



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **05.02.2020**

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.1899 of 2012

and

M.P. (MD) .No.2 of 2012

WEB COPY

- 1.C.Kannan
- 2.P.Ponnaiah
- 3.R.Ptichaimani
- 4.J.Lakshmi
- 5.V.Ramuthai
- 6.S.Vinesh Kumar
- 7.P.Paulraj
- 8.K.Ganesan
- 9.K.Machendiran
- 10.V.Subburaj
- 11.P.Paulpandiyan

... Petitioners

Vs.

- 1.The Chairman cum Managing Director,
Tamilnadu Generation and Electricity
Distribution Company,
144, Anna Salai,
Chennai - 600 002.

- 2.The Chief Engineer / Personal,
Tamilnadu Generation and Electricity
Distribution Company,
144, Anna Salai,
Chennai - 600 002.

- 3.The Superintending Engineer,
Theni Electricity Distribution Company,
Theni.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus , to call for the records relating to the 3rd respondent in Ref.No.Ku.A-No.1592/Me.Po/Theni/u.N.A/NI/PI.2/NI.U.1/Ko.thu.Pani dated 18.01.2012 and to quash the same and to consequently direct the respondents to continue the petitioners in service with all the service and monetary benefits.

For petitioners : Mr.K.Appadurai

For respondents : Ms.P.Malini



ORDER

This writ petition has been filed by the petitioners challenging the order terminating them from service and for a direction to the respondents to continue them in service with all service and monetary benefits.

WEB COPY

2.The learned counsel for the petitioners submitted that by proceedings dated 20.03.1997, the Board has decided to absorb the existing Part Time Sweepers / Scavengers in a regular time scale of pay. By another proceedings dated 14.10.1998, the Board has ordered to revise the scale of pay with retrospective effect. Subsequently, the retrospective effect of fixing time scale of pay was cancelled. Such cancellation was challenged in W.P.No.10777 of 2003 and the same was allowed, against which SLP was filed. The Hon'ble Supreme Court has declined to interfere with the order, however, with a slight modification to the effect that the revised scale can be applied only from the date of filing the writ petition ie from the year 2003. Thereafter, by proceedings dated 02.08.2011, the Board has decided to absorb Part Time Conservancy workers with retrospective effect from 04.04.2003 or any other subsequent date and to grant regular time scale of pay with retrospective effect.

3.The learned counsel for the petitioners would further submit that the petitioners had been working as Part Time Sweepers / Sanitary Workers in a consolidated pay under the third respondent from the year 2006 to 2008. After creation of posts, the third respondent, by his proceedings dated 18.10.2011, has permanently absorbed all the petitioners into regular time scale of pay with retrospective effect and agreed to give arrears in two installments ie., the first installment arrears in October, 2011 and the second installment arrears in April, 2012. Accordingly, the petitioners became permanent employees of the TANGEDCO from 22.10.2011 under the 3rd respondent and received salary in a time scale of pay as regular employees. They were also paid first installment arrears amount in October, 2011. While so, the 3rd respondent, by the impugned order dated 18.01.2012, has cancelled the order absorbing the petitioners in a regular time scale of pay. Challenging the said order, the petitioners have filed this writ petition.

4. The learned counsel for the petitioners would further submit that the petitioners had been working as Part Time Sweepers from 2006 to 2008 onwards and the petitioners have completed 480 days of continuous service in 24 calendar months in a phased manner and considering the same, the respondents absorbed the petitioners in a regular time scale of pay. But, the third respondent has passed the impugned order without any notice and therefore it is clear violation of principles of natural justice



and hence, the same is liable to be set aside.

