

CASE NO.:

Appeal (civil) 3747 of 1998

Appeal (civil) 3748 of 1998

PETITIONER:

THE MANAGING DIRECTOR, A.P. STATE ROAD TRANSPORT CORPORATION

Vs.

RESPONDENT:

THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL, RAMKOTE, HYDERABAD & ORS.

DATE OF JUDGMENT: 01/02/2001

BENCH:

S. Rajendra Babu & S.N. Variava

JUDGMENT:

J U D G M E N T  
RAJENDRA BABU, J. :

L...I...T.....T.....T.....T.....T.....T.....T.....T...J  
The transport wing of Tirupathi Tirumala Devasthanam (for short T.T.D.] was transferred to the Andhra Pradesh State Road Transport Corporation (for short the Corporation] under an agreement dated 8.8.1975. It was provided in the agreement that 850 workmen to be transferred to the Corporation. The transfer of the workmen to the Corporation was challenged in a writ petition No. 1361 of 1976 but it was dismissed on 13.7.1977 and a writ appeal filed against the said judgment was also confirmed. While some of the transferred T.T.D. transport workers who opted to come under the Corporation Rules and Regulations were not before the court, the other workers wanted to maintain their separate identity in spite of their transfer to the Corporation and so they did not opt to come under the Corporation Rules and Regulations. Subsequent to the transfer certain settlements had been entered into with the Corporation by the Union of the workmen from time to time. The members of the Union made a demand that under clause 13 of the transfer agreement dated 8.8.1975 they were entitled to the benefits which accrued to the present T.T.D. workers after 8.8.1975 but the Corporation did not agree for such demand, an industrial dispute was raised which was referred to the Industrial Tribunal (hereinafter referred to as the Tribunal] under Section 10(1)(d) of the Industrial Disputes Act (for short the Act]. The question referred to the Tribunal reads as follows :-

Whether the former transferred T.T.D. workers (presently the APSRTC workers) are entitled to the benefits accrued to the present T.T.D. workers after 8.8.75 in terms of the agreement dated 8.8.75. If so, to what extent?

After notice the representatives of the Union, the Corporation and the T.T.D. filed their statements. The Union raised several questions although the question referred to the Tribunal was with reference to the benefits that have accrued to the present T.T.D. workers would be

applicable to the erstwhile T.T.D. workers or not. In view of the several claims made before the Tribunal the scope of the reference was to be considered. The Tribunal examined various contentions and raised certain issues which are :

1. Whether the second respondent TTD represented by its Executive Officer is a proper and necessary party in this industrial dispute?

2. Whether the members of the petitioner Union are entitled to the benefits conferred on the TTD employees subsequent to 10.8.1975 merger?

3. If any relief is to be granted in this industrial dispute against whom should the award be passed?

4. To what relief?

The Tribunal noticed that clause 11 of the agreement indicated that the T.T.D. reserved its right to retain vehicles, equipment and other assets as required by them along with the required number of workers to operate them. Clause 13 stipulated that all the remaining workmen working in the transport undertaking of the T.T.D. without interruption in their service are taken by the Corporation and protection is given in pay and allowance, provident fund contributions and gratuity in terms of Section 25FF of the Act and T.T.D. agreed to pay such compensation if any as is liable to be paid to workmen who do not opt to serve under the Corporation. Under clause 14 arrangement is made for retirement benefits, provident fund and gratuity. Under clause 15 T.T.D. agreed to continue to permit the employees to continue to reside in their quarters subject to certain conditions. Pursuant to the take over there was complete cessation of legal relationship between the members of the Union and the T.T.D. and after 10.8.1975 these employees have entered into various agreements and settlements with the Corporation and the T.T.D. was not a party to those agreements and none of these workers opted to be retrenched and claimed compensation from the T.T.D., the Tribunal confined the dispute only as against the Corporation. The entire transport wing had been handed over to the Corporation and, therefore, Section 25FF of the Act would be applicable. But the workmen also exercised their option in the form indicated in Ex.M9 in which they have to give an undertaking that they shall abide by the rules of RTC in force from time to time subject to the workmen rights under Section 25FF of the Act. This option form was provided pursuant to a writ petition No. 4456 of 1975. In the circumstances, the Tribunal found that having given categorical undertaking that they would abide by the rules and regulations of the Corporation in force, it is not open to the members of the claimant Union to now contend that they continued to be governed by the T.T.D. rules and regulations and they continue to be employees of the T.T.D.. Therefore, the Tribunal held that they are not entitled to claim benefits which conferred by the T.T.D. Management on its employees subsequent to 10.8.1975. However, after rejecting several other reliefs claimed, the Tribunal granted the following four reliefs :-

