IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2019

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.3427 of 2015
and
M.P.No.1 of 2015

R.Vinodkumar .. Petitioner

-vs-

1. The Tamil Nadu Electricity Generation
& Distribution Corporation Limited,
(TANGEDCO)
No.144, Anna Salai,
Chennai - 600 002

2. The Chief Engineer,
Salem Electricity Distribution Circle,
The Tamil Nadu Electricity Generation
& Distribution Corporation Limited,
(TANGEDCO)
Salem - 636 014 .. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 1st Respondent in Lr.No.004776/020/G.44/G.441/2013-9 dated 10.12.2014 and to quash the same and consequently, direct the respondent to absorb the petitioner on permanent basis in the Respondent The Tamil Nadu Electricity Generation & Distribution Corporation Limited, (TANGEDCO) with regular time scale of pay, within a time frame to be fixed by this Hon'ble Court.

For Petitioner : Mr.G.Sankaran
For Respondents : Mr.Anand Gopalan
For M/s.T.S.Gopalan & Co.

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ORDER

The relief sought for in the present writ petition is to call for the records relating to the impugned proceedings issued by the 1st Respondent in Lr.No.004776/020/G.44/G.441/2013-9 dated 10.12.2014 and to quash the same and to direct the respondent to absorb the petitioner on permanent basis in the Respondent The

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Tamil Nadu Electricity Generation & Distribution Corporation Limited, (TANGEDCO) with regular time scale of pay.

2.The petitioner earlier approached this Court for implementing the orders passed by the respondents, granting permanent status, which was considered by this Court and an order was passed that the case of the writ petitioner ought to have been considered with reference to orders passed by the Hon'ble Division Bench as well as 12(3) Settlement dated 10.08.2007 and the proceedings of the Electricity Board in B.P.No.9, Administrative Branch, dated 09.01.2008 granting permanent absorption for contract labourers.

3.Pursuant to the recommendations of Hon'ble Justice Khalid Committee, a list of eligible persons, who were engaged as Casual Labourers on daily wage basis by the private contractors, who were engaged by the Tamil Nadu Electricity Board for execution of the Boards work were identified and pursuant to the recommendations of Hon'ble Justice Khalid Commission, the benefit of permanent absorption was granted as one time measure. The casual Labourers included in the list by the Select Committee was conferred with the benefit of permanent absorption. However, certain other casual labourers, who were not granted the benefit of permanent absorption, approached the Inspector of Labour under the Confirmation of Permanent Status Act and this Court found that the Inspector of Labour has passed an award in a mechanical manner without adjudicating the legal grounds as well as the implications of such confirmation of permanent status, merely by stating that they have completed 480 days of service. The implications of Constitutional mandates as well as the legal principles settled by the Constitutional Bench of the Hon'ble Supreme Court of India in the case of Secretary, State of Karnataka and others Vs. Umadevi and others, reported in (2006) 4 SCC 1 with reference to the appointment in public services were not considered by the respondents / competent authority. Contrarily, a mechanical approach was adopted by the authorities competent that the casual labourers worked for 480 days and therefore, they are entitled for permanent status.

4. In respect of the order of the respondent electricity Board / Inspector of Labour, this Court elaborately considered the legal principles in W.P.No.811 of 2014 etc., batch and the order was delivered on 25.09.2019, the relevant paragraphs of the order was extracted hereunder;

> "5. In the present case, the service conditions were formulated by the Board by virtue of the powers conferred under Section 79 of the Electricity Supply Act, 1948. Therefore, the service regulations framed under the special statute will prevail over the general laws and therefore, this Court is of the

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considered opinion that the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen Act, 1981) is not applicable in respect of the employees, who all are claiming to be the servants of the Tamil Nadu Electricity Board.

6. The scheme of the service regulations issued by the Tamil Nadu Electricity Board is akin to that of the service condition formulated by the Government of Tamil Nadu to its employees. It is pertinent to note that the reservation in appointments are provided in the service regulation, which is a constitutional mandate. The mode of recruitment and the communal rotations, rosters are also contemplated under the service regulations. In the event of granting such permanent absorption without reference to the Rules & Regulations, the same would be in violation of the constitutional mandates and its provisions. The benefit of regularization or permanent absorption are ought to be granted strictly in accordance with the recruitment Rules in force. The Regulations are constituted by virtue of the powers conferred to the Competent Authorities under the Electricity Act. The service regulation which all are in force are akin to that of the service rules, as applicable to the Government employees in the Government of Tamil Nadu. The Tamil Nadu Electricity Board being an instrumentality of a State are following the service regulations framed under the statute and therefore, the said service regulations will prevail over the general laws and the regulations are to be applied for the purpose of grant of regulation on permanent absorption.

