

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.12.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.No.170/2018 & CMP.No.982/2018

- 1 The Executive Engineer
Maintenance Division
TWAD Board, Thillai Nagar
11th Cross [West],
Trichirapalli-18.
- 2 The Superintendent of Engineer
Trichy-Pudukottai Circle
TWAD Board, Bharathidasan Road
Contonment,Tiruchirapalli-1.
- 3 The Chief Engineer
Eastern Region
TWAD Board, Medical College Road
Eswari Nagar, Thanjavur-4.
- 4 The Managing Director
Head Office, TWAD Board
31, Kamarajar Salai
Chennai 600 005.

.. Appellants /
Writ Petitioners

Versus

- 1 V.Subramanian
- 2 P.Rajendran
- 3 G.Subramanian
- 4 N.Jeyaraj
- 5 M.Selvaraj
- 6 A.Gangaguru
C/o.TWAD Board Employees Union
[CITU] Regn.No.1058/TR1
Karur By Pass Road,
K.Anantha Nambiar Nagar
Tiruchirapalli 620 002.
- 7 Deputy Chief Inspector for
Industries, Tiruchirapalli.

.. Respondents /
Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 09.07.2010 made in WP.No.4492/2004. This Writ Petition is file under article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records made in impugned award No.E 6326/2002 dated 10.10.2003 passed by the seventh respondent and quash the same.

For Appellants : Mrs.S.Thamizharasi
For RR 1 to 6 : Mr.G.Mutharasu
For R7 : Mr.E.Manoharan, AGP

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

By consent, the writ appeal is taken up for final disposal and is disposed of by this judgment. Mr.G.Mutharasu, learned counsel appears on behalf of the respondents 1 to 6 and Mr.E.Manoharan, learned Additional Government Pleader appears on behalf of the 7th respondent.

2 The appellants are the writ petitioners and aggrieved by the dismissal of the writ petition, in and by which, challenge made to the Award dated 10.10.2003, by the Authority constituted under the Tamil Nadu Industrial Establishment [Conferment of Permanent Status to Workmen] Act, 1981, came to be confirmed, had filed the present writ appeal.

3 The facts leading to the filing of this writ appeal have been narrated in detail and in extenso in the impugned order which is the subject matter of challenge in this writ appeal and therefore, it is not necessary to re-state the facts once again.

4 The respondents/workmen had approached the 7th respondent - Authority constituted under the Tamil Nadu Industrial Establishment and Conferment of Permanent Status to Workmen] Act, 1981, praying for permanent status on the ground that they were employed continuously in the services of the 4th appellant herein - the Tamil Nadu Water Supply and Drainage Board [TWAD Board], Maintenance Division and their services were utilised for the combined water scheme of Yelurpatty and Pudupalayam and the said authority, after putting the respondents/Management on notice and on analysing the materials placed, has passed an order on 10.10.2003, conferring permanent status on the private respondents/workmen of TWAD Board. The Management of TWAD Board, aggrieved by the said Award dated 10.10.2003, had filed WP.No.4492/2004 and the said writ petition, after contest, came to be dismissed vide impugned order dated 09.07.2010 and hence, this appeal.

5 Mrs.S.Thamizharasi, learned counsel for the appellants/writ petitioners has drawn the attention of this Court to the Award dated 10.10.2003 passed by the 7th respondent - Deputy Chief Inspector of Factories, Tiruchirapalli, as well as to the impugned order dated 09.07.2010 made in WP.No.4492/2004 and would submit that the said Authority as well as the learned Single Judge, without properly appreciating the materials placed, had erroneously reached the conclusion that the services of the private respondents have to be made permanent. It is the further submission of the learned counsel for the appellants / writ petitioners that adverse inference as to the non-production of the relevant records/documents have been erroneously drawn for the reason that the burden lies heavily on the respondents/workmen to prove, substantiate and probablise that they were under the direct employment of the 4th appellant/TWAD Board for a continuous period of exceeding 480 days and they have miserably failed to do so and therefore, would submit that the Award as well as the impugned order passed in the writ petition, warrant interference.