(1) Pay in the selection grade will have to be fixed taking 1.1.1975 as the crucial date.

(2) Regarding promotions, it held as under :

if and when the workers opt to be governed by A.P.S.R.T.C. Regulations then they may be given promotions taking into account their total service and the seniority including the TTD services.

(3) The facility for bus tour on concessional hire, and

(4) Ex gratia bonus should be paid to the members of the claimant Union on the same basis on which ex gratia bonus is paid to other employees of the RTC.

The matter was carried in writ petition to the High Court and the High Court by its order made on 3.12.1996 did not interfere with the award made by the Tribunal. It is only in regard to these four reliefs that arguments are addressed before us.

In this Court the contentions urged before the Tribunal and the High Court are reiterated that the question referred to the Tribunal being of a limited character as to whether the benefits accruing to the present T.T.D. workers could be extended to the employees of the transport wing or not and having answered that the said employees have all opted for being governed by the Corporation rules and regulations and other service conditions, it is not open to them to claim those benefits.

So far as the first question raised before us regarding selection grade is concerned, it is noticed by the Tribunal that selection grade has been given with effect from 1.1.1974 restricting the monetary benefits to be given only from 1.1.1978; that the orders were actually issued in the year 1976, and that the Corporation had agreed to safeguard the conditions of service of the workers. The Tribunal further noticed that the claim in that regard was pending consideration before the take over and, therefore, restricting the monetary benefits to be given only from 1.1.1978 was not justified and the monetary benefits will have to be given with effect from 1.1.1975. This claim appears to us has been rightly allowed by the Tribunal and thus calls for no interference.

So far as ex gratia bonus is concerned, on an earlier occasion this question has been raised and the matter had reached this Court in Civil Appeal No. 4693 of 1984 and this Court disposed of the matter on 23.11.1984 stating that the parties had agreed that on payment of Rs. 7,50,000 by the respondents to the petitioners within six weeks from that day as ex gratia payment the disputes raised by the workmen of the transport wing which was the subject matter of that appeal should be treated as settled and resolved completely. The direction of the Tribunal in this regard is that ex gratia shall be paid to the members of the claimant Union on the same basis on which ex gratia is paid to other employees of the RTC. Inasmuch as the employees working in the transport wing have now opted to be governed by the RTC regulations and other service conditions, the Tribunal held that they should be treated at par from the year 1986 onwards and they should be given similar benefits that have been given to the other RTC workers earlier. Therefore, we find, this finding recorded by the Tribunal also to be justified.

So far as the claim for bus tour on concessional rate is concerned, although original concessional rate was @ Rs. 1 per kilometer, the Tribunal fixed at Rs. 2.50 per kilometer for the years 1985 onwards till the Corporation changes the rate of hire under Section 9A of the Act and the Tribunal adopted as a rule of thumb and with a view to find out an equitable solution for the dispute between the parties. Inasmuch as the Tribunal had found that unilateral alteration of hire rate to Rs. 4 per kilometer was not justified adopted the rule of thumb, we do not think that the discretion exercised by the Tribunal in this regard is improper.

