



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**DATED: 17.12.2020**

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**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN**  
**AND**  
**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**REV.APLC(MD) No.3 of 2019**  
**in**  
**W.A. (MD) No.972 of 2012**

Selva Ganesh

... Review Applicant/Appellant

-vs-

1.The Presiding Officer,  
Labour Court,  
Tirunelveli.

2.The Management,  
Tuticorin Thermal Power Station,  
Thermal Nagar, Tuticorin-4.

... Respondents/Respondents

Prayer: Review Application is filed under Order 47 Rule 1 and 2, Section 114 of CPC r/w Article 226 of the Constitution of India to review the order passed by this Hon'ble Court in W.A.(MD) No.972 of 2012 dated 11.12.2017.

Prayer in WA(MD).972/2012:

Writ Appeal filed under Clause 15 of the Letters patent to set aside the order dated 09.12.2011 made in WP(MD).NO.11622/2008 on the file of this Court.

Prayer in WP(MD). 11622/ 2008 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus, calling for the records relating to the ID.16/2003 on the file of the 1st Respondent and quash the award passed in I.D.16/2003 on 30.11.2007 and further direct the 2nd Respondent management to regularize and reinstate the petitioner workman in service with continuity of service and consequential benefits.



For Applicant : Mr.H.Arumugam  
For R2 : Mr.Anand Gopalan  
For M/s.Gopalan & Co.  
For R1 : Labour Court

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**O R D E R**

**S.VAIDYANATHAN, J. ,**  
**AND**  
**G.R.SWAMINATHAN. , ,**

Heard the learned counsel on either side.

2. The Review Applicant raised an Industrial Dispute and the same was taken on file as I.D.No.16 of 2003 on the file Labour Court, Tirunelveli. The case of the Review Applicant was that he was engaged by the Management of Tuticorin Thermal Power Station and that he was illegally terminated on 06.11.1999. The petitioner wanted reinstatement as well as payment of backwages. The petitioner's prayer was strongly opposed by the Management. The Labour Court, Tirunelveli, by an Award dated 30.11.2007 dismissed the said I.D. and held that the petitioner is not entitled to the relief sought for. Questioning the same, the petitioner filed W.P. (MD) No.11622 of 2008 and the Writ Petition was dismissed on 09.12.2011. Learned Single Judge in the said Writ Petition held as follows:

"4. Before the Labour Court, the petitioner examined himself W.W.1 and on his side, 19 documents were filed and marked as Exs.W.1 to W.19. On the side of the second respondent, one Shamugam was examined as M.W.1 and on their side, 7 documents were filed and marked as Exs.M.1 to M.7.

5. The Labour Court framed two issues, viz., whether the workman had continuously worked for 480 days during 24 calendar months prior to 30.04.1999 under M/s.Aarth Electricals as a contract labour? and whether the selection of the petitioner would enable him to get employment on regular basis?.

6. In respect of the first issue, the Labour Court held that the workman has not proved that he has worked for 480 days and he has worked only for 418 days even as per Exs.M.3 and M.4. Therefore, he was not eligible for absorption as per the Board Circular. With reference to issue No.2, the Labour Court held that even if his name was in the initial list for screening the



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employee, unless and until he satisfies the Board circular, the question of his being absorbed under the regular service will not arise. In respect of other issues, viz., the violation of Sections 25(N) and 25(G) of the Industrial Disputes Act, 1947, the Labour Court found that there was no such provision attracted in the case of the petitioner. Therefore, in the light of the said factual finding, the Labour Court declined to grant any relief to the petitioner.

7. The petitioner has not chosen to challenge the Board circular. But, on the contrary, he has only tried to establish that he has completed 480 days of service. What is required is 480 days of service in 24 calendar months as on 30.04.1999.

8. It must be noted that the attempt to challenge the said circular as being discriminatory was repelled by the Principal Bench in the Writ petition filed by the similarly placed workmen. Unless and until the petitioner comes within the norms fixed by the Board, the question of granting any relief will not arise. This Court does not find any infirmity or illegality in the award passed by the Labour Court. Hence, the Writ petition stands dismissed. No costs."