7. It is relevant to cite the judgements of the Division Bench of this Court in the case of "L.Justine Vs. Registrar of Co-operative Societies" reported in "2003 (1) L.L.N. 315". The Division Bench framed the Issue No. (ii) as follows :-

"13. The Permanency Act of 1981 is also an Act enacted by the State and received the President's assent. Section 3 of the Act contains non obstante clause and provides protection to workmen, who are in continuous service for a continuous period of 480 days in a period of 24 calendar months in an industrial establishment, thus conferring a status of permanency. 'Industrial establishment' is defined in subSection (3) of Section 2 of the Act and

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in clause (e) thereof, an ' establishment' as defined in clause 2 (6) of the Tamil Nadu Shops and Establishments Act, 1947, is defined to be an industrial establishment. If we go to Section 2 (6) of the Tamil Nadu Shops and Establishments Act, it is clear that the word 'establishment' therein takes in cooperative society also. As such, there cannot be any doubt regarding the applicability of the Permanency Act of 1981. The word, 'industry' defined in Section 2 (j) (q) under the Industrial Disputes Act, 1947 also makes the cooperative societies susceptible to the Act of 1947. Thus, all such workmen belonging to a class and are afforded protection, are entitled for the benefits of the Permanency Act of 1981 as also the Industrial Disputes Act of 1947."

8. With reference to the above issue, the Division Bench made an observation that "The provisions of either the Permanency Act of 1981 or of the Industrial Disputes Act, 1947, cannot also be pressed into service when the appointments are ipso facto illegal and unauthorized. We cannot accede to the contention that even if the appointment is illegal and unauthorized, merely on the passage of time and completion of the stipulated period of 480 days under the Permanency Act, 1981 or 240 days under the Industrial Disputes Act, 1947 an indefeasible right accrues to an employee. Such an argument is clearly untenable.

9. In paragraph No.16 of the said judgement, the Division Bench made an observation that "There is a lot of difference between the irregularity and illegality. The appointments here are not irregular but illegal. Irregular is something which is done in an authorized manner but while doing so, there is some procedural irregularity. Illegality is altogether different. An action is illegal if it is contrary to law. The law in the instant case is so clear that the appointments cannot be beyond the permissible cadre strength."

10. This Court would like to consider the legal principles settled by the Constitution Bench of 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". The Constitution Bench also reiterated that the benefit of regularization or permanent absorption cannot be granted in violation of

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the recruitment Rules in force.

11. Let us look into the spirit of the judgement little later. Coming back to the judgement of the Division Bench in the case of "L.Justine Vs. Registrar of Co-operative Societies" is that the matter went to the Apex Court and in the case of "Uma Rani Vs. Registrar of Co-operative Societies" reported in "(2004) 7 SCC 112", the Apex Court also confirmed the views of the Division Bench in the case of "L.Justine Vs. Registrar of Co-operative Societies" and more specifically in paragraph Nos.24 to 41 are extracted hereunder :-

"24. Let us now consider the extent to which the provisions of the 1981 Act would apply to the fact of the present case.

25. The 1981 Act applies only to industrial establishments. Industrial Establishment has inter alia been defined to mean "an establishment as defined in clause (6) of Section 2 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act 36 of 1947)".

26. Establishment has been defined in Section 2 (6) of the Tamil Nadu Shops and Establishments Act, 1947 as under:

"2. (6) 'Establishment' means a shop, commercial establishment, restaurant, eating house, residential hotel, theater or any place of public amusement or entertainment and includes such establishment as the State Government may by notification declare to be an establishment for the purpose of this Act."

27. Mr. Balakrishnan urged that the cooperative societies are Commercial Establishments.

28. Whether a Cooperative Society would be a commercial establishment or not would essentially be a question of fact. It cannot be said keeping in view the legislative intent that all cooperative societies would be 'commercial establishments' within the meaning of the Tamil Nadu Shops and Establishments Act, 1947. It, therefore, appears that the impugned Government Order has been issued by the State without proper application of mind. It has furthermore not been stated in the impugned Government Order that all the cooperative societies are commercial establishments within the meaning of Section 2(6) of the Tamil Nadu Shops and Establishments Act, 1947.

