



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.04.2017

Pronounced on : 13.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD) Nos.13150, 20184, 20185 of 2014, 1393 of 2015 and 5642 of 2016

and

W.M.P.(MD)No.5072 of 2016 in W.P.(MD)No.5642 of 2016

W.P.(MD) No.13150 of 2014

1.S.Krishnamoorthy
2.R.Murugan
3.S.Jeyaraman
4.V.Karthikeyan
5.R.Vairamani

... Petitioners

Vs.

1.The Secretary to Government,
Government of Tamil Nadu,
Labour and Employment,
Fort St. George,
Chennai - 600 009.

2.The Chairman (Administration),
TANGEDCO,
(Formerly Tamil Nadu Electricity Board),
No.800, Anna Salai,
Chennai - 600 002.

3.The Superintending Engineer,
Theni Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Theni - 625 531.

4.The Inspector of Labour /
Industrial Adjudicator,
Theni.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 1 to 3 herein to absorb the petitioners herein in the third respondent establishment as per the proceedings of the fourth respondent herein in RC No.A/214/2004, dated 07.06.2004 and as confirmed by this Hon'ble Court in W.P.No.6997 of 2005, dated 11.09.2007 and pay all monetary benefits, within a reasonable time.

For Petitioners

For Respondents

: Mr.K.Appadurai

: Mr.S.Srimathy

for Mr.S.M.S.Johnny Basha
Standing Counsel



For Respondents
1 and 4

: Mr.N.S.Karthikeyan,
Additional Government Pleader

W.P. (MD) No.20184 of 2014

N.Baskara Ayyan

... Petitioner

Vs.

1.The Secretary to Government,
Government of Tamil Nadu,
Labour and Employment,
Fort St. George,
Chennai - 600 009.

2.The Chairman (Adminstration),
TANGEDCO,
(Formerly Tamil Nadu Electricity Board),
No.800, Anna Salai,
Chennai - 600 002.

3.The Superintending Engineer,
Theni Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Theni - 625 531.

4.The Inspector of Labour /
Industrial Adjudicator,
Theni.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 1 to 3 herein to absorb the petitioner herein in the third respondent establishment as per the proceedings of the fourth respondent herein in RC No.A/214/2004, dated 07.06.2004 and as confirmed by this Hon'ble Court in W.P.No.6997 of 2005, dated 11.09.2007 and pay all monetary benefits, within a reasonable time.

For Petitioner : Mr.K.Appadurai

For Respondents : Mr.S.Srimathy
2 and 3 for Mr.S.M.S.Johnny Basha
Standing Counsel

For Respondents : Mr.N.S.Karthikeyan,
1 and 4 Additional Government Pleader

W.P. (MD) No.20185 of 2014

A.Lakshmanan

... Petitioner

Vs.

1.The Secretary to Government,
Government of Tamil Nadu,
Labour and Employment,
Fort St. George, Chennai - 600 009.



2.The Chairman (Administration),
TANGEDCO,
(Formerly Tamil Nadu Electricity Board),
No.800, Anna Salai, Chennai - 600 002.

3.The Superintending Engineer,
Theni Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Theni - 625 531.

4.The Inspector of Labour /
Industrial Adjudicator,
Theni.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 1 to 3 herein to absorb the petitioner herein in the third respondent establishment as per the proceedings of the fourth respondent herein in RC No.A/214/2004, dated 07.06.2004 and as confirmed by this Hon'ble Court in W.P.No.6997 of 2005, dated 11.09.2007 and pay all monetary benefits, within a reasonable time.

For Petitioner : Mr.K.Appadurai

For Respondents : Mr.S.Srimathy
2 and 3 for Mr.S.M.S.Johnny Basha
Standing Counsel

For Respondents : Mr.N.S.Karthikeyan,
1 and 4 Additional Government Pleader

W.P. (MD) No.1393 of 2015

M.Pitchaimuthu

... Petitioner

Vs.

1.The Secretary to Government,
Government of Tamil Nadu,
Labour and Employment,
Fort St. George, Chennai - 600 009.

2.The Chairman (Administration),
TANGEDCO,
(Formerly Tamil Nadu Electricity Board),
No.800, Anna Salai, Chennai - 600 002.

3.The Superintending Engineer,
Theni Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Theni - 625 531.



