

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Reserved on : 27.03.2018****Pronounced on : 04.06.2018**

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CORAM**THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN****W.P. (MD) .No.5913 of 2014****and****M.P. (MD) .No.1 of 2014**

The Executive Engineer,
Tamil Nadu Electricity Board,
(Operation and Maintenance),
Kumbakonam Division, Rajan Thottam,
Thiruvudai Maruthur Road,
Kumbakonam-621 001.

...Petitioner

.Vs.

1.The Presiding Officer,
Labour Court, Cuddalore.

2.S.Rajaraman

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the award passed by the first respondent in I.D.No.29/2009 dated 02.02.2012 and set aside the award and consequently quash the same.

For Petitioner	: Mr.Anand Gopalan
	For M/s.T.S.Gopalan & Co
For R1	: Labour Court
For R2	: Mr.G.Sankaran

ORDER

Heard the learned counsel on either side.

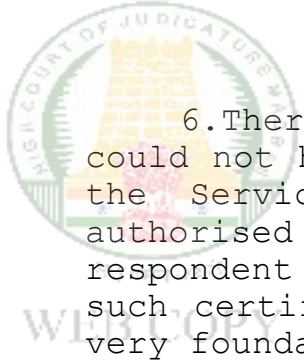
2.Challenge in this Writ Petition is to the award dated 02.02.2012 passed by the Labour Court, Cuddalore, directing reinstatement of the second respondent herein.

3.The case of the second respondent is that he was working as Mazdoor in the Tamil Nadu Electricity Board from 01.05.1996 till 30.11.2007. He sought conferment of permanency. But without acceding to the said request, he was dismissed from service. This <https://hdservicereports.com/hdservicereports.com> by way of an oral order. Claiming reinstatement and continuity of service and back wages, the second respondent raised industrial dispute in I.D.No.29 of 2009.



4. The Management of Tamil Nadu Electricity Board denied the said claim of the second respondent. The petitioner claimed that there was no relationship of employer and employee between them. It also denied the assertion that the second respondent herein was orally terminated on 30.11.2007 and that he has put in more than 240 days of service. The second respondent herein examined himself as a witness and has also marked Exs.W.1 to W.6. Ex.W.1 Series Certificates were issued by the Junior Engineers working in the Tamil Nadu Electricity Board. Ex.W.2 is the Conciliation Failure Report. The Labour Court came to the conclusion that the second respondent herein was working for 240 days in a year continuously and that therefore his service could not have been dispensed with in a summary manner. After referring to various decisions, the Labour Court held that the dismissal was liable to be set aside and that the second respondent herein was entitled for reinstatement with continuity of service with 25% back wages. Industrial Dispute was allowed in part. Questioning the same, this Writ Petition has been filed by the Management of the Tamil Nadu Electricity Board.

5. This Court is of the view that the Labour Court erred in passing the impugned award. This is for more than one reason. It is not the case of the second respondent herein that he was regularly appointed as an employee in the Tamil Nadu Electricity Board. No such order was passed. Even according to the second respondent, he was working as Mazdoor. If the second respondent had put in the requisite number of days of service which would entitle him to be conferred with the status of a permanent employee, then the course open to the second respondent was to move the authority constituted under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. Judicial notice can be taken of the fact that to put an end to the contract labour system prevailing in the Tamil Nadu Electricity Board. "Justice V.Khalid Commission" was appointed and thousands of workmen were absorbed into regular service. Even after the said Commission concluded its work, Tamil Nadu Electricity Board constituted committees to consider the left out cases. Settlements were entered into between the Unions and the Tamil Nadu Electricity Board Management in this regard. The issue attained finality by order dated 24.10.2008 in W.A.No.1302 of 2003. Instead of taking recourse to such remedies, the second respondent had filed the present Industrial Dispute before the Labour Court. In the affidavit filed in support of the Writ Petition, it has been categorically stated that the Assistant Engineers and Junior Engineers are not competent to issue Service Certificates and that such certificates cannot be taken as evidence to show that the petitioner has worked for 480 days in 24 consecutive calendar months. The second respondent is not one of those who were identified as eligible for absorption in the report of the "Hon'ble Khalid Commission. The petitioner's case was not presented before the committees constituted by the Board in this regard.



6. Therefore, this Court is of the view that the Labour Court could not have granted the relief to the second respondent based on the Service Certificates issued by the persons who were not authorised to issue the same. The entire case of the second respondent is based on Ex.W.1 certificates. This Court holds that such certificates could not have been looked into. Therefore, the very foundation of the impugned award goes. Consequently, the award impugned in the Writ Petition is set aside.

7. The Writ Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court, Cuddalore.

+1cc to Mr.F.Deepak, Advocate, SR.No.66553.
+1cc to M/s.P.Malini, Advocate, SR.No.66562.

ORDER MADE IN
W.P. (MD) .No.5913 of 2014
04.06.2018

tsg

RAM/JC/SAR 3/11.06.20184/3P/4C