

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.02.2020

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.14470 of 2012

M.Rajagopal

...Petitioner

..vs..

1. Tamil Nadu Electricity Board,
Rep. by its Chairman,
800, Anna Salai, Chennai-600 002.
2. The Chief Engineer,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai- 600 002.
3. The Superintending Engineer,
Tamil Nadu Electricity Board,
Perambalur Electricity Distribution Circle,
Perambalur Taluk.
4. The Superintending Engineer,
Tamil Nadu Electricity Board,
Trichy Electricity Distribution Circle (Metro),
Trichy.

5. G.Karunakaran

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration that the action of the Tamil Nadu Electricity Board in promoting the petitioner as Helper on par with his junior G.Karunakaran from the date he was promoted as illegal, violative of Art. 14 and 16 of the Constitution of India and consequently direct the respondents Tamil Nadu Electricity Board to consider the case of the petitioner for promotion and promote the petitioner as Helper on par with his junior G.Karunakaran from the date he was promoted, grant backwages, continuity of service and all other consequential and attendant benefits from the date G.Karunakaran was the benefits, award costs.

For Petitioner : Mr.K.M.Ramesh

For Respondents : Mr.Haroon A.Rasheed (R1 to R4)
for M/s.T.S.Gopalan & Co
No appearance (R5)

O R D E R

The petitioner was engaged as contract labourer under the respondents Electricity Board in the year 1984. For the purpose of absorbing the contract labourers, Hon'ble Justice Khalid commission was appointed by the Hon'ble Supreme Court during the year 1991 and as per the report of Hon'ble Justice Khalid Commission 18,000 contract workers were absorbed in the Tamil Nadu Electricity Board. The petitioner was one of the contract labourers, but his name was left out. Later by letter No. Adn/A1/F.Q./C.No./98 dated 28.01.1998, a list of left out names were identified and was issued, according to which the petitioner was directed to appear for interview on 08.08.1998 and accordingly he appeared for the interview but was not selected. Thereafter, the petitioner approached the authorities under Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 and obtained an order of permanent status in Permanent Status case No.3444 of 1999 dated 06.12.2000. Thereafter, he was absorbed in the year 2007 in the respondent board as casual labourer and was appointed as Mazdoor during the year 2009. While the matter stood thus, one of his juniors viz., G.Karunakaran whose name was found in the seniority list published by the third respondent who was appointed as a helper in the year 1999. Even though the petitioner is senior to Mr.G.Karunakaran, by-passing his seniority, the said G.Karunakaran was appointed as a helper. Therefore, the petitioner has preferred this Writ Petition for declaring the promotion given to Mr.G.Karunakaran from the date of the petitioner's promotion is illegal and sought for a direction to the Tamil Nadu Electricity Board to consider the case of the petitioner for promotion as helper on par with his junior Mr.G.Karunakaran from the date on which he was promoted and grant backwages, continuity of service and all other consequential and attendant benefits.

2. The learned counsel for the petitioner would contend that the petitioner has joined services under the Respondents as casual labourer on 07.01.1984, whereas the said Mr.G.Karunakaran, the fifth respondent herein was appointed as casual labourer only on 01.01.1985. The petitioner also appeared for the interview on 08.08.1998, but was left out and not absorbed in the Electricity Board. It is further submitted that the petitioner is entitled to promotion in the year 1991 itself, as his name was included in the list submitted before Justice Kalid Commission by the Union and Management. However, without considering the seniority list he was absorbed only in the year 2007, whereas the said Karunakaran who was appointed as a helper in the year 1998 and was junior in the list produced by the third respondent was given benefit of appointment from the year 1998 and therefore he prayed that the petitioner should also be considered on par with his junior and all attendant benefits be given to him.

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

3. The learned counsel for the respondents 1 to 4 would contend that originally the petitioner had taken a stand that

he was a contract labourer and as per the directions of the Hon'ble Supreme Court the respondents have considered the issues relating to contract labourers and absorbed them from the year 1991 to 1994. The petitioner was not selected by the Commission or absorbed. A report was submitted before the Hon'ble Supreme Court and the Hon'ble Supreme Court has recorded the same. Those who were not selected by Hon'ble Justice Khalid commission have approached the Hon'ble Supreme Court and a contempt petition was also filed in Contempt Petition (c) No.357/93. The Hon'ble Supreme Court by its order dated 15.02.1999 has closed the contempt petition as the process was completed. However, for the persons who have approached the Commissions of Labour, the issue was left open to them to redress their grievance before the High Court of Madras by filing appropriate proceedings within a period of four weeks from the date of that order. The ban imposed on the respondents not to make appointment by its order dated 19.01.1995 was also vacated. Therefore, the petitioner cannot claim seniority, having lost before the Hon'ble Supreme Court for absorption in the year 1999.

