

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.12069 of 2012

M.Kasi

... Petitioner

Vs

1. Tamil Nadu Generation and Distribution Corporation
Rep.by the Chairman
No.144, Anna Salai, TNEB,
Chennai.
2. Tamil Nadu Generation and Distribution Corporation
Rep.by the Chief Engineer(Personnel),
No.144, Anna Salai, TNEB,
Chennai.
3. The Superintending Engineer,
Tirupattur Electricity Distribution Circle,
Tirupattur.
4. The Junior Engineer, (O&M),
Vellakutti Section,
Tirupattur Electricity Distribution Circle
Vaniyampadi Taluk.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus, directing the respondents 2 and 3 to absorb the petitioner as a Mazdoor on the basis of B.P.(FB).No.44 dated 06.09.2007, on par with his immediate juniors namely S.Venkatesan and K.Govindaraju, on the basis of the representation of the petitioner dated 05.03.2012.

For Petitioner : M/s.S.N.Ravichandran

For Respondents: Mr.Anand Gopalan

For M/s.T.S.Gopalan & Co.

O R D E R

The relief sought for in the present writ petition is for a direction to the respondents 2 and 3 to absorb the petitioner as a Mazdoor on the basis of B.P.(FB).No.44 dated 06.09.2007, on a par with his immediate juniors namely S.Venkatesan, and K.Govindaraju, on the basis of the representation of the petitioner dated 05.03.2012.

2. The learned counsel for the writ petitioner states that the writ petitioner joined as a Casual labour on daily wages on 04.06.1981 in the then Tamil Nadu Electricity Board at Tirupattur Electricity Distribution Circle, Vellkuttai. The petitioner states that he was continuously employed by the Electricity Board as a casual labour and he is fully qualified for permanent absorption.

3. The learned counsel for the writ petitioner states that pursuant to the recommendation of the Justice Khalid Committee, eligible contract labourers were identified and their services were regularized. The grievance of the writ petitioner is that his juniors were absorbed in the permanent post and his case was not considered. The petitioner along with others filed a petition before the Inspector of Labour and the Inspector of Labour has also passed an order in the year 2003. The petitioner has received the ex-gratia payment, and therefore, he is suitable for all the conditions set out in the board proceedings issued in B.P.(FB).No.44. Thus, his case is to be considered for permanent absorption along with his colleagues and juniors, who were already absorbed.

4. The learned counsel for the writ petitioner states that the case of the writ petitioner was not considered, as he had submitted bogus educational certificate and the certificate was produced only for the purpose of establishing the date of birth and therefore, such a certificate need not be held against the writ petitioner. He cited the judgment of the Hon'ble Single Judge dated 15.02.2013 stating that in the event of such certificate found to be not to the satisfaction of the respondent board, the respondent Board shall issue an order, directing the petitioner to appear before the Medical Board constituted by it to ascertain the age. Thus, the same procedure ought to have been adopted by the Tamil Nadu Electricity Board for the purpose of ascertaining the correctness of the age proof certificate produced by the writ petitioner. Contrarily, they have rejected the claim of the writ petitioner on the ground that he had submitted a bogus educational certificate.

5. The learned counsel for the writ petitioner is of the opinion that the petitioner was successful before the Inspector of Labour and the said order was also confirmed and his juniors were already absorbed as permanent employees, and therefore, not considering the petitioner's name is illegal and in violation of the board proceedings.

6. The learned counsel appearing on behalf of the respondent board disputed the contention raised on behalf of the writ petitioner by stating that there was an enormous delay even in approaching this Court. The writ petitioner had not approached the High Court within a reasonable period of time and the petition is liable to be rejected on the ground of laches.

7. The writ petitioner claims to have joined as a casual labour on daily wages on 04.06.1981 and received ex-gratia payment from 1995 to 2007. The petitioner was identified as a contract labour working for TNEB on 08.08.1998. During the year 2005, 2500 contract labourers who were employed in the year 1998 were considered for absorption as Trainee[Mazdoor]. The name of the petitioner was shown as S.No.9 in the list Tirupathur EDC. However, he had submitted a false school leaving certificate, and therefore, his name was not considered for permanent absorption and the authorities had dropped his name. The petitioner was aware of this and in fact, he gave a letter dated 14.11.2005, admitting the guilt. The letter dated 14.11.2005 signed by the writ petitioner, states that he had submitted a false certificate before the authorities and further, admitted the fact that he had not studied in school at all.

