



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.5356 of 2011

and

M.P.(MD)No.1 of 2011

WEB COPY

1.The Superintending Engineer,
Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Tirunelveli.

2.The Chief Engineer (Personnel)
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai-2.

... Petitioners

-Vs-

1.The Inspector of Labour,
Tirunelveli.

2.S.Kumaravel

... Respondents

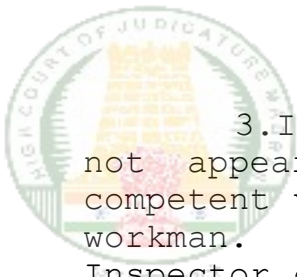
Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the order passed by the first respondent in his proceedings in Na.Ka.No.E/Pa.Ni.Ka.2/08 dated 2.6.2009 and quash the same.

For Petitioner	: Mr.Anand
	For Mr.T.S.Gopalan
For R1	: Mr.S.Dhayalan,
	Government Advocate
For R2	: No appearance

ORDER

The Writ Petition is filed to quash the order passed by the Inspector of Labour.

2.The Inspector of Labour passed an order, granting permanent status to the private respondents herein under the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. The Tamil Nadu Electricity Board preferred these Writ Petitions, challenging the said order on the ground that the private respondents / workmen are not entitled for the permanent status, as they had not served 480 days as contract labourers in the Board. However, such factual disputes cannot be adjudicated in a Writ proceedings. In most of the cases, the Board remained ex-parte before the Inspector of Labour and such ex-parte orders are also under challenge in some of the Writ Petitions.



3. It is contended that wherever the Electricity Board had not appeared before the Inspector of Labour, the authorities competent verified the records and passed an order in favour of the workman. Wherever the Electricity Board appeared before the Inspector of Labour, then also details of the workman were verified and accordingly, an order in favour of the workman was passed, granting permanent status under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

4. This Court is of the considered opinion that the Writ Petition and some other Writ Petitions, which were filed by the workmen as well as by the Management, came for the consideration before the High Court and this Court is of the considered opinion that in all such cases, the permanent status was granted in favour of the workmen by the respective Inspector of Labour consistently.

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 Inspector of Labour, 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



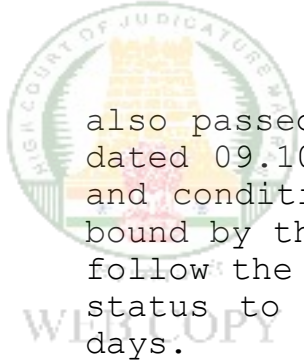
the decision of the learned single will also stands dismissed. The claims of the workmen in W.P.No.1033 of 2006 and the connected batch will not stand affected by the decision of this Court and the Labour Court will decide on their claims in I.D.No.106 of 2003 in the light of what we have observed, in 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. Under these circumstances, the order passed by the Inspector of Labour alone cannot be insisted upon, in view of the fact that this Court is not convinced with the order passed by the Inspector of Labour in respect of the enquiry conducted. 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 Inspector of Labour 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.

12. Under these circumstances, this Court is inclined to pass the following orders:-

"1. The order passed by the Inspector of Labour concerned, cannot be insisted upon by the workmen for grant of permanent status.

2. 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 Hon'ble 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.

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

13. With these directions, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-I)

/TRUE COPY/

Sub Assistant Registrar(CS)



To

The Inspector of Labour,
Tirunelveli.

+1 CC to M/s.P.MALINI, Advocate SR-72956.

W.P. (MD) No.5356 of 2011
02.07.2019

CS: 15/07/2019 5P 3C