

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.22322 of 2010

and

MP.No.1 of 2010

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

Versus

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

Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents to implement the order of Inspector of Labour, Krishnagiri dated 02.04.1998 bearing C/4198/96 viz., 3rd respondent, by absorbing the services of all the employees covered under the order 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 pay them all benefits continuity of service.

For Petitioner	:	Mr. Balan Haridas
For R1 and R2	:	Mr.Fakkirmohideen
For R3	:	Mr.R.Rajeswaran
		Special Government Pleader

ORDER

Heard Mr.Balan Haridas, learned counsel for the petitioner, Mr.Fakkirmohideen, learned counsel appearing for the respondents 1 and 2 and Mr.R.Rajeswaran, learned Special Government Pleader appearing for the third respondent and perused the materials placed on record.

2. The petitioner is the Tamil Nadu Electricity Board Accounts and Executive Staff Union and the prayer sought for in the writ petition is to issue a writ of mandamus directing the respondents to implement the order passed by the third respondent dated 02.4.1998 in and by which, the third respondent directed absorption of the services of Members of the petitioner's Staff Union, whose names have been enclosed in the typed set of papers.

3. The respondent Board filed a writ petition challenging the order passed by the third respondent dated 02.4.1998 in WP.No.11228 of 1999 and this Court granted an order of interim stay of the order of the third respondent and the writ petition was pending till 2001 and thereafter, it was dismissed on 11.4.2001. As against which, the respondent Board filed Writ Appeal in W.A.No.2008 of 2003 and the same was entertained thereby granting interim order since other batch of cases in W.A.No.1302 of 2003, etc. were pending. Subsequently, the said batch of cases were disposed of by the Hon'ble Division Bench by a common judgment dated 24.10.2008 and following the same, writ Appeal No.2008 of 2003 was also disposed of by the Hon'ble Division Bench on 19.01.2009.

4. Based on this factual situation, now, it has to be seen as to whether the respondent Board has to implement the order passed by the third respondent dated 02.4.1998 in its entirety and whether the Members of the petitioner's Union are entitled for the entire relief as granted by the third respondent since the challenge to the said order culminated before the Division Bench by judgment dated 19.01.2009, which, in fact, was in terms of the judgment dated 24.10.2008.

5. To examine this aspect, it is necessary to take note of the judgment of the Hon'ble Division Bench dated 24.10.2008 in Writ Appeal No.1302 of 2003, etc. batch and the operative portion of the same is as follows:-

"24. Under the circumstances, we are convinced that the settlement entered in to by the board with workmen and union is valid and enforceable. We, however, qualify the same that it shall be subordinated only to the extent that the claims of ITI trained workmen that the Regulation demands for the post of helpers are not discarded.

25. We therefore, direct that persons who ought to have been taken in employment against vacancies that were directed to be filled by the Supreme Court pursuant to Khalid Commission's report shall first be filled up before other vacancies are undertaken to be filled up. The writ petitions challenging the 18 (1) settlement will stand dismissed, except to the extent mentioned in paras 23 and 24 above. Age relaxation, wherever necessary to accommodate them shall be given. Similarly, the writ petitions challenging the board proceedings 36 and 37 of the Administrative Branch dated 29.10.2005 will also stand dismissed. The claims of persons before the Labour Inspectors which have been allowed and who have come before this court seeking for issue a mandamus for enforcement will now be considered under the 18 (1) settlement. The writ petitions filed by the Electricity Board challenging the orders of the Labour Inspectors will now be dismissed as infructuous having regard to the 18 (1) settlement. The appeals filed by the board against the decision of the learned single will also stand dismissed. The claims of the workmen in W.P.No. 1033 of 2006 and the connected batch will not stand affected by the decision of this court and the Labour Court will decide on their claims in I.D.No. 106 of 2003 in the light of what we have observed, in so far as they are relevant and independently of the same on factual issues whether they have been directly employed by the Electricity Board or not. The Writ Petitions and Writ Appeals are disposed of accordingly. No costs."

6. Thus, in terms of the decision of the Hon'ble Division Bench, if it is the case of settlement under Section 18 (1) of the Industrial Disputes Act 1947, the Hon'ble Division Bench took a view that the settlement would merge with the order passed by the Inspector of Labour and therefore, the terms of settlement would bind the employees.

