

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.78, 97, 156, 235 and 316 of 2012

B.Vinayagamurthy

.. Petitioner
in W.P.No.78 of 2012

D.Nandagopalakrishnan

.. Petitioner
in W.P.No.97 of 2012

S.Ramanathan

.. Petitioner
in W.P.No.156 of 2012

1.K.B.Mohamed Rafi

2.S.Sankar

.. Petitioners
in W.P.No.235 of 2012

1.D.Krishnaraj

2.J.Senthilmurugan

3.B.Pandiyar

4.K.M.Karunanithi

5.C.Bhupathy

6.J.Thanigaivelan

7.P.Saravanan

8.S.Prakash

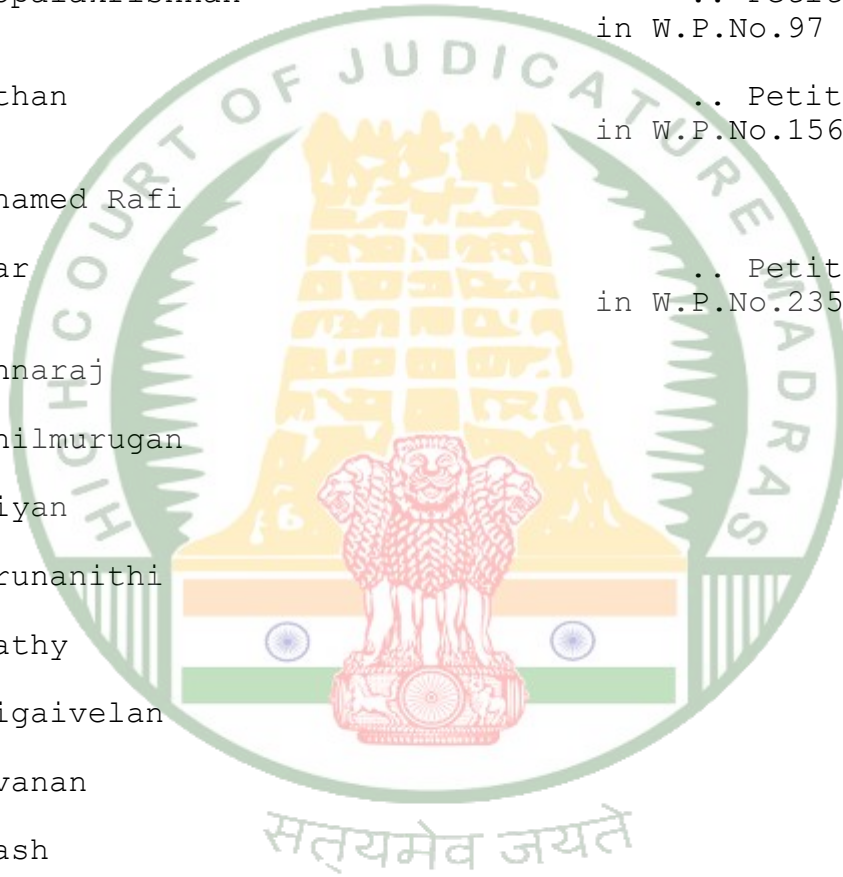
9.S.Dhanasekaran

10.R.Muruganandam

11.P.J.Jesudoss

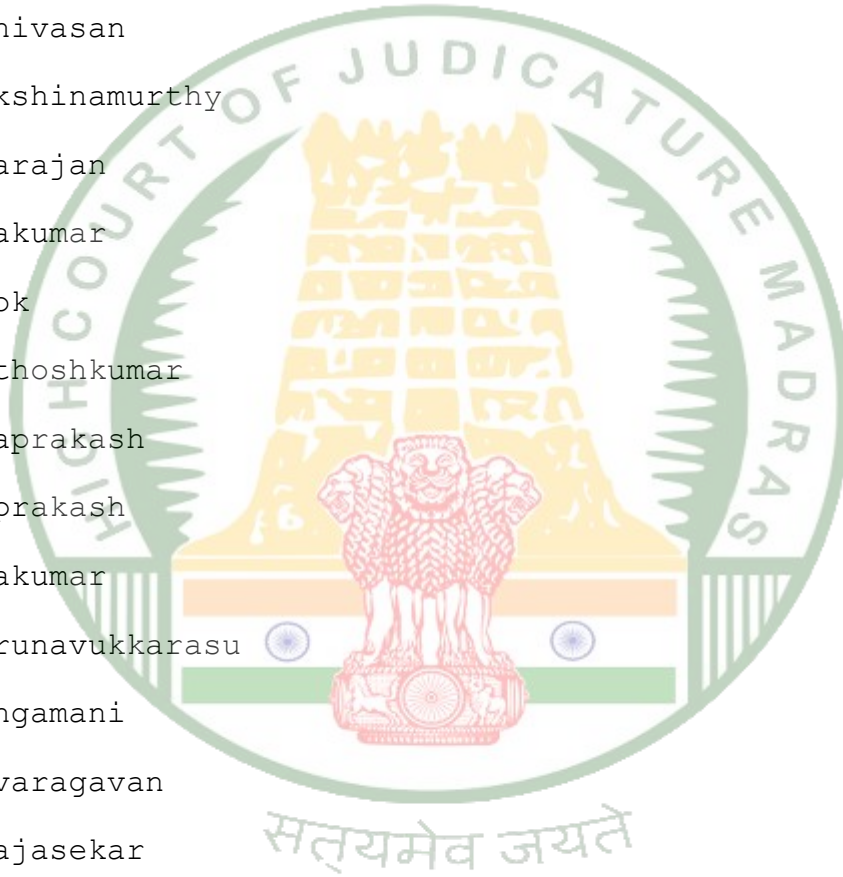
12.D.Gunachandran

13.A.Dhandapani



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14.K.Mani
15.R.Lakshmanan
16.S.Velmurugan
17.V.Udayakumar
18.R.Bakiyaraj
19.P.Paramaguru
20.R.Ramesh
21.R.Srinivasan
22.A.Dhakshinamurthy
23.M.Natarajan
24.S.Sivakumar
25.P.Ashok
26.T.Santhoshkumar
27.J.Jayaprakash
28.M.Rajprakash
29.L.Sivakumar
30.R.Thirunavukkarasu
31.A.Thangamani
32.R.Bhuvaragavan
33.R.K.Rajasekar
34.T.Devaraj
35.A.Abdul Majid
36.A.Giri



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.. Petitioners
in W.P.No.316 of 2012

Vs.

1.The Tamilnadu Electricity Generation & Distribution Corporation Limited,
Represented by The Chairman,
No.144, Annasalai, Chennai - 600 002.

2.The Chief Engineer (Personnel),
Tamilnadu Electricity Generation & Distribution Corporation Limited,
No.144, Annasalai, Chennai - 600 002.

3.The Superintending Engineer,
Tamilnadu Electricity Generation & Distribution Corporation Limited,
Cuddalore.

4.The Inspector of Labour,
Cuddalore.

... Respondents
(in all W.Ps)