29. The Cooperative Societies and the Land Development Banks are governed by the statutes under which they have been created as also the Rules and bye laws framed thereunder. The cooperative societies are obligated to follow the cooperative principles as laid

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down in the Act and the Rules framed thereunder.

30. The State had framed rules in exercise of its power conferred upon it under Section 180 of the 1983 Act in the year 1988. Rule 149 of the 1988 Rules provides for a complete code as regard the mode and manner in which appointments were required to be made and the process of appointments is required to be carried out. In terms of the said Rule, requirements to possess educational qualification and other qualifications had been laid down. One of the essential qualifications laid down for holding certain posts is 'undergoing cooperative training and previous experience'.

31. At this juncture, we may notice some of the provisions contained in Rule 149 of the 1988 Rules.

32. Sub-rule (3) of Rule 149 read as under:

"149. (3)(a) No appointment by direct recruitment to any post shall be made except by calling for from the societies applications from their employees who possess the qualifications for the post and unless the Government have accorded special sanction for recruitment by advertisement in dailies, by also calling for a list of eligible candidates from the Employment Exchange.

(b) Where the Employment Exchange issues a non-availability certificate or the Government have accorded special sanction for recruitment by advertisement in dailies, the society shall invite applications from candidates including those working in other societies by advertisements in one English daily and two Tamil dailies having circulation within the area of operations of the society approved by the Government for the purposes of issue of Government advertisements.

(c) Every appointment by direct recruitment shall be made by holding written examination and interview or by holding only interview as decided by the board and on the basis of the rank given with reference to the marks obtained in the written examination, if any, and the marks awarded in the interview:

Provided that nothing contained in this sub-rule shall apply to any of the posts for the recruitment of which a Recruitment Bureau has been constituted under section 74 or in respect of which common cadre of service has been constituted under section 75;

Provided further that nothing contained in this sub- rule shall apply to appointments of dependents of the employees of any society who died or

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medically invalidated while in service."

33. Sub-rule (4) of Rule 149 mandates that no person shall be appointed to the service of a society if he has on the date on which he joins the post, attained the age of thirty years and in the case of persons belonging to Scheduled Castes and Scheduled Tribes thirty-five years.

34. Sub-rule (25) of Rule 149 provides that the principle of reservation of appointment for Scheduled Castes/ Scheduled Tribes and Backward Classes followed by the Government of Tamil Nadu for recruitment to the State shall apply.

35. No appointment, therefore, can be made in deviation of or departure from the procedures laid down in the said statutory rules.

36. The terms and conditions of services are also laid down in the said rules.

37. The 1983 Act was furthermore amended in the year 1995 providing for cadre strength which is directly relatable to the income of the cooperative societies.

38. Provisions of the Act and the Rules framed thereunder reflect the legislative recruitment policy. The said provisions are, thus, mandatory in nature.

39. Regularisation, in our considered opinion, is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a Statutory Act or the Rules framed thereunder. It is also now well-settled that an appointment made in violation of the mandatory provisions of the Statute and in particular ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation. (See State of H.P. Vs. Suresh Kumar Verma and Another, (1996) 7 SCC 562).

40. It is equally well-settled that those who come by backdoor should go through that door. (See State of U.P. and Others Vs. U.P. State Law Officers Association & Others, (1994) 2 SCC 204)

41. Regularization furthermore cannot give permanence to an employee whose services are ad-hoc in nature."

12. In the case of "Secretary, State of Karnataka and others Vs. Umadevi and others", the Constitution Bench also reiterated by holding that equal opportunity, being a constitutional mandate, the

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irregular or illegal appointments cannot be confirmed. The persons entered into public services through back door must be allowed to go from the door through they entered into. Contrarily, mere length of service cannot be taken as a ground for granting the benefit of regularization of permanent absorption. Thus, engaging an employee in an illegal or irregular manner by some authorities or the engagement is through some contractors then they cannot claim permanent status in service by virtue of the general Act viz., the Conferment of Permanent Status to Workmen Act, 1981 and such a claim cannot be considered by the authorities concerned as well as by the High Court. In such circumstances, the entire constitutional scheme is violated.