4. I have considered the submissions made by both the parties and perused the relevant records. Facts narrated above are not disputed. Admittedly the petitioner was not absorbed by the Hon'ble Justice Khalid Commission pursuant to the interview dated 8.8.1998. Whereas the fifth respondent was absorbed with the services under the respondent. Insofar as the non-absorption of the petitioner is concerned, it was closed by Hon'ble Supreme Court, giving liberty to approach the High Court as per the orders of Commissioner of Labour. The petitioner thereafter approached the Inspector of Labour under the Tamil Nadu Conferment of Permanent Status Act, 1981 and permanent status was conferred on 06.12.2000. The said order was challenged before this Court, wherein the writ court by its order dated 09.12.2003 directed the respondents/Electricity Board to pass appropriate orders by complying with the directions of the Inspector of Labour conferring the permanent status to the petitioner and similarly placed persons. Against the order of the learned Single Judge, the respondent Board preferred Writ Appeals in W.A.No.1302/2003 & batch. The Hon'ble Division Bench of this Court by its order dated 24.10.2008 categorized the issues under three heads. The petitioner fell under the third category for implementation of orders of Inspector of Labour in respect of workers who sought permanent status under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status) Act, 1981. However, during the pendency of writ appeal, the workers Union and the Management entered into a settlement under Section 18 (1) of Industrial Disputes Act, 1947. In view of the settlement, the challenge to the order having become infructuous, the Hon'ble Division Bench recorded the same and dismissed the appeals preferred by the Management. The operative portion of the order passed by the Hon'ble Division Bench is extracted

"22. The decision of the Supreme Court which was an immediate sequel to Justice Khalid Commission ought to be understood as applicable only to cases of contract labours as helpers, whose minimum qualifications had been set forth in the Regulations but not generally to persons who had directly employed by the Electricity board itself on temporary basis but who continued in employment for more than 480 days, and who belonged to the class of persons below the rank of helpers for whom alone the Regulations prescribed a minimum educational qualification of National Trade Certificate (NTC)/National Apprenticeship Certificate (NAC) courses. This situation has been substantially considered in the decision of the learned single judge in Superintending Engineer, Vellore Electricity Board Distribution Circle, Vellore -Vs- Inspector of Labour reported in 2004 (3) LLN 598. This decision itself is the subject of challenge before us but the board has, by entering in to the settlement which is in challenge, has literally made the appeals infructuous by giving in to the claims of the workmen and endorsing the correctness of the judgment. The actual status of several of the workmen had been dealt with in the judgment of the learned Judge in paragraphs 33 and 34 that adverted to the factual findings rendered by the Labour Inspector that all those workmen so called as contract labourers were actually appointed directly by the board and therefore, the applicability of the Tamil Nadu Industrial Establishments (Conferment and Permanent Status of Workmen) Act were clearly attracted. The Supreme Court has also held that creation of new posts, even if such exercise reduces chances of promotion to the existing cadre, could not be objected (Bakshish Singh Vs. Union of India reported in AIR 1985 SC 1272:1985 Supplement I SCC 116. Instances when additional cadres have been created, when Courts have expressed themselves in favour of such exercises have been

in, Shujatali Vs. Union of India reported in AIR 1975 1 SCR 449 : AIR 1974 SC 1631; Dharampal Vs. FCI 2000 (IV LLJ) Supplement 355; APSRTC Employees Union Vs. APSRTC 1995 2 SLT 761.

23. If this was only a case of adjudication of whether the status of workmen was as directly employed by the Electricity Board or they were employed only as contract labourers, we would have directed that the objection should be considered and an adjudication made in the industrial dispute raised under Section 33 (2) (b) of the Industrial Dispute Act. The argument advanced by Shri. Hariparanthaman is that the fate of more than 21,000 workmen was being adjudicated before the Labour Court in I.D.No. 106 of 2003 and that would be the appropriate forum of adjudication. He urged that the petitioner in W.P.No. 27714 of 2007 and connected writ petitions ought to have been directed only to challenge the agreement before the Industrial Tribunal and not by means of writ petition. We have already seen that remedy by writ petition itself is not barred and if the board as an employer has conceded to their status as workmen to whom the provisions of the T.N. Industrial Establishments (Conferment of Permanent Status Act) could be applicable, there is no warrant for directing the parties to seek adjudication before the Industrial Tribunal. We cannot hold that the agreement itself is tainted with any fraud or mala fides. As Shri. P.S.Raman, the learned Additional Advocate General appearing for the Electricity Board says that it is simply a case of the board not allowing itself not to be tied up in knots over a period of time in having ad hoc policies of recruitment and feels upstaged when a problem of gigantic proportion has arisen where claims to thousands of men and women were required to be addressed. A public body employing several thousands of persons could not be

