

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.38265 of 2006

and

MP.No.1 of 2006

The Superintending Engineer,
Mettur Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Mettur Dam -1. Petitioner

Vs.

1. The Government of TamilNadu,
rep by its Secretary to Government,
Energy Department,
Fort St.George,
Chennai - 600 009.

2. The Government of TamilNadu,
rep by its Secretary to Labour
and Employment Department,
Fort St.George,
Chennai - 600 009.

3. The Inspector of Labour,
Namakkal.

4. K.Murugan

5. T.Ramesh

6. S.Ganesh

7. I.Varadharajul
Respondents 4 to 7 are represented
by Mr.K.Murugan

.... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari, to call for the records of the third respondent relating to his award dated 30.09.2004 and made in Na.Ka.No.1266/2004 and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.Anand Gopal
for M/s.Gopal & Co.

For Respondents : Mr.K.Ravikumar,
Additional Government Pleader
for R1 to R3

O R D E R

The petitioner has filed this writ petition seeking to quash the award of the Inspector of Labour, Namakkal, dated 30.09.2004 directing the petitioner to confer on the respondents 4 to 7 herein, permanent status in Tamil Nadu Electricity Board, Mettur Electricity Distribution Circle.

2. The case of the respondents 4 to 7 who are the applicants before the Inspector of Police, Namakkal was that they are working as contract labourer under the control of the Superintending Engineer/Mettur Electricity Distribution Circle, Mettur Dam, T.N.E.B and were attending to the work of extension electric lines and they had put in service of 480 days within a continuous period of 24 calender months and therefore there are entitled for conferment of permanent status under Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act 1981. The third respondent heard the case of the respondents 4 to 7 and directed the Board to confer on them the permanent status from the date on which they had completed 480 days of service within a continuous period of 24 calender months. Hence, the the petitioner has filed this writ petition.

3. It is submitted by the learned counsel for the petitioner that the issue involved in this writ petition is covered by the decision of a Division Bench of this Court reported in MANU/TN/1165/2008 (The Superintending Engineer, Nagapattinam, Electricity Board and The Executive Engineer, Operation & Maintenance, Tamil Nadu Electricity Board Vs. The Inspector of Labour and another), the relevant portion of which reads as follows:

"23.If this was only a case of adjudication of whether the status of workmen was as directly employed by the Electricity Board or they were employed only as contract labourers, we would have directed that the objection should be considered and an adjudication made in the industrial dispute raised under Section 33 (2) (b) of the Industrial Dispute Act. The argument advanced by Shri. Hariparanthaman is that the fate of more than 21,000 workmen was being adjudicated before

the Labour Court in I.D. No.106 of 2003 and that would be the appropriate forum of adjudication. He urged that the petitioner in W.P. No.27714 of 2007 and connected writ petitions ought to have been directed only to challenge the agreement before the Industrial Tribunal and not by means of writ petition. We have already seen that remedy by writ petition itself is not barred and if the board as an employer has conceded to their status as workmen to whom the provisions of the T.N. Industrial Establishments (Conferment of Permanent Status Act) could be applicable, there is no warrant for directing the parties to seek adjudication before the Industrial Tribunal. We cannot hold that the agreement itself is tainted with any fraud or mala fides. As Shri. P.S. Raman, the learned Additional Advocate General appearing for the Electricity Board says that it is simply a case of the board not allowing itself not to be tied up in knots over a period of time in having ad hoc policies of recruitment and feels upstaged when a problem of gigantic proportion has arisen where claims to thousands of men and women were required to be addressed. A public body employing several thousands of persons could not be blind to realities and engage them in long litigations and if it is found that pragmatism dictated that there ought to be a finality to litigations and when it had already a judicial decision of a Single Judge directing permanent status to workmen under the Act, the pro-active poser to conclude all litigations by an agreement could not be challenged either as fraudulent or as illegal. Revival of cadre or increase of cadre strength and specifying lesser qualifications commensurate with the nature of work through Board Proceedings could not be faulted, so long as the Regulations provided for creation of such cadre.

