



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2020

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)NO.14153 of 2015

A.Kanagarajan

:Petitioner

.vs.

1.The Chairman,
TANGEDCO,
No.144, Anna Salai,
Chennai- 600 002.

2.The Chief Engineer,
TANGEDCO,
No.144, Anna Salai,
Chennai - 600 002.

3.The Superintending Engineer,
TANGEDCO,
Virudhunagar Distribution Circle,
Virudhunagar - 626001.

4.The Executive Engineer,
TANGEDCO,
Sivakasi - 626 123,
Virudhunagar District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the entire records pertaining to the second respondent's proceedings in Letter No.033487/153/G.65/G.652/2014, dated 19.4.2014 and to quash the same as illegal and further to direct the respondents 1 to 3 to provide employment to the Petitioner according to the Petitioner's educational qualification in pursuance of the Corporation's notification BP(F.B)44/2007, dated 6.9.2007 and promote the Petitioner from the date of his initial appointment as per BP(F.B)44/2007, dated 6.9.2007 and further to direct the respondents to provide entire monetary benefits as provided to other persons who were absorbed and regularized in view of BP(F.B)44/2007, dated 6.9.2007.

For Petitioner

:Mr.S.M.Anantha Murugan

For Respondents

:Mr.Ananda Gopalan



ORDER

This Writ Petition has been filed seeking issuance of a Writ of Mandamus to quash the second respondent's proceedings in Letter No. 033487/153 /G.65/G.652/2014, dated 19.4.2014 as illegal and further to direct the respondents 1 to 3 to provide employment to the Petitioner according to the Petitioner's educational qualification in pursuance of the Corporation's notification BP(F.B)44/2007, dated 6.9.2007 and promote the Petitioner from the date of his initial appointment as per BP(F.B)44/2007, dated 6.9.2007 and further to direct the respondents to provide entire monetary benefits as provided to other persons who were absorbed and regularized in view of BP(F.B)44/2007, dated 6.9.2007.

2.The learned counsel for the Petitioner submitted that the Petitioner has completed SSLC in the year 1995 at Muslims Higher Secondary School at Sivakasi and completed ITI in the trade of Electrician in the year 1997 and that the Petitioner has completed all his education only through Government aided institutions. On 5.3.1997, the Petitioner joined the service as Mazdoor in the respondents Corporation on contract basis and the duty is to dig pit and taking the electric polls to various places for the purpose of erecting the same. The Petitioner has rendered his service to the respondents Corporation till 27.6.2007 and the persons like that of the Petitioner having the same educational qualification should have been appointed as Helper cum Meter Reader. So also the Petitioner is also entitled to be posted in the same post. Further the Junior Engineer, Ist Grade, Sub-Station, TNEB Sivakasi has issued a Certificate that the Petitioner has rendered his service to the respondents Corporation between 5.3.1997 and 27.6.2007 on contract basis, as Labour. While-so, the Chief Engineer of respondents/Corporation had issued a Circular(Per) BP(FB)No.44, Administrative Branch, dated 6.9.2007 stating that the Superintending Engineers of the Corporation should prepare a list of persons in their respective circles who are working as Labourers on contract basis and the same was also prepared by the concerned official and the respondents Corporation has proposed to absorb 6000 contract labourers w.e.f. 15.09.2007 and such labourers are being already identified in the year 1998 itself. Further, it is mentioned that the contract labours with ITI Qualification would be appointed as Helper cum Meter Reader in the time scale of pay of Rs.3050-5070 applicable to Helpers and they shall do the field works and also do the work of Meter Reading and other assessment works according to the necessity arises as and when.

3.It was further submitted that in the list prepared by the Superintending Engineer, Virudhunagar Circle, the name of the Petitioner was found in S.No.336 and also mentioning that the Petitioner was appointed as contract Labour on 1998. As per the

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



above list, the petitioner ought to have been absorbed and appointed in the post of Helper cum Meter Reader. But it has not been done so. In pursuance with the corporation proceeding in B.P (Ch)44, dated 6.9.2007 the Petitioner represented before the Superintending Engineer that he has not been absorbed in the post of Helper cum Meter Reader though his name was found in S.No.336. On such representation, the said officer prepared a list of omitted persons in which the Petitioner's name found place in S.No.7. However, the respondents have failed to provide employment to the Petitioner without considering his eligibility and seniority.

