

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 24293 of 2013

and

M.P. No. 1 of 2013

The Superintending Engineer,
Namakkal Electricity Distributive Circle,
Tamil Nadu Electricity Board,
Namakkal.

... Petitioner

-VS-

1. Inspector of Labour,
Namakkal.

2. P. Nagarajan
3. A. Ashokan
4. A. Arunagiri
5. P. Thangaraasu
6. P. Murugesan
7. T. Gunasekaran

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the First Respondent, in relation to his proceedings in Na. Ka. No. 1570/2009 dated 17.05.2010 and quash the same as illegal.

For Petitioner : Mr. Anand Gopalan
For M/s. T.S. Gopalan and Co.

For Respondents : Mr. D. Sathyaraj (For R1)
Special Government Pleader

Mr. Elamurugan (For R2 to R7)

ORDER
(through video conference)

Heard Mr. Anand Gopalan, Learned Counsel for the Petitioner, Mr. D.Sathyaraj, Learned Special Government Pleader appearing for the First Respondent and Mr. Elamurugan, Learned Counsel for the Second to Seventh Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Order in Na. Ka. No. 1570/2009 dated 17.05.2010 passed by the First Respondent granting the benefit of permanent status to the Second to Seventh Respondents in the Namakkal Electricity Distribution Circle of Tamil Nadu Generation and Distribution Corporation Limited (hereinafter referred to as 'TANGEDCO' for short) under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter referred to as the 'Act' for short).

3. Learned Counsel for the Petitioner assertively contends that the Act would not be applicable to the claim made by the Second to Seventh Respondents for the following reasons:-

- (i) the conferment of permanent status on the Second to Seventh Respondents would not be in accordance with the constitutional mandate requiring equality of opportunity in public employment under Articles 14 and 16 of the Constitution of India as held by the Constitution Bench of the Hon'ble Supreme Court of India in *Secretary, State of Karnataka -vs- Umadevi* [(2006) 4 SCC 1];
- (ii) the Second to Seventh Respondents had not been initially appointed in sanctioned posts following statutory rules governing the employment in TANGEDCO, which would be in contravention of the dictum laid down by the Hon'ble Supreme Court of India in *A. Umarani -vs- Registrar, Cooperative Societies* [(2004) 7 SCC 112]; and
- (iii) the Namakkal Electricity Distribution Circle of TANGEDCO, where the Second to Seventh Respondents claim to have been worked is not an 'industrial establishment' within the meaning of Section 2(3) of the Act.

These contentions of the Petitioner, which are vehemently opposed by the Second to Seventh Respondents, who are armed with the impugned order passed under the Act, requires further examination after hearing the Learned Counsel for the parties.

4. Be that as it may, the Division Bench of this Court in ***Superintending Engineer, Nagapattinam -vs- Inspector of Labour*** [(2009) 4 MLJ 472] has earlier considered the claims made by similarly placed persons for absorption in Tamil Nadu Electricity Board (hereinafter referred to as 'TNEB' for short and now renamed as 'TANGEDCO') and has ruled that the same would have to be determined only on the basis of the Settlement dated 10.08.2007 entered by TNEB with the Labour Unions under Section 12(3) of the Industrial Disputes Act, 1947, which has been given effect in the Board Proceedings in (Per) B.P. (FB) No. 44 dated 06.09.2007 and Per.B.P. (CHAIRMAN) No. 9 dated 09.01.2008 issued by the Administrative Branch of TANGEDCO. In a number of subsequent cases that have followed, this Court had reiterated that legal position. It is borne out from the materials placed on record that there had not been any earlier occasion for the concerned authority of TANGEDCO to consider the claim of the Second to

Seventh Respondents for absorption on that basis inasmuch as no such application had been made by them so far in that regard.

5. In that view of the matter, this Court without expressing any view on the merits of controversies involved and without prejudice to the rival contentions of the respective parties in this Writ Petition, requires the concerned authority of TANGEDCO to examine the claim of the Second to Seventh Respondents for absorption in service in terms of the Settlement dated 10.08.2007 entered by TNEB with the Labour Unions under Section 12(3) of the Industrial Disputes Act, 1947, which has been given effect in the Board Proceedings in (Per) B.P. (FB) No. 44 dated 06.09.2007 and Per.B.P. (CHAIRMAN) No. 9 dated 09.01.2008 issued by the Administrative Branch of TANGEDCO, in the following manner:-

- (i) The Second to Seventh Respondents shall submit their individual applications to the Superintending Engineer, Namakkal Electricity Distribution Circle, TANGEDCO, Namakkal along with a copy of the same to the Chief Engineer (Personnel), Tamil Nadu Generation and Distribution Corporation Limited, Eighth Floor, Eastern Wing, NPKRR Maligai, 144, Anna Salai, Chennai – 600 002 supported by relevant documents to substantiate their claim for absorption in service, on or before 30.09.2020;

- (ii) If the concerned authority after the scrutiny of the application is not satisfied with the prescribed requirements or eligibility criteria for extending that benefit to the applicant, the deficiencies in that regard shall be informed in writing to him requiring the same to be furnished within a time frame of not less than 10 working days that may be granted for that purpose.
- (iii) In the event of the concerned authority not being satisfied with the compliance of the requirements even thereafter, an enquiry shall be conducted affording opportunity of personal hearing to the applicant to explain his position in that regard;
- (iv) Thereafter, the applications of the Second to Seventh Respondents shall be considered by the concerned authority on merits and in accordance with law dealing with each of the contentions and a reasoned order shall be passed, which shall be communicated to the applicant under written acknowledgment by 31.12.2020.
- (v) The report of action taken shall be filed in the Registry of this Court by 06.01.2021.

Post the matter for further hearing and passing orders under the caption
'Electricity Board - Conferment of Permanent Status cases' on 20.01.2021.

26.08.2020

kv/vjt

Note: Issue order copy by 01.09.2020.

To

1. The Chief Engineer (Personnel)
Tamil Nadu Electricity Generation and Distribution Corporation,
No. 144, Anna Salai,
Chennai – 600 002.
2. The Superintending Engineer,
Namakkal Electricity Distributive Circle,
Tamil Nadu Electricity Board,
Namakkal.
3. The Inspector of Labour,
Namakkal.

Copy to

1. P. Nagarajan,
S/o. Ponnaan,
Kariyampalayam,
Kokkakalai Post,
Thiruchengode Taluk,
Namakkal District.
2. A. Ashokan,
S/o. Arulappan,
Illuppili,
Thiruchengode Taluk,
Namakkal District.

P.D. AUDIKESAVALU, J.

kv

3. A. Arunagiri,
S/o. Arulappan,
Illuppili,
Thiruchengode Taluk,
Namakkal District.
4. P. Thangaraasu,
S/o. Perumal,
Vattur Naatampalayam,
Vattur,
Thiruchengode Taluk,
Namakkal District.
5. P. Murugesan,
S/o. Perumal Gounder,
Illupuli,
Thiruchengode Taluk,
Namakkal District.
6. T. Gunasekaran,
S/o. Thiyagarajan,
West Street,
Kokkakalai Post,
Thiruchengode Taluk,
Namakkal District.

W.P. No. 24293 of 2013

WEB COPY

Dated : 26.08.2020