

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.27373 of 2011

K.P.Nagaraj

... Petitioner

-Vs-

- 1.The Chairman,
Tamil Nadu Generation and Distribution
Corporation,
NPKRR Malligai,
800, Anna Salai,
Chennai 600 002.
- 2.The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution
Corporation,
NPKRR Malligai,
800, Anna Salai,
Chennai 600 002.
- 3.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation,
Generation Circle, Kundah,
Kundha Bridge Post,
The Nilgiris 643 219.
- 4.The Executive Engineer (Electrical),
Tamil Nadu Generation and Distribution
Corporation,
Parali Power House-3 (Post),
Coimbatore District 641 112.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in this proceedings No.Ku.No.018298/316/Ni.Pi.2/Oo.1/ Ko.Kattu/10 dated 06.10.2010, passed by the third respondent and quash the same and direct the respondents to regularise the service of the petitioner from 29.01.2001 i.e., the date of absorption given to the candidates worked along with the petitioner with all monetary and service benefits.

For Petitioner : Mr.M.Vijayakumar
For Respondents : Mr.Anand for
M/s.T.S.Gopalan & Co

O R D E R

Heard Mr.M.Vijayakumar, learned counsel for the petitioner and Mr.Anand, learned counsel appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in this proceedings No.Ku.No.018298/316/Ni.Pi.2/Oo.1/Ko.Kattu/10 dated 06.10.2010, passed by the third respondent and quash the same and direct the respondents to regularise the service of the petitioner from 29.01.2001 i.e., the date of absorption given to the candidates worked along with the petitioner with all monetary and service benefits."

3. The case of the petitioner is as follows:-

The petitioner was an employee of the respondent Corporation. He was working as Contract Labourer from 1992 to 1999. During the period of his employment as contract labourer, the petitioner was directed to work in various stations under the control of the then Electricity Board. The Board has formulated the scheme for absorption of contract labourers by its proceedings in B.P.(F.B) No.22, dated 14.05.1999. As per the scheme, the list was prepared for the purpose of absorption of the contract labourers who were employed for several years. However, it appears that the name of the petitioner was not included in the list, despite the fact that he had also worked like other contract labourers and fulfilled all the conditions, though working in minimum number of days.

4. In these circumstances, the petitioner approached this Court in W.P.No.1454 of 2001, seeking to challenge the action of the respondent Board for not including the name of the petitioner and also for the consequential direction to regularise his services like other contract labourers whose services were regularised under the Board proceedings. This Court vide its order dated 29.04.2008, disposed of the writ petition by directing the respondents to pass revised orders by taking into account the period of service rendered by the petitioner as contract employee. The learned Judge, as he then was, has passed an order on the basis of certain admitted facts as found in paragraph Nos.3, 4 and 5 of the order, which are

reproduced below:-

"3. In the counter affidavit filed by the respondent in para 2, it is stated that the petitioner was working as a Contract Labourer under the control of the third respondent from,

1. 01.11.96 to 31.05.97 (Distribution/Power House-3)

2. 26.04.98 to 21.06.98 (Distribution /Power House-3)

3. 22.06.98 to 20.05.99 (Mechanical/ Power House-3)

The above period of work as Contract Labourer in Power House-3 Division is coming within Generation Circle/Kundah. The other periods such as from 01.12.92 to 31.10.96 in Coimbatore Water Supply Project, Parali and from 01.06.97 to 31.03.98 in Civil Maintenance Circle/Power House-3 are not coming under the purview of Generation Circle/Kundah.

4. As rightly contended by the learned counsel for the petitioner, the petitioner was given work in other stations and not in the Hydro Generations is not fault of the petitioner as the allocation of work was ordered by the third respondent and due to the said reasons only the petitioner was not working in the Hydro Generations as on 06.01.98. The said reason cannot be a reason to deny absorption of the petitioner in Tamil Nadu Electricity Board as Helper. The fact remains that the petitioner continuously works from 01.12.1992 to 20.05.1999.

5. Hence, the impugned order is set aside and a direction is issued to the second respondent to pass revised orders, taking not of the continuous work of the petitioner from 01.12.1992 within a period of four weeks from the date of receipt of a copy of this order. This writ petition is disposed of with the above direction and the miscellaneous petitions are closed. No costs."

Against which, a writ appeal was filed by the respondents herein and the learned Division Bench of this Court vide its order dated 11.03.2010 in W.A.No.263 of 2010, dismissed the appeal by confirming the observations and directions issued by the learned Single Judge.

5. In pursuance of the orders passed by both the learned Single Judge as well as the learned Division Bench, the service of the petitioner came to be regularised on 02.08.2010. The grievance of the petitioner herein is that under the aforesaid Board proceedings, several of the contract employees were regularised with effect from 2001, whereas, the petitioner alone

had been regularised from 2010 and therefore, such action on the part of the respondent Board is without any justification and the same is amounted to discriminatory treatment and violating the Article 14 of the Constitution of India.

6. Upon notice, learned counsel appearing for the respondents entered appearance and filed a detailed counter affidavit.

7. The learned counsel appearing for the respondent Corporation would at the outset submit that the writ petition itself is not maintainable for the reason that the petitioner having already approached this Court in earlier writ petition and obtained an order, cannot file another writ petition for the same relief. Therefore, the writ petition has to be dismissed as not maintainable. The learned counsel would submit that admittedly the petitioner was not employed in the generation circle and only in respect of those who employed in a particular unit, their services were regularised under the Board proceedings in 2001 and therefore, such benefit cannot be conferred on the petitioner as his employment was in a different location and station.

