

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No. 1999 of 2018
And
C.M.P.No. 15853 of 2018

1. The Junior Engineer (O&M/Town)
Tamil Nadu Electricity Board
Anaicut
Vellore 632 101.
2. The Assistant Executive Engineer (O&M/Town)
Anaicut
Vellore 632 101.
3. The Superintending Engineer
Tirupathur Electricity Distribution Circle
Tirupattur 635 601

Appellants 1 to 3/Respondents

Vs.

1. The Presiding Officer
Labour Court, Vellore. 1st Respondent/4th Respondent
2. C.Chokalingam 2nd Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letters Patent against the order of this Court dated 03.03.2017 in W.P.No. 13877 of 2003 which was filed praying to issue Certiorarified Mandamus calling for the records of the 4th Respondent award dated 24.09.2002 in I.D. No. 328/1998 and quash the same consequently directing the Respondents 1 to 3 to reinstate the Petitioner in any light work protecting the pay as on 29.03.1996 which back wages, continuity in service and after attendant benefits.

For Appellant : Mr. Anand Gopal
for M/s. T.S.Gopalan & Co.,
For R-2 : Mr. J.Saravana Vel

J U D G M E N T

(Delivered by C.V.KARTHIKEYAN, J)

The first, second and third respondents in W.P.No. 13877 of 2003 are the appellants before us assailing the Order of the learned Single Judge dated 03.03.2017 allowing the said Writ Petition and holding that the writ petitioner must be deemed to be in service with effect from 29.03.1996 and consequently was entitled to all service benefits, including regularisation of his service till the date of his actual retirement. The appellants herein were also directed to pay full back wages from the date of non employment of the writ petitioner from 29.03.1996 till the date of his superannuation.

2. The appellants have challenged the said directions primarily on the ground that the writ petitioner was not at all an employee much less a workman entitled for the reliefs granted.

3. For the sake of convenience, the parties will be referred with the same nomenclature as they were referred in the Writ Petition. As stated above, the first, second and third respondents in the Writ Petition are the appellants and the writ petitioner is the first respondent herein.

4. The Writ Petition had been filed by C.Chokalingam, who claimed to be a workman under the service of the first, second and third respondents who are Officers of the Tamilnadu Electricity Board, now renamed as the Tamilnadu Generation and Distribution Corporation - TANGEDCO. The writ petitioner claimed that he had been appointed as a Helper on daily wage basis since 1981. The wages were paid on the basis of payments through petty cash vouchers. The respondents however claimed that he was a contract Labourer engaged only on job work basis and not on daily basis. The petitioner fell from an electric poll on 21.03.1996 and suffered injuries. In view of the same, he filed a compensation case before the Workmen's Compensation Commissioner claiming compensation of Rs.2/- lakhs in W.C.No. 200 of 1996. Both sides let in evidence and interpreting the evidence adduced on behalf of the respondents that the petitioner was not employed through a contract, but was allotted work on the basis of necessity as evidence that the petitioner was an workman the Commissioner granted compensation. Parallely, the petitioner also raised an Industrial Dispute before the Labour Court, Vellore questioning non-employment. Since conciliation talks failed, the petitioner filed I.D.No. 328 of 1998. The evidence was also recorded by the Labour Court and on the basis of the oral and documentary evidence, the

Labour Court came to conclusion that the petitioner was only a contract labourer and not a daily wage labourer and that consequently, the question whether he was denied employment unlawfully could not be decided and that he was not eligible for any relief in the dispute. It is this order of the Labour Court which the petitioner has assailed in W.P.No. 13877 of 2003 before this Court.

5. The learned Single Judge by Order dated 03.03.2017 however held that the findings of the Workmen's Compensation Commissioner was final and binding on the Labour Court irrespective of the evidence adduced before the Labour Court. The learned Single Judge also further held that the issue whether the petitioner was a workman or not should never have been examined by the Labour Court. The learned Judge therefore held that the petitioner must be deemed to be a direct employee of the respondent/Electricity Board and that the finding on that line by the Workmen's Compensation Commissioner in W.C.No. 200 of 1996 was binding on the respondents. The learned Judge also observed that the Labour Court, after holding that the petitioner was not an employee did not go into the relief portion of the issue framed by it, held that the matter need not however be remitted back to the Labour Court for fresh consideration with respect to the relief to be granted since the matter was more than 20 years old from the date of non employment. Consequently, the learned Single Judge, opined that the Court can mould the relief in view of the Extra-ordinary Jurisdiction vested under Article 226 of the Constitution of India and granted the reliefs stated above.

6. A perusal of the records however reveal that unfortunately, no evidence is on record to substantiate the fact whether the petitioner is a workman or not or on the nature of injuries suffered and whether he could again perform the works allotted by the respondents. However, the learned Judge in view of the protection granted in Section 47 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Administration) Act 1995 held that he was entitled for the relief of all service benefits till the date of actual retirement. The respondents were also directed to pay all the terminal dues including gratuity, provident fund, pension.

7. It is the contention of the learned counsel for the appellants that there was no evidence on record to show that the writ petitioner was actually a workman, who had put in 240 days of continuous service. Our attention has been drawn to the vouchers produced and a cursory glance shows that the petitioner had been on employment only intermittently. For example, he worked on 09.03.1981 and thereafter only on 28.03.1981. He was not assigned any work in the months of April to August 1981. In

September 1981, he worked only for four days. The entire dates on which he had been provided such employment had been filed before the Labour Court.