4.That apart, in the year 2013, the third respondent had requested the District Employment Office, Virudhunagar to sponsor eligible persons to be appointed as Helper. Since the Petitioner is already employed in the said office, he was not in a position to go for the said interview. Hence the Petitioner requested the second respondent to appoint and regularize him in the post of Helper cum Meter Reader by following B.P(FB) No.44(Admn.Branch), dated 6.9.2007 and provide promotion along with monetary benefits as provided to others who were appointed by following B.P(FB) No.44 (Admn.Branch), dated 6.9.2007.Since the same was not considered, the Petitioner has come forward with the present Writ Petition for the relief stated supra.

5.A counter affidavit has been filed by the respondents stating that the Petitioner's claim is based on the B.P(FB) No.44, dated 6.9.2007 and there is a delay of eight years in filing this Writ Petition and if the Petitioner is really interested for appointment as per the above Board proceedings, he could not have waited for the last eight years. Therefore the Writ Petition is liable to be dismissed on the ground of laches, at the first instance. The Petitioner was given appointment on 21.11.2012 and now he cannot claim absorption in terms of B.P(FB) No.44 of 2007 dated 6.9.2007. In the year 2012, the Petitioner alone was not absorbed but thousands of persons including that of the Petitioner has been absorbed and that they have given an undertaking that they were accepting the appointment in terms of Board proceedings No.22, dated 25.10.2012. Hence the Petitioner is not entitled to be absorbed as per B.P(FB) No.44 of 2007, dated 6.9.2007. Further the Petitioner is entitled to the benefits in terms of B.P.No.44 of 2007, dated 6.9.2007 and whether he should have been absorbed in the year 2008 instead of 2012 would depend upon various factual aspects and those aspects cannot be gone into a Writ jurisdiction under Article 226 of the Constitution of India. It is further stated that the Petitioner, in any event, is not entitled to be appointed and absorbed and made permanent in terms of B.P(FB) No.44 of 2007, dated 6.9.2007. Further a Committee of Officers was formed in each circle and on 8.8.1998 they identified 8500 persons who were paid with ex-gratia upto 2003 and out of these 8500 persons, 2500 have been absorbed and appointed as Mazdoor Grade-II(Trainee)in the year



2005. Further the Petitioner worked as Contract Labour with a Contractor, his engagement is intermittent and has not completed 480 days in 24 months or 240 days in 12 calendar months. Further the Petitioner has also averred that averments in Paragraph Nos. 4 to 14 are put to strict proof with regard to their genuineness and that all those averments are incorrect and prayed for dismissal of the Writ Petition.

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

7. A perusal of the above pleadings would show that the Petitioner has completed his S.S.L.C. Education at Muslim Higher Secondary School at Sivakasi and joined ITI Course in the trade of Electrician in the year 1997. On 5.3.1997 the Petitioner joined in the respondents Electricity Corporation as Mazdoor on contract basis, for digging bit and taking the electric polls for the purpose of erecting the same. It is further submitted that the Petitioner ought to have been provided with an employment, as he has completed ITI Course in the trade of electrician while considering him for absorption and appointment on permanent basis. Moreover, the Junior Engineer Grade-I, Sub Station TNEB, Sivakasi also issued a certificate that the Petitioner has rendered his service to the respondents from 5.3.1997 to 27.6.2007. Further the Chief Engineer of respondents Corporation had issued a circular in B.P(FB) No.44, Administrative Branch, dated 6.9.2007 to prepare a list of persons, who are working as Labours on contract basis, who are to be absorbed and appointed on permanent basis. According to the said Circular the respondents Corporation has proposed to absorb 6000 persons out of 8500 persons as mentioned in the above list w.e.f. 15.09.2007 and they were already identified during the year 1998. From the very same circular, it is seen in para 6(i)(b) that Superintending Engineer/Personal has mentioned that contract Labourer with ITI qualification in the trades in the service Regulation of the Board would be appointed as Helper cum Meter Reader in the time scale of pay of Rs.3050/- - Rs.5070/- applicable to Helpers and such persons shall do the field works and also do the work of Meter Reading and assessment works according to the necessity as and when it has arisen. The learned counsel for the Petitioner has submitted that he was identified in the year 1998 itself as per the list prepared by the Superintending Engineers of the respondents Corporation. But his name was left out in the said list and he was continuing to work as contract Labourer till 2012. There is yet another Board proceedings in BP(Ch)9, Administrative Branch, dated 9.1.2008 in consonance with the earlier proceedings in B.P(Ch)44, Administrative Branch, dated 6.9.2007, as per which, the persons selected from the contract Labourers who were working on consolidated basis should appear before the Selection Committee and the Committee should select the persons eligible for absorption from among the contract labourers. The learned counsel for the



