



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2020

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

WEB COPY

W.P(MD)NO.3536 OF 2014

and

M.P(MD)No.1 of 2014

The Superintending Engineer,
Tamil Nadu Electricity Board,
Tuticorin Electricity Distribution Circle,
Ettayapuram Road,
Tuticorin - 628 002.

:Petitioner

.vs.

1.The Inspector of Labour(i/c),
Tuticorin.

2.M.Vana Raja

3.S.Sivasankar

4.S.Kingslin Jeba

5.C.Ramamoorthi

6.M.Muniyasamy

7.S.Gowsigan Rampal

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the award passed by the first respondent in Na.Ka.No.397/2009, dated 27.12.2013 and to quash the same.

For Petitioner

:Mrs.P.Malini
for M/s.T.S.Gopalan

For Respondent-1

:Mr.J.Gunaseelan Muthiah
Addl.Govt.Pleader

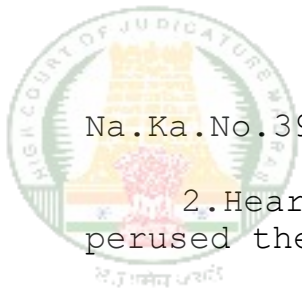
For Respondents
2 to 7

:Mr.J.Bharathan
for Mr.T.S.Rajamohan

O R D E R

This Writ Petition has been filed seeking issuance of a Writ of Certiorari to quash the award passed by the first respondent in

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Na.Ka.No.397/2009, dated 27.12.2013.

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The case of the Petitioner is that the respondents 2 to 7 never worked as Contract Labourer with the Petitioner Board and as such they have to prove the employee-employer relationship between them and the Petitioner herein. In spite of the same, the first respondent herein/Inspector of Labour, Tuticorin had passed an award in favour of the respondents 2 to 7 which shows the non-application of mind. It is further stated that the respondents 2 to 7 if worked as contract labour with the Petitioner from 1.7.1997 to 30.11.2007, their names would find place in the name in the list of 18,006 contract labourers as per the report of the Honourable Khalid Commission and they would be absorbed in the usual course, as has been done in similarly placed persons like that of the respondents 2 to 7. The first respondent, without advert to this fact, has passed an award in favour of the respondents 2 to 7, which is liable to be set aside. Further the Petitioner is not aware of the facts/particulars whether the respondents 2 to 7 as to when they join the work as contract labourer, nature of work performed by them and whether they have worked for three years as stated and whether they have worked for 480 days continuously in 24 calendar months. It is further stated that the Junior Engineers had given Experience Certificate only to those persons who worked as Contract Labourers who had actually worked under the contractors and moreover, the junior Engineers are not competent to issue such certificates. Further the contract labourers who are eligible to confer permanent status are identified by the Committee constituted pursuant to the report of the Honourable Justice Khalid Commission for identification for permanent absorption. The respondents 2 to 7 were not identified by the Commission for absorption. Hence the Petitioner has come forward with this Writ Petition for the relief stated supra.

4. The learned counsel for the Petitioner submitted that the award of the first respondent/Inspector of Labour, Thoothukudi is against law and has been passed by non application of mind. Further the first respondent has failed to consider the decision of the Division Bench of this Court in W.A.No.1803 of 2002 and batch. Further it is submitted that the respondents 2 to 7 are only contract workers/Labourers working for a few days in a year and hence the question of permanency does not arise. Further there is no employee-employer relationship between the Petitioner and respondents 2 to 7 and hence the order of the first respondent in favour of respondents 2 to 7 suffers from infirmity and the same has to be quashed.

5. The learned counsel for the respondents 2 to 7/Contract

<https://hcservices.ecourts.gov.in/hcservices/>



labourers would submit that the respondents 2 to 7 were employed by the Board and they are working under the Board and they have continuously working for 480 days in 24 calendar months. Further the Petitioner has absorbed the similarly placed persons for some reason or other and they have adopted the pick and chose system in absorbing the contract labourers and conferring them permanent status and prays for dismissal of this Writ Petition.

6.The learned counsel appearing for the petitioner/Electricity Board has placed reliance on many Writ Petitions filed before this Court and submitted that in identical Writ Petitions filed by the Petitioner/Board, this Court had ordered notice and grant an order of interim stay. Further the learned counsel for the Petitioner placed reliance on an order passed by this Court in W.P.Nos.358 of 2018 and batch of cases, wherein, it has been held that the order passed by the Inspector of Labour granting permanent status cannot be insisted upon and in the event of considering the case of the workmen in the light of B.P.No.9, dated 9.1.2008, the case of the workmen, the orders passed by the Inspector of Labour need not be given effect to. The learned counsel for the Petitioner has also placed reliance on an another order in W.P.Nos.13172 of 2017 and batch of cases, wherein also the learned Judge has given the verdict as above. The learned counsel for the Petitioner has also placed reliance on yet another decision of this Court in W.P.No.29541 of 2018 and another, dated 31.1.2019 wherein, after elaborately discussing the subject-matter in issue, had directed the workmen therein/respondents to submit fresh representations before the authorities concerned within a stipulated time and on receipt of such representation along with relevant documents, the management/TANGEDCO is directed to consider the same in the light of Board Proceedings in B.P.No.9, dated 9.1.2018 and pass orders on merits as early as possible without insisting upon the order of the Inspector of Labour granting permanent status.

7.Further the learned counsel appearing for the respondents 2 to 7 is not in a position to state under what circumstances the Junior Engineer of the Petitioner/Board had issued Experience Certificate to the respondents 2 to 7, when there is specific circular issued by the Department that the Junior Engineers are not competent to issue such certificates. Further, in matters like this, necessary evidence has to be let in regarding the admissibility of their appointment.

8.In view of the above facts and circumstances this Court is of the view that the respondents 2 to 7 cannot insist upon the order of the first respondent in conferring permanent status to them, as there is no direct employee employer relationship between them and the Petitioner herein.

9.Considering the above facts and circumstances, the



respondents 2 to 7 are directed to submit fresh representation to the Petitioner herein along with necessary and relevant documents relied upon by them and on receipt of such representations, the Petitioner/Board is directed to consider the same in the light of Board Proceedings in B.P.No.9, dated 9.1.2018 and pass orders on merits as early as possible, preferably within a period of six months from the date of receipt of such representations, without insisting upon the order of the Inspector of Labour granting permanent status.

10. With the above directions and observations, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

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/ /2020

Sub Assistant Registrar (CS)

vsn

To

The Inspector of Labour(i/c),
Tuticorin.

+1 CC to M/s.SPL.GP (SR-10160[F] dated 05/03/2020)

+1 CC to M/s.P.MALINI, Advocate (SR-10066[F] dated 04/03/2020)

+1 CC to M/s.T.S.RAJAMOHAN, Advocate (SR-10243[F] dated
05/03/2020)

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