

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.04.2019

Delivered on: 11.04.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.8538 of 2018 &
WMP NO.10477 OF 2018

1. The Chief Engineer (Personnel),
Tamilnadu Electricity Board,
TANGEDCO, 800 Anna Salai,
Chennai-600 002.
2. The Chief Engineer,
North Chennai Thermal Power Station-I,
Chennai-600 120
3. The Superintending Engineer,
(Purchase & Administration),
North Chennai Thermal Power Station-I,
Chennai-600 120
4. The Asst.Executive Engineer,
Electrical Maintenance,
North Chennai Thermal Power Station-I,
Chennai-600 120.

Vs.

1. The Presiding Officer,
The III Additional Labour Court,
Chennai.

2. Thiru M.Yesu

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the first respondent in I.D.No.112/2009 and quash the Award dated 31.08.2017.

For Petitioner : Mr.Anand Gopalan for
M/s.T.S.Gopalann & Co.,

For Respondents : Mr.Balan Haridoss for
Mr.S.N.Ravichandran for R2

ORDER

This Writ Petition has been filed, praying for the issuance of Writ of Certiorari to call for the records pertaining to the Award dated 31.08.2017 passed by the first Labour Court Chennai in I.D.No.112/2009 and quash the same.

2. For the sake of convenience, the parties are hereinafter referred to as 'the Management' and 'the workman'

respectively.

3. The facts and circumstances which led to the filing of the present Writ Petition, are briefly stated as under:

The workman joined the management originally as a contract labourer, for carrying out the work in relation to North-Chennai Thermal Power Station. According to the workman, he was employed from 17.07.1995 and he completed 480 days in two calendar years as on 05.01.1998. The Management, namely, Tamil Nadu Electricity Board, for the purpose of absorbing several thousands of contract labourers employed by the Board over the years, had issued Board Proceedings in B.P.(FB) No.17 dated 28.4.1999 for the purpose of regularizing the contract labourers who had served as contract labourer for 480 days in two calendar years continuously as on 05.01.1998. Subsequently, by instructions, the period was extended till 30.04.1999. Thereafter, the Board issued instructions not to engage contract labourers any more. The Board, in all, identified the

workmen who completed 480 days within a stipulated date, had drawn up a seniority list for the purpose of regularizing those employees in a phased manner and the name of the workman, who is the second respondent herein, was admittedly found in the said seniority list.

4. According to the workman, during the period of his employment, he was absent from 23.07.1999 to 25.10.1999 as he was suffering from illness. When he joined duty on 26.10.1999 along with medical certificate and fitness certificates, he was denied the employment. According to the workman, the management has denied him employment by orally terminating his services on 28.10.1999.

5. The workman on being denied the employment after he reported to work with fitness certificate, started representing to the management on 8.8.2000 followed by many reminders. Since his representation was not responded to by the management, he approached this Court by way of

Writ Petition in W.P.No.10572 of 2004 and this Court disposed of the Writ Petition, by directing the Management to consider the petitioner's representation within the time stipulated therein. In pursuant to the direction, the Management has issued letter on 20.4.2006, stating that the workman was unauthorizedly absent and also not completed 480 days of continuous service during his employment and therefore, his representation came to be rejected. Aggrieved by the rejection of employment, the workman raised an industrial dispute which was referred for adjudication before the first respondent/Labour Court in I.D.No.112 of 2009.

6. According the petitioner/Management, it was admitted that the workman was included in the seniority list prepared by the Management for the purpose of regularization and it was also admitted that the workman attended the interview before the Selection Committee constituted for the said purpose and submitted all relevant records. However, it was contended by the petitioner/Management before the Labour

Court that the workman did not complete 480 days of service as on 30.4.1999 since he was absent during the period from 11.4.1997 to 30.4.1997 and from 23.07.1999 to 25.10.1999 without prior intimation and therefore, he was denied employment when he reported to work from 28.10.1999. According to the Management, when this Court directed the Management to dispose of the representation of the workman, the records were verified and it was found that the workman had put in only 451 days of continuous service as on 30.04.1999 and therefore, the workman was not eligible for absorption as per the Board Proceedings issued for the said purpose.

7. On the basis of rival contentions put forth by both the Management as well as the workman, the first respondent Labour Court has framed the following issues, viz.,

1. Whether the petitioner has worked for a continuous period of 480 days in 24 calendar months as on 5.1.1998 and is

eligible for absorption and regular employment?