Prayer in W.P.Nos.78 & 97 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the respondents 1 to 3 to implement the order of the 4th respondent made in E/8448/05 dated 12.04.2007 under the provisions of the Tamilnadu Industrial Establishments (Conferment of permanent status to workmen) Act, 1981 and thereby direct the respondents 1 to 3 to absorb the petitioners in the 1st respondent Corporation as permanent employees.

Prayer in W.P.No.156 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the respondents 1 to 3 to implement the order of the 4th respondent made in E/2305/99 dated 02.08.2005 under the provisions of the Tamilnadu Industrial Establishments (Conferment of permanent status to workmen) Act, 1981 and thereby direct the respondents 1 to 3 to absorb the petitioner in the 1st respondent Corporation as permanent employee.

Prayer in W.P.No.235 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the respondents 1 to 3 to implement the order of the 4th respondent made in E/5176/05 dated 15.06.2007 under the provisions of the Tamilnadu Industrial Establishments (Conferment of permanent status to workmen) Act, 1981 and thereby direct the respondents 1 to 3 to absorb the petitioners in the 1st respondent Corporation as permanent employees.

Prayer in W.P.No.316 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the respondents 1 to 3 to implement the order of the 4th respondent made in E/6680/05 dated 18.05.2007 under the provisions of the Tamilnadu Industrial Establishments (Conferment of permanent status to workmen) Act, 1981 and thereby direct the respondents 1 to 3 to absorb the petitioners in the 1st respondent Corporation as permanent employees.

