

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.12.2016

Delivered on : 03.1.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.35534 of 2002

S.Singaravel Petitioner

vs

1. Inspector of Labour,
Tuticorin-627 002.
2. The Superintending Engineer,
Kanyakumari Electricity
Distribution Circle,
Nagercoil. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order dated 21.3.2002 passed in Rc/E/2635/2002, on the file of the Inspector of Labour, Tuticorin (the first respondent herein), quash the same and direct the respondents to confer the permanent status upon the petitioner by absorbing him into services of the second respondent by providing him with an employment of permanent nature suitable to his qualification within a time frame, with all the benefits from the date of his initial employment or such other date to be fixed by this Court.

For petitioner : Mr.S.Subbiah

For respondents : Mr.M.Dig Vijaya Pandian, AGP-R1
Mr.R.Varalakshmi for R2

ORDER

This Writ Petition has been filed by the petitioner, seeking for the issuance of Writ of to call for the records relating to the order dated 21.3.2002 passed in Rc/E/2635/2002,

on the file of the Inspector of Labour, Tuticorin (the first respondent herein), quash the same and direct the respondents to confer the permanent status upon the petitioner by absorbing him into services of the second respondent by providing him with an employment of permanent nature suitable to his qualification within a time frame, with all the benefits from the date of his initial employment or such other date that may be fixed by this Court.

2. According to the writ petitioner, he has been working in the Electricity Department as contract labourer in the District of Kanyakumari from the year 1979 onwards. The grievance of the petitioner is that in spite of his long engagement with the Electricity Department, he was not considered for permanent absorption though he was qualified otherwise in all respects.

3. It appears that the writ petitioner had made a representation to the Department seeking for his permanent absorption and since no action was forthcoming, he was constrained to approach this Court by filing a Writ Petition in W.P.No.20969 of 1992. This Court, by order dated 27.10.1997, disposed of the writ petition by directing the Department to consider the representation of writ petitioner. In response to the direction of this Court, representation of the writ petitioner was considered by the second respondent and rejected the same on 16.3.1998, stating that as per the Hon'ble Supreme Court order dated 19.1.1995 only the contract labourers whose names were covered in Mr.Justice Khalid Commission Report be absorbed before 31.3.1998. Being not satisfied with the reply given by the Department, the petitioner made another representation to the Department, requesting for reconsideration of his claim since he was not aware as to why his name was not included in Mr.Justice Khalid Commission Report though he had been employed continuously from 1979 onwards. The Writ Petitioner appears to have filed another writ petition in W.P.No.8613 of 2001 and in the light of the petitioner's claim, the said Writ Petition was disposed on 26.4.2001 by directing the first respondent herein to consider the representation dated 23.2.2001 on merits and in accordance with law, within a period of two weeks. The first respondent, in compliance to the directions of this Court, has finally passed order dated 21.3.2002, rejecting the claim of the petitioner on the ground that no materials were produced by the petitioner in support of his claim that he was continuously engaged by the Department. The said rejection letter of the first respondent is impugned in the writ petition.

4. Heard the learned counsel appearing for the parties and perused the materials available on record.

5. The learned counsel appearing for the petitioner filed additional typed set of documents, stating that the petitioner was, in fact, engaged by the Electricity Department and a certificate to that effect, issued by the Assistant Engineer of the Electricity Department disclosing that the petitioner was employed as contract labourer for the past 7 years, was also filed. The said Certificate was dated 9.10.1986. The learned counsel also relied upon the other documents and tried to impress upon the Court about the petitioner's employment with the Electricity Department and submitted that there was no proper consideration by the first respondent and while rejecting the claim of the petitioner, no opportunity was afforded to him and no documents were called for by the first respondent. Therefore, the rejection order, according to the learned counsel for the petitioner was unsustainable both in law and on facts.

6. Per contra, the learned counsel appearing for the second respondent, who contended that there was proper consideration by the first respondent and the Certificate issued by the Assistant Engineer was not an acceptable document since as per the Circular issued by the Chairman of the Electricity Board, no authority less than Superintending Engineer was empowered to issue Service Certificates. The learned counsel also disputed the claim of the petitioner that he was engaged by the Electricity Department and also contended that the petitioner having not utilized the opportunity, who appeared before the Selection Committee which considered the claims of all the contract employees in furtherance of implementation of Mr. Justice Khalid Commission Report, cannot now agitate the issue after a considerable long delay.

7. Considering the submissions of the parties and the disputed questions of fact, this Court cannot give any finding as to the genuineness of the claim or otherwise of the petitioner. However, at the same time, the case of the petitioner cannot be brushed aside as there appears to be some substance in the claim of the petitioner. However, without going into the merits and without giving any finding on the claim made by the petitioner, in fairness of things, it would suffice a direction be issued to the second respondent to afford an opportunity to the petitioner to substantiate his claim with all the documents which in his possession and to take a decision thereon on that basis.

8. In such view of the matter, the Writ Petition is disposed of, directing the second respondent to afford an opportunity to the writ petitioner to substantiate his claim with all necessary documents in his possession and cause an enquiry into the claim on the basis of the official records available if any and pass a reasoned order, within a period of two months from the date of receipt of a copy of this order. No costs.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

To

1. The Inspector Of Labor,
Tuticorin- 627 002
2. The Superiendent of Engineer
Kanyakumari Electricity
Distribution Circle
Nagarcoil.

+1 CC to Mr. R. Varalakshmi, Advocate sr 74622
+2 CC to Mr. S. Subbiah, Advocate sr 74699 & 485
+1 CC to The Govt. Pleader, High Court, chennai sr 777

सत्यमेव जयते

Pre delivery order in
W.P.NNo.35534 of 2002

NMI (CO)
sp/25/1

WEB COPY