



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.2485 of 2014

- 1.Nallusamy
- 2.Sebastian Anton
- 3.Balasubramaniyan
- 4.Senthilkumar
- 5.K.Venkatesan
- 6.G.Palanisamy
- 7.Murugaiya
- 8.L.Muthusamy
- 9.Shanmugasundaram
- 10.N.Kalimuthu

... Petitioners

vs.

- 1.The Principal Secretary to Government
Department of Energy
Secretariat, Chennai-600 009
- 2.The Chairman
Tamil Nadu Electricity Generation and
Distribution Corporation Limited
Annasalai, Chennai-600 002
- 3.The Chief Engineer
Tamil Nadu Electricity Generation and
Distribution Corporation Limited
Thenur, Tiruchirappalli-620 017
- 4.The Superintending Engineer
Tamil Nadu Electricity Generation and
Distribution Corporation Limited
Mannarpuram, Tiruchirappalli-620 020

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondents 3 and 4 to pay the claim amount to the petitioners toward ex-gratia for the services rendered by them as directed by the Labour Court at Tiruchirappalli by its order dated 26.07.2012 and consequently direct the respondents 1 to 3 to absorb the petitioners considering their services with the 3rd and 4th respondents in the Tiruchirappalli metro of the Tamil Nadu Electricity Board since 1995.



For Petitioners : Mr.T.M.Madasamy

For Respondents : Mr.S.Dhayalan

Government Advocate for R1

Mr.S.M.S.Johnny Basha for R2 to R4

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O R D E R

The relief sought for in the present writ petition is for a direction to the respondents 3 and 4 to pay the claim amount of the writ petitioners towards ex-gratia for the services rendered by them, as directed by the Labour Court, Tiruchirappalli, by its order dated 26.07.2012 and consequently, direct the respondents 1 to 3 to absorb them, considering their services rendered with the respondents 3 and 4 since 1995 respectively.

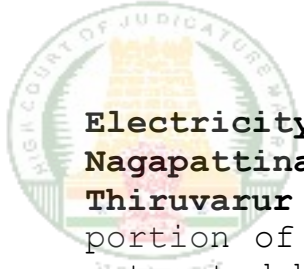
2. The very claim of the writ petitioners is set out based on the fact that they were served as contract labourers from the year 1995 respectively with the respondents 3 and 4 in Trichirappalli Metro Electricity Division. In view of the fact that the writ petitioners have completed 480 days of service, they are entitled to be absorbed. Hence, the present writ petition is filed.

3. The writ petitioners have filed claim petitions before the Labour Court, Trichirappalli, under Section 33(C) of the Industrial Disputes Act, 1947, seeking to compute the money value payable to them as ex-gratia for the services rendered by them. The said amount has also not been settled. Thus, the present writ petition is filed for a direction to settle the ex-gratia amount as well as to absorb the writ petitioners as permanent employees of Trichirappalli Metro Electricity Division.

4. As far as the ex-gratia payment is concerned, it is left open to the writ petitioners to seek execution of the order passed by the Labour Court in the manner known to law under the Industrial Disputes Act, 1947. As far as the permanent absorption of the writ petitioners into the Government service of the Tamil Nadu Electricity Board is concerned, the issues were already settled by this Court in W.P.(MD)Nos.11228 and 11229 of 2015, vide order dated 25.06.2019. The relevant paragraphs of the said order are extracted hereunder:-

"5.Admittedly, all these workmen were employed long back. On account of efflux of time, if permanent status or conformation of service are granted, the same will cause greater implications in the Board's administrations. This apart, the verification of service particulars are of paramount importance, before issuing any such permanent status or confirmation order.

