

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.11.2019
CORAM
THE HON'BLE MR.JUSTICE M.DHANDAPANI
W.P.No.20991 of 2019

R.Palani

... Petitioner

Vs.

1.The Chairman Cum Managing Director
Tamil Nadu Generation and
Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai 600 002

2.The Chief Engineering (Personnel)
Tamil Nadu Generation and
Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai 600 002

3.The Superintending Engineering
Thiruvannamalai Electricity Distribution Circle
Tamil Nadu Generation and
Distribution Corporation Ltd.,
Vengikaal
Thiruvannamalai District.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent in his proceedings in Letter No.06412/SE/ADO/ADM-3/ADA.2/2019, dated 15.06.2019 and quash the same as illegal and consequently direct the Respondents to absorb the petitioner in the regular service of the Respondents' Board.

For Petitioner : Mr.K.Sasindran

For Respondents : Mr.T.S.Akash
for M/s.T.S.Gopalan Rao for R1-R3

O R D E R

By consent of both sides, the writ petition is taken up for final disposal at the admission stage itself.

2.The case of the petitioner is that the petitioner has been working as contract labour in the Tamil Nadu Electricity Board from the year 2002. Whiles, the petitioner filed a case against the 3rd respondent before the Inspector of Labour, Thiruvannamalai to regularise his service. Consequently, the

Inspector of Labour, Thiruvannamalai passed an order to regularise his service. However, the respondents did not implement the order. Thus, the petitioner with no other alternative remedy filed a Writ Petition in W.P.No.17358 of 2018 before this Court seeking direction to the respondents to absorb him in the regular post in the light of the order passed by the Inspector of Labour, Thiruvannamalai. Pursuant to the above direction, the petitioner made a fresh representation requesting the respondents to absorb him in the regular post. However, the 3rd respondent rejected his claim for absorption in regular post. In the instant case, the 3rd respondent has passed a rejection order without any authority and is violation of the order passed by this Court in W.P.No.17358 of 2018. Hence, this writ petition.

3.The learned counsel for the petitioner submitted that though the petitioner is continuously working as contract labour and the same was certified by the Junior Engineers of Kalasapakkam, Thadarampet and Polur to show that the petitioner has been working as a contract labour with the Respondent Corporation. The B.P. Board constituted a committee consisting of i) Member (Accounts), ii)Member (Distribution), iii) Secretary, iv)Chief Engineer / Personnel and v)Senior Personnel Officer / Labour to examine the cases of Contract Labourers not covered by 12(3) settlement dated 10.08.2007 for absorption. The petitioner in order to claim such benefit under B.P.No.9, made a representation to the respondent Corporation on 31.07.2018, which was rejected by the 3rd respondent by its impugned order dated 15.06.2019. Hence, praying for quashing of the same.

4.Per Contra, the learned counsel appearing for the Respondent Corporation submitted that in the present case, the petitioner has not satisfied the proceedings issued in B.P.No.9 dated 09.01.2008. Hence, his claim cannot be considered. The learned counsel also relied upon the decision of this Court in W.P.Nos.18275, 118277, 18278 & 18647 of 2019. Accordingly, prays for dismissal of the writ petition.

5.This Court perused all the three contract certificates issued by the respective Engineers, which does not disclose the true status of the contract that the petitioner said to have been engaged. This Court also perused the B.P.No.9 proceedings dated 09.01.2008, which reveals that the absorption of the contract labourers only those who are paid Ex-gratia for the year 2005-06, in a phased manner. In the present case, except three certificates issued by the respective Junior Engineers, no other documents were produced before this Court. Hence, the respondent corporation has rightly arrived to a conclusion that the petitioner does not satisfy the criteria issued in B.P.No.9

proceedings. This Court also perused the decision of this Court in W.P.Nos.18275, 118277, 18278 & 18647 of 2019, particularly in the following paragraphs:

"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 paragraphs No.16 of the said judgment, 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 the recruitment Rules in force.

11.Let us look into the spirit of the judgment little later. Coming back to the judgment of the Division Bench in the case of "L.Justine Vs.Registrar of Cooperative Societies" is that the matter went to the Apex Court and in the case of "Uma Rani Vs.Registrar of Cooperative 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 Cooperative Societies" and more specifically in paragraph Nos.24 to 41.

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 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.

6. On a perusal of the above decision, it squarely covers the present case. The only difference between the petitioner and the above said case is that the earlier case was filed by the Labourers who have got entered by 12(3) settlement dated 10.08.2007 for absorption but the petitioner claims permanent status based on the proceedings of B.P.No.9 dated 09.01.2008 granting permanent absorption for contract labourers.

7. In view of the above decision and also considering the reasons stated in the impugned order are candid and convincing, this court does not find any infirmity in the impugned order. In the absence of establishing any right for absorption within the prescribed time and with reference to the criteria as fixed in the 12(3) Settlement as well as in the Board Proceedings in B.P.No.9, Administrative Branch, dated 09.01.2008, this court cannot grant the benefit of permanent absorption in violation of the recruitment rules.

8. Accordingly, this writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

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To

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+1cc to Mr.K.Sasidaran, Advocate, SR.No.99049.

W.P.No.20991 of 2019

SR (CO)
CSR(06/01/2020)



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