blind to realities and engage them in long litigations and if it is found that pragmatism dictated that there ought to be a finality to litigations and when it had already a judicial decision of a Single Judge directing permanent status to workmen under the Act, the pro-active poser to conclude all litigations by an agreement could not be challenged either as fraudulent or as illegal. Revival of cadre or increase of cadre strength and specifying lesser qualifications commensurate with the nature of work through Board Proceedings could not be faulted, so long as the Regulations provided for creation of such cadre.

24. Under the circumstances, we are convinced that the settlement entered in to by the board with workmen and union is valid and enforceable. We, however, qualify the same that it shall be subordinated only to the extent that the claims of ITI trained workmen that the Regulation demands for the post of helpers are not discarded.

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. "

In the above lines, it is categorically held that 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.

5. The terms of settlement clearly specify about the persons identified as contract labourers during 1998 by the Committee will be absorbed with effect from 15.09.2007.

6. The relevant terms are extracted hereunder:

"1) The Contract Labourers already identified during 1998 by the committee consisting of officers of the Board not exceeding 6,000 Nos. will be absorbed into Board's service with effect from 15.9.2007 in the following manner:-

a) The contract labourers with S.S.L.C. and higher academic qualification will be appointed as Assessor Grade-II in the Helper Time Scale of Pay of Rs.3050-4590, who will do the Meter Reading and Assessment Works for full month.

b) The Contract Labourers with I.T.I. qualification in the Trades specified in the Service Regulation of the Board and those with Diploma qualification will be appointed as Helpers-cum-Meter Reader in the time scale of pay of Helpers. They will do the field work and also according to need they will do the Meter Reading and Assessment Work.

c) The contract labourers with other qualification or Nil qualification

will be appointed as Mazdoor in the Time Scale of Pay of Rs.2570-3950.

6) Consequent on absorption of 6000 T.C.Ls as Mazdoor on 1.12.2008 the next 6000 Contract Labourers will be appointed as TCLs with effect from 1.12.2008.

7) The remaining 3,600 contract labourers will be engaged as contract labourers on daily wages with effect from 1.12.2008 and they will be appointed as Temporary casual labourers on daily wages with effect from 1.12.2009 for a period of one year and then considered for appointment as Mazdoor."

7. From this it is seen that the petitioner was appointed by virtue of settlement entered into between the parties on 10.08.2007 and his services were regularised in the year 2009. If that be so, the petitioner cannot claim that he is similarly placed on par with the fifth respondent who was absorbed as early as on 1997 by Justice Khalid Commission by virtue of order passed by the Hon'ble Supreme Court. The claim of the petitioner that he is senior to the fifth respondent and that he should be given promotion and with attendant benefits on par with his juniors is not at all maintainable. The petitioner and the fifth respondent do not stand on the same pedestal. The fifth respondent was absorbed by virtue of recommendations of Justice Khalid commission as contract labourer in the year 1999, whereas the petitioner was absorbed only in the year 2009. His claim against non absorption in the year 1998 was also negatived by Hon'ble Supreme Court. In that event, the petitioner who was not even taken to service cannot claim seniority. He had given up his right for absorption pursuant to the order of the Hon'ble Supreme Court, and chosen to claim Conferment of Permanent Status. Having conferred with the permanent status, he can rightly pursue his grievances for appointment, which he has done also. The Hon'ble Division Bench recorded the settlement and held the matter with respect to claiming of permanent status had become infructuous. In such circumstances, the petitioner who has become an regular mazdoor under the respondent in the year 2007, cannot claim any right anterior to that. The petitioner was not born in service, when the fifth respondent was appointed. Hence, by no stretch of imagination, he can claim on the basis of casual engagement. In fact, no contract labourer can claim seniority on the basis of casual engagement, as it does not confer any vested right. The seniority at the most can be claimed only among the same class of casual labourers and not between casual labourers and regular employees.

8. In such view of the matter, the prayer made by the petitioner is not sustainable. Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

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To

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Rep. by its Chairman,
800, Anna Salai, Chennai-600 002.
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Tamil Nadu Electricity Board,
Trichy Electricity Distribution Circle (Metro),
Trichy.

+1cc to Mr.K.M.Ramesh, Advocate SR.No.14471

+1cc to M/s.T.S.Gopalan & Co, Advocate SR.No.14424

W.P.No14470 of 2012

AD(CO)
GMY(03/08/2020)

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