6.In view of the fact that the Hon'ble Division Bench of this Court also considered all these issues raised by the authorities and passed an order in W.A.(MD)No.1302 of 2003 etc., batch, dated 24.10.2008 in the case of **the Superintending Engineer, Nagapattinam**

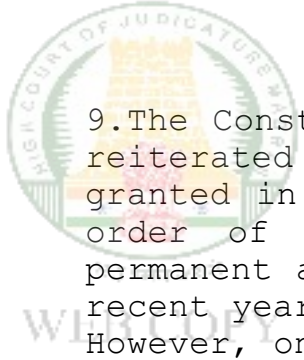


Electricity Distribution Circle, Tamil Nadu Electricity Board, Nagapattinam and others Vs. The Labour Court, Pedari Koil Street, Thiruvavarur and another reported in (2009) 4 MLJ 472. The relevant portion of the order of the Hon'ble Division Bench of this Court is extracted hereunder:-

"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 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 on 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."

7. Equal opportunity in public employment is the Constitutional mandate. Undoubtedly, the permanent status was granted in respect of the contract labourers, who served more than 480 days in board service. On account of lapse of many years, this Court is bound to consider the developments and other issues in respect of the absorption of such larger scale employees in board services. In the event of absorption of such larger scale employees in the board, after a lapse of so many years, the same will cause denial of equal opportunity to all other eligible persons, who are all aspiring to secure employment in Tamil Nadu Electricity Board through open competitive process. Thus, the verification of genuinity of the cases based on the individual particulars, are of paramount importance. Thus, the verification of the personal details of the workmen by the Board by providing an opportunity to the workmen, are also to be done for the purpose of granting permanent status or confirmation of service.

8. With reference to the judgment of the Hon'ble Division Bench of this Court, the Board also issued order in B.P.(Chairman) No.9, Administrative Branch, dated 09.10.2008, granting permanent absorption for contract labourers, who are all not covered by 12(3) settlements. Certain terms and conditions are also stipulated in the Board proceedings dated 09.01.2008 for grant of permanent absorption.



9. The Constitution Bench of the Hon'ble Supreme Court of India also reiterated that the regularization or permanent absorption cannot be granted in violation of the recruitment rules in force. Thus, the order of Labour Court alone cannot be a ground for grant of permanent absorption, in view of the developments took place in the recent years. This adherence of the recruitment rules is mandatory. However, on certain special circumstances, such permanent absorption is granted by way of policy by the employer and on some occasions by the Courts, considering the peculiar circumstances or otherwise.

10. In these circumstances, the recruitment rules are to be followed scrupulously by the competent authorities. When the board also passed an order in B.P.(Chairman) No.9, Administrative Branch, dated 09.10.2008, based on 12(3) settlement, undoubtedly, the terms and conditions were agreed by the Unions also. Thus, the board is bound by the settlements signed between the parties and they have to follow the same for the purpose of granting the benefit of permanent status to these contract labourers, who served for more than 480 days.

11. Even in earlier occasions, this Court considered the very same issue and passed an order, permitting the workmen to submit fresh representations with reference to the judgment of the Hon'ble Division Bench of this Court as well as the board proceedings issued based on the 12(3) settlement and on receipt of the same, the authorities competent of the board, were directed to consider the facts, circumstances, as well as the material available on record, take a decision and pass orders on merits and in accordance with law. The said orders were followed in many other Writ Petitions also."

5. In view of the above, this Court is inclined to pass the following orders:-

1. The workmen are at liberty to submit fresh representations, setting out the facts, details as well as service particulars and the documents, if any, to the competent authorities and in the event of receiving any such representations / applications, the same are directed to be considered by the competent authorities of the Tamil Nadu Electricity Board, strictly in accordance with the judgment of the Honourable Division Bench of this Court reported in **(2009) 4 MLJ 472** as well as consequential proceedings issued in B.P.(Chairman) No.9, Administrative Branch, dated 09.10.2008.

2. The competent authorities, while passing orders on such applications / representations, shall communicate the said orders to the workmen concerned, without causing any undue delay.

6. With these directions, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(Records)

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<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



To:

The Principal Secretary to Government
Department of Energy,
Secretariat, Chennai-600 009.

+2 CC to M/s.T.M.MADASAMY, Advocate (SR-77890[F] dated 26/07/2019)

+1 CC to M/s.SPL GP (SR-77989[F] dated 26/07/2019)

W.P. (MD) No.2485 of 2014
25.07.2019

KRK

JM/08.08.2019/5P-5C