8. Even according to the writ petitioner, he was last employed to work in the Tamil Nadu Electricity Board during the year 2007-2008, and persons similarly placed like him was regularized in service in terms of the settlement dated 10.08.2007. The petitioner submitted a letter in the year 2012, after a lapse of 4 years.

9. The learned counsel for the respondents reiterated that the petitioner has already attained the age of superannuation in the year 2013, as per the records maintained by the respondents. Hence, no relief can be granted. Under these circumstances, the writ petitioner cannot be absorbed on par with other similarly placed persons with reference to the board proceedings, and his representation submitted in the year 2012, after a lapse of 4 years cannot be considered.

10. With regard to the false certificate and statement of the petitioner, it is contended by the respondent that in the year 1998, the board had identified the contract labourers, who

were working more than 5 years. However, at the time of verifying in 2005 for permanent absorption, it came to light that the writ petitioner had submitted a bogus certificate, and therefore, his name was not considered for permanent absorption and he himself has admitted the fact regarding submission of false educational certificate before the authorities concerned.

11. Thereafter, he has approached the board by way of representation only in the year 2012, after a lapse of more than 4 years. Thus, the claim of the writ petitioner was not considered during the relevant point of time.

12. This Court is of the considered opinion that the recommendation of Justice Khalid Committee as well as the subsequent board proceedings issued in the year 2007 and the identification of the contract laborer in the year 1998, considering their names for permanent absorption in the year 2005, were all one time measures taken by the Board, in order to provide an opportunity to the contract laborers who were engaged by the private contractors to perform the works in the Tamil Nadu Electricity Board. If such an one time measure is allowed to be extended for an unspecified period, the constitutional rights of all other eligible candidates will be infringed. Equal opportunity in public employment is the constitutional mandate. However, schemes like one time measure to absorb the contract labourers cannot be extended forever, which would affect the rights of eligible candidates, who all are aspiring to secure the public employment. Now the Tamil Nadu Electricity Board being a State, cannot recruit candidates in violation of the recruitment rules. All appointments are to be made strictly in accordance with the recruitment rules in force. Thus, permanent absorption or regularization cannot be granted in violation of the recruitment rules in force. Legal principles in the matter of public employments for regularization or permanent absorption are now well settled by the Constitutional Bench of the Hon'ble Supreme Court in the case of the State of Karnataka Vs. Umadevi reported in 2006 [4] SCC 1. The relevant paragraphs are extracted hereunder:

"5. This Court has also on occasions issued directions which could not be said to be consistent with the constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualisation of justice. The question arises, equity to whom? Equity for the handful of people who have approached the court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the

coin is considered, the other side of the coin has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the constitutional scheme, certainly tend to water down the constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.

10. When these matters came up before a Bench of two Judges, the learned Judges referred the cases to a Bench of three Judges. The order of reference is reported in Secy., State of Karnataka v. Umadevi (1) [(2004) 7 SCC 132 : 2004 SCC (L&S) 935 : (2003) 9 Scale 187] . This Court noticed that in the matter of regularisation of ad hoc employees, there were conflicting decisions by three-Judge Benches of this Court and by two-Judge Benches and hence the question required to be considered by a larger Bench. When the matters came up before a three-Judge Bench, the Bench in turn felt that the matter required consideration by a Constitution Bench in view of the conflict and in the light of the arguments raised by the Additional Solicitor General. The order of reference is reported in Secy., State of Karnataka v. Umadevi (2) [(2006) 4 SCC 44 : (2003) 10 Scale 388] . It appears to be proper to quote that order of reference at this stage. It reads: (SCC p. 45, paras 1-5)

