

In the High Court of Judicature at Madras

Dated : 20.11.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Cont.P.No.2347 of 2018 & Review Application No.120 of 2020

Contempt Petition :

Tamil Nadu Electricity Board,
Accounts & Executive Staff
Union, rep.by its Circle
Secretary S.Gowse Asam,
Dharmapuri Electricity
Distribution Circle
...Petitioner

Vs

1.A.V.Ravi, Chief Engineer,
Personnel, Tamil Nadu
Electricity Board, No.144,
Anna Salai, Chennai-2.

2.R.M.Mahalingam, Superintending
Engineer, Thirupathur Electricity
Distribution Circle, Tamil Nadu
Electricity Board, Thirupathur,
Vellore District.
...Respondents

Review Application :

1.Tamil Nadu Electricity Board, rep.
By its Chief Engineer (Personnel),
No.144, Anna Salai, Chennai-2.

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

...Petitioners

Vs

1.Tamil Nadu Electricity Board,
Accounts & Executive Staff Union,
rep.by its Circle Secretary,
Dharmapuri Electricity Distribution
Circle, Nelli Nagar, Pidamaneri,
Dharmapuri.

2.The Inspector of Labour,
Krishnagiri.

...Respondents

PETITION under Section 11 of the Contempt of Courts Act to punish the respondents for willful disobedience and violating the order of this Court dated on 09.2.2016 made in W.P.No.10911 of 2011.

Review Application under Order XLVII Rule 1 read with Section 114 of the Civil Procedure Code to review the order in WP.No.10911 of 2011 dated 09.2.2016

For Petitioner in Cont.P. : Mr.R.Marudhachalamurthy
& R1 in R.A.

For Respondents in Cont.P.
& Review Applicants : Mr.Anand Gopalan

COMMON ORDER

I have heard Mr.R.Marudhachalamurthy, learned counsel for the contempt petitioner and Mr.Anand Gopalan, learned counsel appearing for the respondent Board.

2. The above contempt petition has been filed alleging willful disobedience of the order and directions issued in W.P.No.10911 of 2011 dated 09.2.2016. In the said writ petition, the staff union represented by its Circle Secretary sought to implement the order dated 02.4.1998 passed by the Inspector of Labour Krishnagiri in No. C/4198/96. The said writ petition was disposed of on 09.2.2016 by issuing certain directions. The very same staff union represented by the very same Circle Secretary filed another writ petition in W.P.No. 22322 of 2010 for an identical prayer to implement the order passed by the Inspector of Labour dated 02.4.1998 bearing C/4198/96. W.P.No.22322 of 2010 was disposed of 02.3.2016 and the operative portion of the same reads as follows :

“7. The learned counsel for the respondent Board contended that in view of the judgment of the Hon`ble Division Bench dated 24.10.2008, as the terms of the settlement are binding on the employees, they have been absorbed in the services of the Board pursuant to Board proceedings in B.P.No.44 dated 06.9.2007 and B.P.No.22 dated 25.10.2012. Insofar as the employees who have been absorbed pursuant to BP.No.22 dated 25.10.2012 are concerned, it was stated that they have been continuously engaged as contract Labourers on need basis as per

Board Memo dated 20.02.2008.

8. Though they were absorbed pursuant to the order of the Board dated 25.10.2012, from the counter affidavit, it is seen that out of 173 persons, in whose favour the order was passed by the respondents, 98 of them have been absorbed by the Board pursuant to the order dated 06.9.2007, which has been passed in terms of the settlement under Section 12 (3) of the Industrial Dispute Act dated 10.8.2007 apart from executing an undertaking in favour of the respondent. Therefore, in respect of those 98 employees, in terms of the judgment of the Hon`ble Division Bench dated 24.10.2008, no relief can be granted in this writ petition and they should be satisfied with the order of absorption passed, which was done pursuant to the settlement entered into under Section 12 (3) of the Act.

9. Now, the only issue left to be decided by this Court is regarding remaining 74 persons. Admittedly, these 74 persons did not enter into any settlement with the Board. It is stated that from February 2008 onwards, they have been continuously engaged as contract employees on need basis and thereafter absorbed pursuant to the Board proceedings dated 25.10.2012. In

such circumstance, it is to be seen as to what relief they are entitled.

10. At this juncture, the learned counsel for the petitioner submitted that this Court had an occasion to consider some of the similarly placed employees in WP.No.10911 of 2011 by following the judgment passed by the Hon`ble Division Bench in W.A.No.1340 and 1341 of 2012 dated 10.7.2012, rejecting the plea of the Board that there is a deemed merger of the Award with the settlement. Therefore, according to the learned counsel, 74 workmen are entitled for full benefits from 02.4.1998, date of order of the Inspector of Labour and, in respect of those 98 employees, it is stated that the petitioner Union cannot have any grievance and they can seek for nothing more.

