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W.P.(MD)No.5898 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.5898 of 2018

and

W.M.P.(MD)Nos.5819 and 5820 of 2018

I. Wahab

.

... Petitioner

vs.

1.The Chairman,
Tamil Nadu Electricity Board,
N.P.K.R.R. Maaligai,
800, Anna Salai,
Chennai-600 002.

2.The Superintending Engineer,
Madurai Electricity Distribution Circle,
Tamil Nadu Electricity Board,
K.Pudur, Madurai-7.

3.The Executive Engineer,
Distribution,
Tamil Nadu Electricity Board,
Samayanallur, Madurai District.

... Respondents



W.P.(MD)No.5898 of 2018

WEB COPY

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order Ka.No.14548/Ni.Mu/Vu. 2/Ko./Ni.Va/2017-1, dated 20.12.2017, passed by the 2nd respondent and to quash the same and consequently, to direct the 1st and 2nd respondents to permanently absorb the petitioner in a suitable post in TNEB, Madurai in accordance with the qualification of the petitioner with effect from September 2007, i.e., the date of absorption of the similarly placed contract labours worked at TNEB unit Madurai and to grant all the service and monetary benefits with a time limit to be fixed by this Court.

For Petitioner : Mr.T.Sakthikumaran
For R1 & 3 : Mrs.Malini
For R2 : No appearance

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order, dated 20.12.2017, passed by the 2nd respondent and consequently to direct the 1st and 2nd respondents to permanently absorb the petitioner in a suitable post in TNEB, Madurai



W.P.(MD)No.5898 of 2018

WEB COPY

in accordance with the qualification of the petitioner with effect from September 2007, i.e., the date of absorption of the similarly placed contract labours worked at TNEB unit Madurai and to grant all the service and monetary benefits with a time limit to be fixed by this Court.

2. The petitioner had studied upto 8th standard and his contention is that he was directly engaged as department contract labour from 14.07.1983 in the construction and improvement section of TNEB in Madurai Electricity Distribution Circle and has worked as Gang Leader for the construction of Transformer Structure works. Further the petitioner had received certificates from J.E. Construction, TNEB from 1983 to 1986 and from Assistant Engineer of TNEB from 1986 to 2007. Thus, the petitioner has put in 24 years of service as “contract labour” till the abolition of contract labour system in TNEB. The petitioner further contended that Justice Khalid Commission vide report, dated 11.02.1991 had recommended for absorption of 18006 contract labourers but the



W.P.(MD)No.5898 of 2018

WEB COPY

TNEB has absorbed only 13054 contract labourers covered by the above said report during the period 1991 to 31.03.1996. Though the petitioner was working in TNEB as Department Contract Labourers from 14.07.1983, he was not absorbed.

3. In the memo of the TNEB, dated 03.08.1998, it was ordered to pay Rs.250/- as ex-gratia to contract labourers who had completed 5 years of service as on 31.03.1997, i.e., ex-gratia for the year 1996-1997. Thereafter, to conduct verification by a committee to identify the contract labourers in all distribution division as on 08.08.1998 and disburse the ex-gratia for the year 1995 to 1996 at Rs.200/-. The committee was constituted to verify the records and identify the contract labourers and the said committee had identified 8500 contract labourers as on 08.08.1998. Since the petitioner had completed 5 years as on 31.03.1997 and is also having educational qualification and the board has identified



W.P.(MD)No.5898 of 2018

WEB COPY

the petitioner as on 08.08.1998 and the petitioner was included in the list of contract labourers identified as on 08.08.1998 at serial number 104 and serial number 6439. Hence, the petitioner is eligible for ex-gratia payment in the year 1995 to 1996 and the respondents also paid the ex-gratia from 1995 to 1996, 1996 to 1997 and for further years up to 2003 to 2009 that is for a period of 9 years. Since the respondents did not absorb the petitioner, the petitioner submitted a representation on 04.09.1998 and on 24.11.2005. From 2004 to 2006, for 2 years the respondent did not pay any ex-gratia and without assigning any reason denied the petitioner's absorption but continued the petitioner in service as contract labour till 05.09.2007 and from 06.09.2007 onwards the petitioner was discontinued. Aggrieved over the same, the petitioner filed W.P.(MD)No.1741 of 2009 to quash the letter dated 19.02.2009 and to direct the respondents to absorb the petitioner in the Board Service. The petitioner has stated in the affidavit that he had complied with the



W.P.(MD)No.5898 of 2018

WEB COPY

Condition Nos.2 and 5. But the Learned Single Judge had held that the petitioner has raised disputed question of facts and the petitioner has not submitted any evidence that he had received ex-gratia payment from 2005 onwards and dismissed the writ petition vide order, dated 24.11.2010.

