

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.Nos.734 of 2017, 868 of 2017 and 286 of 2018
and
C.M.P.Nos.14984, 14985 and 10062 of 2017

W.A.No.734 of 2017:

Tamil Nadu Electricity Board,
rep.by its Executive Engineer,
Acquisition, Kumbakonam. ... Appellant/Petitioner

-vs-

- 1.Tanjore District Podhu Thozhillalar Sangam,
rep.by its Secretary N.Santhanam,
66, East Raja Street, Thanjavur.
- 2.The Presiding Officer, Labour Court,
Cuddalore.
- 3.G.Sugandha ... Respondents/Respondents

W.A.No.868 of 2017:

- 1.Tamil Nadu Electricity Board,
rep.by its Chief Engineer (Personnel),
800, Anna Salai, Chennai-600 002.
- 2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Thanjavur Electricity Distribution Circle,
Thanjavur-7. ... Appellants/Respondents

-vs-

G.Rajkumar .. Respondent/Petitioner
W.A.No.286 of 2018:

- 1.M.Senthilkumar
- 2.S.Ganesan
- 3.K.Suresh

4.R.Dakshinamoorthy

5.Sugantha

... Appellants/Petitioner

-vs-

1.The Presiding Officer,
Labour Court, Cuddalore.

2.Tanjore District Podhu Thozhilalar Sangam,
rep.by its Secretary N.Santhanam,
No.66, East Raja Street, Thanjavur.

3.The Tamil Nadu Electricity Board,
rep.by its Executive Engineer,
Acquisition, Kumbakonam. ... Respondents/Respondents

W.A.No.734 of 2017 filed under Clause 15 of Letters Patent,
against the order passed by this Court in W.P.No.37257 of 2004
dated 04.09.2014.

PRAYER IN WP.37257 OF 2004 (WA.734 OF 2017)

Writ Petition filed under Article 226 of the Constitution
of India for issuance of Writ of Certiorarified mandamus calling
for the records of the second respondent / labour Court relating
to the award dated 15.04.2004 in I.D.No.42 of 1996 and quash the
same as illegal and without jurisdiction.

W.A.No.868 of 2017 filed under Clause 15 of Letters Patent,
against the order passed by this Court in W.P.No.6344 of 2009
dated 04.09.2014.

PRAYER IN WP.6344 OF 2009 (WA.868 OF 2017)

Writ Petition filed under Article 226 of the Constitution
of India for issuance of Writ of Certiorarified mandamus calling
for the records pertaining to the order dated 28.3.2009 passed
by the second respondent in memo No. 262/Adm.I/A.3 /
F.A.Sessor/2009 dated 28.03.2009 quash the same and
consedquently direct to the Respondents to give the petitioner
permanency and absorption with all consequential benefitts as
par with 18 workmen covered under the Award passed in
I.D.No.42/96

W.A.No.286 of 2018 filed under Clause 15 of Letters Patent,
against the order passed by this Court in W.P.No.1148 of 2018
dated 19.01.2018.

PRAYER IN WP.1148 OF 2018 (WA.286 OF 2018)

Writ Petition filed under Article 226 of the Constitution
of India for issuance of Writ of Certiorarified mandamus to call
for the entire records connected with the impugned Award of the

1st respondent passed in I.D.No.42 of 1996 dated 15.04.2004 and quash the portion of the award in so far as denying the order of absorption to the petitioners from initial date of appointment with backwages, with continuity of service and all other attendant benefits.

For appellants in : Mr.Anandha Gopalan for
W.A.Nos.734 and 868/2017 M/s.T.S.Gopalan & Co.,
and R3 in W.A.No.286/2018 Standing Counsel for TNEB

For R1 and R3 in W.A.No. : Mr.P.Wilson, Sr.Counsel
734 of 2017, respondent for Mr.S.N.Ravichandran
in W.A.No.868 of 2017 and
appellants in W.A.No.286/2018

COMMON JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

It appears that 18 workers who have raised a dispute through their Union, viz. Tanjore District Podhu Thozhilalar Sangam, were directed to be regularised in service in the pay scale of Assessors by the Labour Court in its award dated 15.04.2004 pursuant to the reference made in G.O.D.No.757, Labour and Employment Department, dated 20.08.1996. Thereafter, out of 18 workers, 13 workers have been regularised in service, but without backwages till 2008 and their services have been calculated from 15.04.2004. The remaining 5 workers have not agreed for their services to be calculated from 15.04.2004.

2.On filing writ petitions before this Court by the Tamil Nadu Electricity Board in W.P.Nos.37257 of 2004 and 6344 of 2009, this Court passed an order on 04.09.2014 directing the Tamil Nadu Electricity Board to make the employees permanent including the petitioner in W.P.No.6344 of 2009 on and from the date of publication of award dated 15.04.2004 and grant all other benefits granted by the Labour Court.

3.Challenging the said order, the Tamil Nadu Electricity Board has come up with the appeals in W.A.Nos.734 and 868 of 2017.

4.Against the award passed by the Labour Court dated 15.04.2004 passed in I.D.No.42 of 1996, 5 persons have filed W.P.No.1148 of 2018 and the same was dismissed on 19.01.2018 on the ground of delay/laches. Challenging the same, they have filed the appeal in W.A.No.286 of 2018.