2. Whether the petitioner is not entitled for absorption and regular employment on the ground that he has not completed 480 days of continuous service as on 30.4.1999 as claimed by the respondent?
3. Whether the petitioner has been denied employment by the respondent from 27.10.1999?
4. Whether the non employment of the petitioner is unfair and unsustainable?
5. Whether the petitioner is entitled for regular employment with continuity of service?
6. Whether the petitioner is entitled for back wages and all other attendant benefits?
7. What are the other reliefs the petitioner is entitled for?

8. After framing the above issues, the learned Labour Court had referred to the guidelines issued by the Electricity Board/Management for absorbing the contract labourers who had completed 480 days of continuous service within 24

calender months as on 05.01.1998. The learned Labour Court, on the basis of factual materials made available, had come to the conclusion that the workman herein was indeed employed from 17.07.1995 since that fact was not specifically denied by the Management. In fact, the Labour Court referred to the evidence of the Management witness (MW.1), who stated specifically that it was a fact that the workman was employed from 17.7.1995. Therefore, the Labour Court had come to the definite conclusion about the factum of employment of the workman from 17.7.1995. Thereafter the Labour Court proceeded to deal with the factum of number of days worked by the workman during the relevant time for the workman to claim for absorption on the basis of the Board Proceedings. The factum of the workman remained absent from 23.7.1999 to 25.10.1999 was admitted. However, the explanation of the workman was that during the said period, he was suffering from typhoid and jaundice, for which, he submitted medical certificates to the Board. It was also admitted fact that the workman remained absent from 11.4.1997 to 30.4.1997. The

contention of the Management before the Labour Court was that as on 30.4.1999, in view of his absence, the workman could not have served 480 days in two calendar years even assuming that he was employed from 17.7.1995. However, after advertng to the guidelines issued by the Board itself, the learned Labour Court had come to the conclusion that the workman's claim was that he had completed 480 days of continuous service in two calendar years as on 5.1.1998 and not as on 30.04.1999. Therefore, the learned Labour Court had taken into consideration the calendar years from 6.1.1996 to 5.1.1998 for the purpose of calculating 480 days in respect of the workman concerned.

9. In this regard, the Labour Court has referred to the Management witness MW.1's deposition wherein, he has clearly stated that the workmen who had completed 480 days in two calender years, were eligible to be absorbed. In fact, in the proceedings before the Labour Court, on behalf of the workman, in IA 293 of 2012 was filed, seeking a direction to

the management to produce seven documents including Attendance Register for the relevant period. Despite the direction given by the Labour Court in the said IA, on behalf of the Management, the Attendance Register for the crucial period from January 1996 to 05.01.1998 had not been produced whereas, the Attendance Register for June, 1997 was produced. The Labour Court recorded that there was no satisfactory explanation from the Management for not producing the relevant Attendance Register. In fact, the Labour Court once again relied upon the evidence of MW.1 who had deposed that if the Attendance Register has been produced for the relevant period on the basis of the claim by the workman, it could have reflected that the workman having worked for 480 days for the period. The said witness also accepted the Attendance Register from 17.7.1995 to June, 1997 was not produced. In the said circumstances, the Labour Court proceeds to hold that the initial burden of proving the number of working days worked by the workman, had been successfully discharged and the burden was shifted

on the Management, but they had failed to discharge the same and proceeded to hold that the workman had completed 480 days in two calendar years as on 05.01.1998. Moreover, the Labour Court has found which was also admitted fact that the workman appeared before the Selection Committee in the month of May, 1999 and this was admitted by the Management witness MW.1 that if only the workman had put in 480 days of continuous service as on 05.01.1998, his name would have been included in the provisional seniority list and he would have been allowed to appear before the Selection Committee. Therefore, the Labour Court has come to the unequivocal conclusion that the workman herein had established the fact that he had completed 480 days of continuous service in two calendar years without any scope for doubt. Therefore, the Labour Court has answered in the affirmative in regard to Issue Nos.1 and 2.