Now the only question for consideration before us is with regard to the direction given by the Tribunal regarding promotion of the employees. The Tribunal noticed that the difficulty in regard to promotion had arisen on account of the fact that employees in the transport wing of the Corporation who were erstwhile employees of the T.T.D. were retrenched to go out of station and, in fact, those who were promoted and posted out of station came back to Tirupathi by giving up benefit of promotion. In these circumstances, the Tribunal felt that if and when the workers opt to be governed by the RTC regulations then they may be given promotions taking into account their total service and the seniority including the T.T.D. services. This direction would give rise to a lot of difficulties in the services inasmuch as several others have already been promoted and given that benefit and now to consider the cases of the members of the Union for promotion would lead to anomalous results that apart from financial burden that will arise in the case. Therefore, all that could be done now is to consider the cases of these employees for promotion as and when vacancies arise bearing in mind whether their juniors have been promoted earlier or not. In such cases, since the workmen in the transport wing have also opted to be governed by the RTC regulations, their cases will have to be examined for promotion but where promotions had already been given to others the same cannot be disturbed. Notional promotion may be given to them without any monetary benefits and suitable adjustments in seniority be made. Direction of this sort given in modification of the award of the Tribunal would meet the requirements of justice. We order accordingly. Shri Nageswara Rao pointedly addressed that direction given by the Tribunal is far beyond the scope of the reference. The question referred to the Tribunal though worded as to the cover applicability of conditions of service in T.T.D. to the members of the respondent Union, what was really in issue is as to what conditions of service are applicable to them after they exercised their option to abide by the Corporation regulations, and thereafter both parties have raised pleadings and adduced evidence. Hence, we cannot say that the Tribunal travelled beyond the scope of reference.

Subject to the modification of the award as stated above, the award made by the Tribunal is upheld as confirmed by the High Court. In the circumstances, the appeals are, therefore, partly allowed. The parties are left to bear their respective costs.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3748 OF 1999

M/s L &amp; T Mc Neil Limited

Appellant

Versus

Government of Tamil Nadu

Respondent

WITH CIVIL APPEALS NOS. 3808/2000, 3809/2000,  
1043/2000, 3727/2000 AND 5307/2000

## J U D G M E N T

RAJENDRA BABU, J. :

The Government of Tamil Nadu issued a notification under Section 10(1) of the Contract Labour (Regulation & Abolition) Act, 1970 [hereinafter referred to as the Act] prohibiting the employment of contract labour in the process of sweeping and scavenging in the establishments/factories which are employing 50 or more workmen. This prohibition is without reference to class of establishment which is involved or the conditions of work in a particular establishment. Under Section 10 of the Act the Government is obliged to consult the Tamil Nadu State Contract Labour Advisory Board [for short the Board] before issuing a notification in question. The appellants contended that there has been no effective consultation with the Board inasmuch as the only occasion when this aspect was considered was in the Sub-Committee meeting of the Board. The Minutes of the meeting made available to the Court disclosed that it recorded the views of the All India Manufacturers Organisation to the effect that the sweepers and scavengers work not for more than 2 to 3 hours daily and the view of the employees representatives was that sweepers and scavengers are working for more than 120 days in a year. No decision as such was made but it was noted that the Government should take a decision in the matter. The said notification was challenged before the High Court in a writ petition. The High Court, following its earlier decision in *Bharat Heavy Electricals Limited v. Government of Tamil Nadu and Ors.*, 1997 (3) LLN 495, dismissed the writ petition holding that the notification had been issued after fully complying with the prescribed procedure under Section 10 of the Act to prohibit employment of contract labour after proper consultation with all relevant parties and evaluation of all relevant factors and materials by the State Government. Following this aforesaid decision, the writ petition filed by the petitioner also stood dismissed. Hence these appeals.

The Division Bench of the High Court in the course of its order noticed that apart from Sub-Committee report, to which reference has been made, the Minutes of the 17th Meeting of the Board also disclosed that the Board had elaborately considered the matter with reference to the question of issuing a draft notification abolishing contract labour system in sweeping and scavenging among other nature of work and though it appeared that a further consideration by the Government was suggested during the course of deliberations, the Board did not appear to have thought any need for further consideration. On that basis the Division Bench took the view that since the matter had been left for consideration of the Government by the Board with its report and Government had also considered the need and necessity in the light of the requirements of the law as enumerated under Section 10(2) of the Act to issue the notification in question, there is no justification to interfere with the notification in question. Whereas at the time when the learned single Judge considered the matter the report of the Sub-Committee was not available at all.