13. The Constitutional scheme of appointments ought to be followed scrupulously by the authorities competent while undertaking the process of selection and appointment. In the event of engaging persons on temporary or casual basis, thereafter, granting the benefit of confirmation in violation of the service regulation, undoubtedly is in violation of the Constitutional scheme of appointments and such a situation would amount to an unconstitutional act and therefore, the Court cannot consider such benefit of regularization on regularization or permanent absorption, merely on the ground that they have completed 480 days of service or for a considerable length of time.

14. The learned counsel appearing on behalf of the writ petitioner contended that the Tamil Nadu Electricity Board is not an Industrial Establishment defined under the provisions of the Act itself. Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 states that the Act applies to every industrial establishment. The word 'Industrial Establishment' is defined in Section 2(3) of the Act which reads as under :-

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"(a) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (Central Act LXIII of 1948) or any place which is deemed to be a factory under sub-section (2) of section 85 of that Act; or

(b) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (Central Act LXIX of 1951); or

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(c) a motor transport undertaking as defined in clause (g) of section 2 of the Motor Transport Workers Act, 1961 (Central Act 27 of 1961); or

(d) a beedi industrial premises as defined in clause (i) of section 2 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (Central Act 32 of 1966); or

(e) an establishment as defined in clause (6) of section of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947); or

(f) a catering establishment as defined in clause (1) of section 2 of the Tamil Nadu Catering Establishments Act, 1958 (Tamil Nadu Act XIII of 1958); or

(g) any other establishment which the Government may, by notification, declare to be an industrial establishment for the purpose of this Act."

15. Relying on the above provisions, the petitioner states that the Act itself is not applicable in respect of the employees of the Tamil Nadu Electricity Board Act. If they are working in an Industrial Establishment, as defined under Section 2 (3) of the Act, then alone the Act would be applicable.

16. The benefit of regularization of these contract labourers were earlier granted by the Tamil Nadu Electricity Board, pursuant to the recommendations of Justice Khalid Commission long back and subsequently, such confirmations are granted strictly in accordance with the terms and conditions of the 12(3) Settlement and not otherwise. This being the procedures followed for grant of confirmation, the Inspector of Labour are mechanically passing such order of confirmation of permanent status without reference to the legal grounds raised by the writ petitioner, even before the Inspector of Labour.

17. All appointments by the 'State' must be made only under the Constitutional scheme and by providing equal opportunity to all the eligible candidates, who all are aspiring to secure public employment through open competitive process. It is not as if the authorities can recruit the persons at their whims and fancies or of their choice and after allowing to such employees to work for a considerable length of time, then provide confirmation, regularization or permanent absorption, which is otherwise in violation of the service Rules of the Tamil Nadu Electricity Board.

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Such a practice would amount to unconstitutionality and further the equality clause enunciated in the Constitution is defeated. Lakh and lakh of youth of this great nation are burning their midnight lamp for securing public employment by participating in the open competitive process. The constitutional right of all these eligible candidates cannot be denied or deprived by the State or its authorities. In the event of denial of such constitutional rights of all eligible candidates, the entire appointment becomes unconstitutional and in violation of the Constitutional mandate.

18. This being the view to be adopted, this Court is of an opinion that it is not as if the employees can claim confirmation merely on the ground that they have served for 480 days, which is otherwise in violation of the service regulation constituted by virtue of the powers conferred under the Electricity Act, which will prevail over the general laws. The service regulations are constituted under the Constitutional scheme more specifically by providing Rules of reservation, communal rotations and other reservations for the priority categories. In the event of granting confirmation in the routine manner in respect of these employees, the Constitutional Right of all other eligible candidates to participate in the recruitment process is not only defeated but their rights are infringed. Thus, the orders of the Inspector of Labour are in violation of the constitutional scheme of appointment as well as in violation of the service regulations issued by the Tamil Nadu Electricity Board by virtue of the powers conferred under the Electricity Act and such service regulations are apparently on par with the service regulations of the Government employees of the Government of Tamil Nadu.

19. In the present case, the applications are filed before the Inspector of Labour and the grounds raised by the writ petitioner in respect of the application of the Act as well as the service regulations in force in the Tamil Nadu Electricity Board were not considered and the Inspector of Labours have passed the order without considering all these legal grounds and thus, this Court has no hesitation in coming to the conclusion that the order of the Inspector of Labour is perverse and not in consonance with the legal principles settled by the constitutional Courts across the country as well as by

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the Apex Court of India.

