

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2016

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.10911 of 2011

Tamil Nadu Electricity Board,
Accounts and Executive Staff Union,
rep. by its Circle Secretary,
Registration No.2472,
Dharmapuri Electricity Distribution Circle,
No.2/489, Nelli Nagar,
Pidamaneri, Dharmapuri - 636 703. ... Petitioner

Vs.

1. Tamil Nadu Electricity Board,
rep. by its Chief Engineer (Personnel)
No.144, Anna Salai, Chennai - 600 002.
2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Thirupathur Electricity Board,
Thirupathur Electricity Distribution Circle,
Thirupathur.
3. The Inspector of Labour,
Krishnagiri. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents to implement the order, dated 02.04.1998, passed by the Inspector of Labour, Krishnagiri, bearing No.C/4198/96, by absorbing the services of all the employees, whose names are mentioned in annexure II to the said order, in the post of Mazdoor from the date when they completed 480 days of continuous service within a period of 24 calender months in terms of section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981, and to pay them all benefits and continuity of service.

For Petitioner : Mr.Balan Haridas
For Respondents 1 & 2 : Mr.Fakkir Mozhideen
For Respondent-3 : Mr.S.Rajeswaran
Special Government Pleader

O R D E R

Heard the learned counsels appearing for the parties.

2. The petitioners have filed this Writ Petition, seeking for implementation of the order passed by the Inspector of Labour, Krishnagiri, viz., the third respondent, dated 02.04.1998, by absorbing their services in the post of Mazdoor from the date when they completed 480 days of continuous service within a period of 24 calendar months in terms of section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981, and to pay them all benefits and continuity of service.

3. After hearing the learned counsels appearing for the respective parties, it is to be pointed out that the issue involved in this Writ Petition is no longer res integra, as it is squarely covered by the decision of the Hon'ble Division Bench of this Court rendered in Writ Appeals, being W.A.Nos.1340 and 1341 of 2012, dated 10.07.2012, in re (The Superintending Engineer, TANGEDCO Vs. P.Kothandam and others). In the said judgment, the Division Bench considered the similar plea, raised in the counter-affidavit filed in connection with the present Writ Petition. The contention of the appellant/TANGEDCO is that there is deemed merger of the award with that of the settlement, and the Division Bench, while rejecting the said contention, dismissed the Writ Appeals and confirmed the order passed by the learned Single Judge. The operative portion of the judgment is extracted hereunder:-

"3. The appellant filed the writ petitions challenging the orders passed by the second respondent, the competent authority under the Tamil Nadu Industrial Establishment (conferment of permanent status) Act, allowing the claim petitions filed by the respondents and directing the appellant to pass orders for granting permanency in service to the respondents under Section 3 of the Act taking into consideration the date of completion of 480 days of employment in a period of 24 calendar months from the date of joining employment.

4. Though the award was passed in favour of the respondents during 2005-07, the appellant kept idle and have challenged the awards in 2012 by filing the writ petitions. Therefore, the learned Single Judge rightly prefaced by stating that the writ petitions are a clear manifestation of abuse of process of Court indulged by a subordinate officer of the appellant.

5. The learned counsel appearing for the appellant would contend that though the award was passed during 2005-07, there was a settlement with the various Workers Union during 2007 and the award passed by the respondent authority is deemed to have merged with the settlement. The learned counsel also placed reliance on the judgment of a Division Bench of this Court in W.A.No.1302 of 2003, dated 24.10.2008.

6. We have perused the settlement entered in 2007 and we find absolutely no reason to infer any deemed merger of the award passed by the respondent authority nor there is any specific reference to the award passed by the respondent authority while entering into such settlement. Therefore, we reject the contention raised by the appellant that there is deemed merger of the award with that of the settlement. The cases covered in W.A.No.1302 of 2003, appear to be cases where the memorandum of settlement dated 10.08.2007 under Section 18(1) was challenged, the second category where the validity of the Board Proceedings 36 & 37, dated 29.10.2005, prescribing the modes of appointment of Mazdoor through their absorption and the third category wherein enforcement of orders of Labour Inspector were sought for and while considering the facts therein, the Division Bench passed the judgment, dated 24.10.2008, issuing certain directions and dismissing the writ petitions filed challenging the 18(1) of the Settlement and the Board Proceedings. However, those writ petitions were filed during 2005. In the instant case, the appellant has failed to explain the inordinate delay of 5 to 7 years in moving this Court and on that ground itself the writ petitions were liable to be dismissed.

7. As noticed by the learned Single Judge that in a batch of cases where the workers sought for implementation of the award of the respondent authority, direction is issued to the appellant to comply with the order within a specified period as the appellant had not challenged the award. Therefore, the direction issued in those writ petitions filed at the instance of the workers having become final, such right could not be taken away by the appellant, by filing the writ petitions against which, the present appeals have been preferred.

8. For all the above reasons, we find no grounds to interfere with the order passed by the learned Single Judge and accordingly, the writ appeals fail and they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

4. Thus, following the judgment passed by the Hon'ble Division Bench, referred supra, the plea raised by the second respondent, stating that there is a deemed merger of the award with the settlement stands rejected and the respondents are directed to implement the award within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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No.144, Anna Salai, Chennai - 600 002.
2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Thirupathur Electricity Board,
Thirupathur Electricity Distribution Circle,
Thirupathur.

3. The Inspector of Labour,
Krishnagiri.

+1cc to Mr.Balan Haridas, Advocate, S.R.No.8439
+1cc to Mr.Fakkir Mozhideen, Advocate, S.R.No.9008
+1cc to the Government Pleader, S.R.No.8500

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VSN (CO)
SRG (27/02/2016)



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