4.The Inspector of Labour /
Industrial Adjudicator,
Theni.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 1 to 3 herein to absorb the petitioner herein in the third respondent establishment as per the proceedings of the fourth respondent herein in RC No.A/214/2004, dated 07.06.2004 and as confirmed by this Hon'ble Court in W.P.No.6997 of 2005, dated 11.09.2007 and pay all monetary benefits, within a reasonable time.

For Petitioner : Mr.K.Appadurai

For Respondents : Mr.S.Srimathy
2 and 3 for Mr.S.M.S.Johnny Basha
Standing Counsel

For Respondents :Mr.N.S.Karthikeyan,
1 and 4 Additional Government Pleader

W.P. (MD) No.5642 of 2016

1.K.Ganapathy
2.K.Nagarajan

... Petitioners

Vs.

1.Tamil Nadu Generation and Distribution Corporation,
Rep. by its Chairman,
No.144, Anna Salai,
Chennai - 600 002.

2.The Chief Engineer (Personnel),
TANGEDCO,
Anna Salai, Chennai.

3.The Superintending Engineer,
Theni Electricity Distribution Circle,
TANGEDCO, Theni - 625 531.

... Respondents

Prayer: 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 impugned order of the 3rd respondent in Ku.AANo.928/MePo/Theni/VuNiA/NiPi2/Vul/Ko.The.A.Pa/2014, dated 02.01.2015 and the consequential impugned order of the third respondent in Memo No.928-3/SE/TEDC/TNI/Adm.O/AdmnII/A1/F.N.B./15, dated 24.04.2015 and quash the same in so far as appointing the petitioners on need basis and as permanent casual labours and consequently directing the respondents 1 to 3 herein to absorb the petitioners herein in the 3rd respondent establishment as per the proceedings of the Inspector of Labour, Theni in Rc.No.A/214/2004, dated 07.06.2004 and as confirmed



by this Hon'ble Court in W.P.No.6997 of 2005, dated 11.09.2007 and W.P.No.15847 of 2012, dated 03.07.2014 and pay all monetary benefits, within a reasonable time.

For Petitioner : Mr.K.Appadurai

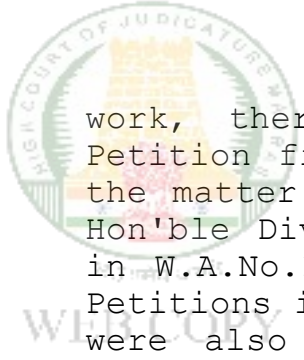
For Respondents : Mr.S.Srimathy
for Mr.S.M.S.Johnny Basha
Standing Counsel

COMMON ORDER

All these Writ Petitions are for issuing Writ of Mandamus directing the respondents 1 and 3 herein to absorb the petitioners in the respective cases under the respective Electricity Distribution Circle of Tamil Nadu Electricity Board as per the proceedings of the Inspector of Labour, as confirmed by this Court, in the earlier Writ Petition and further to direct the respondents to pay all monetary benefits within a reasonable time.

2.The prayer in all these Writ Petitions are to regularise the petitioners' service as per the order of the Labour Inspector namely the fourth respondent in all the Writ Petitions vide reference RC No.A/214/2004, dated 07.06.2004.

3.It is stated that the petitioners in all the Writ Petitions were employed in different sections in different places on regular basis for digging, pole erection, stretching wires, transformer erection, cutting trees, loading and unloading the electrical apparatus, street light erection and maintenance work, etc. It is contended that the work allotted to the petitioners in all these cases are perennial in nature as their services are necessary to meet the requirements of uninterrupted power supply to the industries and domestic consumers round the clock. The petitioners, who continued their employment on the legitimate expectation that they would be regularised due to their long number of years, were not regularised and hence, they were constrained to approach the fourth respondent claiming permanent status under Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status) to Workmen Act, 1981. After holding enquiry, the fourth respondent, namely, the Labour Inspector, who is the competent authority under the Act, passed a final order on 07.06.2004 finding that all the 73 Casual Labourers, were directly employed by the third respondent and that all the petitioners had completed 480 days continuously within 24 months and entitled for absorption under Section 3(1)(c) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status) to Workmen Act, 1981. As against the direction of the fourth respondent to confirm the services of the petitioners, according to the list enclosed, the respondents 2 and 3 challenged the said order of Labour Inspector in W.P. (MD) No.6997 of 2005 before this Court and refused to give any



