

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.12030 and 12031 of 2012

and M.P.No.1 of 2012

L.Easter Thangaiah ... Petitioner in W.P.No.12030 of 2012

P.Jeyakumar ... Petitioner in W.P.No.12031 of 2012

vs.

- 1.The Chief Engineer (Personnel),
TamilNadu Generation and Corporation Limited,
8th Floor, N.P.K.R.R. Maligai,
No.144, Anna Salai, Chennai-2.
- 2.The Chairman cum Managing Director,
Tamil Nadu Generation and Corporation Limited,
10th Floor, N.P.K.R.R. Maligai,
No.144, Anna Salai, Chennai-2.
- 3.The Director (Generation),
Tamil Nadu Generation and Corporation Limited,
10th Floor, N.P.K.R.R. Maligai,
No.144, Anna Salai, Chennai-2.
- 4.The Superintending Engineer,
Purchase and Administration,
Tamilnadu Generation and Corporation Limited,
Tuticorin Thermal Power Station,
Tuticorin -4.

.. Respondents in both W.Ps.

Prayer in W.P.No.12030 of 2012: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 4th respondent in Memo No.2442/41/ADM-II/A1-2010 dated 24.02.2010 insofar as the order deems the petitioner as fresh appointment against the order of the competent authority under the Tamil Nadu Industrial Establishments (Conferment Status to Workmen) Act, 1981 dated

02.01.2001 and the consequential order of the 4th respondent in proceedings No.Ku.No.1193/53/Ne.Pe.3/U4/Ko.Manu/2011 dated 26.03.2011 and quash the same as illegal and arbitrary and consequently directing the first respondent to confer permanent status to the petitioner from the date of his joining in the service of the 4th respondent entitling the service benefits of promotion, back wages, continuity of service, family pension benefits and all other concomitant service benefits eligible to the petitioner.

Prayer in W.P.No.12031 of 2012: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 4th respondent in Memo No.2442/41/ADM-II/A1-2010 dated 24.02.2010 insofar as the order deems the petitioner as fresh appointment against the order of the competent authority under the Tamil Nadu Industrial Establishments (Conferment Status to Workmen) Act, 1981 dated 02.01.2001 and the consequential order of the 4th respondent in proceedings No.Ku.No.0794/09/Ne.Pe.3/U4/Ko.Manu/2012 dated 19.01.2012 and quash the same as illegal and arbitrary and consequently directing the first respondent to confer permanent status to the petitioner from the date of his joining in the service of the 4th respondent entitling the service benefits of promotion, back wages, continuity of service, family pension benefits and all other concomitant service benefits eligible to the petitioner.

For Petitioner : Mr.R.Sivakumar
in both W.Ps. for M/s.K.M.Vijayan Associates

For Respondents : Mrs.R.Varalakshmi
in both W.Ps. Standing Counsel for TANGEDCO

C O M M O N O R D E R

Since the issue to be adjudicated is one and the same, both these writ petitions are to be taken up and disposed of by this common order.

2. The petitioners would aver that they were employed as Contract Labourer in the services of the fourth respondent from the year 1997-1998 and for regularization of their services, they approached the Deputy Chief Inspector of Factories, Tirunelveli - Authority constituted under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and after contest, vide order dated 02.01.2001, the said authority has found that 7 persons, which

include the petitioners herein, had rendered continuous service for 480 days in a period of 24 calendar months and therefore, allowed the petition for conferment of permanent status and appointed them as permanent workers in Tuticorin Thermal Power Station, Tuticorin. The Tamil Nadu Electricity Board, aggrieved by the said order conferring permanent status on the petitioners, had filed W.P.No.9729 of 2002 and the learned Judge, having found that writ petitions in W.P.Nos.6171 of 1998 etc. batch relating to the very same issue have been dismissed, vide order dated 20.12.2000, dismissed the said writ petition, vide order dated 20.08.2003.

3. The petitioners would further aver that aggrieved by the order dismissing the writ petition, the Tamil Nadu Electricity Board filed W.A.No.311 of 2004, which was also dismissed on 17.11.2008 and despite the said fact, they have not been given appointment to the post of Helper by way of provisional selection. The petitioner, in this regard, has also submitted representations which were rejected, vide impugned order of the fourth respondent on the ground that they are entitled to the benefits only from the date of joining to the post. Challenging the legality of the said order, the present writ petitions are filed.

4. Mr.R.Sivakumar, learned counsel appearing for the petitioners would submit that since no further challenge has been made to the order dated 17.11.2008 in W.A.No.311 of 2004 filed by the Tamil Nadu Electricity Board against the petitioners and others, coupled with the fact that 4 of them, namely Tvl.B.Sekar, M.Murugan, P.Bernardshaw and P.Rajakumar had filed W.P.Nos.10054 to 10057 of 2011 praying for quashment of the impugned order and for a direction to the first respondent to confer permanent status to the petitioners therein from the date of joining and it came to be allowed and it was also implemented, vide proceedings of the fourth respondent dated 23.01.2016 in Memo No.34551/220/Adm- III(2)/F.Court Case./2015-4, there cannot be any impediment on the part of the respondents in granting the similar relief to the petitioners herein.

