



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.08.2019
CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

REV.APLC.(MD)No.52 of 2019 &

W.M.P.(MD)No.10196 of 2019

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1. The Chairman(Administration),
The Tamil Nadu Electricity Generation
and Distribution Corporation Limited,
(TANGEDCO),No.800, Anna Salai, Chennai - 600 002.
2. The Superintending Engineer,
Madurai Electricity Distribution Circle,
The Tamil Nadu Electricity Generation
and Distribution Corporation Limited,
K.Pudur, Madurai - 625 007. ... Petitioners/Respondents

Vs.

1. K.Mariappan
2. M.S.Raja
3. V.Murugan
4. P.Muniyandi
5. C.Kalirasu
6. The Secretary to Government,
Government of Tamil Nadu,
Labour and Employment,
Fort St. George, Chennai - 600 009.
7. The Inspector of Labour/Industrial Adjudicator,
Virudhunagar,
Virudhunagar District. ... Respondents/Petitioners

PRAYER : Review application is filed under Order 47 Rule 1 of C.P.C. r/w Section 114 of C.P.C., to review the order of this Court dated 22.11.2018 in W.P.(MD)No.8998 of 2015 and pass appropriate orders as may be deem fit and proper in the circumstances of the case and thus render justice.

Prayer in WP(MD). 8998/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the respondents 1 to 3 herein to absorb the petitioners herein as permanent workers as per the order of the 4th respondent in Na.Ka.NO.A/6943/99 dated 08.04.2005 and as confirmed by the final order of this Honble Court dated 11.9.2007 made in WP (MD) NO.8443 of 2005 considering this past services from 1999.



For Petitioner : M/s.P.Malini
For R-1 to R-5 : Mr.K.Appadurai
For R-6 & R-7 : Mr.M.Rajarajan,
Government Advocate(Crl.Side)

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ORDER

Respondents 1 to 5 herein in this Review application filed a petition before the Inspector of Labour, Virudhunagar, seeking conferment of permanent status. Their petition was allowed as early as on 08.04.2005. The TANGEDCO filed W.P.(MD)No.8443 of 2005, challenging the order made in favour of respondents 1 to 5 herein. The writ petition filed by the management was dismissed on 11.09.2007 by a learned Judge of this Court.

2. Respondents 1 to 5 herein thereafter filed W.P.(MD) No.8998 of 2015 seeking their absorption as permanent workers in terms of the order of the Inspector of Labour, Virudhunagar, passed on 08.04.2005. The Writ petition was allowed by me on 22.11.2018. Seeking review of the order dated 22.11.2018 allowing the writ petition filed by the workers, this Review application has been filed.

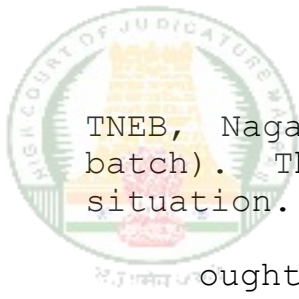
3. Heard the learned counsel on either side.

4. The learned counsel appearing for the Management reiterated the contentions set out in the review application.

5. The learned counsel appearing for respondents 1 to 5 herein pointed out that before me, a submission was made by the management that they had filed a writ appeal challenging the order dated 11.09.2007 made in W.P.(MD)No.8443 of 2005. But then, the writ appeal filed by the TANGEDCO does not seem to have seen the light of the day. Even its fate is unknown. Since the order passed by this Court had become final, this Court had rightly allowed the petition filed by the workers. His contention is that the order passed by this Court does not suffer from any error apparent on the face of the record and that therefore, this review application should be dismissed.

6. I carefully considered the rival contentions and went through the materials on record.

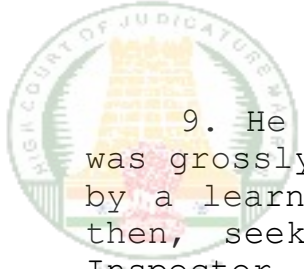
7. Two facts are not in dispute. The petition filed by the workers was allowed by the Labour Inspector and the challenge mounted against the same by the management failed before this Court. But then, the learned counsel appearing for the review applicant would raise a larger issue. He would place reliance on the order dated 24.10.2008 passed by the Hon'ble Division Bench in the decision reported in (2009) 4 MLJ 472(The Superintending Engineer,



TNEB, Nagapattinam V. The Inspector of Labour, Thiruvarur and batch). The Hon'ble Division Bench was considering a similar situation. Paragraph No.25 of the order reads as follows:-

"25. We therefore, direct that persons who ought to have been taken in employment against vacancies that were directed to be filled 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 a 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 Judge 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 I.D.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."