work, thereafter, to the petitioners intentionally. The Writ Petition filed by the respondents was dismissed after holding that the matter is already settled by the Hon'ble Supreme Court and the Hon'ble Division Bench of this Court in similar cases particularly in W.A.No.1593 of 2004 reported in 2004 3 LLN 598. Similar Writ Petitions in W.P.Nos.12578 to 12585 of 2001 and 3372 to 3377 of 2002 were also dismissed. Despite the settled position of law and several judgments in similar cases by this Court, the respondents have not complied with the directions of the fourth respondent. The Writ Petitioners have stated in their affidavit filed in the respective Writ Petitions that they were compelled to approach this Court once again for implementation of the order of the fourth respondent dated 07.06.2004 for absorption / permanent status / regularisation of the petitioner. It is submitted by the learned counsel for the petitioners that the respondents instead of implementing the order of fourth respondent, denied employment violating Article 21 of the Constitution of India. It was further stated by the learned counsel for the petitioners that the third respondent further made an attempt to circumvent the implementation of the order of this Court. The petitioners in W.P.(MD)No.13150 of 2014 contended that the third respondent issued an order on 13.01.2015 contrary to the order of the fourth respondent dated 07.06.2004 stating that the petitioners will be given employment on need basis and that they will be paid daily wages at the rate of Rs.250 per day.

4. These proceedings of the third respondent dated 13.01.2015 was brought to the notice of this Court earlier and this Court surprised to find that the petitioners were compelled to withdraw the Writ Petition to get employment on certain terms which is contrary to the directions of the fourth respondent in the proceedings. It appears that the respondents realising their mischief passed an amendment to the earlier order by stating that the expression of the word "Casual Labour Permanently" should be substituted for the expression "Temporary Casual Labour / TCL" wherever it appears indicating that the petitioners whose stating was confirmed in W.P.(MD) No.13150 of 2014 are absorbed as Casual Labour Permanently. It is also relevant to point out that this Court has made the following observations on 09.03.2015:

"It is represented by the learned counsel appearing for the respondents that the petitioners are, in fact, appointed permanently though it is stated as 'need basis' in the order of appointment. When this Court sought explanation, as to how such an order is passed, in spite of an order passed by the Labour Inspector, confirmed by this Court earlier, the learned counsel for the respondents seeks a week's time to file additional affidavit to the effect that these appointments are only permanent.

Post the matter next week for filing additional

<https://hcservices.ecourts.gov.in/hcservices/>

5. Once again, before this Court, the learned Counsel



appearing for the respondents made a submission and the same is recorded by this Court which is extracted as below:

"Learned counsel for the respondents submitted that already draft orders have been passed and the same are placed before the Chairman for approval. As the Chairman is not available in the office due to Budget session the learned counsel for the respondents seeks further time for reporting compliance. Post after two weeks.

24.03.2015"

6. From the facts narrated, it is seen that the respondents are adopting only delaying tactics without any justification for refusing to implement the orders of the fourth respondent.

7. It is surprising to note that the respondents during the pendency of the Writ Petitions have compelled the petitioners in W.P.(MD)No.13150 of 2014 to accept employment on a false hope with a condition to withdraw the Writ Petition unconditionally. The respondents thereafter have withdrawn their condition regarding withdrawal of Writ Petitions by the petitioners in W.P.(MD)No.13150 of 2014.

8. An additional affidavit has been filed by the third respondent in W.P.(MD)No.13150 of 2014 in the following manner:

"4. I respectfully submit that this Hon'ble high Court directed me to present and explain the order issued by the Executive Engineer, Periyakulam stating that to withdrawn the Writ petitions filed before this Court when the matter is already seized by this Court. It is further humbly submits that on 03.01.2015 the petitioners personally appeared before me / the third respondent herein and made a requisition letter submitted and state that they came to understand that the second respondent already issued the order of appointment to all the petitioners herein and respectively state that if the third respondent issued an appointment order according to the Board norms and regulations the petitioners are ready to withdrawn the cases which pending before this Hon'ble Court. It is very clear that on the requisition given by the petitioners herein the Executive Engineer, Periyakulam issued the reposting order and state that to withdrawn the Writ Petitions filed before this Court before joining duty.