Petitioner submitted that his name found place in S.No.336 in the said list and he should have been appointed as per the original list itself. The Junior Engineer Grade-I, Sub-Station TNEB, Sivakasi also issued a Certificate that the Petitioner has rendered in the respondent Corporation from 5.3.1997 to 27.6.2007, on contract basis. The Petitioner was under the fond hope that he would have been selected and absorbed on permanent basis. But to his dismay he was not selected. While so, the third respondent requested the District Employment Office, Virudhunagar to sponsor eligible persons to appoint them as Helpers and the third respondent has also informed the Petitioner to participate in the interview proposed to be held on 11.11.2013. But since he has already been working from 2012, he was not interested in the said post and he has also not accepted the said call from the third respondent. The Petitioner also reported before the third respondent and informed that he was appointed as Mazdoor Trainee and subsequently on 23.1.2014 he was regularized. He also informed the third respondent that he joined the respondents Corporation on 5.3.1997 on contract basis and has put in 15 years of service. Further he should have been appointed in the year 2007 itself as per the Board proceedings in B.P(FB) NO.44(Admn. Branch), dated 6.9.2007. Since the Petitioner has been absorbed only in the year 2012, his promotional aspects were negatived by the respondents/Corporation. On 9.4.2014, the Petitioner submitted a representation to the respondents requesting them to regularize the services of the Petitioner as per the above Board proceedings. The Petitioner also requested the second respondent to appoint and regularize him as Helper cum Meter Reader by following B.P.(FB) No.44, (Admin.Branch), dated 6.9.2007 and provide him appropriate post. The second respondent rejected his claim stating that since the Petitioner was appointed as Mazdoor and regularized as Mazdoor on 23.1.2014, he cannot be regularised as Helper cum Meter Reader. Though the Petitioner has completed S.S.L.C and ITI and put in 15 years of service he ought to have been appointed as Helper cum Meter Reader. However, others have been appointed as Helper without any qualification. But no proof has been produced before to show that those persons have been appointed as Mazdoor without any qualification.

8. On going through (Per) B.P(F.B)No.44, dated 6/9/2007 found in page No.11 of the typed-set of papers, it is seen as follows:

''4. The Board has identified the contract Labourers on 8.8.1998, who have been engaged on need basis for five years or more as on 31.3.1997. As per this identification, about 8500 contract labourers are paid ex-gratia from 1997-10998 till 2005-2006. Out of these 8500 contract labourers, 2500 contract labourers were already absorbed as Mazdoors Grade-II(Trainee) on consolidated payment of Rs.2500/- per month for a period of two years as per B.P third and fourth read above.



Committee of Officers to be deputed from Headquarters to various circles.

4) The Committee will be asked to submit its report before 23.10.2007.

5) Based on the report of the Committee, the circle wise list of contract labourers with reference to date of entry will be arrived at, and 6000 contract labourers will be appointed as TCLs with effect from 1.12.2007 for a period of one year and then they will be absorbed as Mazdoor in the scale of pay with effect from 1.12.2008

6) Consequent on absorption of 6000 temporary casual labourers as Mazdoors on 1.12.2008 the next 6000 contract Labourers shall be appointed as temporary casual Labourers with effect from 1.12.2008.

7) The remaining about 3600 Contract labourers will be engaged on daily wages with effect from 1.12.2008 and they will be appointed as Temporary Casual Labourers on daily wages with effect from 1.12.2009 for a period of one year and then considered for appointment as Mazdoor.

8) The TCLs as well as the Contract Labourers identified by the Committee will be given photo identity card. Attendance Register will be maintained for TCLs and Contract Labourers in each Section.

9) The Temporary Casual Labourers as well as the Contract Labourers will be covered by Contributory Pension Scheme w.e.f. 1.12.2007.

10) The Temporary Casual Labourers will be paid wages of Rs.70/- on the days of their working and they will be provided job for a minimum period of 20 days in a month.

11) The Contract Labourers will also be paid daily wages of Rs.70/- on the day of their working and they will be engaged on need basis.

9) Accordingly, the Tamil Nadu Electricity Board hereby directs the following:

1) The Contract Labourers already identified during 1998 by the Committee consisting of Officers of the Board not exceeding 6000 Nos. shall be absorbed into Board's service immediately in the following manner:

(a) The Contract Labourers with S.S.L.C and higher academic qualification shall be appointed as Assessors Grade-II in the Helper time scale of pay of Rs.3050-5070, who will do the Meter Reading and Assessment Works for full months.

