IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.17839 of 2011

1.P.Thirunavukkarasu
2.S.Chinasamy
3.V.Sekar
4.N.Saravanan
5.M.Durairaj
6.S.Sekar
7.K.Boopathi ... Petitioners

Vs.

The Superintending Engineer,
Chennai Electricity Distribution
Circle/North,
Tamil Nadu Electricity Board,
No.791, Anna Salai,
Chennai 600 002. ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, to direct the respondent to implement the order of authority dated 30.06.1999, passed in Na.Ka.No.E.5889/97 and further direct the respondent to calculate the difference in wages and pay it to the petitioners.

For Petitioners : Mr.S.T.Varadarajulu

For Respondent : Mrs.R.Varalakshmi

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O R D E R

Heard Mr.S.T.Varadarajulu, learned counsel for the petitioners and Mrs.R.Varalakshmi, learned standing counsel appearing for the respondent.

2. The petitioners have approached this Court for seeking the following relief,

"To issue a writ of Mandamus, to direct the respondent to implement the order of authority dated

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30.06.1999, passed in Na.Ka.No.E.5889/97 and further direct the respondent to calculate the difference in wages and pay it to the petitioners."

3. The case of the petitioners is as follows:-

The petitioners were engaged on a contractual basis by the respondent Electricity Board in one of its units. The respondent Board had been engaging thousands of contract workers for over two decades and they were engaging them continuously for its operation.

4. In order to streamline the employment of the contract workers and regularization, the Hon'ble Supreme Court of India, had appointed Justice Khalid Commission to go into the question of absorption and regularization of contract workmen, serving in the respondent Board for years together. The report was filed on 11.02.1991 and on the basis of which, nearly 20,000 contract workmen were regularized. However, according to the petitioners, the said benefit was not extended to them who were engaged in Distribution and Maintenance contract work, wherein the workers were continuously engaged on contract basis. According to the petitioners, they were engaged from 1990 onwards and each one of the petitioners has put in service for more than 7 to 9 years.

5. Since the petitioners' services were not regularised, they had approached the Authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, for regularization of their services. The Authority after hearing the submissions of both the workmen and the Management, allowed the claim of the petitioners on 30.06.1999 and directed to regularise their services after completion of 480 days from the date of initial appointment.

6. Against the order passed by the Authority, a writ petition was filed by the Board in W.P.No.2001 of 2000 and the same was dismissed by this Court. After dismissal of the writ petition, the petitioners were given employment on 19.06.2008, but, they were put on daily wages, once again as contract employees. In this regard, the petitioners have sent a representation on 20.04.2011, to regularise their services as per the order of the Authority. Thereafter, a further notice was also sent for the same relief. Since no action was forthcoming from the Board, the petitioners have approached this Court, seeking issue of a Writ of Mandamus.

7. Upon notice, learned standing counsel appearing for the respondent, entered appearance and filed a counter affidavit. According to the counter affidavit, it is submitted that in view of the persistent demand from the workmen for their absorption, in 2007, the Board and the unions have entered into settlement

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under Section 12(3) of the Industrial Disputes Act, wherein, all those who had obtained awards in their favour for absorption, were absorbed from 2011 and in the settlement, it was unanimously agreed by all parties that there would be no claims regarding the date of absorption, back wages or any other requirement by the contract labourers. In the said circumstances, these petitioners cannot stake absorption as ordered by the Authority on 30.06.1999.

8. At this, the learned counsel for the petitioners would dispute that these petitioners were not covered under the 12(3) settlement, since they were ordered to be regularised by the Authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. Even assuming that the 12(3) settlement has binding all the parties, the same cannot be prevail over the order obtained by the petitioners from the Statutory Authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. The fact that these petitioners were not covered under the 12(3) settlement, entered into between the Board and the Unions as averred in the counter affidavit, has not been seriously disputed.

9. That being the case, this Court does not understand as to what legal basis, the benefit of the order passed by the Authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, dated 30.06.1999, cannot be implemented in favour of the petitioners. Moreover, it has to be seen that the Board which had filed a writ petition against the order of the Authority was unsuccessful, since the writ petition was dismissed. In view of the same, there cannot be any justification for Board to drag its feet any further and delay the benefit of implementation of the order passed by the Authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981.

10. The learned counsel for the petitioners would submit that the petitioners would not claim wages for the period of non-employment on the principle “No work, no pay”. Considering the submissions of the learned counsel and pleadings and materials placed on record, this Court is of the view that the inaction on the part of the respondent Board, in not implementing the order dated 30.06.1999 of the Authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, cannot stand the test of judicial scrutiny and therefore, the same is liable to be interfered with.

11. In the said circumstances, this Court having no hesitation to direct the respondent to grant permanent status to

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the petitioners in terms of the order passed by the Authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, in Na.Ka.No.E.5889/97, dated 30.06.1999, within a period of eight weeks from the date of receipt of a copy of this order. The petitioners are entitled to all attendant benefits except backwages for the period of non-employment.

12.With the above direction, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

gsk
To

The Superintending Engineer,
Chennai Electricity Distribution
Circle/North,
Tamil Nadu Electricity Board,
No.791, Anna Salai,
Chennai 600 002.

+1cc to Mr.S.T.Varadarajuly, Advocate SR.No.87985
+1cc to Mr.R.Varalakshmi, Advocate SR.No.87822

W.P.No.17839 of 2011

SR(CO)
GN(23/01/2018)

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