

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :23.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.20833 OF 2013

1.S.Seenivasaga Perumal
2.P.Sangeeth Manikandan
3.K.Senthil Kumar

.. Petitioners

- Vs -

1.The Chairman cum Managing director
TANGEDCO & TANTRANSCO
144, Anna Salai,
Chennai 600 002.

2.The Superintending Engineer,
TANTRANSCO
General Construction Circle,
Coimbatore 641 012.

3.The Labour Inspector,
Coimbatore 641 018.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Mandamus, directing the respondents to fix their seniority from the eligible date together with all monetary benefits etc. in pursuance to the implementation of the order of the Labour Inspector Coimbatore in Na.Ka.E/8789/99 dated 6.5.2000 as confirmed by this Court in W.P.No.9702/2004 dated 19.4.2004

For Petitioner : M/S.DR.S.R. Kalyani

For Respondents: Mr.Anand for
M/S.T.S.Gopalan & Co., for R2

ORDER

The writ petition has been filed by the petitioners, to direct the respondents to fix their seniority from the eligible date together with all monetary benefits etc. in pursuance to the implementation of the order of the Labour Inspector Coimbatore in Na.Ka.E/8789/99 dated 6.5.2000 as confirmed by this Court in W.P.No.9702/2004 dated 19.4.2004.

2.The case of the petitioners is that the 1st and 3rd petitioners were engaged as contract labour in the year 1991 and the 2nd petitioner was engaged in the year 1994 by the respondents. The grievance of the petitioners is that even after completion of 480 days of continuous service in a period of 24 calendar months, the petitioners services were not regularised and they were not conferred with permanent status. Therefore the petitioners and others filed an application before the Labour Inspector, Coimbatore under the relevant provisions of the Permanent Status Act for workmen for grant permanent status. The Labour Court Inspector, Coimbatore passed the award in favour of the petitioners on 06.09.2000. However, the respondents did not implement the above said order of the Labour Inspector, Coimbatore. Aggrieved against the same, the petitioners filed WP.No.9702 of 2004 to implement the order passed by the Labour Court on 06.09.2000 and the respondents have also filed WP.NO.14770 of 2001 challenging the order passed by the Labour Court. This Court passed final order in the above two writ petitions, by dismissing the petition filed by the respondents/management and allowing the petition filed by the petitioners. In compliance of the said order, the respondents appointed these petitioners on 23.01.2008 as Temporary Casual Labourers and the 1st and 2nd petitioners were promoted as Gr.II, Assessor on 05.06.2009 and the 3rd petitioner was appointed as Mazdoor on 09.06.2009. Though they absorbed the petitioners immediately after the dismissal of the writ petition, the petitioners were not given their due seniority and all other monetary benefits. Hence the present petition.

3.Learned Counsel for the petitioners submitted that though the petitioners were absorbed, however, seniority and consequential benefits have not been granted to the petitioners. Hence this Court may issue a direction to the respondents to extend the benefits legally due to the petitioners.

4.Per contra, learned standing counsel appearing for the respondents submitted that it is true that writ petition was filed against the order of Labour Court and this Court dismissed the said writ petition on 19.04.2004 against which W.A.NO.3856/2004 was preferred, which was disposed of directing the parties to follow the order of this Court in W.A.No.1302/2003. It was held by the Division Bench that after the settlement between the contract labourers and Department, any order passed by the Labour Court is invalid and the settlement alone is valid. In order to extend such benefits the petitioners were absorbed subsequently hence the order of Division Bench of this Court in W.A.No.1302/2003 is binding on the parties. It is also submitted that this Court, in identical circumstances, in W.P. No.38265/06 has passed order in line with

the order in W.A. No.1302/03. Accordingly he prays for dismissing the present writ petition.

5.This Court heard the rival submissions made by both sides and also perused the materials available on record.

6. Similar issue was considered by this Court in W.P. No.38265/06 and this Court, after hearing either side, passed the following order :-

3. It is submitted by the learned counsel for the petitioner that the issue involved in this writ petition is covered by the decision of a Division Bench of this Court reported in MANU/TN/1165/2008 (The Superintending Engineer, Nagapattinam, Electricity Board and The Executive Engineer, Operation & Maintenance, Tamil Nadu Electricity Board Vs. The Inspector of Labour and another), the relevant portion of which reads as follows:

"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.

... 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 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."

3. As held in the above decision, the claim of contract labourers could not be considered in terms of Section 12 (3) of the Act. In view of the relief granted by the Division Bench of this court in the said judgement, the award passed in favour of the respondents 4 to 7 is confirmed. Accordingly, this writ petition is disposed of. No costs."

7. In view of the fact that the issue herein before the Court having already been considered and an order passed in favour of the petitioners therein and the petitioners herein are persons identically placed, the relief sought for cannot be granted.

8. For the reasons aforesaid, the present writ petition fails and the same is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Chairman cum Managing director

TANGEDCO & TANTRANSCO

144, Anna Salai,

Chennai 600 002.

2.The Superintending Engineer,

TANTRANSCO

General Construction Circle,

Coimbatore 641 012.

3.The Labour Inspector,

Coimbatore 641 018.

+1cc to M/s.T.S.Gopalan, Advocate, S.R.No.31054

W.P. NO.20833 OF 2013

RSV(CO)
RV(18/11/2020)



WEB COPY