

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.42917,42918, 41883, 41884, 40993 & 40994 of 2016
and

W.M.P.Nos.36804, 36805, 35872, 35873, 34992 & 34993 of 2016

W.P.No.42917/2016

K.Rajaram

.. Petitioner

vs

1. The Chairman,
Tamil Nadu Generation and Distribution
and Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.
2. The Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution
and Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.
3. The Superintending Engineer,
Coimbatore Electricity Distribution Circle,
TANGEDCO Ltd.,
South, Tatbud,
Coimbatore - 12

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the entire records connected with the impugned proceedings passed by the 2nd respondent vide (Per.)B.P.(FB)No.35, Administrative branch, dated 27.09.2008 and quash the same insofar as prospective absorption of the petitioners as watchman in the time scale of pay and consequentially direct the 2nd respondent to absorb the petitioners with all consequential monetary benefits, as per Award of the Inspector of Labour, Thiruvannamalai passed in Na.Ka.No.1032/2001 dated 6.7.2001 confirmed by order in W.P.No.15575 of 2002 dated 7.8.2008.

W.P.No.42918/2016

R.Rajamani

.. Petitioner

vs

1. The Chairman,
Tamil Nadu Generation and Distribution
and Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.
2. The Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution
and Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.
3. The Superintending Engineer
Tirupattur Electricity Distribution Circle,
TANGEDCO Ltd.,
Tirupattur,
Vellore District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the entire records connected with the impugned proceedings passed by the 2nd respondent vide (Per.)B.P.(FB)No.35, Administrative branch, dated 27.09.2008 and quash the same insofar as prospective absorption of the petitioners as watchman in the time scale of pay and consequentially direct the 2nd respondent to absorb the petitioners with all consequential monetary benefits, as per Award of the Inspector of Labour, Krishnagiri passed in Na.Ka.No.E/701/2001 dated 17.7.2001.

W.P.No.41883/2016

1. M.D.Moorthy
2. P.Kandharoopan
3. S.Jayaraman
4. G.Jayabalan
5. G.Ramadoss

.. Petitioners

vs

1. The Chairman,
Tamil Nadu Generation and Distribution
and Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.
2. The Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution
and Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.
3. The Superintending Engineer
Tirupattur Electricity Distribution Circle,
TANGEDCO Ltd.,
Tirupattur,
Vellore District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the entire records connected with the impugned proceedings passed by the 2nd respondent vide (Per.)B.P.(FB)No.35, Administrative branch, dated 27.09.2008 and quash the same insofar as prospective absorption of the petitioners as watchman in the time scale of pay and consequentially direct the 2nd respondent to absorb the petitioners with all consequential monetary benefits, as per Award of the Inspector of Labour, Thiruvannamalai passed in Na.Ka.Aa.1521/2001 dated 31.7.2001, confirmed by the order in W.P.No.3283 of 2002 dated 18.08.2008..

W.P.No.41884/2016

1. G.Hanumanthu
2. M.Devendiran .. Petitioners

vs

1. The Chairman,
Tamil Nadu Generation and Distribution
and Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.
2. The Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution
and Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.

3. The Superintending Engineer
Tirupattur Electricity Distribution Circle,
TANGEDCO Ltd.,
Tirupattur,
Vellore District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the entire records connected with the impugned proceedings passed by the 2nd respondent vide (Per.)B.P.(FB)No.35, Administrative branch, dated 27.09.2008 and quash the same insofar as prospective absorption of the petitioners as watchman in the time scale of pay and consequentially direct the 2nd respondent to absorb the petitioners with all consequential monetary benefits, as per Award of the Inspector of Labour, Thiruvannamalai passed in Na.Ka.Aa.1521/2001 dated 31.7.2001, confirmed by the order in W.P.No.3283 of 2002 dated 18.08.2008.

W.P.No.40993/2016

1. R.Venkatesan
2. T.Ranganathan
3. S.Dhanasekaran
4. P.Pachiappan
5. R.Sekar
6. R.Dhanasekaran
7. P.Mani
8. P.Vedachalam

... Petitioners

vs

1. The Chairman,
Tamil Nadu Generation and Distribution
and Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.

2. The Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution
and Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.

