

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 10.04.2019

Delivered on : 24.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.6480 of 2006

The Superintending Engineer,
Vellore Electricity Distribution Circle,
Gandhi Nagar, Vellore -6. ... Petitioner

Vs.

1.The Govt. of Tamil Nadu
rep. by its Secretary to Government,
Energy Department, Chennai-9.

2.The Govt. of Tamil Nadu,
rep. by its Secretary to Government,
Labour and Employment Department,
Chennai-9.

3.The Inspector of Labour,
Vellore.

4.N.Mathiyazhagan

5.K.Palanivelu

6.M.Balasundaram

7.R.Thanji

8.C.Krishnan

9.B.Velu

10.P.Jeyachandran

11.D.Govindaraj

12.D.Annamalai

13.E.Sekar

14.M.Anbu

(Respondents 4 to 14 are Tamil Nadu
Electricity Board Workers Federation
Union, Rep. by the Circle Secretary,
No.16, 10th East Main Road,
Vellore-6)

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 3rd Respondent relating to his proceeding in Po.Mu.No.E.2166/2004, dated 05.11.2004 and quash the same as illegal and without jurisdiction.

For Petitioner : Ms.M.Devi Rudra
for M/s.T.S.Gopalan & Co.

For Respondents : Mr.Mr.K.S.Suresh
Government Advocate for R1 to R3
R4 to R14- No appearance

O R D E R

This Writ Petition is filed for a Writ of Certiorari to quash the order dated 05.11.2004 of the Third Respondent.

2.The case of the Petitioner is that the Respondents 4 to 14 filed an application before the Third Respondent purportedly under Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (the Tamil Nadu Act 46 of 1981). According to the Petitioner, it is not aware of the particulars of Respondents 4 to 14, such as date of joining, nature of work performed and whether they had worked for a continuous period of 480 days in 24 calendar months.

3.The Petitioner further states that the Tamil Nadu Act 46 of 1981 is not intended to confer permanent status on contract labourers. According to the Petitioner, contract labourers are governed by the Contract Labour (Regulation and Abolition) Act, 1970, which is a central legislation. In this regard, the Petitioner states that whenever a legislation is extended to contract labourers, it is clear from the definition of worker as contained therein. In the instant case, the Petitioner states that there is nothing in the Tamil Nadu Act 46 of 1981 that indicates that it applies to contract labourers. Accordingly, the exercise of jurisdiction by the Third Respondent is said to be unlawful.

4.The Writ Petition was admitted on 07.03.2006 and Rule Nisi was issued. Thereafter, the Respondents 4 to 14 were served on various dates between 28.04.2006 and 25.05.2006. However, the said Respondents did not enter appearance either in person or through counsel. Consequently, no counter affidavit was filed. Nonetheless, the pleading of the said Respondents before the Third Respondent is before the Court and may be referred to for the version of the said Respondents.

5.In the claim Petition before the Third Respondent, Respondents 4 to 14 state that each of them had been employed on daily wage basis by the Petitioner for 480 days continuously in 24 calendar months and that they are, therefore, entitled to be conferred with permanent status as per Section 3 of the Tamil Nadu Act 46 of 1981. From the claim Petition, it also appears

that the Petitioners annexed their educational qualification certificates and proof of employment. By reply dated 13.10.2004 to the claim Petition, the Petitioner herein stated that two contract labourers who applied for absorption in the Petitioner were impleaded in ID.No.106/2000 before the Labour Court. However, it is clear from the names mentioned therein that it does not include any of Respondents 4 to 14. The Petitioner herein further stated in the said reply that 13 persons who were named in the said reply, including Respondent 13 and 14 herein, did not attend the enquiry in relation to their application for absorption. The Petitioner herein further stated therein that the payment for the contract labourers is made by the contractors concerned and not by the Petitioner herein. Significantly, it is stated that the certificate issued to the contract labourers by the contractors/officials merely mentions the period of service and that the said certificate cannot be relied upon because the certificates were issued by field officers without due authorisation. It is also stated therein that the Petitioner herein makes ex-gratia payments to those employed for more than five years and that certificates issued, in that regard, were misused in order to claim permanent status.

6. Based on the aforesaid pleadings, the Third Respondent herein concluded that the Petitioner herein could not disprove that Respondents 4 to 14 were employed for a continuous period of 480 days in 24 calendar months. The Third Respondent further held that the said Respondents were not involved in ID.No.106/2000. On this basis, the Third Respondent directed the Petitioner herein to confer permanent status on all the applicants therein (Respondents 4 to 14 herein) from the 481st day. The annexure to the order of the Third Respondent mentions the joining dates of the applicants therein as ranging from 01.07.1992 to 25.03.1998.

