

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 04-04-2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.7129 OF 2014

1.Tamilnadu Electricity Board,  
rep. by Chief Engineer/  
Personnel Office of the Chairman of TNEB,  
Anna Salai,  
Chennai - 600 002.

2.The Superintending Engineer,  
TNEB,  
Tirupattur Electricity Distribution Circle,  
Tirupattur,  
Vllore District. ....

Petitioners

-vs-

1.M.D.Murthy  
2.P.Kandharoopan  
3.S.Jayaraman  
4.G.Jayabalan  
5.G.Ramadoss

6.The Inspector of Labour,  
Vellore,  
Vellore District.

7.The Presiding Officer,  
The Principal Labour Court,  
Vellore. ....

Respondents

Petition under Article 226 of the Constitution of India,  
praying for issuance of a writ of certiorari, to call for the  
records relating to the order passed by the seventh respondent  
made in Computation Petition No.15 of 2012, dated 31.07.2013, and  
quash the same.

For petitioners : Mr.M.Fakkir Mohideen

For respondents 1 to 5 : Mr.S.N.Ravichandran

For respondent 6 : Mr.R.Rajeswaran,  
Spl.Govt.Pleader.

O R D E R

This Writ Petition has been filed by Tamil Nadu  
Electricity Board, represented by its Chief Manager, and the  
Superintending Engineer of Tirupattur Electricity Distribution  
Circle.

2. The undisputed facts are as follows :

2.1. Respondents 1 to 5 were all Ex-servicemen. After discharge from defence service, they applied for appointment in the petitioner Board through Ex-servicemen Welfare Association. They were appointed as Watch and Ward on contract basis for a period of three years on 10.09.1997. Thus, on and after September, 2000, they had no right to continue in the job. However, on 19.06.2000, they submitted an application before the Inspector of Labour, seeking permanency. Parallely, they moved this Court by way of a writ petition vide W.P.No.5038 of 2001 and an order of status quo with regard to their employment was granted by this Court. Thus, their services beyond the period of contract had to be extended and they continued in employment. The Inspector of Labour, namely, sixth respondent herein, exercising his power under the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, in short, "the Act", by an order, dated 04.06.2001, allowed the Claim Petition and directed the Board to grant permanent status to the respondents and others. Challenging the said order, the Board preferred W.P.No.18848 of 2002 and an order of interim stay was obtained. The connected writ petitions and writ appeals were tagged together and placed before the Hon'ble Division Bench, which disposed of the matters by a common order, dated 07.08.2008. The said order reads as follows :

"Heard Mr.V.Radhakrishnan, learned counsel appearing for the Electricity Board and other counsels appearing for the respondents.

2. The writ petitions are directed against the award passed by the Labour Court and the writ appeals are against the orders of the learned single Judges in some of the writ petitions, where the awards of the Labour Court had been confirmed.

3. Learned counsel appearing for the Electricity Board on instructions has submitted that the Electricity Board has taken a decision to regularise the services of the respondents as Watch and Ward staff.

4. In view of the submission made at the Bar, it is not necessary to go into the questions raised in the writ appeals/writ petitions. Necessary steps shall now be taken by the Tamil Nadu Electricity Board within a period of four weeks from the date of receipt of the present order. With the above direction, the writ appeals and the writ petitions are accordingly disposed of. No costs."

2.2. Following the above order, another batch of cases in W.P.No.5038 of 2001 were also disposed of, on the same lines, by an order, dated 10.09.2008. So far as the Writ Petition, namely, W.P.No.18848 of 2002, which was filed against the very same order of the Inspector of Labour, was concerned, it was disposed of along with another connected matter in W.P.No.3283 of 2002 by the Hon'ble Division Bench, by an order, dated 18.08.2008, and all the three orders were identical.