6 Per contra, the learned counsel appearing for the respondents 1 to 6 / workmen would submit that similar challenge was made to the order dated 24.11.2009 passed by the Deputy Labour Inspector, Salem, in WP.No.3178/2011 and it came to be dismissed on 23.02.2011 and the challenge made to the said order by filing WA.No.697/2011 also came to be dismissed vide judgment dated 15.12.2014. The Special Leave Petition filed in SLP [C] No.13562/2015 was filed before the Hon'ble Supreme Court of India and the said SLP was also came to be dismissed at the admission stage itself on 08.05.2015 and the review petition in Review Petition [C] No.3734/2015 to review the said order also came to be dismissed on 20.01.2016. It is the further submission of the learned counsel for the respondents 1 to 6 on the merits of the case that the Authority constituted under the Tamil Nadu Industrial Establishment [Conferment of Permanent Status to Workmen] Act, 1981, had carefully considered the materials placed, especially the documentary evidence and found that though the TWAD Board - appellants herein was in possession of the records, they have failed to produce the same and on careful scrutiny and consideration of the materials, has rightly reached the conclusion to confer permanent status and the learned Single Judge while dismissing the writ petition filed by the Management of TWAD Board, has independently appraised the entire materials and rightly reached the conclusion to dismiss the writ petition and therefore, this Court, in exercise of its Appellate jurisdiction under Clause 15 of the Letters Patent, may not interfere with the same and prays for dismissal of the writ appeal.

7 This Court has carefully considered the rival submissions and also perused the materials placed before it.

8 A perusal of the Award dated 10.10.2003 passed by the Authority/Deputy Chief Engineer-7th respondent herein, would disclose that the Contractors who have been examined on behalf of the Management, did not fully support their case and they have also failed to produce the relevant records for consideration before the said Authority and the 7th respondent has also reached the finding that even prior to the alleged contractual employment, the respondents were employed in the services of the appellants/TWAD Board and therefore, held that there is an employer-employee relationship and further found that since they have continuously put in employment for a period of 480 days during 24 Calendar months, they are entitled to be made permanent and accordingly, passed the Award. The Management of TWAD Board, made a challenge to the said Award, by filing WP.No.4492/2004 and it was entertained. The learned Single Judge, on an independent appraisal of the materials, also taken into consideration, the scope of judicial review in the light of the ratio laid down by the Hon'ble Apex Court in the decision reported in 2005 [3] SCC 193 [Management of Madurantakam Cooperative Sugar Mills Limited V. S.Viswanathan], found that the work assigned to the private respondents is of perennial in nature and rejected the contention pleaded by the appellants/writ petitioners-Management that through Contractor, they were employed as Motor Operators and Pipeline Fitters., and the same was not at all established and that apart, the names of the private respondents/workmen did not find place in the Register maintained for Motor Operator and Pipeline Fitter. The learned Judge further found by analysing the Award that only Xerox copy of the Contract Agreement was produced and no other record was placed to show that one A.Sivasakthivel was the Contractor of the petitioners/appellants - TWAD Board and further found that even on a perusal of the contents of the said clause would disclose that the Contractor was under the obligation to send periodical record and no such record was placed before the 7th respondent, showing the names of the workmen. The learned Judge further found that the Authority-7th respondent has also considered the oral evidence and also placed reliance upon the judgment reported in AIR 1999 SC 1160 [Secretary, Haryana Electricity Board Vs. Suresh and others] and recorded the finding that the Award passed by the 7th respondent warrants no interference.

9 In the light of the grounds raised and submissions made, this Court had also gone through the Award passed by the 7th respondent-Authority as well as the impugned order dismissing

the writ petition and finds that the 7th respondent-Authority as well as the learned Judge have correctly appreciated the factual aspect and taking into consideration the well settled position of law, find that the private respondents/workmen are entitled to be made as permanent workmen. As rightly pointed out by the learned Judge in the impugned order, in the matter of judicial review, this Court cannot re-appreciate the same materials and reach a different conclusion altogether. This Court finds no error apparent on the face of the record or infirmity in the reasons assigned by the learned Judge in dismissing the writ petition and finds no merits in the writ appeal.

10 In the result, the writ appeal is dismissed, confirming the order dated 09.07.2010 made in WP.No.4492/2004. No costs. Consequently, connected miscellaneous petition is also dismissed.

11 In the light of the dismissal of the writ appeal, the appellants are directed to issue appropriate proceedings to comply with the Award of the 7th respondent dated 10.10.2003 within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the respondents 1 to 6 / workmen.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

AP
To

- 1 The Executive Engineer
Maintenance Division
TWAD Board, Thillai Nagar
11th Cross [West],
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4 The Managing Director
 Head Office, TWAD Board
 31, Kamarajar Salai
 Chennai 600 005.

5 Deputy Chief Inspector for
 Industries, Tiruchirapalli.

+1 cc to Mr.M.Muthu Pandian, Advocate, S.R.No.87533

+1 cc to M/s.S.Thamizharasi, Advocate, S.R.No.87243

+1 cc to the Government Pleader, S.R.No.87654

WA.No.170/2018

RSV(CO)

SSM(21/01/2019)