5. The learned counsel appearing for the respondent submitted that by order dated 02.08.2011, the third respondent absorbed 88 persons, including the petitioners, in a regular time scale of pay. Thereafter, the third respondent received communications dated 22.12.2011 informing that posts have been created only taking into consideration of those persons who have joined in temporary service upto 15.10.2005 and those who had already been identified by that date and the persons who joined after 2007 were not covered. As the appointment of the petitioners was in violation of the order of the 2nd respondent dated 02.08.2011, there is no requirement to issue notice to the petitioners. Hence, by order dated 18.01.2012, the third respondent has cancelled the absorption and fixation of time scale of pay in respect of the petitioners. This exercise was done in various other Electricity Generation Circles as well. The petitioners were not terminated as alleged in the writ petition. Only their absorption and fixation of time scale of pay were cancelled by the impugned order. The petitioners, thereafter, were to be continued as daily wage Part Time Conservancy Workers. But, they themselves stopped reporting duty after the order dated 18.01.2012. Even now the petitioners, if they so desire, can report for work as Part Time Conservancy Workers on daily wage basis and they will be accommodated subject to requirements. The respondents are now in the process of absorbing Part Time Conservancy Workers and in due course, the petitioners will be considered for absorption provided they offer their service on continuous basis. Thus, she prayed to dismiss this writ petition.

6. Heard the learned counsel for both sides and perused the records carefully.

7. Admittedly, the petitioners had been working as Part Time Sweepers / Sanitary Workers from 2006 to 2008 onwards in a consolidated pay under the third respondent and the petitioners have completed 480 days of continuous service in 24 calendar months in a phased manner. Considering the same and also considering the order of the 2nd respondent dated 02.08.2011 and also the other orders dated 05.09.2011 and 15.09.2011, the petitioners were absorbed in a time scale of pay with DA by the 3rd respondent on 18.10.2011. The 3rd respondent has also approved the appointment of the petitioners. By order dated 21.11.2011, the Executive Engineer has agreed that the petitioners are also entitled to get arrears amount. As such, they were also paid first installment of the arrears amount. But, after about three months of their service, by the impugned order, the 3rd respondent has cancelled the absorptions of the petitioners stating that they were joined after the crucial date ie., after 15.10.2005.



8. Admittedly, the impugned order has been passed without any notice, which is a clear violation of principles of natural justice. The submission of the respondents that since the absorption of the petitioners were made in violation of the order dated 02.08.2011, there is no necessity to issue notice to them, cannot be accepted for the reasons that the order of the 2nd respondent was not violated by the petitioners and before absorption, the petitioners were worked about 4 to 6 years as Part Time Sweepers in a consolidated pay and thereafter, only, they became regular employees. Having absorbed in a regular time scale of pay and having extracted their works, the respondents ought to have been issued notice to the petitioners before cancelling the orders of their absorption. Hence, this Court is inclined to set aside the impugned order dated 18.01.2012.

9. Though it is stated by the respondents that after the impugned order, the petitioners could have been worked on consolidated pay, but they did not turn up, this Court is not inclined to accept the same, because it has not been stated so in the impugned order. Therefore, the petitioners cannot be found fault with in any way. The petitioners are only last grade servants. Considering the mental agony undergone by them for these long years, this Court is inclined to direct the respondents to reinstate the petitioners with continuity of service and monetary benefits.

10. In view of the above, the impugned order is set aside and the respondents are directed to reinstate the petitioners with continuity of service and monetary benefits. The above said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

11. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



1.The Chairman cum Managing Director,
Tamilnadu Generation and Electricity
Distribution Company,
144, Anna Salai,
Chennai - 600 002.

2.The Chief Engineer / Personal,
Tamilnadu Generation and Electricity
Distribution Company,
144, Anna Salai,
Chennai - 600 002.

3.The Superintending Engineer,
Theni Electricity Distribution Company,
Theni.

+1 CC to MR.K.APPADURAI, Advocate (SR-4807[F] dated 05/02/2020)

+1 CC to M/s.P.MALINI, Advocate (SR-4792[F] dated 05/02/2020)

Order made in
W.P(MD)No.1899 of 2012
05.02.2020

KM (26.05.2020) 6P 6C