10. As regards Issue Nos.3 and 4, the Labour Court proceeded to hold that although it was a fact that the

workman was absent from 23.7.1999 to 25.10.1999, he has produced medical and fitness certificates at the time of joining duty on 26.10.1999. The fitness certificate which was marked as MW.11 was relied on by the Labour Court, although it was contended on behalf of the Board that the officials were informed not to furnish any employment certificate in respect of contract labourers. Therefore, any letter issued by the Contractor or the officials of the Board could not be relied upon. However, the learned Labour Court rejected the contention of the Management, stating that from the certificates produced by the workman, it was clearly established that his absence was explained and any departure from the Circular issued by the Board, it was an administrative lapse and the workman cannot be faulted with. Therefore, the Labour Court proceeded to accept the reason for the absence of the workman from duty for the said period as genuine and therefore, answered Issues Nos.3 and 4 in favour of the workman.

11. As regards Issue Nos.5 and 6, the Labour Court ultimately held that the non-employment of the workman from 27.09.1999 was unfair and unacceptable and the workman was entitled to be reinstated with permanent status with continuity of service and with all attendant benefits including the back wages and all other attendant benefits. The Labour Court thus answered all the Issues in favour of the workman. The award passed by the Labour Court on 31.08.2017 is put to challenge in the present Writ Petition by the Management.

12. Shri Anand Gopalan, learned counsel appearing for the petitioner management would strenuously contend that the second respondent workman had not actually worked 480 days in two calendar years as on 30.4.1999 as the Board found from the records that the workman had worked only 451 days during the relevant two calendar years and hence he was not entitled to be absorbed like the other workmen in pursuant to the Board Proceedings. In any event, the learned counsel would submit that the workman was stopped from

reporting to work admittedly on 28.10.1999, but the dispute was raised in 2009, i.e. after 10 years and therefore, the Labour Court ought not to have granted him the relief. He would submit that the Labour Court has also erred in entertaining the claim of the workman notwithstanding the fact that the workman was only a contract employee and not directly employed by the Board and hence the Board did not have proper materials to place the same before the Labour Court in order to establish the fact that the workman had not completed 480 days in two calendar years as on 30.4.1999. However, the fact remained that he was absent for considerable time during the period as held by the Labour Court itself. Therefore, the Labour Court ought not to have treated the claim of the workman as that of the other employees who had actually completed 480 days during the relevant period and their claim was favourably considered by the Board in pursuant to the Board Proceedings. In any case, the Labour Court cannot order absorption of the workman by granting permanent status since he was employed through a

Contractor and he would submit that the Labour Court has over reached its jurisdiction by ordering absorption which is beyond the scope of Section 2(A) of the Industrial Disputes Act. He would refer Section 2(A) of the Industrial Disputes Act which is extracted hereunder:

"2(A). "Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.-(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

13. According to the learned counsel, there was no employee and employer relationship in the first place for the Labour Court to interfere with the non-employment of the workman and therefore, the award of the Labour Court

ordering absorption in the petitioner Board is completely beyond the scope of the provision and such jurisdiction is not vested in the Labour Court. Therefore, he would submit that the Labour Court has exceeded its jurisdiction in allowing the claim of the workman on erroneous assumption. The learned counsel in support of his contention, would draw the attention to a decision rendered by a learned single Judge of this Court in W.P.No.17142 of 1998 dated 18.2.2000, wherein, in respect of the same establishment/management, it was held that automatic absorption and permanency cannot be claimed as a matter of right. The learned counsel would also refer to two awards passed by the Industrial Tribunal, Chennai in I.D.No.45 of 2002 dated 9.2.2016, wherein, the Industrial Tribunal, while dealing with the similar claims, has held that the Board could not be compelled to absorb all the employees on abolition of contract labour system and the contracted workman cannot claim regularization as a matter of right. The Industrial Tribunal finally dismissed the ID filed by the Union on behalf of the workman saying that the claim was not

justified. Similar legal position was adopted by the Industrial Tribunal in I.D.No.16 of 2006 dated 18.2.2016. Therefore, the learned counsel would submit that the Labour Court cannot justify in ordering the absorption and other reliefs to the workman in the circumstances of the case and he would urge this Court to set aside the Award passed by the Labour Court.

14. Per contra, Mr.Balan Haridoss, learned counsel appearing for the second respondent/workman would submit that the Labour Court has passed a very detailed award dealing with every factual and legal aspect of the dispute by analyzing the claim of the workman. In fact, the learned counsel would submit that in regard to the factum of the workman completed 480 days of service in two calendar years, the workman had discharged his burden having established the fact of his working 480 days in two calendar years and the same was not disputed by the Management by producing any relevant Attendance Register for the period. In fact, the argument put forth on behalf of the management that the

workman was employed through a contractor and therefore, the Management did not have proper materials, cannot be a valid argument for the simple reason that for the later period from June 1997, Attendance Register was produced from which, it could be seen that even during that period, the workmen was employed only as a contract labourers. When such material could be produced, what prevented the Management from producing the Attendance Register for the crucial period from January 1996 till June 1998 was anybody's guess.