4. Aggrieved over the same, the petitioner has filed writ appeal in W.A.(MD)No.61 of 2012 and the Hon'ble Division Bench of this Court, vide judgment, dated 14.02.2017 allowed the appeal and remitted the matter back to the second respondent. The employees were directed to submit their individual explanations as to why they have not received the ex-gratia amount and also to submit the documents with regard to their continuous service. On receipt of such explanation, the second respondent was directed to consider the appellant's case afresh in the light of B.P. Proceedings No.9, dated 09.01.2008 and pass appropriate orders after giving sufficient opportunity. If the employee's name is not



W.P.(MD)No.5898 of 2018

WEB COPY

in the list, the TNEB was directed to pass appropriate speaking orders. Based on this order, the petitioner submitted an explanation, dated 06.05.2017. After considering the same the impugned order, dated 20.12.2017 was passed.

5. In the impugned order, it has been stated that based on the orders passed by the Court, the petitioner was called for personal hearing on 19.06.2017. In the enquiry, it was stated that the petitioner had received the ex-gratia payment until 2003 to 2004, thereafter, the petitioner was not well and the petitioner has not reported for duty and the petitioner was carrying on his agriculture activities. From 01.03.2004 onwards, the petitioner has not served as a contract labour and has not reported to duty. Based on this fact and based on the 12(3) settlement, dated 10.08.2007, the contract labourers who had received ex-gratia in the year 2005 to 2006 and had continued the service until November



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W.P.(MD)No.5898 of 2018

2007 were identified and they were regularised. However, the petitioner was identified on 08.08.1998 but from September 1999 the petitioner had not reported to duty, thereafter, from 2001 to 2002, 2002 to 2003 and 2003 to 2004, the petitioner has received ex-gratia payment but subsequently, the petitioner has not received any ex-gratia payment from 2005 onwards and has also not reported to duty.

6. Hence, the petitioner's name is not in the list when the contract labourers were identified on September 2007, therefore, the petitioner's claim was rejected through the impugned order. The relevant portion of the impugned order is extracted here under:



WEB COPY



W.P.(MD)No.5898 of 2018

-2-

தங்களது கோரிக்கை, விசாரணை அறிக்கை ஆய்விவற்றை கவனமாக ஆய்வு செய்து, வாரிய குழு தமிழ்நாடு மின்சாரவாரியம் மற்றும் வாரிய தொழில் சங்கங்களுக்கிடையே ஏற்பட்ட 10.08.2007 நாளைய 12(3) உடன்படிக்கையின் படி 2005-2006 ஆண்டிற்கான கருணைத்தொகை பெற்று தொடர்ந்து ஒப்பந்த தொழிலாளராக பணியாற்றியவர்களை 11/07-ல் அடையாளம் காணப்பட்டு நிலைமைக்கு தகுந்தாற்போல் வாரியத்தில் நிரந்தரப்படுத்தப்பட்டார்கள் என்றும், நீதிமன்ற மேல்முறையீட்டு மனுதாரரான நீங்கள் 08.08.1998 அன்று ஒப்பந்த தொழிலாளராக அடையாளம் காணப்பட்டு 9/1999-க்கு, பின்பு தொடர்ந்து பணிக்கு வராமல் இருந்த நிலையில் 2001-2002, 2002-2003 & 2003-2004-க்கு கருணைத்தொகை பெற்று இருந்தாலும் அதன் பின்பு தொடர்ந்து பணிக்கு வராததால் கருணை தொகை வழங்கப்படவில்லை. தவிரவும் தங்களது பெயர் 11/2007-ல் அடையாளம் காணப்படும் பட்டியலில் இடப்பெறவில்லை.

எனவே, மேலே கண்ட குழுவின் கூற்றுப் படி வாரியத்தில், நிரந்தரமாக ஏற்றுக் கொள்ளும் உங்களது கோரிக்கை நிராகரிக்கப்படுகிறது என்பதை தெரிவிப்பதுதலுமே.

செ. பரிபாத்தி
மேற்பார்வை பொற்பாளர் / 22/12
மஹிபவ/மதுரை / 4

7. It is seen that the respondents have conducted the enquiry and categorically rendered a finding that the petitioner had served until 1998, thereafter had served for three years from 2001 to 2004, then again the



WEB COPY



W.P.(MD)No.5898 of 2018

petitioner had not served from 2005 onwards and had not reported to duty. Moreover, the petitioner had gone back to carry on his agricultural activities. Therefore, this Court is of considered opinion the petitioner is not entitled to absorption. Pending this writ petition, the petitioner died. Hence, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No

Internet : Yes

NCC : Yes / No

13.04.2023

(1/2)

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WEB COPY



W.P.(MD)No.5898 of 2018

S.SRIMATHY, J

Tmg

W.P.(MD)No.5898 of 2018

13.04.2023
(1/2)