3. The Superintending Engineer
Kanchipuram Electricity Distribution Circle,
TANGEDCO Ltd.,
Kanchipuram.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the entire records connected with the impugned proceedings passed by the 2nd respondent vide (Per.)B.P.(FB)No.35, Administrative branch, dated 27.09.2008 and quash the same insofar as prospective absorption of the petitioners as watchman in the time scale of pay and consequentially direct the 2nd respondent to absorb the petitioners with all consequential monetary benefits, as per Award of the Inspector of Labour, Kanchipuram passed in Na.Ka.No.E.1317/2001 dated 29.10.2001, confirmed by the order in W.P.No.36824 of 2003 dated 17.12.2003.

W.P.No.40994/2016

1. A.V.Anbanandan
2. M.Venu
3. M.A.Chidambaram
4. G.Balan
5. K.Rajendran
6. Y.Francis
7. G.Manokaran
8. D.Karunakaran
9. M.Maragabandhu
10. P.Venkatraju
- 11.R.Pargunam
12. J.Sukumaran
13. S.M.Selvavinayagam

.. Petitioners

vs

1. The Chairman,
Tamil Nadu Generation and Distribution
and Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.
2. The Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution
and Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.
3. The Superintending Engineer
Kanchipuram Electricity Distribution Circle,
TANGEDCO Ltd.,
Kanchipuram.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the entire records connected with the impugned proceedings passed by the 2nd respondent vide (Per.)B.P.(FB)No.35, Administrative branch, dated 27.09.2008 and quash the same insofar as prospective absorption of the petitioners as watchman in the time scale of pay and consequentially direct the 2nd respondent to absorb the petitioners with all consequential monetary benefits, as per Award of the Inspector of Labour, Thiruvallur passed in Na.Ka.No.1338/2001 dated 31.07.2001, confirmed by the order in W.P.No.35837 of 2003 dated 30.04.2004.

For Petitioners: Mr.N.Ravichandran
For Respondents: Mr. Anand Gopalan
for T.S.Gopalan & Co.

C O M M O N O R D E R

All these writ petitions are filed with the following relief:

To issue Writ of Certiorarified Mandamus to call for the entire records connected with the impugned proceedings passed by the 2nd respondent vide (Per.)B.P.(FB)No.35, Administrative Branch, dated 27.09.2008 and quash the same insofar as prospective absorption of the petitioners as watchmen in the time scale of pay and consequentially direct the 2nd respondent to absorb the petitioners with all consequential monetary benefits, as per Award of the Inspector of Labour.

2. Heard Mr.S.N.Ravichandran, learned counsel for the petitioners and Mr.Anand Gopalan, learned counsel appearing for the respondents.

3. It is seen that this is the second round of litigation, arising out of the same issue, before this Court. The very same petitioners filed W.P.No. 7594/2010 seeking for the following relief:

To issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 2nd respondent in proceedings (Per) B.P.(FB) No.35, dated 27.09.2008 quash the same insofaras it relates to prospective absorption and fixation of time scale, further direct the respondents 1 and 3 herein to fix time scale of pay to the petitioners as watchman from the date on which they have completed 480 days of employment with the 1st respondent Board with all consequential benefits including backwages, continuity of

service.

4. It is further seen that the said writ petition along with other writ petitions filed by other workers were posted for hearing before the learned single Judge on 31.03.2011 and after making the submissions, the learned counsel appearing for the petitioners therein sought permission to withdraw those writ petitions with liberty to approach the appropriate Court for claiming the relief made in those writ petitions. Accordingly, the writ court dismissed those writ petitions with liberty as prayed for. The petitioners thereafter, approached the Labour Court and filed the Claim Petition in C.P.No.15/2012 for computation. The Labour Court passed an order on 31.07.2013 in favour of the petitioners. Challenging the said order, the Management filed W.P.No.7129/2014. The learned single Judge, after elaborately considering all the facts and circumstances, allowed the writ petition and set aside the order passed in C.P.No.15/2012. At paragraph Nos. 13, 14 and 15, the learned single Judge has observed as follows:

