

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.11.2020

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.11563 of 2014

1.C.Gopi

2.R.Baratha Selvan

3.Innasi Muthu

.. Petitioners

vs.

1.The Tamil Nadu Electricity Board,
Rep. By its Chairman,
Tamilnadu Electricity Board,
144, Anna Salai,
Chennai 600 002.

2.The Chief Engineer, (Personnel),
Office of the Tamil Nadu Electricity Board,
144, Anna Salai, Chennai 600 002.

3.The Superintending Engineer,
Office of the Tamil Nadu Electricity Board,
Perambalur.

4.S.Rajendran
Ex-Assistant Engineer,
Opposite Raja Theatre,
Elambalur Road,
Perambalur-21212.

5.N.Marudhai, S/o Natesan,
Tamil Nadu Electricity Board Contractor,
Kurmbalur, Kurumbalur post,
Perambalur- 621212.

.. Respondents

(R2 & R5 are impleaded as per order dated 05.12.2014 in
M.P.2/2014 in W.P.No.11563/2014)

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Mandamus,
directing the respondents to absorb the petitioners in the

subsequent vacancies as per B.P.(Chairman) No.9 dated 9.1.2008, constituted by the 1st respondent and to consider the case of the petitioner for absorption pursuant to the recommendation of the 2nd respondent and extend all benefit given to the similarly placed persons.

For Petitioner :Mrs.Sudharashana Sunder

For Respondents:Mr.Anand

for M/S.T.S.Gopalan & Co for RR1 to 3

:M/S.Adithya Reddy for R4.

ORDER

This writ petition has been filed by the petitioners, to direct the respondents to absorb the petitioners in the subsequent vacancies as per B.P.(Chairman) No.9 dated 9.1.2008, constituted by the 1st respondent and to consider the case of the petitioner for absorption pursuant to the recommendation of the 2nd respondent and extend all benefit given to the similarly placed persons.

2.It is the case of the petitioners that they were working as contract labour at Perambalur division office of the Assistant Engineer, Perambalur division from 2005 to 2006 on daily wages basis and they had put in more than 480 days in 2 calendar years. However, their services were not regularized. It is the averment made by the petitioners that persons who were working on contract basis under the respondents who were engaged on regular basis for a number of years had requested for ex-gratia payment and absorption and the respondent Board had entered into a 12(3) settlement with workers union on 10.08.2004 for the absorption of contract labourers in the Board, in a phased manner. The contract labourers who were continuously working for 5 years from 1998 have been identified by the Committee and were absorbed by the Board. Persons who were not covered under the said settlement but had an order passed by the Inspector of Labour prior to 10.08.2007 who were engaged as contract labourers and as daily wages were also reinstated in service vide Board proceedings dated 9.1.2008. Some of the persons were absorbed, however the petitioners were not absorbed by the respondent Board. The Chennai contract employees welfare union of which the petitioners are members filed WP.No.21988 of 2008 forbearing the respondent from filling up the vacancy pending decision of the five member Committee constituted under B.P.No.9 dated 9.1.2008 and to examine the case of the contract labourers who were not covered under 12(3) settlement dated 10.08.2007 for absorption, and this Court by its order dated 27.04.2009, permitted the petitioner union to submit a

representation to the second respondent, and issued a direction to the respondents to consider the claim of the union members, insofar as the 37 eligible candidates including the petitioners who have been left out and who had not got the ex Gratia payment. In spite of the said order, the case of the petitioners were not considered. The grievance of the petitioners is that though they had worked continuously for more than 480 days and certificates have been issued by the concerned contractors which were also enclosed as per the order, after a lapse of nearly 4 years, the 2nd respondent has issued a rejection letter dated 23.8.2013. Aggrieved against the same the present petition is filed.

3. Learned counsel appearing for the petitioners, while reiterating the contentions raised in the grounds filed in support of the affidavit, however, without going into the merits of the contentions, submitted that it would suffice if a direction is issued to the 1st respondent to consider the petitioners claim in the light of the Board Proceedings No.9 dated 9.01.2008.

4. Per contra, learned standing counsel appearing for the respondents filed a detailed counter, denying the averments made in the affidavit filed by the petitioners and submitted that in the earlier round of litigation, this Court issued a direction to consider the similarly situated persons, which was examined by the committee constituted on 9.01.2008 and the Board was appraised of the details of all the 37 petitioners as in W.P.No.21988/2008 and it was found that they were not liable to be absorbed and the committee. Accordingly, their case as also the case of the petitioners were rejected on the ground that the experience certificate produced by the petitioners are bogus certificates and the same was communicated to the petitioners herein on 28.03.2013. However, without challenging the order of rejection, merely filing the petition with the above said prayer is not maintainable and this petition is liable to be rejected.

5. This Court heard the learned counsel appearing on either side and also perused the materials available on record.

6. The facts in the present case is not in dispute. On perusal of the counter affidavit, it reveals that the Board has decided to interview all the contract labourers, who were left out and, accordingly, interview was held for absorption, and after verification of all the records of the contract labourers, who attended the interview they were selected. However the petitioners had not attended the interview on the above date, which clearly reveals that the petitioner had not worked continuously as contract labourer. Admittedly the contract labourers who were continuously working in Board were

recommended by the concerned contractors, who had received ex-gratia bonus, which list was forwarded by the Assistant Engineer. However, persons, including the petitioners, did not produce any records to prove their continuous employment as contract labourers and, hence, the petitioners claim for permanent status cannot be considered positively. Further, their case having been rejected by the Board, the course open to the petitioners is to challenge the order of rejection and it is not open to the petitioners to directly approach this Court by filing this petition. In the above backdrop, this Court at this point of time, cannot direct the respondents to absorb the petitioners in the subsequent vacancies as per B.P.(Chairman) No.9 dated 9.1.2008, constituted by the 1st respondent, unless sufficient materials are placed by the petitioners to show their continuous employment as contract labourers in the respondent Board. In the above backdrop, this Court is of the considered view that the relief sought for by the petitioners cannot be acceded to.

7. For the reasons aforesaid, this writ petition is devoid of merits and deserves to be dismissed. Accordingly, this writ petition is dismissed. However, there shall be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jrs
To

- 1.The Tamil Nadu Electricity Board,
Rep. By its Chairman,
Tamilnadu Electricity Board,
144, Anna Salai,
Chennai 600 002.
- 2.The Chief Engineer, (Personnel),
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144, Anna Salai, Chennai 600 002.
- 3.The Superintending Engineer,
Office of the Tamil Nadu Electricity Board,
Perambalur.

+1 CC to M/s.T.S. Gopalan & Co, sr 36126.

W.P.No.11563/2014

BS (CO)
SP(09/12/2020)