8. No doubt that the petitioner herein had approached this Court earlier for the benefit of regularisation of service, but, however, in the earlier writ petition, the prayer was only for the regularisation, not from any particular date. The learned Judge as he then was clearly held that the petitioner had worked in various stations and units from 1992 to 1999, like any other contract employees and therefore, he was entitled to the benefit of regularisation. The fact of the period of employment of the petitioner as contract employee was not disputed and the findings of the learned Single Judge had become final, since the same had also been confirmed in the writ appeal.

9. Unfortunately, while seeking a relief, the petitioner herein had merely sought for regularisation of his service without mentioning the year of the service rendered by him, obviously for the reason that at that time, the petitioner was not aware of the regularisation of the Government employees in 2001. In view of this, it cannot be said that the petitioner has lost his right to approach this Court once again for the relief as prayed for in the present writ petition. Once, the Corporation has regularised the service of the workman in 2001, and whose services were also similar to that of the petitioner herein, it cannot be gainsaid that the second writ petition is not maintainable. The issue raised in the present writ petition is a consequence of action where the petitioner found that some of the contract employees who worked along with the petitioner, had been regularised from 2001. Therefore, the plea of maintainability of the writ petition has no merit. As regards

the merits of the claim of the petitioner, admittedly, he had worked from 1992 to 1999, during the provisional period where the service of all the contract employees were taken into account for the purpose of regularisation.

10. As rightly held by the learned Single Judge as well as learned Division Bench of this Court, it was not the fault of the petitioner that he had been employed in different stations, since it was prerogative of the Corporation to use the service of the employees anywhere on the basis of their functional requirement. Therefore, the employment of the petitioner at different places or different stations, cannot be put against him for the purpose of grant of regularisation on par with other similarly placed employees.

11. In view of the same, this Court is of the view that the petitioner has made out a case for grant of relief. Therefore, the impugned order passed in No.Ku.No.018298/316/Ni.Pi.2/Oo.1/Ko.Kattu/10, dated 06.10.2010, rejecting the claim of the petitioner in this regard is hereby set aside. The respondents are directed to grant regularisation to the petitioner from 2001, on par with other similarly placed contract employees. The respondents are further directed to fix the pay of the petitioner notionally with effect from the date of regularisation as ordered by this Court.

12. With the above direction, the writ petition stands allowed. It is also made clear that the petitioner is not entitled to back wages for the period from 2001. He is only entitled to notional benefits. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

सत्यमेव जयते
Sub Asst. Registrar

gsk

To

1.The Chairman,
Tamil Nadu Generation and Distribution
Corporation,
NPKRR Malligai,
800, Anna Salai,
Chennai 600 002.

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2.The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution
Corporation,
NPKRR Malligai,
800, Anna Salai,
Chennai 600 002.

3.The Superintendent Engineer,
Tamil Nadu Generation and Distribution
Corporation,
Generation Circle, Kundah,
Kundha Bridge Post,
The Nilgiris 643 219.

4.The Executive Engineer (Electrical),
Tamil Nadu Generation and Distribution
Corporation,
Parali Power House-3 (Post),
Coimbatore District 641 112.

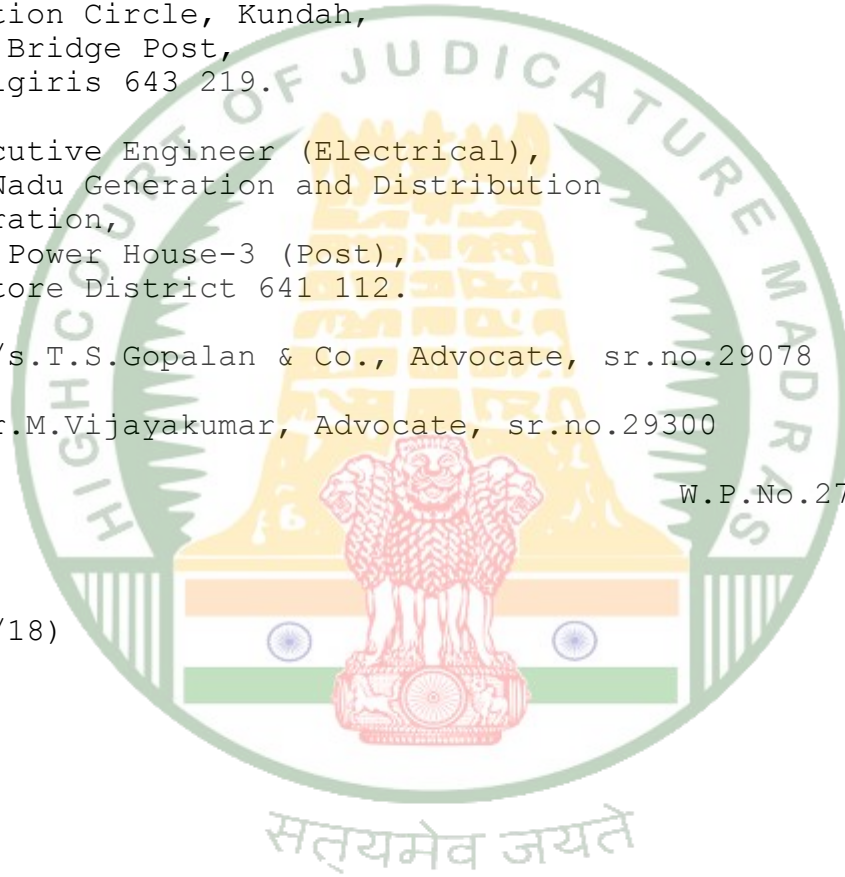
+1cc to M/s.T.S.Gopalan & Co., Advocate, sr.no.29078

+1cc to Mr.M.Vijayakumar, Advocate, sr.no.29300

W.P.No.27373 of 2011

LRS (CO)

RRK (30/05/18)



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