2.3. After the above writ petitions were disposed by the Hon'ble Division Bench, as undertaken before the Hon'ble Division Bench, the Board decided to absorb 151 Ex-servicemen as regular Watch and Ward, in the time scale of pay of Rs.3050-5070 prospectively. Prior to such absorption, a specific undertaking was given by the respondents and similarly placed persons, stating that they were not entitled to any benefits whatsoever, based on their previous engagement as Watch and Ward. This undertaking was obtained much prior to the Board Proceedings vide B.P.No.35, which were issued, absorbing their services. The said Board Proceedings, dated 27.09.2008, proposed to absorb 151 Ex-servicemen, who were engaged continuously as Watch and Ward, in the time scale of pay, prospectively. After the said Board Proceedings were issued, the respondents filed a writ petition vide W.P.No.7594 of 2010 to quash the same in so far as they relate to prospective absorption and fixation of time scale of pay and the said writ petition was clubbed along with other connected matters, namely, W.P.No.2130 of 2010 batch. After making submissions, learned counsel for the respondents (writ petitioners therein) sought permission of the Court to withdraw the writ petition with liberty to approach the appropriate Court for claiming the relief made in the writ petition. Hence, the said writ petitions were dismissed, with liberty as prayed for. Thereafter, the respondents filed Computation Petition, namely, C.P.No.15 of 2012 on the file of Principal Labour Court, Vellore, wherein they sought for computation of monetary benefits, by contending that they were entitled to draw difference in salary as per the time scale of pay, as they were entitled to be permanently absorbed as employees of the Board from the date on which they had completed 480 days of service. This submission was based upon the order passed by the Inspector of Labour, dated 04.06.2001, conferring permanent status on the respondents, on and from the date when they completed 480 days of continuous service.

2.4. Before the Labour Court, one of the workmen examined himself as P.W.1 and the Administrative Officer and Superintending Engineer (Central Office), Tirupattur, as R.W.1. Exs.P-1 to P-4 were marked on the side of respondents and Exs.R-1 to R-5, on the side of petitioners.

2.5. The Labour Court, by its order, dated 31.07.2013, allowed the Computation Petition and directed the petitioner Board to compute and pay the monetary benefits to each of the respondents herein towards arrears of backwages within a period of two weeks. Challenging the said award, the present Writ Petition has been filed.

3. I have heard Mr.M.Fakkir Mohideen, learned counsel for the petitioners; and Mr.S.N.Ravichandran, learned counsel for respondents 1 to 5.

4. Learned counsel for the petitioners, after referring to the above factual submissions, submitted that the respondents, having given a specific undertaking prior to issuance of B.P.No.35, are estopped from making any claim, contrary to the said undertaking. It is further submitted that when the Hon'ble Division Bench disposed of the matters on 07.08.2008 and



18.08.2008, the Board had made it clear that the relief was granted only with prospective effect. In this regard, the learned counsel relied upon a copy of the common affidavit, purported to have been filed in W.P.No.27061 of 2005.

5. Learned counsel for the respondents, at this stage, submits that it is very doubtful as to whether such an affidavit was filed before the Hon'ble Division Bench, as it was not reflected in the order.

6. Be that as it may. The petitioners would contend that the petition filed by the respondents for computation was hopelessly barred by delay and laches and this aspect was not considered by the Labour Court. Further, it is submitted that on account of the interim order of status quo obtained by the workmen, they could not be discharged from service and the order of status quo continued. Much emphasis has been laid on the orders passed by the Hon'ble Division Bench to contend that the benefit was agreed to be conferred only prospectively and what has been stated in the additional common affidavit filed in W.P.No.27061 of 2005, dated, August, 2008, was, in fact, clearly reflected in Board Proceedings No.35, dated 27.09.2008, and paragraph 6 of the said Board Proceedings is an exact repetition of paragraph 5 of the additional common affidavit filed in W.P.No.27061 of 2005. It is also submitted that if the impugned order is to be implemented, there will be huge financial implication, and, that apart, if the interpretation is accepted, the respondents have to be paid pension, and that the respondents, as Ex-servicemen, are already drawing pension and, therefore, it would be a double benefit. With the above submissions, learned counsel for the petitioners has sought for setting aside the order impugned.