8. Placing strong reliance on these documents, it had been urged by Mr. Anand Gopal, the learned counsel for the Appellants that the matter requires reconsideration to determine whether the petitioner was indeed a workman and to determine the extent of injuries suffered by him.

9. On the other hand, Mr. J. Saravanel, learned counsel for the writ petitioner/respondent No.2 in the Appeal supported the order of the learned Judge.

10. We have given our careful consideration to the arguments advanced and the material papers on record.

11. Admittedly before the Labour Court, additional documents had been produced but were not marked. These documents related to the vouchers evidencing payment of wages which as aforesaid were intermittent in nature. There has been no specific finding that the petitioner was working for continuous period of 240 days entitling him to seek the reliefs he sought. There has been no opportunity granted to the respondents herein also to test the contention of the petitioner that he was a direct employee under them. These issues go to the root of the matter. Unless there is clear and cogent evidence both oral and documentary to show that the petitioner was an employee under the respondents or that he had worked for 240 days continuously entitling him for necessary reliefs, the relief granted by the learned Judge have to be interfered with.

12. The burden is on the petitioner to prove continuous employment. He has to discharge his burden in manner known to law, through oral and documentary evidence. It is seen that he had filed additional documents before the Labour Court but for some reason they were not marked as exhibits. The learned Single Judge had held that since considerable time has passed it would not be in the interest of both the parties to relegate them to trial on the said issue, but we hold that the central fact whether the petitioner was a workman or not has to be decided in manner known to law on the basis of oral and documentary evidence and by the Court of first instance, in this case by the Labour Court. Without a direct finding on the aspect whether the petitioner is a workman or not, we hold that the omnibus relief granted by the learned Single Judge cannot be sustained.

13. In view of the reasons stated above, we are constrained to interfere with the order of the learned Single

Judge and we remit the matter back to the Labour Court for fresh trial on all aspects including the aspect whether the petitioner was a workman or not and also on the disability suffered by him. Consequently, the order of the learned Single Judge is set aside and the Writ Appeal is allowed. The parties are relegated back to the Labour Court, Vellore and the said Court is directed to take on file I.D.No. 328 of 1998 and both parties are granted opportunity of adducing fresh additional oral and documentary evidence and thereafter, the Labour Court has to give a specific finding on the basis of the evidence, whether the petitioner herein was an employee under the respondents. The Labour Court is also under an obligation to examine the nature of injuries suffered and whether denial of employment by the respondents was justified or not.

14. The Labour Court is directed to issue notices to both the petitioner and the respondents and it is hoped that the said Court would bestow attention in disposing of I.D.No. 328 of 1998 within a period of six months from the first hearing date.

15. With the above observations, the Writ Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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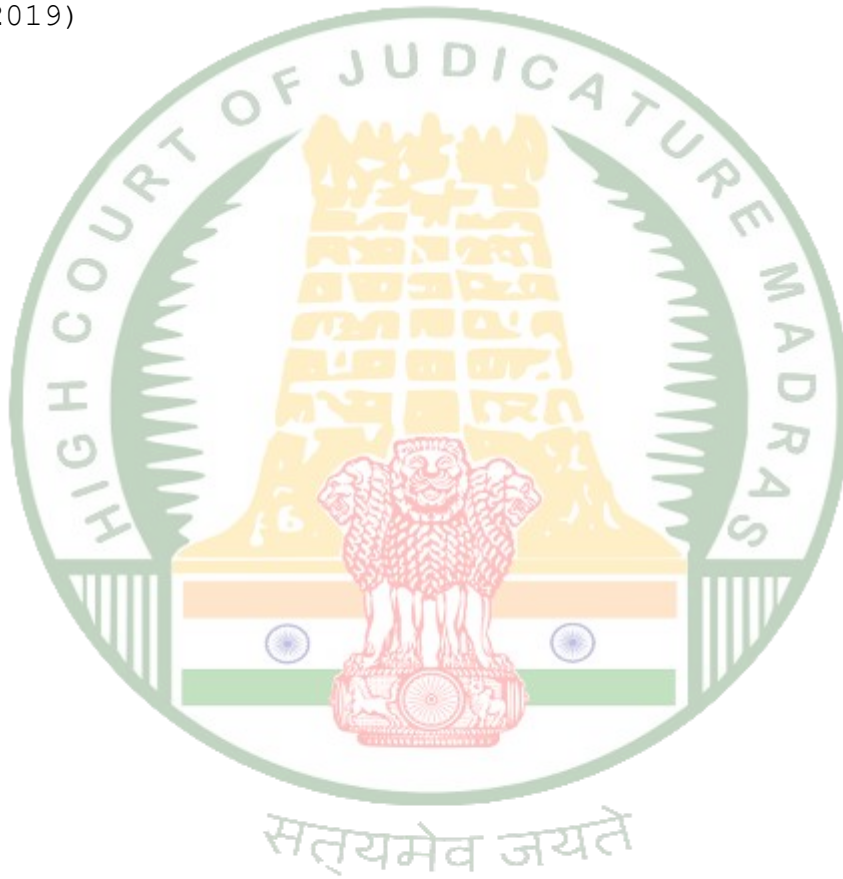
To

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+1 CC to Mr.J.Saravanel, Advocate sr 46472.
+1 CC to Mr.T.S. Gopalan, Advocate sr 46360.

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PP (CO)
SP (23/07/2019)



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