5. I respectfully submit that the Tamil Nadu Electricity Board have no bad intention and having great respect and obedience of this Hon'ble High Court and seeking open apologies before this Court if the Executive Engineer passed such an order to the petitioners to withdraw the writ petitions filed before this Court when the matter is already seized of by this Court and obeying the order of this Hon'ble High Court the Executive Engineer ~~amended~~ the order already issued to the petitioners and removed the column 7 totally and the order has been



communicated to them also. In this respect on 07.03.2015 the petitioners one Murugan, Jeyaraman and Vairamani were also joined their duty and now they are working in the respective areas from 08.03.2015 onwards."

9. The conduct of the respondents in the present case is contumacious. Despite the fact that the matter has reached finality by the disposal of the writ petitions filed by the respondents earlier, challenging the order of fourth respondent in W.P.(MD) No.6997 of 2005 by order dated 11.09.2007, the respondents are once again making strenuous efforts and attempt to deprive the petitioners the benefits of the order of fourth respondent and the judgment as confirmed by this Court in the earlier Writ Petition. The respondents have filed counter affidavit in W.P.(MD) No.13150 of 2015 mainly on the ground that the petitioners have accepted the employment on their assurance to withdraw the writ petition. Later the condition imposed to the petitioners to withdraw the Writ Petition was removed and the petitioners were induced to accept the employment subject to the result of the Writ Petitions filed by the petitioners. Hence, without even going into the controversy it can be safely concluded that there is no impediment to this Court to pass the order on merits and this Court need not be influenced merely because the petitioners in the Writ Petitions are engaged by the respondents on the basis of some other independent order passed by the respondents. The order during the pendency of the Writ Petition is not in compliance with the direction of the fourth respondent. The petitioners are right in stating that they are coerced to accept some form of employment on condition to withdraw the Writ Petitions. This Court record its serious concern about the conduct of the respondents. As pointed out by the learned counsel for the petitioners in these cases, the petitioners in the Writ Petitions are entitled to the benefit of the order of fourth respondent which has been confirmed by this Court in the Writ Petitions filed by the respondents. It is unfortunate to note that the same points that were raised in the previous round by litigation are once again raised. The respondents argued about the settlement that was arrived at between the respondents and the employees. It is pertinent to mention that the respondents in their respective counter affidavit in the Writ Petitions have not stated anything about the nature of settlement and the benefit that was given to the Writ Petitioners in terms of the settlement. Hence, when they do not admit any right in favour of the petitioners, there is no purpose in referring to the settlement, if any. This Court in W.A. (MD) Nos.339 and 340 of 2015, dated 24.11.2016 has dismissed the Writ Appeals which are filed as against the order of the learned Single Judge of this Court in W.P.(MD) No.2653 of 2013 and 14674 of 2012 allowing the Writ Petitions with similar prayer as in the present Writ Petitions by persons who are similarly placed as the petitioners in the present cases. Having regard to the above facts, this Court is not inclined to accept the case of the respondents in defence and these Writ Petitions are allowed with cost of Rs.5000/-



to each of the Writ Petitioner in the Writ Petitions. Consequently, the connected Miscellaneous petition in W.M.P.(MD)No.5072 of 2016 is closed. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
Government of Tamil Nadu,
Labour and Employment,
Fort St. George,
Chennai - 600 009.

2.The Chairman (Administration),
TANGEDCO,
(Formerly Tamil Nadu Electricity Board),
No.800, Anna Salai,
Chennai - 600 002.

3.The Superintending Engineer,
Theni Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Theni - 625 531.

4.The Inspector of Labour /
Industrial Adjudicator,
Theni.

5.The Chairman,
Tamil Nadu Generation and Distribution Corporation,
No.144, Anna Salai,
Chennai-600 002.

6.The Chief Engineer(Personnel)
TANGEDCO,
Anna Salai, Chennai.

+2cc to M/s. K.APPADURAI Advocate in SR. NO.59929
+1cc to M/s. S.M.S.JOHNNY BASHA Advocate in SR. No.59907
SRM
JS/SV.MMS/SAR.1/16.6.2017/9P-10C

W.P.(MD) Nos.13150, 20184, 20185 of 2014,
1393 of 2015 and 5642 of 2016
13.06.2017