

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.32709 of 2012

and

M.P.No.1 of 2012

- 1.J.Kadarbasha
- 2.D.Jai
- 3.P.Sivapragasam
- 4.K.Senthil
- 5.R.Manoharan
- 6.G.Balasubramanian
- 7.P.Velayuthan

.. Petitioners

-vs-

1. The Tamil Nadu Electricity Generation & Distribution Corporation Ltd.,
Rep., by its Chairman,
No.144, Annasalai, Chennai-2.
2. The Chief Engineer (Personnel),
The Tamil Nadu Electricity Generation & Distribution Corporation Ltd.,
No.144, Annasalai, Chennai-2.
3. The Executive Engineer,
Tamilnadu Electricity Generation & Distribution Corporation Ltd.,
Kallakurichi, Villupuram District.
4. The Superintending Engineer,
Tamilnadu Electricity Generation & Distribution Corporation Ltd.,
Villupuram.

.. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Declaration declaring that the proceedings of the 2nd respondent in FB TANGEDCO Proceedings No.22 dated 25.10.2012 is illegal and liable to be set aside and thereby direct the 1st respondent to issue fresh proceedings including the name of the petitioners by appointing them as Mazdoor (Trainees) in the 1st respondent Corporation.

For Petitioners : Mr.N.Suresh
For Respondents : Mr.Harron AL Rasheed
For M/s.T.S.Gopalan & Co.

ORDER

The Writ on hand is filed to declare that the proceedings of the 2nd respondent in FB TANGEDCO Proceedings No.22 dated 25.10.2012, is illegal and liable to be set aside and thereby direct the 1st respondent to issue fresh proceedings including the name of the petitioners by appointing them as Mazdoor (Trainees) in the 1st respondent Corporation.

2.The very relief sought for in the present writ petition is to appoint the writ petitioners as Mazdoor (Trainees). The proceedings of the 2nd respondent, impugned dated 25.10.2012, states that the contract labourers engaged directly by the Board on need basis on daily wages, who have received ex-gratia payment, are absorbed in Board's service as Mazdoor (Trainees) on certain terms and conditions. The terms and conditions are elaborated in the said order.

3.The learned counsel for the respondent Board also reiterates that the contract labourers, who have satisfied the terms and conditions of the Board Proceedings were granted with the benefit of absorption as Mazdoor (Trainees), and as far as the writ petitioners are concerned, they were found ineligible with reference to the orders passed in FB TANGEDCO Proceedings No.22, dated 25.10.2012, and therefore, they have challenged the said proceedings.

4.This Court is of a considered opinion that the contract labourers, engaged by the private contractors, cannot claim regularisation or permanent absorption in Board's Services in violation of the recruitment rules in force. Some of the contract labourers were absorbed on permanent basis as a one time measure based on the recommendations of Justice Khalid Commission. The one time measure regarding permanent absorption was mooted out 28 years back and the eligible contract labourers were engaged by the private contractors with whom the Tamil Nadu Electricity Board entered into an agreement to execute the works of TNEB. Therefore, such a one time arrangement made for permanent absorption based on the recommendations of Justice Khalid Commission cannot be extended purportedly so as to provide permanent absorption in violation of the recruitment rules in force. This apart, the Board also issued certain terms and conditions for regularisation or permanent absorption and now, the recruitment rules are also in force. Even, the Board

cannot made any irregular appointments in view of the legal principles settled by the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others reported in (2006) 4 SCC 1. Thus, the Board itself cannot recruit any irregular appointees, as the Constitutional Bench reiterated that all appointments are to be made under the constitutional scheme and by following the recruitment rules in force.

5. Equal employment is the constitutional mandate. The Tamil Nadu Electricity Board is bound to follow the recruitment rules for the purpose of selection, appointment, regularisation or permanent absorption. Contract labourers, who were engaged by the private contractors cannot claim any permanent absorption in Board's Service in violation of all such rules. Equal opportunity in public employment being the constitutional mandate, the authority competent must ensure that all the eligible persons are appointed through regular process of selection. By appointing candidates on irregular basis or in an illegal manner, the respondent cannot infringe the constitutional rights of the eligible candidates, who all are aspiring to secure public employment. Therefore, the contract labourers, who were engaged otherwise by the contractors cannot seek permanent absorption or regularisation in violation of the recruitment rules. The time measure made by the Board pursuant to the recommendations of Justice Khalid Commission cannot be extended even after a lapse of three decades. Now, such irregular or illegal appointments cannot be made in violation of the legal principles settled by the constitutional Bench of the Apex Court.

6. In the present case, the Board issued proceedings in FB TANGEDCO Proceedings No.22, dated 25.10.2012 in respect of the contract labourers, who were engaged directly by the Board on need basis, on daily wages and who received ex-gratia. Even such Board Proceedings cannot be continued for years together. As of now, all appointments are to be made strictly in accordance with the recruitment rules in force. Even the regularisation or permanent absorption cannot be granted in violation of the recruitment rules. Therefore, the Board Proceedings cannot be implemented so as to make irregular or illegal appointments. Even if the said board proceedings dated 25.10.2012 is in force, the respondent Board has to now re-visit the entire terms and conditions and look into the fact whether, such conditions are in consonance with the legal principles settled by the Constitutional Bench in Umadevi Case. Therefore, the Board Proceedings itself cannot be implemented in its entirety, if it is found that the terms and conditions stipulated are in violation of the legal principles settled by the Apex Court.

7.As far as the claims of the writ petitioners are concerned, they were engaged by the private contractors with whom the Tamil Nadu Electricity Board entered into an agreement on behalf of Electricity Board and therefore, these contract labourers are not entitled for regularisation or permanent absorption, as they have no legal rights. In view of the fact that the writ petitioners have not established even a semblance of legal right so as to claim regularisation or permanent absorption, the case of the writ petitioners cannot be considered. The recommendations of Justice Khalid Commission cannot be now extended after a lapse of about 28 years and in respect of such recommendations, the Committee constituted identified the persons and those identified persons are already absorbed on permanent basis and therefore, the case of the writ petitioners deserves no merit consideration. Consequently, the writ petition stands dismissed. However, there shall be no order as to costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman, The Tamil Nadu Electricity Generation & Distribution Corporation Ltd., No.144, Annasalai, Chennai-2.
2. The Chief Engineer (Personnel),
The Tamil Nadu Electricity Generation & Distribution Corporation Ltd.,
No.144, Annasalai, Chennai-2.
3. The Executive Engineer,
Tamilnadu Electricity Generation & Distribution Corporation Ltd.,
Kallakurichi, Villupuram District.
4. The Superintending Engineer,
Tamilnadu Electricity Generation & Distribution Corporation Ltd., Villupuram.

+1cc to Mr.N.Suresh, Advocate, S.R.No.93664

+1cc to M/s.T.S.Gopalan & Co., Advocate, S.R.No.93538

W.P.No.32709 of 2012

EV(CO)

CS/17/12/2019