11. In W.A.No.1340 and 1341 of 2012 dated 10.7.2012, the Hon`ble Division Bench took a stand that there cannot be any deemed merger of the Award of the settlement in the light of the fact that there was inordinate and unexplained delay of 5 to 7 years in moving this Court and on that ground, the writ petition filed by the Board was dismissed.

12. The facts of the present case are slightly different. The Inspector of Labour

passed an order dated 02.4.1998 and promptly, during the year 1999, the writ petition was filed and an order of stay was obtained. After dismissal of the writ petition on 11.4.2001, a Writ Appeal was filed and it was numbered as W.A.No.2008 of 2003 and there was an order of stay operating and the matter was kept pending since there was other batch of cases. The other batch of cases were disposed of on 24.10.2008. Following the same, the Writ Appeal concerning the order of the Inspector of Labour in this writ petition, was disposed of on the same lines by judgment dated 19.01.2009. Therefore, the Board had been diligently prosecuting the matter and the order of the Inspector of Labour was stayed by the Writ Court initially and thereafter, by the Division Bench and after the dismissal of the Writ Appeal i.e. in January 2009, the order became capable of being implemented. That apart, it is seen that from 2008 onwards, 74 contract Labourers have been continuously engaged by the Board and subsequently, they have also been absorbed by Board's order dated 25.10.2012.

13. Therefore, the relief sought for by the petitioner Union in respect of 74 employees, cannot be fully granted as, at this stage, it would

be too hard to direct the Board to grant them all benefits from the date of order of the Inspector of Labour i.e. 02.4.1998. However, the period between 19.01.2009 i.e. the date on which the Writ Appeal No. 2008 of 2003 was dismissed, and 25.10.2012, the date of Board's proceedings in BP.No.22, should be given credence.

14. Considering the entire facts and circumstances of the case and also considering the fact that there was a large scale of absorption of employees in the Board's Service, this Court directs the Board to consider the claims of those 74 employees by taking into consideration the period between 19.01.2009 and 25.10.2012 for the purpose of calculating the total length of service only for the terminal benefits and nothing else. This mean that these services shall be accounted only for the terminal benefits of 74 employees and this order will not confer any other right, such as inter se seniority, promotion etc.

With the above clarification and modifications, the writ petition is partly allowed.”

3. This order has not been challenged by the staff union. However, the above contempt petition has been filed alleging willful disobedience of the order dated 09.2.2016 in W.P.No.10911 of 2011.

4. Though the cause title shows that the petitioner is the staff union, the affidavit has been filed by one Mr.S.Gowse Asam stating that he is the member of the union and he seeks a direction to punish the respondents for violating the order of this Court.

5. Firstly, the above contempt petition is not maintainable at the instance of a member of the union, as he is not authorized to file a contempt petition on behalf of the staff union, which had, in fact, filed W.P.No.22322 of 2010 for an identical relief and appears to have been satisfied by the order dated 02.3.2016. Therefore, there cannot be two orders in respect of an identical claim and the contempt petition is held to be not maintainable.

6. The Tamil Nadu Electricity Board filed the above review application and considering the facts stated above, today, this Court condoned the delay in filing the review application by a separate order and has taken up the review application for consideration.

7. It is an unfortunate case where the staff union filed two writ petitions for an identical relief. That apart, the respective learned counsel on either side, who appeared in the matters, are also one and the same and they have

not brought to the notice of this Court that subsequently, an order dated 02.3.2016 was passed in W.P.No.22322 of 2010. It appears that the union and the management were satisfied with the directions issued in W.P.No.22322 of 2010, as no appeal has been filed against the order dated 02.3.2016. Therefore, the order dated 09.2.2016 passed in W.P.No.10911 of 2011 has to be necessarily recalled.

8. Accordingly, R.A.No.120 of 2020 is allowed and the order dated 09.2.2016 passed in W.P.No.10911 of 2011 is recalled. W.P.No.10911 of 2011 is dismissed as unnecessary in the light of the order passed in W.P.No.22322 of 2010 dated 02.3.2016. In the event Mr.S.Gowse Asam has got any grievance, it is open to him to work out the same against the staff union in a manner known to law. Cont.P.No.2347 of 2018 is dismissed. No costs.

सत्यमेव जयते SD/-

ASSISTANT REGISTRAR(COMM.CASES)

rs

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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SMI/05/01/2021

To

- 1.The Chief Engineer,
Personnel, Tamil Nadu
Electricity Board, No.144,
Anna Salai, Chennai-2.
- 2.The Superintending
Engineer, Thirupathur Electricity
Distribution Circle, Tamil Nadu
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