7. At the hearing, the learned counsel appearing for the Petitioner referred to several subsequent developments. In particular, the Memorandum of Settlement dated 10.08.2007 (the Settlement) between the Petitioner and the unions representing the workmen was referred to. From the said Settlement, it appears that the TNEB Workers Federation, i.e. the union representing Respondents 4 to 14, participated in the said Settlement. It also appears that the Settlement envisaged the phased absorption of 21,600 contract labourers as permanent workers. The learned counsel for the Petitioner also referred to board proceedings of the Petitioner. In specific terms, BP(FB) No.44 dated 06.09.2007 was referred to and this provides for the implementation of the aforementioned Settlement. The learned counsel also referred to BP (FB) No.9 dated 09.01.2008. It is clear from this BP No.9 that it is intended to consider cases of contract labourers who were not covered by the Settlement.

8. The learned counsel for the Petitioner also referred to the order of a Division Bench of this Court in W.A.No.1302 of 2003, wherein the Division Bench held as follows:

"24. Under the circumstances, we are convinced that the settlement entered into by the board with workmen and union is valid and enforceable. We, however qualify the same that it shall be subordinated only to the extent that the claims of ITI trained workmen that the regulation demands for the post of "helpers" are not discarded.

25. We therefore, direct that persons who ought to have been taken in employment against vacancies that were directed to be filled up by the Supreme Court pursuant to Khalid Commission's Report shall first be filled up before other vacancies are undertaken to be filled up. The writ petitions challenging the 18 (1) settlement will stand dismissed, except to the extent mentioned in paras 23 and 24 above. Age relaxation, wherever necessary to accommodate them shall be given. Similarly, the writ petitions challenging the board proceedings 36 and 37 of the Administrative Branch dated 29. 10. 2005 will also stand dismissed. The claims of persons before the Labour Inspectors which have been allowed and who have come before this court seeking for issue of mandamus for enforcement will now be considered under the 18 (1) settlement. The writ petitions filed by the Electricity Board challenging the orders of the Labour Inspectors will now be dismissed as infructuous having regard to the 18 (1) settlement. The appeals filed by the board against the decision of the learned single will also stand dismissed. The claims of the workmen in W.P. No. 1033 of 2006 and the connected batch will not stand affected by the decision of this court and the Labour Court will decide in their claims in ID No. 106 of 2003 in the light of what we have observed, in so far as they are relevant and independently of the same on factual issues whether they have been directly employed by the

Electricity Board or not. The writ petitions and writ appeals are disposed of accordingly. No costs."

9.The learned counsel for the Petitioner also referred to the Order passed in W.P.No.358 of 2018 batch wherein, by Order dated 24.04.2018, the batch of Writ Petitions were disposed of by permitting the workmen to submit fresh representations to the management within three weeks from the date of receipt of a copy of the order along with all necessary documents to establish their engagement as contract labourers. On receipt thereof, the management was directed to consider the same in light of BP(FB) No.9 dated 09.01.2008 and pass orders thereon within a period of 12 weeks from the date of receipt of a copy of the order. Another order dated 31.01.2019 of this Court in W.P.No.29541 of 2018 and W.P.No.193 of 2019 was also cited wherein, the court passed the following order:

"The writ petitioner in W.P. No. 29541 of 2018 and Respondents 2 to 10 in W.P. No. 193 of 2019 are permitted to submit fresh representations to the respondents, within a period of three weeks from the date of receipt of a copy of this order, along with necessary documents establishing their engagement as contract labourers. In the event of receiving any such representation from the workmen, the management/TANGEDCO, is directed to consider the same, in the light of the board proceedings in B.P. No.9 dated 09.01.2008, and pass orders on merits and in accordance with law, as early as possible, preferably within 12 weeks thereof. Further, in view of the submissions made by the learned counsel appearing for both sides, the order passed by the Inspector of Labour, granting permanent status cannot be insisted upon and in the event of considering the case of the Petitioners in the light of Board Proceedings dated 9.1.2008, the orders passed by the Inspector of Labour need not be given effect to."

10.After the conclusion of the hearing, an additional affidavit dated 08.04.2019 was filed by the Petitioner wherein it is stated that the Respondents 4 to 14 herein did not satisfy the criteria of the Settlement or the board proceedings and, therefore, they were not absorbed. However, no details are provided as to why Respondents 4 to 14 do not satisfy the criteria and, therefore, the said statements do not carry material evidentiary value.