Before us in these appeals against the order of the High Court what is principally contended is that (i) there is no effective consultation with the Board by the Government

before issuing the notification in question, and (ii) the Government did not have any relevant material otherwise and, therefore, in the absence of relevant material the Government could not have issued any notification and thus calls for interference at our hands.

Consultation does not mean concurrence and the views of the Board are ascertained for the purpose of assisting the Government in reaching its conclusion on the matter one way or the other. The Government reached the conclusion on the basis of notings made on various aspects and the aspects taken note of by the Government are as follows :-

- a) Whether the process, operation or other work is incidental to, or necessary for the industry trade, business manufacture or occupation that is carried on in the establishment. Yes
- b) Whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade business manufacture or occupation carried on in that establishment. Yes
- c) Whether it is done ordinarily through regular workman in that establishment or an establishment similar thereon. Can be done through regular Workmen
- d) Whether it is sufficient to employ considerable number of whole time workmen. Yes

What is set out in this format is what is contained in Section 10 of the Act and is a mere repetition of the expression used therein. The questions posed indicate the provisions contained in the Section, while answers thereto are by monosyllables and it is not clear from the record available as to whether the same were based on any material. In the 16th Meeting of the Board, it is noted that the members were also informed that as far as sweepers and scavengers were concerned the matter would be examined and necessary proposals sent to Government. In the 17th Meeting of the Board, it was noted that various Sub-Committees have been formed in different industries such as (a) Cement, (b) Paper, (c) Textiles, (d) Chemicals and (e) Electricity Board and thereafter the draft notification abolishing contract labour system in sweeping and scavenging was taken up for consideration. While the view expressed on behalf of the Management is that the sweepers and scavengers are not having 8 hours of work but they work not more than 2 or 3 hours a day and since employing permanent workmen is not economically viable, they are employing contract labour in this type of work and, therefore, the Government needed to examine whether the requirements of Section 10(2)(a) to (d) of the Act have been fulfilled before finalising the notification. While the e representatives of the All India Trade Union Congress (AITUC) took the stand that if the work is done for more than 120 days it has to be considered as being of intermittent nature and also stated that because of the contractual nature of the work they cannot fully get benefits of employment. The Chief Engineer of the Tamil Nadu Electricity Board pointed out that regular workmen are not willing to do this type of work and requested the Government not to proceed with the notification. The representative of AITUC stated that no further examination is necessary by the Board and notification could be issued. His view was supported by another member representing Hind Mazdoor Sabha (HMS). The Chairman stated that the Government should take a decision in the matter.

Thus, it is clear that no definite view was expressed by the Board in this regard. The fact that the Board had been consulted in the matter is indisputable. So also the fact

that no decision was taken by it. Therefore, we asked the learned counsel for the State of Tamil Nadu to make available the necessary files leading to the draft notification and final notification and other materials that were relied upon in issuing the notification in question. Even after careful perusal of these files, we found that there is no further or fresh material available in these files. In the circumstances, it is not very clear as to how

the Government could have reached the conclusion one way or the other in the absence of any advice by the Board and in the absence of any other material. The decision of the Government in issuing the notification under Section 10(1) of the Act is thus vitiated because of non-consideration of relevant materials. The mere fact that several notifications have been issued in relation to contract labour or that system in sweeping and scavenging has been abolished in some other industries may not, by itself, be sufficient to hold that a common notification applicable to all industries and establishments abolishing contract labour in sweeping and scavenging could have been issued by the Government without necessary material. The Government ought to take into consideration the relevant factors contained in Section 10(2)(a) to (d) of the Act and thereafter decide the matter. These aspects were, however, lost sight of by the High Court in the decisions rendered by it earlier.

In the circumstances, we have no hesitation in quashing the notification issued by the Government of Tamil Nadu. However, it is made clear that it is open to the Government to issue a fresh notification after due consideration of the matter in accordance with law.

The appeals stand allowed accordingly.

..J.  
[ S. RAJENDRA BABU ]

..J.  
[ S.N. VARIAVA ]

NEW DELHI  
JANUARY 30, 2001.

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