7. The learned counsel for the respondent Board contended that in view of the judgment of the Hon'ble Division Bench dated 24.10.2008, as the terms of the settlement are binding on the employees, they have been absorbed in the services of the Board pursuant to Board proceedings in B.P.No.44 dated 06.9.2007 and B.P.No.22 dated 25.10.2012. Insofar as the employees who have been absorbed pursuant to BP.No.22 dated 25.10.2012 are concerned, it was stated that they have been continuously

engaged as contract Labourers on need basis as per Board Memo dated 20.02.2008.

8. Though they were absorbed pursuant to the order of the Board dated 25.10.2012, from the counter affidavit, it is seen that out of 173 persons, in whose favour the order was passed by the respondents, 98 of them have been absorbed by the Board pursuant to the order dated 06.9.2007, which has been passed in terms of the settlement under Section 12 (3) of the Industrial Dispute Act dated 10.8.2007 apart from executing an undertaking in favour of the respondent. Therefore, in respect of those 98 employees, in terms of the judgment of the Hon'ble Division Bench dated 24.10.2008, no relief can be granted in this writ petition and they should be satisfied with the order of absorption passed, which was done pursuant to the settlement entered into under Section 12 (3) of the Act.

9. Now, the only issue left to be decided by this Court is regarding remaining 74 persons. Admittedly, these 74 persons did not enter into any settlement with the Board. It is stated that from February 2008 onwards, they have been continuously engaged as contract employees on need basis and thereafter absorbed pursuant to the Board proceedings dated 25.10.2012. In such circumstance, it is to be seen as to what relief they are entitled.

10. At this juncture, the learned counsel for the petitioner submitted that this Court had an occasion to consider some of the similarly placed employees in WP.No.10911 of 2011 by following the judgment passed by the Hon'ble Division Bench in W.A.No.1340 and 1341 of 2012 dated 10.7.2012, rejecting the plea of the Board that there is a deemed merger of the Award with the settlement. Therefore, according to the learned counsel, 74 workmen are entitled for full benefits from 02.4.1998, date of order of the Inspector of Labour and, in respect of those 98 employees, it is stated that the petitioner Union cannot have any grievance and they can seek for nothing more.

11. In W.A.No.1340 and 1341 of 2012 dated 10.7.2012, the Hon'ble Division Bench took a stand that there cannot be any deemed merger of the Award of the settlement in the light of the fact that there was inordinate and unexplained delay of 5 to 7 years in moving this Court and on that ground, the writ petition filed by the Board was dismissed.

12. The facts of the present case are slightly different. The Inspector of Labour passed an order dated 02.4.1998 and promptly, during the year 1999, the writ petition was filed and an order of stay was obtained. After dismissal of the writ petition on 11.4.2001, a Writ Appeal was filed and it was numbered as W.A.No.2008 of 2003 and there was an order of stay

operating and the matter was kept pending since there was other batch of cases. The other batch of cases were disposed of on 24.10.2008. Following the same, the Writ Appeal concerning the order of the Inspector of Labour in this writ petition, was disposed of on the same lines by judgment dated 19.01.2009. Therefore, the Board had been diligently prosecuting the matter and the order of the Inspector of Labour was stayed by the Writ Court initially and thereafter, by the Division Bench and after the dismissal of the Writ Appeal i.e. in January 2009, the order became capable of being implemented. That apart, it is seen that from 2008 onwards, 74 contract Labourers have been continuously engaged by the Board and subsequently, they have also been absorbed by Board's order dated 25.10.2012.

13. Therefore, the relief sought for by the petitioner Union in respect of 74 employees, cannot be fully granted as, at this stage, it would be too hard to direct the Board to grant them all benefits from the date of order of the Inspector of Labour i.e. 02.4.1998. However, the period between 19.01.2009 i.e. the date on which the Writ Appeal No. 2008 of 2003 was dismissed, and 25.10.2012, the date of Board's proceedings in BP.No.22, should be given credence.

14. Considering the entire facts and circumstances of the case and also considering the fact that there was a large scale of absorption of employees in the Board's Service, this Court directs the Board to consider the claims of those 74 employees by taking into consideration the period between 19.01.2009 and 25.10.2012 for the purpose of calculating the total length of service only for the terminal benefits and nothing else. This mean that these services shall be accounted only for the terminal benefits of 74 employees and this order will not confer any other right, such as inter se seniority, promotion etc.

With the above clarification and modifications, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

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

+ 1 cc to Mr.M. Fakkirmohideen, Advocate SR.13973
+ 1 cc to MR.Balan Haridas, Advocate SR.13492

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RSY(CO)
Eu 17.03.16



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