11.The affidavit, additional affidavit, documents on record and oral submissions of the Petitioner were carefully considered.

12.From the order of the Third Respondent, it appears that Respondents 4 to 14 claimed permanent status on the basis that they had joined the Petitioner on dates ranging from 01.07.1990 to 25.03.1998. The said order also indicates that some of these Respondents received ex-gratia payment but not others. In the recent orders of this Court, the Writ Petitions were disposed of on the basis of both sides agreeing that the representation of the contract labourers could be considered in light of B.P.(FB) No.9 of 2008. In the instant case, in view of the non-appearance of the Respondents concerned, the order cannot be based on consent.

13.Nevertheless, in view of the Settlement, which was held to be binding and enforceable by an order of the Division Bench of this Court, and the board proceedings issued pursuant thereto, this Court is of the view that the ends of justice would be served if Respondents 4 to 14 herein are permitted to submit fresh representations to the Petitioner herein, along with necessary documents in support thereof, within three weeks from the date of receipt of a copy of this order. Upon receipt thereof, the Petitioner is directed to consider the representations, on merits, after providing adequate opportunity to the persons making representations, and decide the same by a speaking order to be issued within three months of the receipt of the respective representations in consonance with the Settlement, the Order dated 24.10.2008 of the Division Bench in W.A.No.1302 of 2001 and relevant board proceedings. If the representations of Respondents 4 to 14 are considered and disposed of in the manner indicated above, it would not be necessary to give effect to the order of the Labour Inspector.

14.The writ petition is disposed of in the above terms but there shall be no order as to costs.

sd/

ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

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To

1.The Secretary to Government,
Energy Department, Chennai-9.

2.The Secretary to Government,
Labour and Employment Department,
Chennai-9.

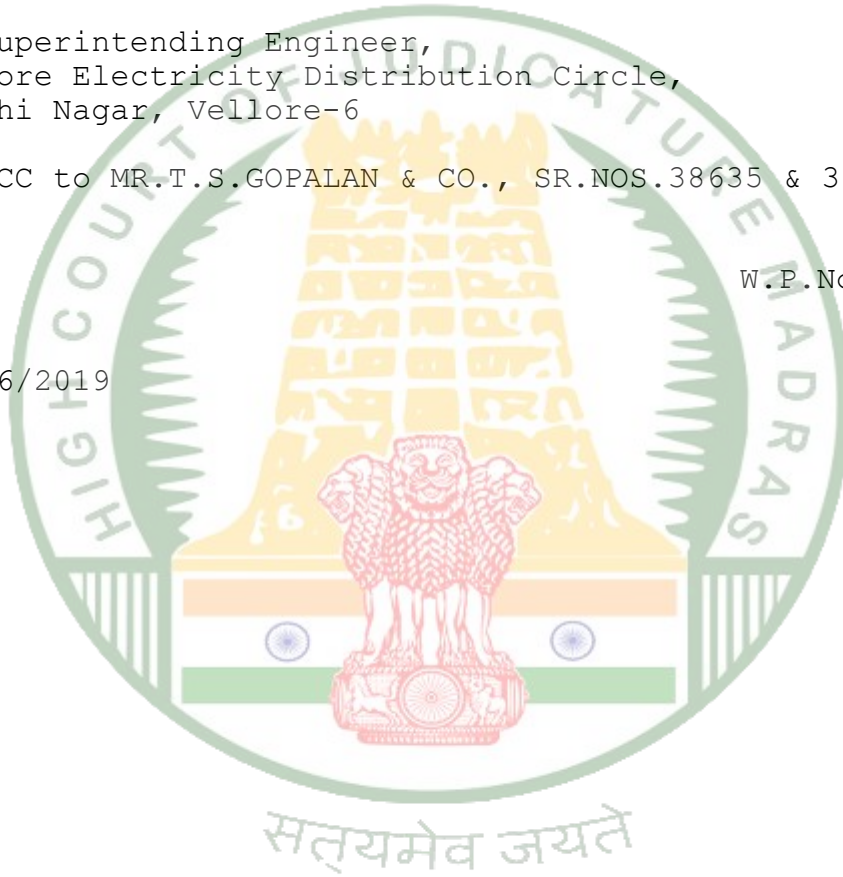
3.The Inspector of Labour,
Vellore.

4.The Superintending Engineer,
Vellore Electricity Distribution Circle,
Gandhi Nagar, Vellore-6

+2CC to MR.T.S.GOPALAN & CO., SR.NOS.38635 & 39646

W.P.No.6480 of 2006

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