7. Learned counsel for the respondents submitted that the Court should sympathise with the case of the respondents and, they, having spent a good part of their career serving the nation, came to native State to get some employment; they worked for less than the minimum wages and they are now treated unfairly by the respondent Board. Further, by referring to the orders of the Hon'ble Division Bench, dated 07.08.2008 and 18.08.2008, it is submitted that the Division Bench did not foreclose the avenues of the respondents to claim benefits retrospectively. Also, by referring to explanation under Section 3 (2) of the Act, it is submitted that even assuming that an undertaking was obtained, that undertaking is of no consequence and it cannot prevail or set aside the order passed by the sixth respondent. In this regard, reliance has been placed on a decision of this Court in Kumar Polydot Mills Limited v. Deputy Chief Inspector of Factories, 2010-III- LLJ-756 (Mad). With regard to the effect of undertakings, it is submitted that it is clearly an exploitation of unequalness in bargaining power and it cannot override the rights of the respondents. To support such contention, reliance has been placed on a decision of the Hon'ble Supreme Court in Oswal Agro Furane Ltd. v. Oswal Agro Furane Workers Union, (2005) 3 SCC 224; and also the decisions of this Court in R.Lakshmi v. The Chief Engineer (Personnel), 2012 (3) LLN 681 (DB) (Mad.); and S.Pappa v. Government of Tamil Nadu, (1999) 3 MLJ 347.

8. Learned counsel for the respondents submitted that it is very doubtful as to whether the common affidavit, dated August 2008, was filed before the Division Bench in W.P.No.27061 of 2005. That apart, the learned counsel, referring to the impugned order, submitted that the Labour Court was right in directing for computation of monetary benefits and was justified in observing that the past services rendered by the respondents cannot be excluded. Further, it is submitted, that in this writ petition, the petitioner Board has not disputed the quantum nor did it attack the impugned order on any other ground, other than mentioning that there was an undertaking.

9. After hearing the learned counsel for the parties and perusing the materials placed on record, it is to be pointed out, that though the respondents have given an undertaking, such an undertaking may not strictly bind on them nor can that be the sole basis for denying the relief sought for. Therefore, there would not be a need to go into the aspect as regards the unequalness in the bargaining power between the petitioner and the respondents. Undoubtedly, in order to arrive at a decision in this case, there is no necessity to go into the aspect as to whether the undertaking was obtained or not, prior to issuance of B.P.No.15, dated 27.09.2008. Thus, this Court de hors such question, proceeds to examine the correctness of the impugned order.

10. The undisputed facts have been set out in the preceding paragraphs i.e., the preamble of this order, so as to give a clear picture as to where the respondents stand. It is not in dispute that the respondents were contract workers and appointed on a three year contract. At the end of their three year period, they approached the Inspector of Labour, seeking permanency. Parallely, they also moved this Court by way of a writ petition not to disturb their employment. This Court granted an order of status quo, by virtue of which, the respondents continued in service. Ultimately, the Inspector of Labour passed an order on 04.06.2001, in favour of the private respondents, allowing their claims, thereby directing them to be made as permanent employees of the Board from the date on which they completed 480 days of continuous service. Challenging the said proceedings, the Board filed W.P.No.18848 of 2002 and an order of interim stay was granted by this Court on 04.06.2002. For six years, the writ petition was pending. Therefore, the question of implementation of the order of Inspector of Labour, dated 04.06.2001, did not arise. Similar orders were passed by various other authorities, which were challenged by the Board, and a set of cases were clubbed together in W.P.No.27061 of 2005. The Board questioned the correctness of the order passed by the Inspector of Labour, conferring permanent status on the respondents. When the matter came up before the Hon'ble Division Bench on 07.08.2008, learned counsel for the Board, on instructions, submitted that the Board had taken a decision to regularise the services of the respondents as Watch and Ward staff. In view of the said submission made by the Board, the Division Bench observed that it was not necessary to go into the question raised in the Writ Appeals/Writ Petitions and necessary steps would be taken by the Board within a period of four weeks from the date of receipt of

the order. With the said observation/direction, the writ appeals and the writ petitions were disposed of. Thus, the Division Bench did not test the correctness of the order passed by the Inspector of Labour nor did the respondents herein, who were also the respondents therein, contest the stand taken by the Board wherein they conveyed an agreement to regularise the services prospectively. However, it is too late for anyone to make any comments or observations on the order passed by the Hon'ble Division Bench, dated 07.08.2008, that too, at this distant point of time.