15. The learned counsel for the second respondent workman would also submit that the award passed by the Labour Court was well rooted factually and legally as all the contentions raised on behalf of the parties have been dealt with threadbare. In fact, the entire conclusion by the Labour Court is only on the basis of the evidence of the Management witness, namely, MW.1. Moreover, the very fact that the workman was included in the seniority list and was also

interviewed by the Selection Committee, would conclusively prove that he was eligible to be considered for absorption. The Labour Court further held that the non-employment of the workman was unfair and unsustainable in the circumstances of the case since the workman was suffering from Typhoid and jaundice for which he had produced both medical and fitness certificates. But for his absence during the time, the workman could have been automatically absorbed in service like any other workman. However, once that non-employment period i.e. from 23.7.1999 to 25.10.1999 had been found to be genuine and properly explained, the question of denying him employment from 28.10.1999 was found to be unjustified by the Labour Court. Therefore, the finding of the Labour Court that the denial of employment to the workman by the Management was unfair, unsustainable and cannot be faulted with, as the reasons were well founded after adverting to the factual materials and documents placed for consideration.

16. As regards the objections raised by the learned counsel for the Management about the scope of Section 2(A), the award of the Labour Court directing absorption, the learned counsel for the workman would submit that such objection was considered by this Court earlier and the same was discountenanced as being invalid argument. The learned counsel would rely on a decision of this Court dated 26.3.2018 in WP No.10738 of 2010. The learned counsel would draw the attention of this Court to paragraph 23 of the order which is extracted hereunder:

“23. The main thrust of arguments advanced on behalf of the Board is that the dispute under Section 2-A of the Industrial Disputes Act was not maintainable in the instant case. As rightly contended by the learned counsel appearing for the employees, in this case the termination of the first respondent employees was directly linked to their absorption in the service of the Board and therefore, the scope of Section 2A of the Industrial Dispute Act cannot be given constricted meaning in the facts

of the present case, as both the termination and absorption was interlinked and cannot be separated. Such nuanced interpretation of Section 2A does not advance cause of scheme of Industrial Dispute Act. In industrial adjudication, such disputes are quite common, where employees used to be engaged on contract basis in order to restrict the benefits otherwise entitled to be the workmen. Such dispute can never be entertained by the industrial Tribunal, if such constricted meaning is given to the scope of Section 2 A of the Industrial Dispute Act, for redressal of their legitimate grievance. Although the learned counsel for the petitioner relied on the judgments of the Punjab and Haryana and the Hon'ble Supreme Court of India, those decisions cannot be applied to the factual matrix of the present case. Since the termination of the employees herein does not stand independently as that of the absorption effectively. But for the involvement of the employees in the criminal case their names would have been automatically included in the list of absorption. When such was the fact, this Court does not think that the Labour Court has overreached in jurisdiction in

ordering reinstatement. In the instant case, the award passed by the Labour Court cannot be faulted with and ordering reinstatement with continuity of service does not said to be an judicial overreach, as contended by the learned counsel for the petitioner.”

17. Since this Court has dealt with the contention of maintainability of Labour Court ordering absorption, the arguments put forth on behalf of the Management do not hold good any further and the same has to be rejected outright.

18. The learned counsel would also rely on a judgment of the Division Bench in W.A.No.504 of 2016 dated 20.4.2016 wherein the Division Bench has held that the regularization is only a follow up action on reinstatement in service in para 15 which is extracted hereunder:

“15 In the case on hand, it was a clear case of re-employment / reinstatement. The regularization was a follow-up action. Thus, the dispute squarely falls within the ambit of the

provisions of Section 17-B of the I.D. Act. We do not find any irregularity, illegality or infirmity in the order sought to be impugned in this appeal. Accordingly, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.”

