

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.32026 of 2017
and WMP.Nos.35181 and 35182 of 2017

1. The Superintending Engineer
Tamil Nadu Generation and Distribution
Corporation Ltd.,
Mettur Electricity Distribution Circle
Mettur Dam-01
Salem District-636 401
 2. The Chief Engineer/Distribution
Erode Region
Tamil Nadu Generation and Distribution
Corporation Ltd.,
Erode-638 009
- ...Petitioners

Vs.

1. The Presiding Officer
The Labour Court
Salem
 2. P.Duraisamy
- ...Respondents

Prayer :- Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent order dated 27.04.2015 in I.A.No.445 of 2014 in I.D.No.129 of 2013 and quash the same and consequently direct the 1st respondent to hear the main case in I.D.No.129 of 2013 on merits.

For Petitioners : Mr.P.R.Dhilip Kumar

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O R D E R

This Writ Petition is filed seeking to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent order dated 27.04.2015 in I.A.No.445 of 2014 in I.D.No.129 of 2013 and quash the same and consequently to direct the 1st respondent to hear the main case in I.D.No.129 of 2013 on merits.

2.1. It is a case where the 2nd respondent was appointed as a Contract Labourer (Mazdoor) on 21.10.1982. As per the recommendations of Justice Khalid Committee regarding absorption of Contract Labourers, the TANGEDCO (erstwhile TNEB) has formed the Screening Committee throughout Tamil Nadu to identify the bonafide contract labourers. The screening committee has instructed the Contract Labourers that those who have been working for more than 5 years as on 08.08.1998 to appear before the screening committee along with the educational certificates and proof of age and other certificates required.

2.2 In the said process of identification, the 2nd respondent said to have submitted a medical certificate obtained from the Senior Civil Surgeon Government Primary Health Centre, Elanthakuttai, Namakkal District, as proof of his age and as per the medical certificate, his date of birth has been arrived as 07.08.1963. During the interview by the screening committee, the 2nd respondent has claimed that he has not studied in any school and hence, on the basis of the medical certificate, the 2nd respondent was appointed as Mazdoor-II Grade (Trainee) on 23.11.2005.

2.3 After completing the training period, the individual has been appointed as Mazdoor II Grade with effect from 23.11.2005. While joining duty in the regular Mazdoor post, the 2nd respondent has produced medical fitness certificate obtained from the Senior Civil Surgeon Medical Officer, Government Hospital, Sankari, and also he has produced age certificate obtained from the Senior Civil Surgeon, Government Primary Health Centre, Elanthakuttai, Namakkal District. In the medical certificate, his age is furnished as 42 years as on 12.11.2005.

2.4 While so, a petition dated 02.05.2009 has been received stating that the 2nd respondent has studied upto 3rd standard and therefore, enquiry was made with the Head Master, Panchayat Union Elementary School, Palayapalayam, Tiruchengode, regarding the educational qualification of 2nd respondent.

2.5 The Additional Deputy Elementary Education Officer, Tiruchengode of Namakkal District, in his letter dated 01.07.2009, has stated that the 2nd respondent was admitted in the Chinna Anangoor Panchayat Union Elementary School on 04.06.1957 and his date of birth as per school record was 24.03.1952 and the authority has also furnished the copy of register of admission.

2.6 Noticing the fact that the 2nd respondent has concealed the fact of school education and produced medical certificate for proof of his age wherein it has been arrived as 07.08.1963, a Disciplinary Proceedings has been initiated against the 2nd

respondent and he was suspended from service with effect from 26.03.2010.

2.7 On conclusion of the domestic enquiry, charges were levelled against him and the Enquiry Officer has stated in his findings that the charges levelled against him were proved. Based on the proven charges, the punishment of postponement of next annual increment for a period of 2 years with cumulative effect was imposed. On 31.03.2012, his suspension was revoked and permitted to join duty and on the same day (31.03.2012) he has been relieved from his duties on attaining the age of superannuation.

3. The 2nd respondent has raised a dispute under Section 2A of Industrial Dispute Act, 1947, before the Labour Officer, Salem, in I.D.No.129 of 2013, challenging the punishment awarded to him vide memo dated 26.11.2012 by the 1st respondent and also challenging the relieving order .

4. Before the Labour Court/1st respondent, due to non-filing of vakalat and counter affidavit on time and since there was none to represent on behalf of the Petitioners-TANGEDCO, an exparte order was passed on 22.01.2014 and ordered the TANGEDCO to reinstate the 2nd respondent into service with continuity of service and backwages.

5. The Petitioners herein filed I.A.No.445 of 2014 in I.D.No.129 of 2013 on 25.11.2014 before the 1st respondent to condone the delay of 345 days in filing the petition to set aside the ex-parte award explaining the reason that after receiving the Court summon, the matter was entrusted to the Administrative Assistant of the Department, who has failed to follow up the case and therefore, the Department could not file vakalat and counter on the specified date.

6. The said I.A., was dismissed by the Labour Court vide order dated 27.04.2015. This Writ Petition is filed seeking to set aside the dismissal order of the Labour Court passed in I.A.No.445 of 2014 in I.D.No.129 of 2013 dated 27.04.2015 and for consequential direction to the 1st respondent to hear the main case in I.D.No.129 of 2013 on merits.

7. The learned counsel for the Petitioners (TANGEDCO) submits that only due to administrative reasons, the delay has occurred.

8. In the application to condone the delay of 345 days, it has been stated by the Petitioners that due to administrative reasons, such a long delay has occurred, which in my considered

view, is an usual reason given by the Organisation. Further the Petitioners-TANGEDCO is having a list of standing counsel to represent their cases and further having separate Department/Wing, to deal with court cases and in such circumstances, this court is unable to accept the stand taken by the Petitioners-TANGEDCO that they are unaware of the proceedings before the Labour court.

9. For the above reasons, this Writ Petition is liable to be dismissed as there is nothing found in the affidavit warranting interference with the impugned order. The award passed by the learned Labour Court, Salem, passed in I.A.No.445 of 2014 in I.D.No.129 of 2013, clearly shows that the petitioner has no valid ground to seek the relief as stated therein.

In the result, finding no reason to interfere with the impugned order passed by the Labour Court, this Writ Petition is dismissed. No costs. Consequently, connected WMPs are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintending Engineer
Tamil Nadu Generation and Distribution
Corporatin Ltd., Mettur Electricity Distribution Circle
Mettur Dam-01, Salem District-636 401
2. The Chief Engineer/Distribution
Erode Region, Tamil Nadu Generation and Distribution
Corporation Ltd., Erode-638 009
3. The Presiding Officer
The Labour Court
Salem

+1cc to Mr.P.R.Dhilip Kumar, Advocate, S.R.No.88829

Writ Petition No.32026 of 2017

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