11. The contention of the Board is that they filed affidavit sometime in August, 2008, wherein they took a stand that the Board was willing to absorb 151 Ex-servicemen covered under the batch of cases in writ petitions/writ appeals as regular Watchmen in the time scale of pay of Rs.3050-5070, prospectively. In the light of the said proposal, a prayer was made by the Board to permit them to issue orders of absorption, as stated above.

12. It may be true, that the learned counsel for the petitioner Board has only handed over a photostat copy of the affidavit signed and sealed by the Chief Engineer (Personnel), TNEB. The doubt raised by the learned counsel for the respondents is, whether such an affidavit was filed in Court, at all.

13. In my view, there need not be any doubt on this aspect, because, B.P.No.35, dated 27.09.2008, exactly reflects the same stand taken in the affidavit of the Chief Engineer, Personnel, dated August, 2008. In fact, paragraph 6 of the Board Proceedings is an exact replica of first five lines in paragraph 5 of the affidavit. Therefore, this Court can safely conclude that the affidavit formed part of the record before the Hon'ble Division Bench. One more aspect to be taken note of is that not only W.P.No.27061 of 2005 and other seven cases were disposed of by the order, dated 07.08.2008, but three other connected cases were also disposed of in W.P.Nos.5038 to 5040 of 2001, by an order, dated 10.09.2008. W.P.No.18848 of 2002 filed against the order obtained by the private respondents herein was also disposed of by the Hon'ble Division Bench, along with the connected writ petition in W.P.No.3283 of 2002, by a common order, dated 18.08.2008. All the three orders were verbatim the same and, therefore, it would be rather unreasonable on the part of the respondents to now state that there was no affidavit before the Hon'ble Division Bench.

14. Having steered clear of the above factual position, it is to be seen, as to whether the Labour Court could have computed the wages, stating that the respondents are entitled to all benefits, after they have completed 480 days of continuous service. As a matter of fact, this was the order, which was passed by the Inspector of Labour, dated 04.06.2001, the correctness of which was to be tested in the writ petition, filed by the Board. However, when the matter came up before the Hon'ble Division Bench, on a submission made by the Board, which, according to them, was based on an affidavit, the respondents therein, in the first batch of cases, admittedly did not raise any objection and the Division Bench did not issue any positive direction, but, in effect, diluted the very effect of the order of



Inspector of Labour, as the Hon'ble Division Bench permitted for necessary steps to be taken by the Board within a time frame. In so far as the case filed by the Board against the order, dated 04.06.2001, passed by the Inspector of Labour is concerned, the same was disposed of by this court, vide a common order, dated 18.08.2008. It is not known, as to whether a similar affidavit was filed in the said writ petition. However, the order, which was passed therein, was identical in all the three sets of cases. Therefore, the respondents cannot harp upon the direction issued by the Inspector of Labour, as the said order got merged with the order passed by the Hon'ble Division Bench, which recorded an undertaking of the Board that they propose to regularise the services of 151 Ex-servicemen and, as per the affidavit, such regularisation was prospective.

15. In such circumstances, it is to be seen, whether the Labour Court could have computed the wages with retrospective effect. As long as the order passed by the Hon'ble Division Bench remains unassailed and the order of Inspector of Labour having been merged with the order of the Hon'ble Division Bench, it would be an unacceptable plea that still the Labour Court could compute wages based on the order passed by the Inspector of Labour, which, in effect, stood modified, after the order passed by the Hon'ble Division Bench, dated 18.08.2008.