> 20. Under these circumstances, the order passed by the Inspector of Labour in proceedings No. Na.Ka.E.2057/2003 dated 27.09.2004 is quashed and the writ petition stands allowed. No costs. Connected miscellaneous petition is closed."

5. In the earlier writ petition filed for implementation of the order of the respondent Electricity Board, this Court issued a direction to consider the claim of the writ petitioner in the light of 12(3) Settlement as well as the proceedings issued by the Electricity Board in B.P.No.9, Administrative Branch, dated 09.01.2008. Such a direction was given on the ground that individual facts regarding the employment are to be verified with reference to the original documents as well as the evidences available. Such disputed errors cannot be adjudicated in writ proceedings under Article 226 of the Constitution of India. Under these circumstances, this Court directed committee of the Electricity Board to receive the documents and representations from the employees concerned, the conduct an enquiry and pass orders with reference to claim for implementation of the orders of the respondent Electricity Board / Chief Engineer passed in favour of the workman.

6.Such an exercise was done by the competent Authorities and labour Court, and an order was passed in proceedings dated 10.12.2014, which is impugned in the present writ petition. Admittedly, the workman has submitted his representation afresh along with the documents to establish his employment or otherwise.

7. The learned counsel appearing on behalf of the respondent reiterated that the Electricity Board has meticulously prepared questionnaire in order to provide genuine hearing and opportunity to the employee. Various questions were formulated and an enquiry was conducted to find out whether these workman is entitled for the benefit of permanent absorption or not. Accordingly, the paragraphs stated in the impugned order are extracted hereunder:

> "As per the orders of the Hon'ble High Court of Madras in Writ Petition No.34632 of 2012, the personal hearing to put forth your claim was given by the Committee constituted vide B.P.No.9, dated 09.01.2008 on 26.11.2014. Your representation for inclusion of your name in the Contract Labourers identification list and for absorbing yourself as per B.P.(Ch).No.9 Adm. Br.dt.09.01.08 was received and examined by the Committee.

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(2) The Committee after accepting your representation and giving reasonable opportunity to put forth your claim, then requested you to clarify on certain issues for which you have answered as detailed below:

(i) Whether you were executing works as a contractor or working as a contract labour in the Board?

You have informed that, you were executing works as a contractor and has also worked as a contract labour from 2004 only. You have also agreed that you have not worked continuously.

(ii) Whether your name has been included in the list of identified contract labourers or included in the left out contract labourers list?

You have informed that your name has been included in the left out contract labourers list but have not furnished any records in this regard.

(iii) Whether you have received any payment directly from the Board for working as contract labour?

You have stated that you have received payment of Rs.120/- and Rs.178/- from the Board and payment was made through PCB and also that you have worked only for 18 days.

(iv) Whether you have received any ex-gratia given to contract labourers?

You stated that you have not received any ex-gratia.

3) The committee after hearing your submissions and clear reply has then briefed you about the conditions stipulated for absorption of the left out contract labourers i.e.,

a) You should have been engaged prior to 05.01.1998.

(b) You should have been continuously engaged for the Board's work till the date of absorption without break in service for more than 3 months.

(c) You should have been paid Ex-gratia for the year 2005-2006, 2006-2007.

You have also stated that you were satisfied with the hearings by the committee.

(4) After the hearing, the Committee came to the conclusion that

(i) You have not worked continuously; and have breaks of more than 3 months in the works carried out by you as a Contractor from 2004.

(ii) You have not received any ex-gratia.

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(iii) Your name was not furnished in the left out contract labour list (Annexure-I) of Salem EDC, based on which the left out contract labourers of the 12(3) Settlement who were working prior to 1998 in Salem region were later absorbed vide memo dated 20.02.2008. Your name was not included in the left out Contract labour list as you were executing Board's work only from 2004, as per your own statement.

(5) In view of the above, based on the evidences produced by you and also as per the oral statements made during the personal hearing, the committee after careful examination is of the view that the claim made by you to absorb into the Board (now TANGEDCO) cannot be considered."