13. In my view, there need not be any doubt on this aspect, because, B.P. No. 35, dated 27.09.2008, exactly reflects the same stand taken in the affidavit of the Chief Engineer, Personnel, dated August, 2008. In fact, paragraph 6 of the Board Proceedings is an exact replica of first five lines in paragraph 5 of the affidavit. Therefore, this Court can safely conclude that the affidavit formed part of the record before the Hon'ble Division Bench. One more aspect to be taken note of is that not only W.P. No. 27061 of 2005 and other seven cases were disposed of by the order, dated 07.08.2008, but three other connected cases were also disposed of in W.P. Nos.5038 to 5040 of 2001, by an order, dated 10.09.2008. W.P. No. 18848 of 2002 filed against the order obtained by the private respondents herein was also disposed of by the Hon'ble Division Bench, along with the connected writ petition in W.P. No. 3283 of 2002, by a common order, dated 18.08.2008. All the three orders were verbatim the same and, therefore, it would be rather unreasonable on the part of the respondents to now state that there was no affidavit before the Hon'ble Division Bench.

14. Having steered clear of the above factual position, it is to be seen, as to whether the Labour Court could have computed

the wages, stating that the respondents are entitled to all benefits, after they have completed 480 days of continuous service. As a matter of fact, this was the order, which was passed by the Inspector of Labour, dated 04.06.2001, the correctness of which was to be tested in the writ petition, filed by the Board. However, when the matter came up before the Hon'ble Division Bench, on a submission made by the Board, which, according to them, was based on an affidavit, the respondents therein, in the first batch of cases, admittedly did not raise any objection and the Division Bench did not issue any positive direction, but, in effect, diluted the very effect of the order of Inspector of Labour, as the Hon'ble Division Bench permitted for necessary steps to be taken by the Board within a time frame. In so far as the case filed by the Board against the order, dated 04.06.2001, passed by the Inspector of Labour is concerned, the same was disposed of by this court, vide a common order, dated 18.08.2008. It is not known, as to whether a similar affidavit was filed in the said writ petition. However, the order, which was passed therein, was identical in all the three sets of cases. Therefore, the respondents cannot harp upon the direction issued by the Inspector of Labour, as the said order got merged with the order passed by the Hon'ble Division Bench, which recorded an undertaking of the Board that they propose to regularise the services of 151 Ex-servicemen and, as per the affidavit, such regularisation was prospective.

15. In such circumstances, it is to be seen, whether the Labour Court could have computed the wages with retrospective effect. As long as the order passed by the Hon'ble Division Bench remains unassailed and the order of Inspector of Labour having been merged with the order of the Hon'ble Division Bench, it would be an unacceptable plea that still the Labour Court could compute wages based on the order passed by the Inspector of Labour, which, in effect, stood modified, after the order passed by the Hon'ble Division Bench, dated 18.08.2008.

5. Challenging the said order, these petitioners filed W.A.No.1527/2018. The said writ appeal was dismissed on 19.07.2018 by observing at paragraph Nos. 5 , 6 and 7 as follows:

5. Having heard the learned counsel appearing for the parties, we find that the learned Single Judge has held that the Labour Court has erred in allowing the computation petition ignoring the fact that the earlier order dated 4.6.2001 passed by the Labour Court got merged with the order of the Division Bench and all the directions/observations contained in the order of the Division Bench would bind both the parties and therefore, the appellants cannot resile themselves from the said order and state that they are entitled to make a challenge to the prospectivity of the proceedings in B.P.No.35 and accordingly, allowed the writ petition.

6. In our view, the learned Single Judge, having appreciated the factual aspects in a proper perspective and has come to the right conclusion that the earlier award passed by the Labour Court got merged with the decision of the Division Bench in endorsing the proposal of the Board to regularize the employees with prospective effect and the appellants herein, having accepted the same and given an undertaking, cannot make a challenge to the prospectivity of the order regularizing their services.

7. We do not find any reason to interfere with the well reasoned order passed by the learned Single Judge. Accordingly, the writ appeal fails and the same is dismissed. No costs.

Thereafter, these present writ petitions are filed before this Court with the relief as stated supra.