16. In the given situation, the Labour Court fell in clear error in computing the wages, which are payable to the private respondents, without addressing the core issue as to the effect of the order passed by the Hon'ble Division Bench. In fact, the Labour Court had taken note of the order passed by the Hon'ble Division Bench in internal page 8 of the order, but, observed that the writ appeals were dismissed. The Labour Court should have endeavoured at least to carefully peruse the observations made by the Hon'ble Division Bench. In view of the order of the Inspector of Labour having got merged with the order of the Hon'ble Division Bench, all directions/observations contained in the order of the Hon'ble Division Bench would bind both the parties. Therefore, the respondents cannot resile themselves from the said order and state that they are entitled to make a challenge to the prospectivity of the proceedings in B.P.No.35. At the same time, the question of the petitioners/Board contesting the claim of the respondents does not arise, as such a plea is superfluous. Since the petitioners have challenged the impugned proceedings as without jurisdiction, in the light of the orders passed by the Hon'ble Division Bench, as observed by this Court earlier, this Court has not gone into the undertaking nor to the effect of such undertaking, but by the decision of the Hon'ble Division Bench. The argument based on explanation to Section 3 (2) of the Act is of little avail, as this Court is not inclined to go beyond the order of the Hon'ble Division Bench, nor can it give a different interpretation.

17. In view of my elaborate discussion as above, the order passed by the seventh respondent in C.P.No.15 of 2012, dated 31.07.2013, calls for interference, and is, accordingly, set aside.

18. Writ Petition is allowed. No costs. Consequently,  
the connected M.P.No.1 of 2014 is closed.

Sd/-  
Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

dixit

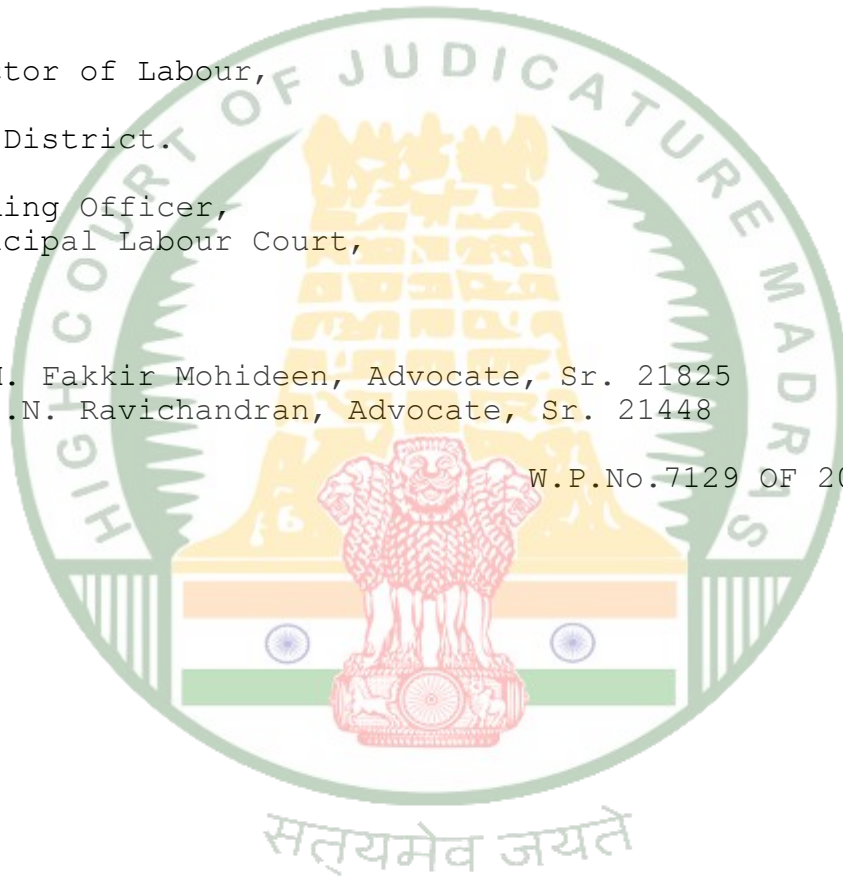
To

- 1.The Inspector of Labour,  
Vellore,  
Vellore District.
- 2.The Presiding Officer,  
The Principal Labour Court,  
Vellore.

1 cc to Mr.M. Fakkir Mohideen, Advocate, Sr. 21825  
1 cc to Mr.S.N. Ravichandran, Advocate, Sr. 21448

W.P.No.7129 OF 2014

EV (CO)  
kk 26/4



WEB COPY