8.Pursuant to the findings of the Committee in the impugned order, this Court is of the opinion that the eligibility criteria and the requisite qualifications etc., considered for grant of permanent absorption in the 12(3) Settlement as well as in the proceedings No. B.P.No.9, Administrative Branch, dated 09.01.2008 were not met out in respect of the writ petitioner in the present writ petition. In other words, the writ petitioner was found not eligible for permanent absorption with reference to 12(3) Settlement as well as the proceedings issued by the Tamil Nadu Electricity Board in B.P.No.9 Administrative Branch, dated 09.01.2008. The respondent found that the writ petitioner was not identified by the Committee constituted by the Board for identification of contract labourers dated 08.08.1998, in terms of 12(3) Settlement dated 10.08.2007. When the writ petitioner was not identified either by the Committee constituted or benefited by 12(3) Settlement, he was not identified for benefit of permanent absorption. This apart, it is held that the ex-gratia prescribed is not received by the writ petitioner.

9.For all these reasons, the claim of the writ petitioner is rejected. This Court does not find any infirmity in the impugned order passed by the Authorities of the Tamil Nadu Electricity Board.

10.The writ petitioner himself admitted that he was not worked continuously and have breaks of more than three months in the works carried out by him as a Contractor. Therefore, he was not entitled to raise any dispute in this regard. The learned counsel appearing on behalf of the respondent cited the judgment of Oshiar Prasad & others Vs. Sudamadih Coal Washery, reported in (2015) 4 SCC 71 and the relevant paragraphs of the said judgment are extracted herein;

"23. Coming now to the facts of this case, it is an admitted case that the services of the appellants and those at whose instance the reference was made

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were terminated long back prior to making of the Oshiar Prasad & Ors vs Emp.In Rel.To Mgt.Of S.C.Washery ... on 2 February, 2015 Indian Kanoon - http://indiankanoon.org/doc/179458182/ 5 reference. These workers were, therefore, not in the services of either Contractor or/and BCCL on the date of making the reference in question. Therefore, there was no industrial dispute that "existed" or "apprehended" in relation to appellants' absorption in the services of the BCCL on the date of making the reference.

24.Indeed a dispute regarding the appellants' absorption was capable of being referred to in reference for adjudication, had the appellants been in the services of Contractor or/and BCCL. But as said above, since the appellants' services were discontinued or/and retrenched (whether rightly or wrongly) long back, the question of their absorption or regularization in the services of BCCL, as claimed by them, did not arise and nor this issue could have been gone into on its merits for the reason that it was not legally possible to give any direction to absorb/regularize the appellants so long as they were not in the employment.

25. It is a settled principle of law that absorption and regularization in the service can be claimed or/and granted only when the contract of employment subsists and is in force inter se employee and employer. Once it comes to an end either by efflux of time or as per the terms of the Contract of employment or by its termination by the employer, then in such event, the relationship of employee and employer comes to an end and no longer subsists except for the limited purpose to examine the legality and correctness of its termination.

26. In our considered opinion, the only industrial dispute, which existed for being referred to the Industrial Tribunal for adjudication was in relation to termination of appellants' employment and - whether it was legal or not? It is an admitted fact that it was not referred to the Tribunal and, therefore, it attained finality against the appellants.

27. In our considered opinion, therefore, the reference, even if made to examine the issue of absorption of the appellants in the services of BCCL, the same was misconceived."

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11.In para 27 of the above judgment, the Hon'ble Supreme Court held that the reference, even if made to examine the issue of absorption of the appellants in the services of BCCL, the same was misconceived.

12.This being the circumstances of the case, the reasons stated in the impugned order are candid and convincing. In the absence of establishing any right for absorption within the prescribed time and with reference to the criterias as fixed in the 12(3) Settlement as well as in the Board Proceedings in B.P.No.9 Administration Branch, dated 09.01.2008, this Court cannot grant the benefit of permanent absorption in violation of the recruitment rules and as per the one time scheme issued pursuant to the recommendations of Hon'ble Justice Khalid Committee. Thus, the writ petition is devoid of merits and the same stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

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Sub-Assistant Registrar

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To

1. The Tamil Nadu Electricity Generation
   & Distribution Corporation Limited,
   (TANGEDCO)
   No.144, Anna Salai,
   Chennai - 600 002

2. The Chief Engineer,
   Salem Electricity Distribution Circle,
   The Tamil Nadu Electricity Generation
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   Salem - 636 014

+1 CC to Mr.T.S. Gopalan & Co, sr 91342.

W.P.No.3427 of 2015

RSV(CO)
SP(06/12/2019)

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