"1. Apart from the conflicting opinions between the three-Judge Bench decisions in Ashwani Kumar v. State of Bihar [(1997) 2 SCC 1 : 1997 SCC (L&S) 465 : 1996 Supp (10) SCR 120] , State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] and Dharwad Distt. PWD Literate Daily Wage Employees Assn. v. State of Karnataka [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] on the one hand and State of H.P. v. Suresh Kumar Verma [(1996) 7 SCC 562 : 1996 SCC (L&S) 645 : (1996) 33 ATC 336 : AIR 1996 SC 1565 : (1996) 1 SCR 972] , State of Punjab v. Surinder Kumar [(1992) 1 SCC 489 : 1992 SCC (L&S) 345 : (1992) 19 ATC 500 : AIR 1992 SC 1593 : 1991 Supp (3) SCR 553] and B.N. Nagarajan v. State of Karnataka [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] on the other, which have been brought out in one of the judgments under appeal of

the Karnataka High Court in State of Karnataka v. H. Ganesh Rao [(2001) 4 Kant LJ 466 (DB)] , decided on 1-6-2001 the learned Additional Solicitor General urged that the scheme for regularisation is repugnant to Articles 16(4), 309, 320 and 335 of the Constitution and, therefore, these cases are required to be heard by a Bench of five learned Judges (Constitution Bench).

2. On the other hand, Mr M.C. Bhandare, learned Senior Counsel, appearing for the employees urged that such a scheme for regularisation is consistent with the provisions of Articles 14 and 21 of the Constitution.

3. Mr V. Lakshmi Narayan, learned counsel appearing in CCs Nos. 109-498 of 2003, has filed the GO dated 19-7-2002 and submitted that the orders have already been implemented.

4. After having found that there is conflict of opinion between the three-Judge Bench decisions of this Court, we are of the view that these cases are required to be heard by a Bench of five learned Judges.

5. Let these matters be placed before the Hon'ble the Chief Justice for appropriate orders."

We are, therefore, called upon to resolve this issue here. We have to lay down the law. We have to approach the question as a constitutional court should."

12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognised and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is

completed. Once this right of the Government is recognised and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

13. What is sought to be pitted against this approach, is the so-called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of the courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in *State of Punjab v. Jagdip Singh* [(1964) 4 SCR 964 : AIR 1964 SC 521]. It was held therein: (SCR pp. 971-72)

"In our opinion where a government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status."

14. During the course of the arguments, various orders of the courts either interim or final were brought to our notice. The purport of those orders more or less was the issue of directions for continuation or absorption without

referring to the legal position obtaining. Learned counsel for the State of Karnataka submitted that chaos has been created by such orders without reference to the legal principles and it is time that this Court settled the law once and for all so that in case the Court finds that such orders should not be made, the courts, especially, the High Courts would be precluded from issuing such directions or passing such orders. The submission of learned counsel for the respondents based on the various orders passed by the High Court or by the Government pursuant to the directions of the Court also highlights the need for settling the law by this Court. The bypassing of the constitutional scheme cannot be perpetuated by the passing of orders without dealing with and deciding the validity of such orders on the touchstone of constitutionality. While approaching the questions falling for our decision, it is necessary to bear this in mind and to bring about certainty in the matter of public employment. The argument on behalf of some of the respondents is that this Court having once directed regularisation in Dharwad case [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] all those appointed temporarily at any point of time would be entitled to be regularised since otherwise it would be discrimination between those similarly situated and in that view, all appointments made on daily wages, temporarily or contractually, must be directed to be regularised. Acceptance of this argument would mean that appointments made otherwise than by a regular process of selection would become the order of the day completely jettisoning the constitutional scheme of appointment. This argument also highlights the need for this Court to formally lay down the law on the question and ensure certainty in dealings relating to public employment. The very divergence in approach in this Court, the so-called equitable approach made in some, as against those decisions which have insisted on the rules being followed, also justifies a firm decision by this Court one way or the other. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily, the law thus laid down.

