applicable to the lowest category, namely Mazdoor category II with effect from 1.7.1998. It is the further case of the petitioner that several workmen are employed on purported contract basis in the electricity distribution, generation and other circles of the Board in the State. Similarly, various workmen are employed in general construction circles and in project circles. Some of the workmen were paid directly and in respect of some workmen, one amongst them signs the agreement called K2 agreement with the Board and wages are paid through such person. It is the further case of the petitioner that taking advantage of this method, many contract labourers engaged in distribution, generation and other circles of the Board are paid at a much lower rate than PWD schedule of rates. The Board has taken a decision for making payment to 849 contract labourers engaged in four hydro generation circles as per PWD schedule rates. However, in respect of other persons employed in various circles, such payment is not according to PWD schedule of rates. In this background, the prayer is for issuance of writ of mandamus.

4. A counter affidavit has been filed on behalf of the respondents, wherein it is indicated that as per the Board's resolution dated 27.7.1998. contract labourers serving on daily wages in Hydro Generation Circles have been paid according to PWD schedule of rates. According to the counter, this arrangement is not applicable to contract labourers working in distribution, construction and projects since the contract labourers in those areas are working under the direct control of the contractors by virtue of K2 agreement entered into with the contractor and Chit agreement, which were already negotiated in between the Board and the Contractor and payments will be made only to the contractors and not individually to the labourers and the contract labourers have no locus standi to claim payment on par with the contract labourers working on daily wages. It has been further indicated that such type of contract is a works contract and the contractor has been paid as per the rate quoted in the agreement. The allegation of the petitioner regarding violation of Article 14 of the Constitution has been denied in the counter.

5. From the materials on record, it is apparent that a decision had been taken to pay to the labourers employed on the labour contract basis at the rate prescribed by PWD. By entering into the so called K2 agreement, it is obvious that the Board is circumventing the need to pay the labourers at the rate fixed by PWD. I do not find any justification in such action of the Board. The work undertaken by such labourers employed through the so called K2 agreement appears to be similar in nature to other labourers. In the absence of any apparent justification, I am inclined to issue direction to the Board to pay labourers employed in distribution, generation and other circles the wages according to PWD schedule and the so called K2 agreement would not stand in the way of the labourers getting the wages according to PWD schedule.

6. The petitioner has prayed for payment of arrears with effect from 1.7.1998. Having regard to the facts and circumstances of the case and keeping in view the financial ramifications, I feel interest of justice would be served by directing the respondents to pay arrears with effect from the date of filing of the writ petition, that is to say, October 2002. The arrears till the end of March, 2004 shall be paid by the end of September, 2004.

7. With the above directions, the writ petition is allowed. No costs.

Index : Yes

Internet : Yes

dpk

To

1. Tamilnadu Electricity Board,
rep. by its Secretary,

800, Anna Salai, Chennai 2.

2. The Chief Engineer (Personnel),
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai 2.

□