3. Challenging the same, the Applicant herein filed W.A.(MD) No.972 of 2012 before the Division Bench. The Division Bench refused to interfere with the factual finding and held that the finding of the Labour Court was also confirmed by the learned Single Judge and that the Writ Appeal was dismissed. Seeking review of the order made in W.A.(MD) No.972 of 2012, the present Review Application has been filed.

4. Learned counsel for the Review Applicant strongly contended that two of the documents marked by him in Ex.W7 and W10 were not considered by the Labour Court and if those documents had been taken into account, the Labour Court would have come to the conclusion that as on 01.05.1999, the Applicant had completed 480 days of service.

5. Learned Standing Counsel for the 2<sup>nd</sup> Respondent contended that the Review Applicant was no doubt working under a Contractor by name Aarthi Electricals even prior to March, 1988 and he came to work for Tuticorin Thermal Power Station only from March, 1988. Therefore, services put in by the Review Applicant in Aarthi Electricals prior to March, 1988 cannot be taken into account.



6. We have carefully gone through the grounds of Writ Appeal, from which it is apparent that the Review Applicant nowhere stated that two of the documents marked by him in Ex.W7 and W10 were not considered by the Labour Court and therefore, it can be presumed that the Applicant had no grievance upto Appeal stage and he cannot be permitted to raise such ground for the first time in the Review Application.

7. It is further contended the ground of non-consideration of exhibits has been raised in the written arguments / submissions. It is pertinent to mention here that written arguments / submissions are generally accepted by Courts to have a better idea about the case and to render a decision on merits, so as to reduce its burden and it does not mean that it is a gospel truth to be accepted. The Hon'ble Division Bench of this Court, in which one of us was a party, in the case of **S.Basheria and others vs. State and others** [Review Application No.36 of 2017] decided on 03.11.2017, held as follows:

"23. The learned counsel for the review petitioners, citing the decisions, indirectly, is trying to point out as if the Court has committed a mistake in its judgment. The conduct of the review petitioners like the present one, makes us to think that the Court will have to ensure that the Advocates are asked not to file written submissions/arguments. If the Advocates are going to blame the Judges indirectly, this Court will not ask the parties / counsel like the one here to file written submissions/arguments. If any written submissions / arguments are filed, without the leave of the Court, then, certainly, the Court can ignore the same. Since in this case, the Court has directed the counsel to file written submissions/arguments, the same has been filed before the Section/Office/Registry and neither the counsel nor the Registry has brought the same to our notice/attention during the hearing of the Writ Appeal, nor the said written submissions/arguments have been given to the Court Officer/Stenographer after leave of the Court and after serving/not serving the same on the other side.

24. The non-consideration of the written submissions/arguments will not be a ground for reviewing the judgment rendered by us in the Writ Appeal, more particularly, when there is no error apparent on the face of record.

25. For the foregoing discussion, the Review Application is dismissed. No costs."

8. It is appropriate to state that written arguments / submissions are meant to assist the Court and non consideration of pleadings raised therein cannot be a ground to entertain the Review



Application. The Review Applicant has not raised any ground about these two exhibits mentioned supra, which means that the Applicant has accepted these two exhibits or given up the plea with regard to the same. Therefore, he cannot now agitate it in the Review Application, saying that the aforesaid plea has been taken in the form of written arguments /submissions.

9. Looked at any angle, we find no error apparent on the face of record and the Review Application is liable to be dismissed. Accordingly, the Review Application is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

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To:

- 1.The Presiding Officer,  
Labour Court,  
Tirunelveli.
- 2.The Management,  
Tuticorin Thermal Power Station,  
Thermal Nagar, Tuticorin-4.

+1cc to M/s.P.Malini, Advocate Sr.No.26436

**REV.APLC(MD) No.3 of 2019**  
**in W.A. (MD) No.972 of 2012**

**17.12.2020**

**SV2** (CO)

NR (07/01/2020) 5P : 4C