(b) The Contract Labourers with ITI qualification in the Trades specified in the Service Regulations of the Board and those with Diploma qualification shall be appointed as Helper cum Meter Reader in the time scale of



pay of Helpers. They will do the field work and also, according to need, the Meter Reading and Assessment works.''

Subsequently, it is also seen from Page 49 of the typed-set of papers, a list has been provided by the Superintending Engineer, Virudhunagar, the Petitioner has he has been identified to be eligible for payment of ex-gratia. It is further seen that for the period from 2005-2006, the Petitioner is eligible to draw ex-gratia Vide Boards Order, dated 25.1.2007.

9.Only from 2007, the Petitioner was eligible for getting ex-gratia and from the documents produced by the learned counsel for the respondents, it is seen that the Petitioner is selected for payment of ex-gratia only in the year 2007-2008 and the persons who have got ex-gratia earlier to this petitioner, were absorbed and appointed as per the original list as per B.P(F.B)No.44, dated 6/9/2007.The Petitioner's case was considered in Page No.53 of the typed-set of papers in Memo No.012267/G.582/2010-8, dated 25.10.2012 as per which,the Superintending Engineers are directed to identify the contract labourers who have been engaged on need basis at Rs.120/- vide references (1 and (2) cited above and also who have received ex-gratia for the year 2010-2011. Accordingly, this Petitioner was also considered and the Superintending Engineers were also informed as:

''4. The Superintending Engineers are requested to obtain an application along with the undertaking from the Contract Labourers in the format enclosed in quadruplicate and 1 copy of the same has to be retained in the Division Office/Central Office/Region Office and 1 copy should be forwarded to this Office in spiral binding.

5.The Superintending Engineers are informed that the Contract Labourers who satisfy the following conditions alone should be served the orders of absorption as Mazdoor(Trainee):

a)The Contract Labourers should have been engaged as per the Memo, cited in reference (1) and (2) above.

b)The Contractors' Labourers should have reported to the Section Office regularly and should have received ex-gratia for the year 2010-2011.

c)The TCLs who have been engaged as per the orders of the Chief Engineer/personnel, based on Court Orders as per Annexure enclosed.

6.....

7.....

8.The Superintending Engineers are requested to send the copy of absorption orders issued to the Contract Labourers as Mazdoor(Trainee) along with the statement showing the number of Contract Labourers absorbed Section wise in the compact Disc(CD) to this Office in duplicate



along with a copy to the Regional Chief Engineer through a Special Messenger not later than 20.11.2012.''

10. The learned counsel for the respondents has denied all the averments of the Petitioner and it is seen from the said application of the Petitioner herein that from 1997 onwards, he was working on daily wages but in the said list he was found in S.No.336. It is the list prepared only by the Superintending Engineer and not by the Board. The learned counsel further submitted that as per the B.P (F.B)No.44, dated 6/9/2007, 6000 people have been absorbed on regular basis and the said persons were given appointment as per the qualification and the remaining persons were later absorbed as Per B.P(FB)No.22, dated 25.10.2012. As per the said order all the persons who have been left out could not have been left out and also a policy decision was taken by the Government that the persons who have been working for a long time in the said Corporation and decided that a settlement can be entered into between the labourers and the Government and as per the said settlement under Section 18 (1) of the ID Act, 1947, signed by the Unions on 10.8.2007. The settlement was converted into a settlement under Section 12(3) of the Industrial Disputes Act, 1947 and signed before the Commissioner of Labour on 10.8.2007 by the representatives of the Board and the Unions representing the workmen of Tamil Nadu Electricity Board and contract Labourers.

'1)The Tamil Nadu Electricity Board has absorbed 21.600 contract Labourers in a phased manner as per the 12(3) settlement. A settlement under Section 18(1) of the ID Act, 1947, which was signed with the Unions on 10.8.2007 was converted into a settlement under Section 12(3) of the ID Act, 1947 before the Commissioner of Labour on 10.8.2007 by the representatives of the Board and the Unions representing the workmen of TNEB and Contract Labourers.

2)After that, the Board (now TANGEDCO) after careful consideration decided and constituted a committee vide B.P second read above to examine the cases of Contract Labourers who were worked continuously and not covered in the 12(3) Settlement. Accordingly, orders have been issued vide Memos third and forth as read above to continue to engage the Contract Labourers who have worked continuously on need basis on daily wages. The Superintending Engineers in their orders have also will not confer upon them, any right for absorption etc and the decision of the COMMITTEE IN THEIR CASES WILL BE FINAL.

