

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 8938 OF 2013

AND

M.P. NO. 1 OF 2015

A.Marikannu

.. Petitioner

- Vs -

1. The Chief Engineer (Personnel)
Tamil Nadu Electricity Board
144, Anna Salai, Chennai 600 002.

2. The Superintending Engineer
Cuddalore Electricity Distribution Circle
Tamil Nadu Electricity Board
Cuddalore, Cuddalore District.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the Letter No.04637/Nir.2/Oo.2/Ko.O.Tho/2012 dated 31.12.2012 issued by the 2nd respondent, quash the same and direct the 2nd respondent to issue appointment order appointing the petitioner as Assessor Grade-II as per the Memo No.003907/G58/582/2007-28 dated 02.06.2010 issued by the 1st respondent with all service benefits and continuity of service in par with persons appointed as per the said memo within the time that may be fixed by this Court.

For Petitioner : Mr. Sridhar Baskar, for
Mr. M.Senthilkumar

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

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ORDER

The petitioner was working as contract labourer in the Cuddalore Electricity Distribution Circle from 3.5.96 and, thereafter, as per the proceedings of the 2nd respondent dated 24.2.08, the petitioner was absorbed as temporary casual labourer under the control of the 2nd respondent for more than one year from 26.2.08. However, due to the ill-health of the petitioner's mother, a representation dated 5.3.09 was made by the petitioner to the 1st respondent seeking transfer from Cuddalore Electricity Distribution Circle to Villupuram Electricity Distribution Circle, the representation was not considered and no orders were passed on the said representation. The petitioner was waiting for necessary transfer orders and looking after his mother.

2. In the meantime, memo dated 2.6.10 was issued to appoint the contract labourers, who were absorbed as temporary casual labourers and who were working for more than one year as Assessor Grade-II, Helper-cum-Meter Reader and Mazdoor in the time scale of pay and direction was issued to the respective authorities to issue necessary appointment orders. It is the case of the petitioner that though he had worked for more than a year, however, his case has not been considered and he was not appointed as Assessor Grade-II, though he had passed 10th standard. In this regard, the petitioner sent several representations, dated 9.9.10 and 21.11.11 to the 1st respondent, which did not evoke any response.

3. Thereafter, the petitioner, under the Right to Information Act, obtained information from the 2nd respondent stating that as he did not report for duty since 21.3.09, his case for appointment was not considered. It is the case of the petitioner that he had worked for more than a year and he was expecting transfer orders based on his representation. The act of the respondents in not passing any orders on his transfer representation and rejecting his candidature for appointment is per se illegal and is unsustainable in law. Therefore, the petitioner has come before this Court seeking the relief as above.

4. Learned counsel appearing for the petitioner submits that though the petitioner had given representation for transfer, quoting the ill-health of his mother, however, without passing any orders on the said representation, his case has been unilaterally rejected. However, persons, who were similarly situated like the petitioner were provided with appointment and the case of the petitioner alone was not considered and,

therefore, the prayer as sought for by the petitioner deserves to be allowed.

5. Per contra, learned counsel appearing for the respondents submitted that the petitioner, on his own volition, had not reported for duty since 21.3.09, though he was only a temporary casual labourer on the said date. It is the further submission of the learned counsel for the respondents that the petitioner cannot be equated with other persons, who are alleged to be similarly placed, as those persons, to whom appointment orders were given were continuously working under the respondent. The non-continuation of the petitioner in service was the cause of his non-absorption in the time scale of pay. Learned counsel for the respondents further submitted after a lapse of three years the petitioner has submitted a representation to consider his case, and after a lapse of seven years, this Court, in exercise of its powers, shall not interfere with the appointment process, as the petitioner has not been in continuous employment with the petitioner. Therefore, it is prayed for dismissal of this petition.

6. This Court heard the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

7. The facts in issue are not in dispute. The main ground on which claim is made by the petitioner is that he was working as a contract labour for more than a year. It is even the admitted case of the petitioner that after submitting representation for transfer, the petitioner has gone to take care of his mother, who was suffering from ill-health. Therefore, it is clear from the said fact that the petitioner was not working under the respondent during the relevant time when the case of persons, who were also working as temporary casual labour were taken up and were appointed in the time scale of pay. The petitioner was a casual labour and it is not open to him to sit tight and await the orders on his representation, as no right accrues on him for grant of transfer. Even otherwise, the petitioner has not pursued with the respondents with regard to the transfer representation submitted by him, but has kept silent and had been awaiting orders of transfer from the respondent, which admitted stand of the petitioner, is an incomprehensible conduct and this Court is of the considered view that the petitioner not being in continuous service of the respondents, cannot, as a matter of right claim right to appointment in the regular time scale of pay.

8. For the reasons aforesaid, this Court is not inclined to accede to the prayer as made by the petitioner and, accordingly, this petition deserves to be dismissed. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

GLN
To

1. The Chief Engineer (Personnel)
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2. The Superintending Engineer
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Tamil Nadu Electricity Board
Cuddalore, Cuddalore District.

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