

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated : 07.02.2018****CORAM :****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P (MD) Nos.13054 and 1410 of 2014****and****WMP (MD) No.1 of 2014**

1.S.Maruthapandi (Electrician)
2.K.Muniyandi (Turn Cock)
3.S.Sakkappan (Turn Cock)
4.P.Pandian (Turn Cock)
5.A.Raja (Turn Cock)
6.A.Velsamy (Turn Cock)
7.P.Ochathevan alias Ochu (Turn Cock)
8.R.Ramar (Turn Cock)
9.V.Murugan (Turn Cock)
10.A.Marirasu (Electrician)
11.M.Raja (Turn Cock)
12.M.Ramamorrthy (Fitter)
13.V.Kathiresan (Turn Cock)
14.S.Rajangam (Turn Cock)
15.M.Illayaraja (Electrician)
16.C.Pandian (Turn Cock)
17.P.Rameshkumar (Turn Cock)
18.K.Chellapandi (Turn Cock)
19.K.Marimuthu (Turn Cock)
20.M.Sivakumar (Turn Cock)
21.P.Karuppasamy (Turn Cock)
22.K.Senrayal (Turn Cock)
23.D.Gurusamy (Turn Cock)
24.M.Salikmaideen (Electrician) Petitioners in
W.P.13054/2014 & respondents
2 to 25 in W.P.1410/2014

Vs.

1. The Executive Engineer,
Tamilnadu Water Supply and
Drainage Board,
Rural Water Supply Division,
N.R.T.Nagar, Theni.
2. The Assistant Executive Engineer,
Tamilnadu Water Supply and
Drainage Board,
Maintenance Sub Division,
N.R.T.Nagar, Theni.



3. The Assistant Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Maintenance Sub Division,
Lower Camp, Theni District.

... Petitioners in
W.P.1410/2014 & respondents
in W.P.13054/2014

4. The Inspector of Labour,
Theni.

... 1st respondent in
W.P.1410/2014

Prayer in W.P.13054/2014 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first respondent to implement the order passed by the Inspector of Labour in Pro.No.475/2012 dated 25-11-2013 within the time frame as may be fixed by this Court.

Prayer in W.P.1410 of 2014 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order bearing Na.Ka.No.475/12 dated 25.11.2013 in C.P.No.1 to 29 except 12, 18, 25, 27, 28 passed by the 1st respondent and quash the same.

For Petitioners in
W.P.13054/2014 &
respondents 2 to 25 in
W.P.1410/2014 : Mr.J.Ashok

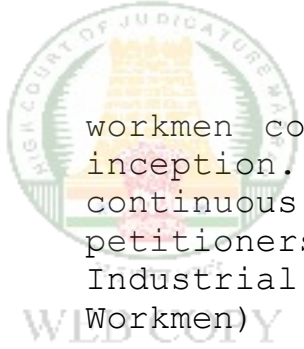
For Petitioners in
W.P.1410/2014 &
respondents in
W.P.13054/2014 : Mrs.Porkodi Karnan

For 1st respondent in
W.P.1410/2014 : Mr.J.Gunaseelam Muthiah, AGP

COMMON ORDER

The petitioners in W.P.(MD) No.13054/2014 were working under Contractors in different Trades such as Electricial, Turn Cock and Fitter. All of them have been serving TWAD Board. The Board has been engaging and utilising their services through intermediary contractors.

2. Two facts are not in dispute. The work carried out by the aforesaid workmen is perennial in nature. Secondly, only the contractors have been changing once in two years. But, the



workmen continued to serve in the very same capacity right from inception. Since the petitioners had put in 480 days of continuous service in 24 consecutive calendar months, the petitioners applied to the authority constituted under Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 seeking declaration for conferment of permanency. The applications submitted by the aforesaid petitioners were ofcourse opposed by the TWAD Board. The only ground taken by the TWAD Board is that the applications filed by the applications were not maintainable since they were contractual labour and not direct employees of the Board. In other words, the defence of the Board was that since 480 days of service put in by the applicants was not directly under the Board, their applications were liable to be dismissed. The statutory authority constituted under the Act conducted enquiry and examined witnesses also. After due consideration of the entire material on record, the authority passed the order dated 25.11.2013 conferring the status of permanency on the applicants w.e.f. the completion of 480 days from the date of their initial engagement. The authority had also mentioned the date on which the individual applicants joined service.

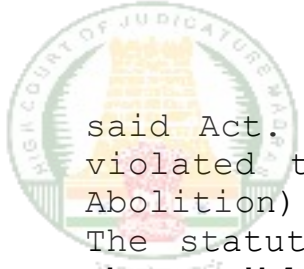
3.W.P.(MD) No.13054 of 2014 has been filed by the workmen for enforcement of the said award. W.P.(MD) No.1410 of 2014 has been filed by the TWAD Board questioning the same.

4.Heard the learned counsel on either side.

5.The learned counsel appearing for the workmen wanted to sustain the order passed by the authority. On the other hand, the learned standing counsel for the Board called upon this Court to set aside the order on the ground that the workmen did not have the locus standi to maintain the applications.

6.The applicability of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 to TWAD Board cannot be in dispute. As the learned counsel appearing for the workmen rightly pointed out, the ground now urged by the learned standing counsel for the Board has been considered on earlier occasions and rejected by this Court.

7.For instance, the Hon'ble Division Bench, by order dated 24.08.2012 in W.A.No.1644 of 2012 specifically rejected the contention that the Workmen were not employed directly by the Board and that therefore, they are not entitled for permanent status. The said contention of the Board was negatived for the simple reason that the Board admittedly had not obtained the employer's license as required under the Contract Labour (Regulation and Abolition) Act, 1970. Likewise, the individual contractors in this case also had not obtained licence under the



said Act. Therefore, this Court had held that the Board having violated the provisions of the Contract Labour (Regulation and Abolition) Act, the Board cannot take advantage of its own wrong. The statutory authority in this case following the decisions of the Hon'ble Supreme Court held that the inescapable inference can only be that the workmen in this case were direct employees of the Board. The reasons assigned by the authority in the impugned order are perfectly justified. The Board has not placed any reason for dislodging the findings set out in the impugned order.

8. Accordingly, W.P.(MD) No.13054 of 2014 filed by the workmen stand allowed. W.P.(MD) No.1410 of 2014 filed by the Board stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

The Inspector of Labour,
Theni.

+1cc to Mrs. Porkodi Karnan, Advocate Sr.No.47004
+1cc to Mr. J. Ashok, Advocate Sr.No.46987
+1cc to The Spl. Government Pleader Sr.No.47198

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VB/MR/SAR4/16.02.2018/4P/5C

**W.P (MD) Nos.13054 and 1410 of 2014
and
WMP (MD) No.1 of 2014**

07.02.2018