8. The learned counsel appearing for the Management would want me to bear in mind the aforesaid order of the Hon'ble Division Bench while appreciating the case on hand. His pointed contention is that the order passed by the Labour Inspector on 08.04.2005 covered not only respondents 1 to 5 herein, but also a total number of 166 claimants. In the meanwhile, settlement under Section 12(3) of the Industrial Disputes Act 1947 was arrived at between the management and the workers' unions. As per the terms of settlement, the claimants will have to appear before a committee and establish that they were in receipt of ex-gratia. If the claimants can establish that they were in receipt of ex-gratia after the cut of date, the management was bound to absorb them as permanent workers. He would also submit that the management passed orders prospectively absorbing them. He drew my attention to the fact that out of 166 claimants who were covered by the aforesaid order of the Labour Inspector, 99 workers were actually absorbed by TANGEDCO and that the claims of 67 workers were rejected.

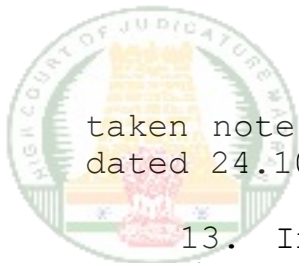


9. He also contended that the very filing of the writ petition was grossly belated. The order of the Labour Inspector was confirmed by a learned Judge of this Court vide order dated 11.09.2007. But then, seeking an enforcement of the order passed by the Labour Inspector, the writ petition came to be filed only in the year 2015. Though the Limitation Act does not apply to writ proceedings, the doctrine of laches will apply. He placed reliance on the decision reported in (2018) SCC Online Mad 11643 (S.Vaidhyanathan V. Government of Tamil Nadu), in which the Hon'ble Division Bench strongly emphasized the importance of the doctrine of laches.

10. He also contended that to enforce an order passed by the Labour Inspector under the Tamil Nadu Act 46 of 1981, one must invoke Section 6 of the Act and that the jurisdiction of the High Court is not available. In this regard, he placed reliance on the decision reported in (2012) SCC Online Mad 122 (C.Shenna Kesavan V. Tamil Nadu Electricity Board). As rightly contended by the learned counsel appearing for the review applicants, if respondents 1 to 5 herein had moved this Court immediately, their cases also would have taken up along with the other writ petitions filed before the Hon'ble Division Bench. It is not in dispute that the issue raised in these proceedings is absolutely identical to the one raised before the Hon'ble Division Bench. The learned Standing counsel would also point out 99 persons covered by the order of the Labour Inspector were regularized even before W.P.(MD)No.8443 of 2005 was dismissed on 11.09.2007. It is true that this Court while exercising the jurisdiction under Article 226 of the Constitution of India, is not obliged to deny relief on the ground of laches. It will have to consider the probable prejudice that may be caused to the TANGEDCO on account of the belated filing of the writ petition. In this case, it has been demonstrated before me that a serious prejudice has actually been caused to the management. During the period between the dismissal of the writ petition filed by the management on 11.09.2007 and the filing of the writ petition by the workers in the year 2015, the Hon'ble Division Bench has given its verdict on the issue.

11. It is also seen that whenever the workers moved this Court after 2009 for enforcement of their rights in terms of Labour Inspector's award, many of the learned single Judges relegated the claimants to work out their rights and remedies in terms of settlement. Quite a few such orders have been enclosed by the learned counsel appearing for the review applicants in the typed set of papers.

12. I had adopted a technical approach while allowing the writ petition filed by respondents 1 to 5 herein. The only question I posed was whether the order made in W.P.(MD) No.8443 of 2005 was successfully challenged. The answer was in the negative. Thereupon, I chose to allow the writ petition straightaway. My order suffers from an error apparent on the face of the record because I have not



taken note of the order made in W.P.(MD)Nos.1302 of 2003 etc. batch dated 24.10.2008 by the Hon'ble Division Bench.

13. In this view of the matter, the order dated 22.11.2018 allowing W.P.(MD)No.8993 of 2015 is set aside. Review application is allowed. It goes without saying that the rights of respondents 1 to 5 herein to workout their remedy in terms of settlement under Section 12(3) of the Industrial Disputes Act 1947 is left intact. As and when respondents 1 to 5 herein submit their representations whether individually or collectively, the same will be taken up in terms of settlement under Section 12(3) of the Industrial Disputes Act 1947 within a period of four weeks, thereafter. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

pmu

To

1. The Secretary to Government,
Government of Tamil Nadu,
Labour and Employment,
Fort St. George, Chennai - 600 009.
2. The Inspector of Labour/Industrial Adjudicator,
Virudhunagar,
Virudhunagar District.

+1cc to M/s.P.Malini, Advocate Sr.No.83864

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