5.Mr.P.Wilson, learned senior counsel appearing for the incumbents has submitted that the incumbents have been working in the Department since 1989 and the similarly placed persons have been absorbed in the Department with effect from 06.04.2002

and that by virtue of their absorption, they will be entitled for pensionary benefits and whereas the incumbents herein would be entitled for absorption only from the date when the award became enforceable, ie., 15.04.2004. Hence this is a clear case of discrimination.

6.A counter affidavit has been filed on behalf of the Tamil Nadu Electricity Board in which it is stated that out of these 19 persons, 1 workman was given up at the trial stage and the number of workmen who have settled the issue with the management is 13 persons and they have been absorbed with effect from 15.04.2004 without back wages till January 2008 and in respect of remaining 5 workmen, the Board is willing to grant absorption with effect from 15.04.2004, without back wages till January 2008 in the event of them giving an undertaking accepting the same.

7.It appears that the said 18 persons involved in the present dispute had worked only for a few days in a month and they were engaged to take meter readings in some rural areas only at the end of the month. Further, in view of the change in system to once in two months, their services were not required after 1995. Hence they cannot be compared with the regular employees, as these 18 persons were not given any other work similar to the one being performed by the permanent employees. It appears that large number of workmen have been absorbed pursuant to the award passed by the Labour Court.

8.Taking into consideration the counter affidavit filed by the Tamil Nadu Electricity Board and also the facts and circumstances of the case, this Court is of the considered opinion that these 5 persons (appellants 1 to 4 in W.A.No.286 of 2018 and the respondent in W.A.No.868 of 2017) would be entitled to the same benefit as that of the other 13 persons who have been absorbed by the Tamil Nadu Electricity Board by way of settlement, and not more than that. Thus these 5 persons can be absorbed with the same benefit as given to the 13 persons, in the event of them giving an undertaking accepting the same.

9.The writ appeals are disposed of accordingly. No costs. Consequently the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VIII)
//True Copy//

Sub Assistant Registrar

KM

To

1.The Executive Engineer-Acquisition,
Tamil Nadu Electricity Board,
Kumbakonam.

2.The Presiding Officer, Labour Court,
Cuddalore.

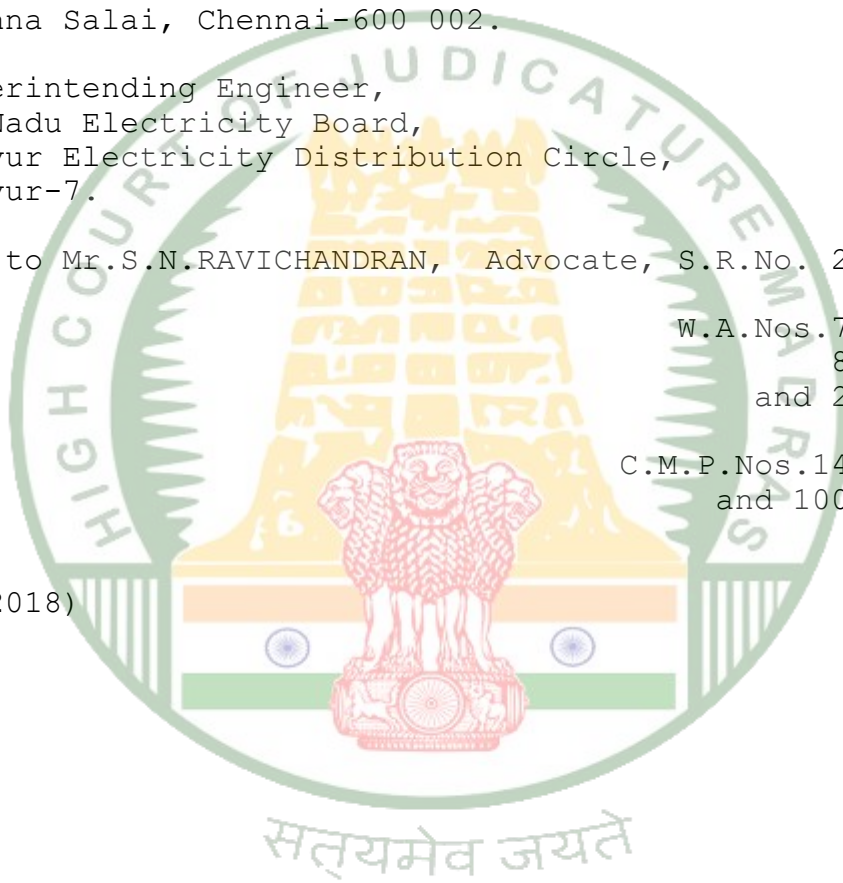
3.The Chief Engineer (Personnel),
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai-600 002.

4.The Superintending Engineer,
Tamil Nadu Electricity Board,
Thanjavur Electricity Distribution Circle,
Thanjavur-7.

+3cc to Mr.S.N.RAVICHANDRAN, Advocate, S.R.No. 21908

W.A.Nos.734 of 2017,
868 of 2017
and 286 of 2018
and
C.M.P.Nos.14984, 14985
and 10062 of 2017

RSK(CO)
TR(12/04/2018)



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