3)The details of 4,037 contract Labourers who were engaged on daily wages and received ex-gratia vide B.P fifth read above as duly furnished by the Superintending



Committee and the Committee has recommended that their cases may be placed before the Board for taking a decision.

4) In addition to the above, 236 temporary Casual Labourers who were engaged as per the Honourable High Court's orders in various circles were also put up to the Board for approval.

5) After careful consideration and taking into the financial condition of the Board, it has been directed in the 27th Meeting of the TANGEDCO held on 20.07.2012 as follows:

a) The Board directed to ensure that no more Contract Labourers are directly employed by TANGEDCO/TANTR/TANTRANSCO in the field after the absorption of the above and further directed to obtain certificate from the circle Superintending Engineers/appropriate authorities to strictly observe the same.

b) Engagement of Contract Labourers directly by TANGEDCO shall be strictly prohibited in future and should be monitored continuously. Accordingly, the Board also directed that a Certificate from all the above Superintending Engineers of the Electricity Distribution Circles shall be obtained every month stating that no contract Labourers have been engaged.

c) A consolidated wages of Rs.3,100/- may be fixed for first year, Rs.3200/- for second year and Rs.4000/- may be fixed for the third year.

6) In view of the above directions, it is hereby ordered as follows:

(a) The 4,037 contract Labourers in the circle wise list and 236 temporary casual labourers as furnished in the Annexure enclosed herewith based on the reports of the Superintending Engineers concerned will be appointed as Mazdoor (Trainee) for a period of three years on consolidated wages subject to their identity after verification.

(b) The consolidated wages for the first year is Rs.3,100/- for the second year is Rs.3200/- and for the third year is Rs.4000/-

(c) The orders of appointment be issued separately after verification and identity of the 4,037 contract labourers by the Superintending Engineers concerned.

(d) The 4,273 posts of Mazdoor (Trainee) shall be created for absorption of Contract Labourers/Temporary Casual Labourers.

(e) The Contract Labourers/Temporary Casual Labourers absorbed as Mazdoor (Trainee) as per these proceedings shall not make any claim whatsoever in future



by virtue of their engagement as Contract Labourers in the post.''

11.As per the said order passed, it is only based on the 12(3) Settlement. It is made clear that 4037 contract labourers engaged in contract Labour and receiving ex-gratia, were recommended to be absorbed as Mazdoor Trainee in the respondents Corporation for a period of three years on consolidated pay. Accordingly, this Petitioner was also absorbed in the year 2012 and was given regularization in the year 2014.

12.The learned counsel for the respondents also pointed out that the Petitioner has also given an undertaking as per 12(3) Settlement and as per the settlement, it is clear that the Petitioner has agreed that he will be working as Mazdoor for three years on consolidated pay from 25.10.2012 and that he will not ask for EPF and also withdrawn the case filed by him. He has further given an under taking that after being regularized he will not claim any right over the said period and claim any money as salary for the said period while he was working earlier as contract labourer. As per the settlement, it is clear that the Petitioner and other persons who are similarly left out in the original list have been absorbed in a phased manner. Accordingly Government took a policy decision to appoint them as Mazdoor Trainee for a period of three years which was accepted by the Petitioner. Therefore now the Petitioner cannot come and canvass a different case before this Court that he should have been appointed in a suitable post as per his educational qualification. If one person is granted the relief and appointed him in a suitable post according to his educational qualification, then most of the persons who are similarly placed as that of the Petitioner will also rush to this Court and this will lead to chaos in the administration of the respondents Corporation. Moreover, the Petitioner has been absorbed in the year 2012 and has been regularised in the year 2014 and as such the prayer now sought for by the Petitioner, cannot be granted accordingly the Writ Petition fails and deserves dismissal.

13.In the result, the Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1.The Chairman,
TANGEDCO,
No.144, Anna Salai,
Chennai- 600 002.

2.The Chief Engineer,
TANGEDCO,
No.144, Anna Salai,
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3.The Superintending Engineer,
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Virudhunagar Distribution Circle,
Virudhunagar - 626001.

4.The Executive Engineer,
TANGEDCO,
Sivakasi - 626 123,
Virudhunagar District.

+1 CC to Mr.P.MALINI, Advocate (SR-11158[F] dated 11/03/2020)

ORDER MADE IN
W.P(MD)No.14153 of 2015
11.03.2020

VB(08.05.2020) 12P 6C