20. The decision in Dharwad Distt. PWD

Literate Daily Wage Employees Assn. v. State of Karnataka [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] dealt with a scheme framed by the State of Karnataka, though at the instance of the Court. The scheme was essentially relating to the application of the concept of equal pay for equal work but it also provided for making permanent, or what it called regularisation, without keeping the distinction in mind, of employees who had been appointed ad hoc, casually, temporarily or on daily-wage basis. In other words, employees who had been appointed without following the procedure established by law for such appointments. This Court, at the threshold, stated that it should individualise justice to suit a given situation. With respect, it is not possible to accept the statement, unqualified as it appears to be. This Court is not only the constitutional court, it is also the highest court in the country, the final court of appeal. By virtue of Article 141 of the Constitution, what this Court lays down is the law of the land. Its decisions are binding on all the courts. Its main role is to interpret the constitutional and other statutory provisions bearing in mind the fundamental philosophy of the Constitution. We have given unto ourselves a system of governance by rule of law. The role of the Supreme Court is to render justice according to law. As one jurist put it, the Supreme Court is expected to decide questions of law for the country and not to decide individual cases without reference to such principles of law. Consistency is a virtue. Passing orders not consistent with its own decisions on law, is bound to send out confusing signals and usher in judicial chaos. Its role, therefore, is really to interpret the law and decide cases coming before it, according to law. Orders which are inconsistent with the legal conclusions arrived at by the court in the selfsame judgment not only create confusion but also tend to usher in arbitrariness highlighting the statement, that equity tends to vary with the Chancellor's foot.

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order

upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in

ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief

which would amount to perpetuating an illegality.

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of

the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularised since the decisions in Dharwad [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] , Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] , Jacob [Jacob M. Puthuparambil v. Kerala Water Authority, (1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697] and Gujarat Agricultural University [Gujarat Agricultural University v. Rathod Labhu Bechar, (2001) 3 SCC 574 : 2001 SCC (L&S) 613] and the like, have given rise to an expectation in them that their services would also be regularised. The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. [See Lord Diplock in Council for Civil Services Union v. Minister of Civil Service [1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] , National Buildings Construction Corpn. v. S. Raghunathan [(1998) 7 SCC 66 : 1998 SCC (L&S) 1770] and Chanchal Goyal (Dr.) v. State of Rajasthan [(2003) 3 SCC 485 : 2003 SCC (L&S) 322] .] There is no case that any assurance was given by the Government or the department concerned while making the appointment on daily wages that the status

conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after Dharwad decision [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544]. Though, there is a case that the State had made regularisations in the past of similarly situated employees, the fact remains that such regularisations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some cases by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularised in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularisation of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is

also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no

doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the

employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality."

13. Now, the State Corporation or Institution cannot grant regularization or permanent absorption in violation of the recruitment rules by depriving equal opportunity to all the eligible candidates and in the event of providing any such appointment, such appointments are to be construed as backdoor appointments and in violation of the recruitment rules. Thus, equality clause enshrined in the Constitution of India must be scrupulously followed by the authorities. Mere length of services would not provide any legal right to claim regularization or permanent absorption in violation of the recruitment rules.

14. The contract labourers appointed on certain terms and conditions, are very much aware of the nature of the services as well as the terms and conditions. The casual labourers, who joined through the private contractors and were performing the jobs in the Tamil Nadu Electricity Board, cannot claim that their initial appointments were made in consonance with the recruitment rules of the Tamil Nadu Electricity Board. In the absence of any such valid order of appointment by the competent authority of the Tamil Nadu Electricity Board, the contract labourers engaged through the private contractors cannot seek regularization or permanent absorption merely on the ground that they are allowed to work as casual labourers. However, one time concession was provided by the Tamil Nadu Electricity Board to these contract labourers, and the eligible contract labourers were absorbed pursuant to the recommendation of Justice Khalid Commission. The recommendations were made 28 years back, and now after this length of time, the contract labourers cannot claim regularization or permanent absorption based on that recommendation. As of now, even the Tamil Nadu Electricity Board cannot recruit the candidates in violation of the rules as they are bound to select and appoint the persons under the constitutional scheme and by following the recruitment rules in force. The authorities competent now are bound to follow the constitutional principles laid down by the Constitutional Bench of the Supreme Court of India in "Uma Devi Case". Equal opportunity in public employment is the constitutional mandate. The authorities cannot appoint persons through backdoor and

after allowing them to work for a considerable length of time, grant regularization or permanent absorption, which is in violation of the recruitment rules in force. In turn, the authorities who are all making such illegal or irregular appointments ought to be prosecuted and disciplinary actions are also to be initiated against them. In the event of identifying any such illegal or irregular appointments in the board, the authorities are bound to institute the appropriate action and ensure equal opportunity in public employment.