19. The learned counsel also would rely on a decision of the Hon'ble Supreme Court reported in “2010 (1) LLN 48 (**Director, Fisheries Terminal Division and Bhilkubhai Meghajibhai Chavda**)”, wherein, the Hon'ble Supreme Court has held that once the burden of proving having worked for a minimum number of days is discharged by the workman by deposing in witness box, the burden to prove otherwise is on the employer. Therefore, he would submit that in this case, the burden of proving continuous employment of 480 days during two calendar years as on 5.1.1998 had been proved by the second respondent workman before the Labour Court and the same was not disproved by the Management by producing any materials. In fact, he would submit that the evidence of

Management witness MW.1 fully supported the case of the workman and it is, in that circumstance, not open to the Management to contend that the workman was not entitled to be treated on par with the other employees for the purpose of absorption and regularization. Therefore, he would urge this Court to dismiss the Writ Petition as being devoid of merits.

20. This Court considered the submissions made on behalf of the Management as well as the workman. Upon perusing the materials, pleadings and the award passed by the first respondent Labour Court, this Court finds that the first respondent Labour Court has considered all the legal and factual aspects in support of the dispute and answered all the Issues in favour of the workman. The Labour Court, as it could be seen from the award, has threadbare analysed the evidence and the materials placed for consideration and had come to a definite conclusion that the second respondent workman had worked for 480 days in two calendar years as on 05.01.1998. The very fact that the workman's name had

been included in the seniority list and he was interviewed in 1999 by the Selection Committee for the purpose of his absorption, it cannot be gainsaid by the Management that the workman had not completed 480 days during the relevant 24 calendar months. The objection of the Management that the workman had worked only 451 days during the relevant period, was not supported by any materials whatsoever. On the other hand, the claim of the workman that he worked for 480 days during the relevant 24 calendar months was fully supported by the materials beyond any doubt. The conclusion reached by the Labour Court on this aspect, does not call for any interference from this Court.

21. This Court finds that the finding of the Labour Court is well founded and such finding does not even remotely call for the second look. Further, after having concluded unequivocally that the workman had put in 480 days of continuous service during two calendar years as on 05.01.1998, the Labour Court proceeded further and held that

the non-employment of the workman from 28.10.1999 was unfair and unjustified. The Labour Court had relied on the medical and fitness certificates produced by the workman and had given a finding that his absence was justified and genuine. This fact was not specifically refuted or denied by the Management. In fact, the Management witness who was examined as MW.1, had cogently deposed in support of the claim of the workman and rightly the Labour Court had relied on such deposition and evidence let in by the Management witness for the purpose of coming to a definite conclusion on the factual aspects of the matter. In the said circumstances, it is not open to the Management to come forward with any contra case than what was made available before the Labour Court in the form of oral evidence or by any material evidence. Moreover, as rightly held by the Labour Court that the Management had no explanation at all for non-production of Attendance Register from 1996 till June 1998 and a feeble explanation was sought to be offered by the Management stating that the workman was employed as a contract labourer

and therefore, the Management was not in possession of any materials. Such explanation can hardly be worth considering, since all the employees employed by the Board, were contract labourers, but, the materials were available for the purpose of verifying the number of days worked by each of the employee. Therefore, it was too late in the day for the Management to resist the claim of the workman in regard to the factum of number of days worked by the workman herein. Except stating that the workman had worked only 451 days during the relevant period, nothing has been brought on record by the Management before the Labour Court. In the absence of material, it does not lie in the mouth of the Management to refute the factual claim of the workman since such claim of the workman was found fully established without leaving any trace of doubt.

WEB COPY

22. In regard to the legal objection raised on behalf of the Management, that the judicial over-reach by the Labour Court by ordering absorption when in fact, the workman was only a

contract labourer, this Court has already dealt with the legal objection and overruled the same in the decision cited supra by the learned counsel for the workman. Therefore, it is no more open to the Management to repeat the same objection when such objection was considered and discountenanced by this Court recently in the aforementioned Writ Petition.

23. As regards the objection raised on behalf of the Management that the dispute was raised after about 10 years from the date of cause of action, such objection appears to have some force in the circumstance of the case. The workman was denied employment from 18.10.1999 whereas the dispute was ultimately raised only in 2009 in I.D.No.112 of 2009. On behalf of the workman, there was hardly any explanation for such long delay in raising the dispute. In fact, when this objection was raised on behalf of the Management, the same was not met with any worthwhile contention that the long delay in raising the dispute by the workman. In the said circumstances, this Court is of the view that the first

respondent Labour Court's award, ordering full back wages to the workman including for the period of his non-employment from 28.10.1999 is completely without any justification, since the workman cannot be awarded with back wages for the period from 28.10.1999 till 2009 when he raised the dispute since the delay was entirely attributable to him and the Management cannot be expected to compensate for the workman's laxity and inaction. Therefore, the direction to pay back wages atleast for the period from 28.10.1999 till 2009 when the dispute was raised, ought not to be upheld as that would mean that the workman without any efforts on his part, would be attempted to unjustly enriching himself.