In all W.Ps:

For Petitioners: Mr.N.Suresh
For RR1 to 3 : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.
For R4 : Mr.R.S.Selvam
Government Advocate

C O M M O N O R D E R

All these Writ Petitions are filed for a direction to the respondents 1 to 3 to implement the orders of the fourth respondent made in E/8448/05 dated 12.04.2007, E/2305/99 dated 02.08.2005, E/5176/05 dated 15.06.2007 and E/6680/05 dated 18.05.2007 under the provisions of the Tamilnadu Industrial Establishments (Conferment of permanent status to workmen) Act, 1981 and thereby direct the respondents 1 to 3 to absorb the petitioners in the 1st respondent Corporation as permanent employees.

2.The learned counsel appearing for the petitioners contended that all the petitioners worked for 12 years as daily wage workers and they are entitled to be made permanent on completion of 480 days in 24 calendar months. In the petition filed before the fourth respondent for confirmation of permanent status, the petitioners have substantiated their claim that they worked for 480 days in 24 calendar months and 4th respondent directed the respondents 1 to 3 to consider permanency. The respondents 1 to 3 did not challenge the said order by filing Writ Petition and the said order has become final. This issue was considered by the Division Bench of this Court in the judgment reported in CDJ 2013 MHC 046, [R.Ashok & Others Vs. The Chairman, Tamil Nadu Generation and Distribution Corporation Ltd. & Others] and this Court held that 4th respondent has exercised statutory power and the respondents 1 to 3 are bound by the said order. The learned counsel appearing for the petitioners also relied on the order dated 01.04.2013 reported in CDJ 2015 MHC 4251 made in W.P.(MD)No.15852 of 2012 & M.P.(MD).No.1 of 2012 [Annadurai

Vs. The Chairman, Tamil Nadu Generation and Distribution Corporation Limited, (Formerly known as Tamil Nadu Electricity Board)] (delivered by me) and 2013-II-LLJ (Mad) [R.Ashok and others Vs. Chairman, Tamil Nadu Generation and Distribution Corporation Limited].

3.The respondents filed counter affidavit and denied all the allegations in the affidavit and contended that petitioners are not entitled to regularisation.

4.The learned counsel appearing for the respondents 1 to 3 and the learned Government Advocate appearing for the 4th respondent has not denied that order of the 4th respondent was not challenged by the respondents 1 to 3 and the said order has become final.

5.Respondents 1 to 3 filed typed set of papers enclosing various proceedings in similar matter and the settlement entered into under Section 12 (3) of the Industrial Disputes Act, 1947 between TANGEDCO and various unions.

6.The learned counsel appearing for the respondents contended that the Division Bench of this Court in the judgment dated 24.10.2008 made in W.A.No.1302 of 2003 and batch upholding the settlement dated 10.08.2007 held that claim of the contract labours should be considered only in the terms of the settlement entered into on 10.08.2007. For enforcing the order of Inspector of Labour, they cannot invoke the Writ Jurisdiction and Writ is not maintainable. The issue of confirmation of permanent status of labourers was dismissed and Writ Appeal filed against the Writ Petition was also dismissed. After the dismissal of the Writ Petition and Writ Appeals, the respondents 1 to 3 filed SLP. In the SLP the respondents 1 to 3 took a stand that many of the workers have produced forged documents and the Hon'ble Apex Court gave liberty to the respondents to initiate criminal proceedings against the said workers. In Cuddalore Division around 1,200 persons filed 28 petitions before the 4th respondent seeking permanency and the same has been ordered. On the liberty given by the Hon'ble Apex Court, the respondents 1 to 3 filed protest petition No.RCS.1/2016 before the Judicial Magistrate III, Cuddalore and prayed for dismissal of all the Writ Petitions.

7.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents 1 to 3 and the learned Government Advocate appearing for the 4th respondent and perused the entire materials on record.