6. Going by the prayer sought for in these writ petitions as well as the prayer sought for in W.P.No.7594/2010 and the result of the said writ petitions having been dismissed as withdrawn and the subsequent order passed by the Labour Court in the Computation Petition No.15 of 2012 dated 31.07.2013 which has been set aside by the learned single judge in W.P.No.7129/2014 dated 04.04.2016 and confirmed by the Division Bench in W.A.No.1527/2018 dated 19.07.2018, I find that the present attempt of the petitioners in filing the present writ petitions once again, arising out of the same issue, is nothing but agitating the matter repeatedly on the very same set of cause of action, especially when they failed to succeed in their earlier

attempt. Hence, these writ petitions cannot be sustained. Though it is contended by Mr.S.N.Ravichandran, learned counsel for the petitioners that the order made in W.P.No.18848/2002 by the Division Bench of this Court does not empower the Management to give regularisation prospectively, the said order was dealt with by the learned single Judge in W.P.No.7129/2014, by specifically giving an observation that the Division Bench which recorded the undertaking of the Board that they propose to regularise the services of 151 Ex-serviceman and as per the affidavit such regularisation was prospective. When such finding of the writ court was confirmed by the Division Bench W.A.No.1527/2018, I do not think that these writ petitions can be maintained by the writ petitioners any further to seek for any relief. Therefore, I find these Writ Petitions are not having any merits. Accordingly, the Writ Petitions are dismissed as the relief sought for by them was already considered and decided in the earlier round of litigation.

7. Learned counsel for the petitioners submitted that these petitioners are not paid minimum wages as contemplated in the statutory provisions. It is totally a different issue and therefore, the order passed in these writ petitions will not be a bar for the petitioners to seek such benefit before the appropriate forum by filing appropriate proceedings, if they are not given such benefits so far. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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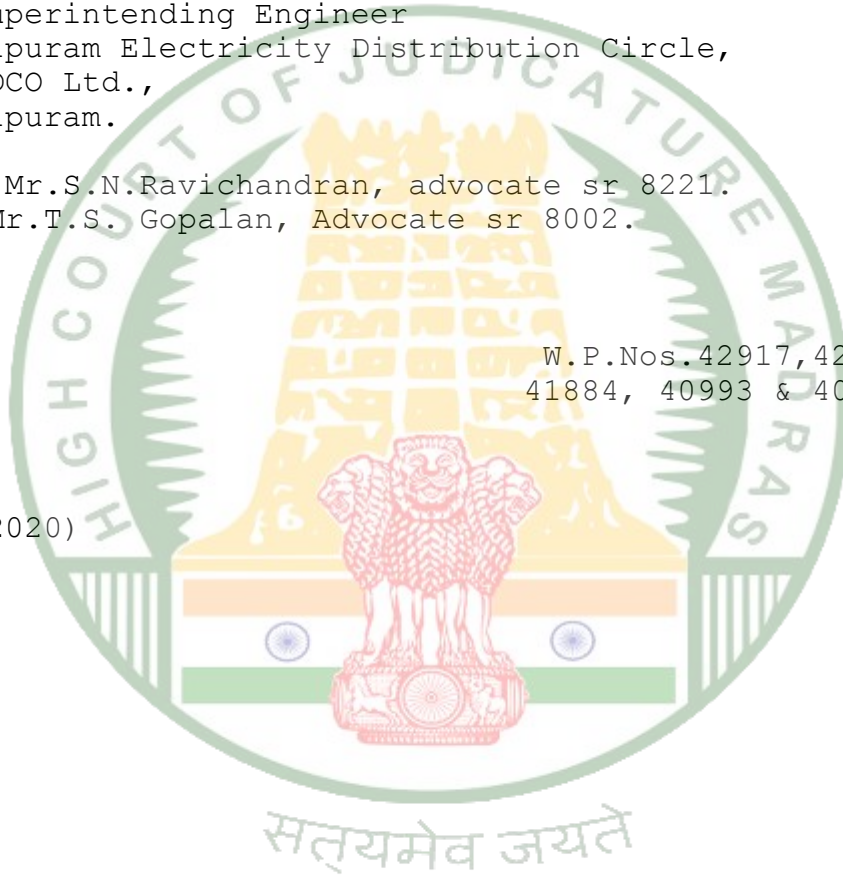
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Kanchipuram Electricity Distribution Circle,
TANGEDCO Ltd.,
Kanchipuram.

+3 Ccs to Mr.S.N.Ravichandran, advocate sr 8221.
+1 CC to Mr.T.S. Gopalan, Advocate sr 8002.

W.P.Nos.42917,42918, 41883,
41884, 40993 & 40994 of 2016

PP (CO)
SP (10/03/2020)



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