

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.NO.10150 OF 2018
AND W.M.P.NO.12093 OF 2018

The Superintending Engineer,
Vellore Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited,
Gandhi Nagar, Vellore - 6. ... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Vellore, Vellore District.
2. G.Annamalai ... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in C.P.No.80 of 2016 and quash its order dated 29.04.2017.

For Petitioner : Mr.G.Anand Gopalan
for M/s.T.S.Gopalan & Co.,

For 2nd Respondent : Mr.S.T.Varadarajulu

O R D E R

The Writ Petition has been filed by the Tamil Nadu Generation and Distribution Corporation Limited challenging the order passed in the Claim Petition filed by the second respondent.

2.The second respondent was appointed as a Casual Labour on 24.12.1986 in the SIPCOT RCC Yard of the petitioner / Electricity Board. On completion of 480 days in 24 calender months, the second respondent requested the petitioner / Board to regularize his services as Helper. However, his request was not considered. Therefore, the second respondent filed a petition under Section 3 of the Tamil Nadu Industrial Establishment (Permanent Status to Workmen) Act, 1981, before

the Inspector of Labour, Vellore, seeking permanency. The Inspector of Labour, Vellore, vide order dated 21.01.2002, directed the petitioner / Board to regularize the services of the second respondent in the post of Helper from the date of completion of 480 days viz., from 01.03.1988 and the name of the second respondent was found in Sl.No.34 of the order passed by the Inspector of Labour . On the basis of the order passed by the Inspector of Labour, Vellore, the second respondent, filed a Claim Petition Under Section 33 C(2) of the Industrial Disputes Act, 1947, before the first respondent / Principal Labour Court, Vellore, claiming difference in wages and the same was allowed on 29.04.2017 in C.P.No.80 of 2016. Challenging the order passed in the Claim Petition, the petitioner / Board has filed the present writ petition.

3. According to the learned counsel for the petitioner, the order passed by the Labour Officer conferring permanent status cannot be insisted upon by the second respondent and he is not entitled to file a Claim Petition by-passing the order passed by the Higher Fora. Further, the issue is no longer res integra. It is covered by the order of the Division Bench of this Court in W.A.No.1302 of 2003 and batch, which is followed in W.P.Nos.358 of 2018 and batch, W.P.No.38265 of 2006, W.P.No.15174 of 2008 and W.P.No.6480 of 2006. In W.A.No.1302 of 2003, the Division Bench held as under:

"24. Under the circumstances, we are convinced that the settlement entered into by the board with workmen and union is valid and enforceable. We, however qualify the same that it shall be subordinated only to the extent that the claims of ITI trained workmen that the regulation demands for the post of helpers are not discarded.

25. We therefore, direct that persons who ought to have been taken in employment against vacancies that were directed to be filled up by the Supreme Court pursuant to Khalid Commission's Report shall first be filled up before other vacancies are undertaken to be filled up. The writ petitions challenging the 18 (1) settlement will stand dismissed, except to the extent mentioned in paras 23 and 24 above. Age relaxation, wherever necessary to accommodate them shall be given. Similarly, the writ petitions challenging the board proceedings 36 and 37 of the Administrative Branch dated 29. 10. 2005 will also stand dismissed. The claims of persons before the Labour Inspectors which have been allowed and

who have come before this court seeking for issue of mandamus for enforcement will now be considered under the 18 (1) settlement. The writ petitions filed by the Electricity Board challenging the orders of the Labour Inspectors will now be dismissed as infructuous having regard to the 18 (1) settlement. The appeals filed by the board against the decision of the learned single will also stand dismissed. The claims of the workmen in W.P. No. 1033 of 2006 and the connected batch will not stand affected by the decision of this court and the Labour Court will decide in their claims in ID No. 106 of 2003 in the light of what we have observed, in so far as they are relevant and independently of the same on factual issues whether they have been directly employed by the Electricity Board or not. The writ petitions and writ appeals are disposed of accordingly. No costs."

4. Per contra, the learned counsel for the second respondent would contend that the second respondent was not given an opportunity to put forth his contention that he worked for 480 days continuously in 24 calendar months and that he is entitled to get an absorption into the employment under the petitioner / Board.

5. In similar circumstances, this Court in W.P.No.6480 of 2006 dated 24.04.2019, has observed as under:-

"13. Nevertheless, in view of the Settlement, which was held to be binding and enforceable by an order of the Division Bench of this Court, and the board proceedings issued pursuant thereto, this Court is of the view that the ends of justice would be served if Respondents 4 to 14 herein are permitted to submit fresh representations to the Petitioner herein, along with necessary documents in support thereof, within three weeks from the date of receipt of a copy of this order. Upon receipt thereof, the Petitioner is directed to consider the representations, on merits, after providing adequate opportunity to the persons making representations, and decide the same by a speaking order to be issued within three months of the receipt of the respective representations in consonance with the Settlement, the Order dated 24.10.2008 of the Division Bench in W.A.No.1302 of 2001 and

relevant board proceedings. If the representations of Respondents 4 to 14 are considered and disposed of in the manner indicated above, it would not be necessary to give effect to the order of the Labour Inspector."

The present case on hand is also similar to that of the respondent Nos.4 to 14, in the above said Writ Petition, who are Casual Labourers of the petitioner/Board.

6.Considering the facts and circumstances of the case, this Court is inclined to set aside the order passed by the first respondent, with the following directions:-

(i)The impugned order dated 29.04.2017 passed in C.P.No.80 of 2016 by the first respondent is set aside.

(ii)The second respondent is permitted to submit a fresh representation to the petitioner herein along with necessary documents in support thereof within a period of three weeks from the date of receipt of a copy of this order.

(iii)Upon receipt of such documents, the petitioner is directed to consider the representation, on merits and in accordance with law, after providing adequate opportunity to the second respondent and decide the same by a speaking order, to be issued within a period of three months from the date of receipt of respective representation, in consonance with the Settlement order dated 24.10.2008, passed by the Division Bench of this Court in W.A.No.1302 of 2001 and relevant Court proceedings.

7.The Writ Petition is disposed of with the above observation and direction. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

asi/tk

To

1.The Presiding Officer,
Labour Court,
Vellore, Vellore District.

2. The Superintending Engineer,
Vellore Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited,
Gandhi Nagar, Vellore - 6.

+1 CC to Mr.T.S. Gopalan & Co, sr 447

+1 CC to Mr.S.T.Varadarajulu, Advocate sr 218.

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SP(03/02/2021)



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