5. Per contra, Mrs.R.Varalakshmi, learned Standing Counsel appearing for the respondents/Tamil Nadu Electricity Board would submit that the order of the authority conferring permanent status is bereft of any particulars and though challenge has been made to the said order, which ended in failure, the petitioners, who are back-door appointees, cannot claim the benefit of regularization anterior to the date of joining and therefore, prays for dismissal of these writ petitions.

6. This Court has considered the rival submissions and also perused the entire materials placed before it.

7. The order conferring permanent status dated 02.01.2001 passed by the Deputy Chief Inspector of Factories, Tirunelveli - Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 was unsuccessfully challenged in W.P.No.9729 of 2002 and it was dismissed on 20.08.2003 and the appeal filed by TNEB in W.A.No.311 of 2004 against the said order was also dismissed on 17.11.2008 and while dismissing the said appeal, this Court directed the appellant/TNEB to implement the order of the Deputy Chief Inspector of Factories, Tirunelveli dated 02.01.2001 in letter and spirit within a stipulated time frame. It is informed that no challenge has been made to the order passed in the writ appeal and it has become final.

8. Seven workers were benefited out of the order dated 02.01.2001 passed by the Deputy Chief Inspector of Factories, Tirunelveli - Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and among them Tvl.B.Sekar, M.Murugan, P.Bernardshaw and P.Rajakumar had filed W.P.Nos.10054 to 10057 of 2011, praying for a direction to the respondent to regularize them from the anterior date and conferment of other consequential reliefs and the said writ petitions were allowed and it is relevant to extract the following portion of the said order:

"9. Above all, this Court is also aware of the question as to, how the petitioners who had not worked from 02.01.2001 till they are absorbed on 24.02.2010 to be paid with the backwages and continuity of service. Looking into the causes for their non-employment and continuity of service, the respondents only should be thankful for non-absorption of the petitioners, inspite of several orders passed by the Authority under the Act and this Court, therefore, continuity of service 02.01.2001 cannot be denied. Secondly, while turning to the question of backwages, the respondent department is the only prime reason for not implementing the order of this Court dated 02.01.2001, for which the petitioners cannot be denied with the backwages. However, taking into account the peculiar circumstances of the case, this Court hereby directs the respondents to grant continuity of service to the petitioners and other benefits, as per the order of the Hon'ble Division Bench, on 17.11.2008 in W.A.No.311 of 2004, within a period of two months from the date of receipt of a copy of this order."

The above said order has also been implemented vide proceedings of the fourth respondent dated 23.01.2016 in Memo No.34551/220/Adm-III(2)/F.Court Case/2015-4 dated 23.01.2016 and hence, there cannot be impediment for the respondents to confer the said benefits to the petitioners herein/

9. It is represented by the learned Standing Counsel appearing for TNEB that challenging the said order, writ appeal has been filed with delay and the petition for condonation of delay is yet to be listed. In the considered opinion of the Court, the order dated 12.06.2014 made in W.P.No.10054 of 10057 of 2011 is an interparty order and therefore, the respondents are bound by the same. As already pointed out, challenge made to the order conferring permanent status on the petitioners and five others had ended in failure and it has also become final and therefore, the respondents are bound to confer the said benefits to the petitioners as per the order of the Deputy Chief Inspector of Factories, Tirunelveli - Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and also in the light of the above cited common order dated 12.06.2014 made in W.P.Nos.10054 to 10057 of 2011.

10. In the result, both the Writ Petitions are allowed and the proceedings of the 4th respondent in Memo No.2442/41/ADM-II/A1-2010 dated 24.02.2010 insofar as the order deems the petitioners as fresh appointment against the order of the competent authority under the Tamil Nadu Industrial Establishments (Conferment Status to Workmen) Act, 1981 dated 02.01.2001 and the consequential order of the 4th respondent in proceedings No.Ku.No.1193/53/Ne.Pe.3/U4/Ko.Manu/2011 dated 26.03.2011 and the proceedings in No.Ku.No.0794/09/Ne.Pe.3/U4/Ko. Manu/2012 dated 19.01.2012 respectively are set aside and the respondents are directed to accord the petitioners the benefit of continuity of service from 02.01.2001 and other consequential benefits, subject to other eligibility, within a period of three months from the date of receipt of a copy of this order and communicate the decision taken, to the petitioners. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To

- 1.The Chief Engineer (Personnel),
TamilNadu Generation and Corporation Limited,
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Purchase and Administration,
Tamilnadu Generation and Corporation Limited,
Tuticorin Thermal Power Station,
Tuticorin -4.

+1cc to Mr.Vara lkshmi, Advocate, S.R.No.24551

+2cc to M/s.Vijayan Associates, Advocate, S.R.Nos.24390,24391

W.P.Nos.12030 and 12031 of 2012

SJ(CO)
RS(04/05/2017)

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