

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.21547 of 2016

A.Anandha Kumar

... Petitioner

Vs.

1.The Chief Engineer (Personnel),
Tamil Nadu Generation & Distribution Corporation,
No.144, Anna Salai,
Chennai-600 002.

2.The Superintending Engineer,
Chennai Electricity Distribution Circle/South,
Tamil nadu Generation & Distribution Corporation,
K.K.Nagar, Chennai-600 078.

3.The Chairman-cum-Managing Director,
Tamil Nadu Generation & Distribution Corporation,
No.144, Anna Salai,
Chennai-600 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the Letter No.078941/498/G.61/G.612/2013-2, dated 31.10.2013 on the file of the 1st respondent and to quash the same and to direct the respondents to regularise the service of the petitioner as per the list submitted by the 2nd respondent to the 1st respondent in pursuant to the Memo No.128688/G.58/G.582/2009-1, dated 12.05.2010, on the file of the 1st respondent.

For Petitioner : Mr.S.Doraisamy

For respondents : Mrs.Varalakshmi

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the Letter No.078941/498/G.61/G.612/2013-2, dated 31.10.2013 on the file of

the 1st respondent and to quash the same and to direct the respondents to regularise the services of the petitioner, as per the list submitted by the 2nd respondent to the 1st respondent in pursuant to the Memo No.128688/G.58/G.582/2009-1, dated 12.05.2010, on the file of the 1st respondent.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner that the petitioner is working as Contract Labour in the respondent-Corporation for more than 480 days continuously from 28.02.1997. He was working under the control of the various Assistant Engineers (O & M), under the 2nd respondent. The 1st respondent issued a memo dated 12.05.2010 in memo No.128688/G.58/G.582/2009-1, directing all the Superintending Engineers to furnish the details of the left out contract labourers, who are not covered under 12(3) Settlement and engaged continuously and the details of contract labourers, who are not engaged and obtained the orders of Inspector of Labour/High Court, etc immediately. In pursuance to the said memo dated 12.05.2010 issued by the 1st respondent, the 2nd respondent instructed to all the Assistant Executive Engineers to furnish the details in the enclosed statements on or before 27.05.2010 without fail. The petitioner is working as a contract labour for several years continuously and he received wages through petty cash book. The concerned Assistant Engineer also entered the petitioner's name in the Annexure-II, showing that he is left out contract labour, and not covered under 12(3) Settlement and engaged continuously along with others. In this regard, a report was submitted to the 2nd respondent, and thereafter, the same was forwarded to the 1st respondent. However, no orders with regard to regularization was made in pursuance to the memo issued by the 1st respondent dated 12.05.2010. Hence, the petitioner made a representation to the 1st respondent on 04.01.2013 requesting to regularize his services, but no order was passed by the 1st respondent.

3.It is further stated by the petitioner that as per Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, a person who was engaged for more than 480 days, is entitled to be absorbed as regular employee. Though the petitioner has worked for more than 480 days, his service was not regularised. Hence, the petitioner and similarly placed persons filed a writ petition in W.P.No.20948 of 2013 for a direction to the respondents to regularize their services as per the list submitted by the 2nd respondent to the 1st respondent in pursuant to the memo dated 12.05.2010. This Court by order dated 30.07.2013 disposed of the said writ petition, directing the respondents to consider the representation of the petitioner and to pass order. Pursuant to the direction given by this Court, the 1st respondent has passed the impugned order dated

31.10.2013 rejecting the petitioner's representation assigning the following reasons _

"i)the petitioner has not worked at TANGEDCO & TANTRANSCO even as TCL in construction section.

ii)he has not received ex-gratia.

iii)he was not identified by the committee constituted for identification of Contract Labourers engaged by Board on 08.08.1998 & 11/2007.

iv)Further he has not produced any documents to satisfy that he has worked continuously in O & M works at TANGEDCO.

v)He has done petty works related to construction as and when required and but not worked continuously and worked only 4 days on 09.07.1998, 13.09.2000, 10/2000 and 11/2000 and never worked after."

Aggrieved over the impugned rejection order same, the petitioner has come forward with the present writ petition.

4.When the matter is taken up for consideration, the learned counsel for the petitioner submitted that the petitioner was working in the Operation & Maintenance Division since 28.02.2007 continuously. Though he was not paid ex-gratia payment, on 16.11.2006, the Superintending Engineer, Chennai Electricity Distribution Circle (South) have made a request to the 1st respondent to permit him to pay an ex-gratia payment to him. In this regard, the petitioner has also made a representation dated 28.03.2016. Thus, the learned counsel for the petitioner submitted that by quashing the impugned order of rejection, again a direction could be given to the respondents to consider the representation of the petitioner dated 28.03.2016.

5.Per contra, the learned Standing Counsel for the respondents would submit that already the petitioner's representation was considered and rejected by the respondents and if the petitioner is aggrieved, he has to work out his remedy before the Competent authority viz., Inspector of Labour. Thus, the learned Standing Counsel for the respondents sought for dismissal of the writ petition.

6. Heard the submissions made on either side and perused the materials available on record.

7. When the petitioner's representation has already been considered and his request was rejected by the respondents, this Court is not inclined to give again a direction to the respondents to consider his representation. If the petitioner has records in support of his claim, he is at liberty to work out his remedy before the competent authority viz., Inspector of Labour. Hence, this Court is not inclined to entertain the prayer sought for by the petitioner. Accordingly, the writ petition is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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Chennai-600 002.

+1cc to Mr.S.Doraisamy, Advocate SR.56711
+1cc to Mrs.R.Varalakshmi, Advocate Sr.56557

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srg 24/11/2016