24. Be that as it may, the award on the whole is a well considered one since the Labour Court has given a finding which was supported by a concrete evidence and materials and such finding by the Labour Court in favour of the workman cannot be called in question by the Management. This Court does not see even remotely any aspect of

consideration by the Labour Court warranting a slightest interference from this Court.

25. Except the grant of back wages for the entire period of non-employment, for the above said reasons, this Court does not find any fallacy in the approach of the Labour Court in passing the Award in favour of the workman and therefore, the Award passed by the Labour Court dated 21.08.2017 in I.D.No.112 of 2009 has to be necessarily upheld. Accordingly, the same is upheld subject to the modification as under:

The grant of backwages to the workman for the entire period of non-employment is modified holding that the workman is not entitled to back wages from 28.10.1999 till the date of reference of the dispute before the Labour Court, but he is entitled to 25% of back wages from the date of reference till the date of the Award since admittedly, the delay in raising the dispute for nearly ten years is on the part of the workman and the principle 'no work, no pay' will apply to his case. With this modification, the other aspects of the Award

shall remain in tact.

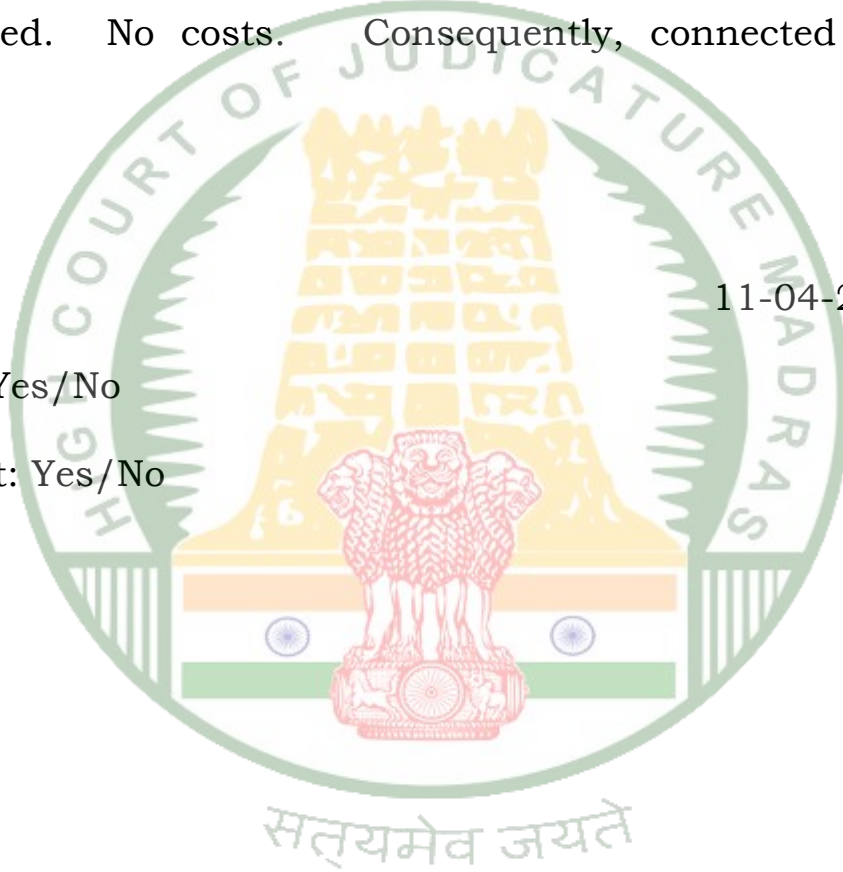
26. In the circumstances, this Court does not find any merit in the Writ Petition. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected WMP is closed.

Suk

11-04-2019

Index: Yes/No

Internet: Yes/No



WEB COPY

V.PARTHIBAN, J.

suk



Pre Delivery Order in

W.P.No.8538 of 2018

WEB COPY

11-04-2019