



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.03.2018

Pronounced on: 05.06.2018

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

W.P. (MD) No.4642 of 2016
and W.M.P. (MD) No.4196 of 2016

- 1.The Superintendent of Engineer,
Theni Electricity Distribution Circle,
TNEB, Theni.
- 2.Chief Engineer,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai - 2. Petitioners

Vs.

- 1.The Labour Court,
Madurai.
- 2.S.Mohan Kumar Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records in pursuant to the impugned order passed by the first respondent in C.P.No.35 of 2011 dated 08.07.2015 and quash the same.

For Petitioners: Mrs.P.Malini
for M/s.T.S.Gopalan &Co
For R2 : Mr.T.Arul
for Mr.R.Thangasamy

ORDER

Tamilnadu Electricity Board has come forward with the present writ petition. The order passed by the Labour Court, Madurai allowing the Claim Petition No.35 of 2011 filed by the second respondent herein is under question.

2. The facts are not in dispute. One Marichamy and 119 others filed Claim Petitions before the Labour Inspector, Theni, seeking conferment of permanent status. The said applications were allowed. The Tamilnadu Electricity Board management filed W.P.(MD) Nos. 7977 and 7978 of 2006 before this Court questioning the order dated 14.10.2005 passed by the Labour Inspector, Theni. This Court by order dated 11.09.2007 dismissed the writ petitions. Though Tamilnadu Electricity Board management claims that Writ Appeal was filed against the said order of dismissal, there is nothing on record to show that the order dated 11.09.2007 in W.P.(MD) Nos.7977 and 7978 of 2006 was set aside. Thus as on date the position is that the order of the Labour Inspector conferring permanent status on the second respondent herein holds good.



3. But the Tamilnadu Electricity Board management did not comply with the said direction of the Labour Inspector. The second respondent was not given any job. Therefore, the second respondent filed Claim Petition No.35 of 2011 on 06.07.2011. By the impugned order dated 20.11.2014, the Labour Court, Madurai directed the writ petitioners herein to pay a sum of Rs.9,90,945/- within a period of three months. Questioning the same, the present writ petition has been filed.

4. This Court, at the time of admission, granted the interim order of stay subject to the condition that the Tamilnadu Electricity Board shall deposit 50% of the award amount. The said condition has been complied with.

5. The learned counsel appearing for the petitioners sought to question the order conferring permanent status on the second respondent.

6. This Court is of the view that challenge to the order dated 14.10.2005 passed by the Labour Inspector having been unsuccessful, it is not open to the petitioner to collaterally question it in the present proceedings. The said course of action is clearly not available in law.

7. It is seen that a sum of Rs.9,90,945/- has been arrived at by taking into account the initial scale of pay attached to the post of Helper. This Court went through the operative portion of the order dated 14.10.2005 passed by the Labour Inspector. It is seen that the authority had merely directed that the management to confer permanent status on the workmen concerned. But then the second respondent cannot assume that he should be absorbed as a Helper. In fact, that would be contrary to law. The Hon'ble Division Bench in the order dated 24.10.2008 in W.A.No.1302 of 2003 etc. batch observed that in the case of Helpers, minimum qualifications have been set forth in the statutory regulations and that therefore, only those persons employed directly by the Board and who belong to the class of persons below the rank of Helpers alone can be directed to be conferred with the permanent status by the authority under Tamil Nadu Industrial Establishments (Conferment and Permanent Status Workmen) Act 1981.

8. However, the Labour Court in this case proceeded on a misconception that the second respondent herein can be conferred with permanent status in the Helper Grade. That would be contrary to law. The order was passed by the authority in favour of the second respondent as early as on 14.10.2005. The writ petition filed by the management was dismissed on 11.09.2007. But the Claim Petition was filed by the second respondent on 06.07.2011. Thus there has been a delay of almost 6 years on the part of the second respondent in filing the Claim Petition. Ofcourse, there is no



limitation prescribed in this regard. But, this will have to be taken into account while finalising the quantum of backwages.

9. The learned counsel for Tamilnadu Electricity Board management submitted that they have invoked the principle of 'No work No pay'.

10. This Court rejects the plea that the second respondent was lying idle all these years. Therefore, this Court is of the view that interest of justice would be served by permitting the second respondent to withdraw the amount already deposited by Tamilnadu Electricity Board pursuant to the direction given by this Court on 08.03.2016 as full and final settlement of his monetary claim against the Tamilnadu Electricity Board management. But then the writ petitioner will have to comply with the order passed by the Labour Inspector forthwith. The second respondent will have to be accommodated in the Grade below that of Helper.

11. The writ petitioners shall issue necessary orders in this regard within a period of four weeks from the date of receipt of a copy of this order. This writ petition is partly allowed. No costs. Consequently, connected W.M.P.(MD) No.4196 of 2016 is closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1.The Presiding Officer,
Labour Court, Madurai.

2.The Superintendent of Engineer,
Theni Electricity Distribution Circle,
TNEB, Theni.

3.Chief Engineer,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai - 2.

+1CC to Mrs.P.Malini, Advocate, SR.No.66739

+1CC to Mr.T.Arul, Advocate, SR.No.67098

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and W.M.P.(MD) No.4196 of 2016
05.06.2018

CM

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