8.From the materials on record, it is seen that all the petitioners are claiming to have completed 480 days in 24 calendar months and approached the 4th respondent for an order confirming them as permanent employees of the 3rd respondent. The 4th respondent considering the materials placed before him has directed the 3rd respondent to grant permanent status to the petitioners herein. The respondents have not initiated any proceedings challenging the said order and the order of the 4th respondent has become final. The contention of the respondents 1 to 3 that as per terms of the settlement entered between the respondents 1 to 3 and TANGEDCO Union on 10.08.2007, the persons who satisfies the conditions in the settlement only can be absorbed is without merits. The learned counsel appearing for the respondents 1 to 3 has not produced any material to show that petitioners belonged to Union which entered into agreement with the TANGEDCO and that they have produced the protest petition bearing No.RCS.1/2016 before the Judicial Magistrate III, Cuddalore, against the workers who have produced bogus and forged documents. The learned counsel appearing for the respondents 1 to 3 is unable to state whether protest petition was filed against the petitioners herein also.

9.Considering the fact that petitioners worked for 240 days in 12 calendar months and 480 days in 24 calendar months and the judgment of the Division Bench of this Court referred to above, the petitioners are entitled to be granted permanent status as per the order of the 4th respondent.

10.In the result, all these Writ Petitions are allowed.
No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

krk
To

- 1.The Tamilnadu Electricity Generation & Distribution Corporation Limited,
Represented by The Chairman,
No.144, Annasalai, Chennai - 600 002.
- 2.The Chief Engineer (Personnel),
Tamilnadu Electricity Generation & Distribution Corporation Limited,
No.144, Annasalai, Chennai - 600 002.

3.The Superintending Engineer,
Tamilnadu Electricity Generation &
Distribution Corporation Limited,
Cuddalore.

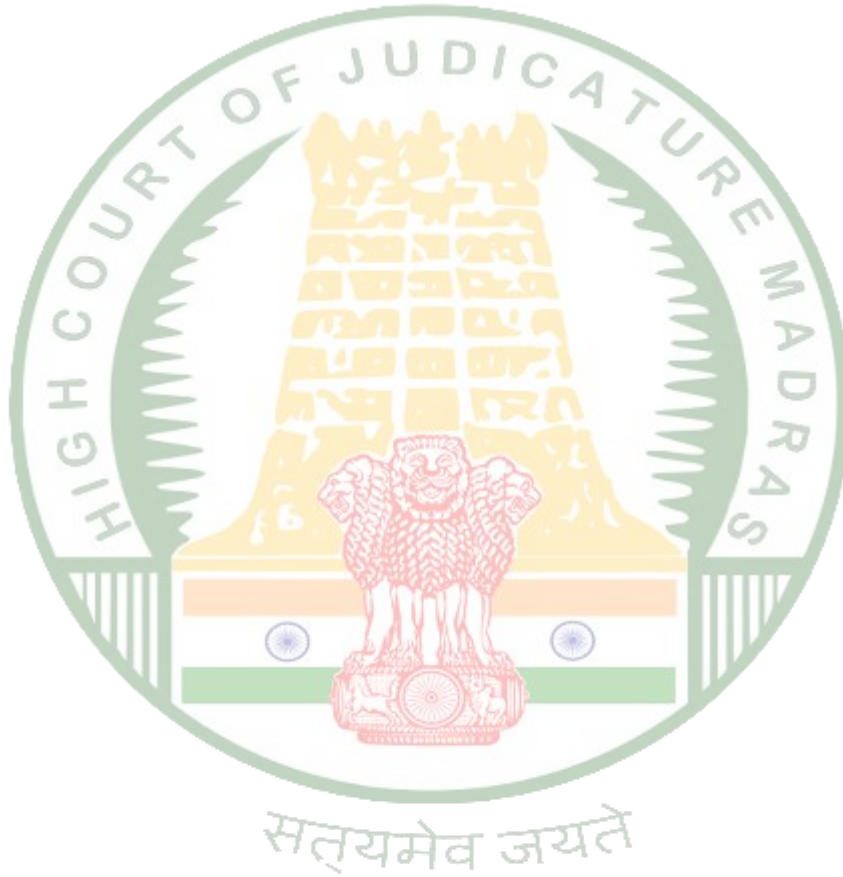
4.The Inspector of Labour,
Cuddalore.

+1cc to Mr.N.Suresh , Advocate SR.No. 75358

+2ccs to M/s.T.S.Gopalan , Advocate SR.No. 73809

W.P.Nos.78, 97, 156, 235 and 316 of 2012

A.SK(20/11/2019)



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