.. 25. We therefore, direct that persons who ought to have been taken in employment against vacancies that were directed to be filled by the Supreme Court pursuant to Khalid Commission's report shall first be filled up before other vacancies are undertaken to be filled up. The writ petitions challenging the 18 (1) settlement will stand dismissed, except to the extent mentioned in paras 23 and 24 above. Age relaxation, wherever necessary to accommodate them shall be given. Similarly, the writ petitions challenging the board proceedings 36 and 37 of the Administrative Branch dated 29.10.2005 will also stand dismissed. The claims of persons before the Labour Inspectors which have been allowed and who have come before this Court seeking for issue a mandamus for enforcement will now be considered

under the 18 (1) settlement. The writ petitions filed by the Electricity Board challenging the orders of the Labour Inspectors will now be dismissed as infructuous having regard to the 18 (1) settlement. The appeals filed by the board against the decision of the learned single judge will also stand dismissed. The claims of the workmen in W.P. No.1033 of 2006 and the connected batch will not stand affected by the decision of this Court and the Labour Court will decide on their claims in I.D. No.106 of 2003 in the light of what we have observed, in so far as they are relevant and independently of the same on factual issues whether they have been directly employed by the Electricity Board or not. The Writ Petitions and Writ Appeals are disposed of accordingly. No costs.

3. As held in the above decision, the claim of contract labourers could (*)be considered in terms of Section 12 (3) of the Act. In view of the relief granted by the Division Bench of this court in the said judgement, the award passed in favour of the respondents 4 to 7 is ***modified**. Accordingly, this writ petition is disposed of. No costs. ***Consequently, the connected Miscellaneous Petition is also closed.**

s/d-
Assistant Registrar(CO)
Dated:28/05/2018

(*)Amended as
per the order dated 13.06.2018
in W.P.No.38265 of 2006

Sd/-
Assistant Registrar(CO)
Dated:26/06/2018

True Copy
सतयमेव जयते
Sub-Assistant Registrar

dh

To

1. The Secretary to Government,
Government of TamilNadu,
Energy Department,
Fort St.George,
Chennai - 600 009.

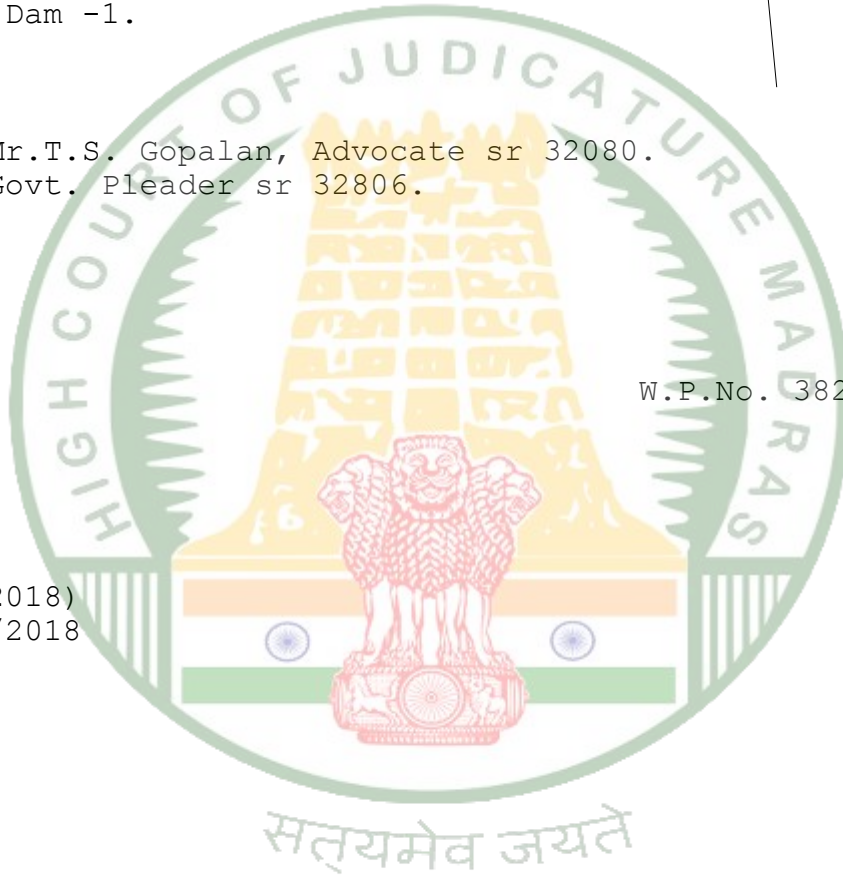
To be substituted the
order already
despatched on
08/06/2018

2. The Secretary
Government of TamilNadu,
Labour and Employment Department,
Fort St.George,
Chennai - 600 009.
3. The Inspector of Labour,
Namakkal.
4. The Superintending Engineer,
Mettur Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Mettur Dam -1.

+1 CC to Mr.T.S. Gopalan, Advocate sr 32080.
+1 CC to Govt. Pleader sr 32806.

W.P.No. 38265 of 2006

SKS(CO)
SP(30/05/2018)
srg 26/06/2018



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