15. This apart, the writ petitioner attained the age of superannuation in the year 2013 itself and he made a representation after a lapse of 4 years. His case was not considered during the relevant point of time in the year 2005, in view of the fact that he had submitted a bogus educational certificate. After a lapse of 5 years from the date of retirement, this Court cannot consider the case of the writ petitioner for grant of regularization or permanent absorption in violation of the legal principles settled by the Constitutional Bench of the Hon'ble Supreme Court of India, which became the law of the Land under Article 141 of the Constitution of India.

16. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

ssb

To

1. The Chairman

Tamil Nadu Generation and Distribution Corporation
No.144, Anna Salai, TNEB,
Chennai.

2. The Chief Engineer (Personnel),

Tamil Nadu Generation and Distribution Corporation
No.144, Anna Salai, TNEB,
Chennai.

3. The Superintending Engineer,

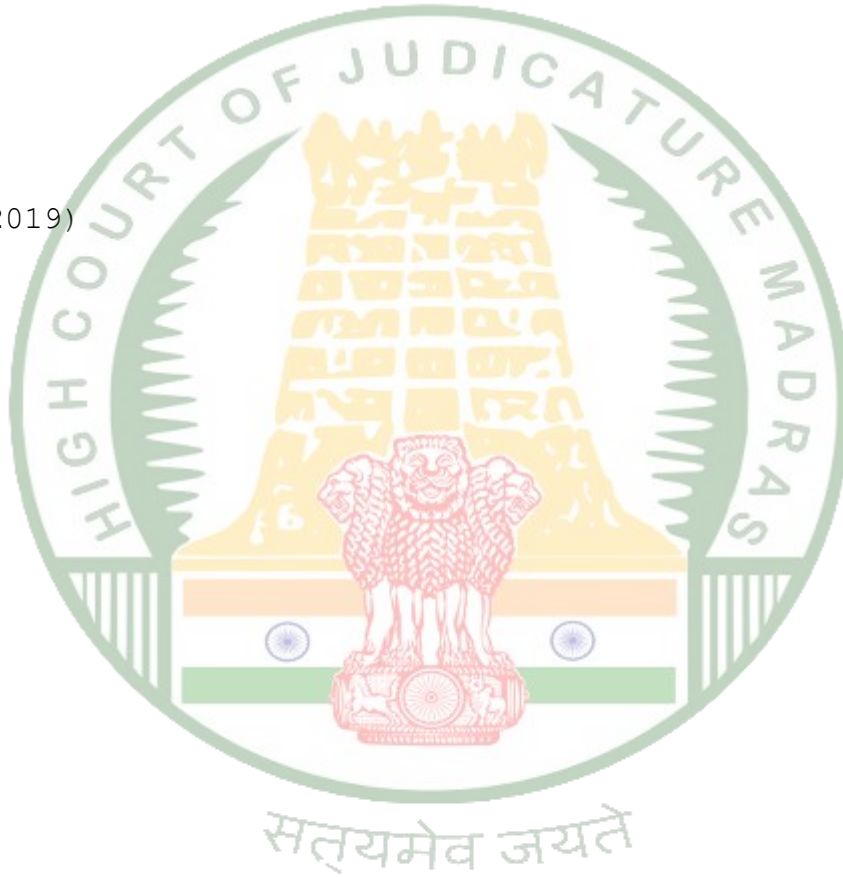
Tirupattur Electricity Distribution Circle,
Tirupattur.

4. The Junior Engineer, (O&M),
Vellakutti Section,
Tirupattur Electricity Distribution Circle
Vaniyampadi Taluk.

+1 CC to Mr.S.N. Ravichandran, Advocate sr 83531
+1 C to M/s.T.S. Gopalan And Co, sr 83359.

W.P.No.12069 of 2012

SS(CO)
SP(05/12/2019)



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