



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Writ Appeal Nos.2072, 2073, 2074, 2075, 2076, 2077,
2079, 2081 and 2082 of 2021 and
CMP.Nos.13116,13117,13119,13126,
13134,13147,13156,13160 and 13165 of 2021

1. The Chief Engineer (Personnel),
Tamilnadu Electricity Board,
800 Anna Salai,
Chennai 600 002.
2. The Chief Engineer,
North Chennai Thermal Power Station,
Chennai 600 120.
3. The Superintending Engineer (P&A)
North Chennai Thermal Power Station-I,
Chennai 600 120. ... Appellants in all Writ Appeals

vs.

- | | |
|----------------------|--------------------------------------|
| 1. L.Chandran | ...Respondent in W.A.No.2072 of 2021 |
| 2. E.Subramani | ...Respondent in W.A.No.2073 of 2021 |
| 3. T.M.Srinivasan | ...Respondent in W.A.No.2074 of 2021 |
| 4. R.Selvaraj | ...Respondent in W.A.No.2075 of 2021 |
| 5. J.Yuvaraj | ...Respondent in W.A.No.2076 of 2021 |
| 6. R.Santhanam | ...Respondent in W.A.No.2077 of 2021 |
| 7. S.Sekar | ...Respondent in W.A.No.2079 of 2021 |
| 8. P.Dakshinamoorthy | ...Respondent in W.A.No.2081 of 2021 |
| 9. G.Balu | ...Respondent in W.A.No.2082 of 2021 |

Writ Appeals filed under Clause 15 of Letters Patent against the common order dated 30.08.2018 passed by this Court in W.P.Nos.36575 to 36580 of 2004 and W.P.Nos.1213 to 1215 of 2005.

Prayer:-

W.P.Nos.36575 to 36580 of 2004 and W.P.Nos.1213 to 1215 of 2005.

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified



Mandamus to call for the entire records made in the impugned order in Letter No.042264/G.58G.581/2004-6 dated 27/11/2004 passed by the first respondent confirming the order of the Second respondent in Letter No. 5148,5143,5151,5144,5145,5150,5146,5142,5147/Ni.pe.3/Niu.1/Ko.Ka ttu/2004 dated 19.7.2004 respectively and quash the same and direct the respondents to absorb the petitioner as regular helper with effect from 27.10.1999 with all monetary and consequential benefits.

For Appellants in all W.As. : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.

For Respondent in all W.As. : Mr.S.N.Ravichandran

C O M M O N J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Challenging the common order dated 30.08.2018 passed by the learned Single Judge in W.P.Nos.36574 to 36580 of 2004 and W.P.Nos.1213 to 1215 of 2005, Tamil Nadu Electricity Board has come up with the above Writ Appeals.

2. Respondents in the above Writ Appeals are the Writ Petitioners. Before the learned Single Judge, Writ Petitioners challenged the impugned order dated 27.11.2004 passed by the 1st Respondent therein, confirming the order dated 19.07.2004 passed by the 2nd Respondent therein, and for a consequential direction to the Respondents therein to absorb them as Regular Helpers w.e.f. 27.10.1999 with all monetary and consequential benefits.

3. It is seen that, by a common order dated 23.11.2009, the learned Single Judge allowed the above Writ Petitions, based on the judgment of the Division Bench of this Court in W.A.(MD) No.6 of 2009, by directing the Respondents therein to treat the Writ Petitioners as deemed to have been appointed as Helpers from 27.10.1999. However, in paragraph 6 of the order, the date of giving effect has been wrongly mentioned as 27.10.2009 instead of 27.10.1999. For better understanding, paragraph 6 of the said order dated 23.11.2009 is extracted hereunder:

"6. Mr.V.Prakash, the learned counsel for the Petitioner also produced a judgment of this Court. While allowing the Writ Petition No.7509 of 2002, filed by the similarly placed persons, this Court directed the Petitioner therein, deemed to have been appointed as helper under the Board with effect from 27.10.1999. The learned



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Senior Counsel also represented that the order was passed in a similar circumstance of the case and the benefit given in Writ Petition No.7509 of 2002 may also be extended to the Petitioner, as the Petitioner shall be deemed to have been appointed as Helper under the Board with effect from 27.10.2009."

4. Thereafter, above Writ Petitions were listed for clarification at the instance of the Writ Petitioners. Before the learned Single Judge, learned counsel for the Electricity Board contended that, even though the original order was passed in the year 2009, Writ Petitioners have approached the Court seeking clarification, belatedly. While so, learned counsel for the Writ Petitioners contended that, it is only a typographical error made by the Registry and therefore, right of the Writ Petitioners should not be infringed. According to the learned counsel, when the deemed date of appointment in respect of other similarly placed persons has been taken as 27.10.1999, if the date of appointment in the case of the Writ Petitioners is taken as 27.10.2009, then they would lose their pensionary benefits.

5. Taking into consideration the fact that, the above Writ Petitions were allowed by this Court based on the judgment rendered in W.A.(MD) No.6 of 2009, and that, similarly placed persons have obtained pensionary benefits, the learned Single Judge, by a common order dated 30.08.2018 in the above Writ Petitions, directed the Respondents therein to grant pensionary benefits and continuity of service to the Writ Petitioners, deeming their date of appointment as 27.10.1999. Challenging the said order of clarification passed by the learned Single Judge, Electricity Board has come up with the above Appeals.

6. Today, when the matter is taken for hearing, learned counsel for the Appellants/Electricity Board, contended that, the learned Single Judge ought not to have modified the order dated 23.11.2009 passed in the above Writ Petitions, by an order dated 30.08.2018, after a lapse of nearly nine years, that too, based on the verbal submissions of the learned counsel for the Writ Petitioners. He went on to contend that, when the Writ Petitioners have acquiesced to the position that, they were entitled for appointment only in terms of the order dated 23.11.2009, they cannot seek extension of benefits retrospectively.

7. Learned counsel for the Appellants/Electricity Board referred to a First Bench decision of this Court dated 19.12.2002 rendered in W.P.No.4149 of 2001 batch, which relate to the disciplinary proceedings initiated against the employees, who were appointed pursuant to the Award of Mr.Justice Khalid

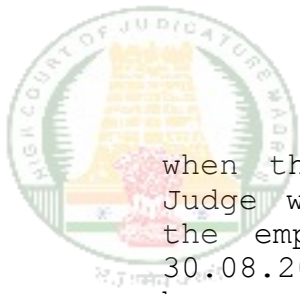


Commission. In the said order, reference was made to the order passed by the Tamil Nadu Electricity Board as regards production of bogus Certificates for qualification/age by the contract labourers absorbed as Helpers. The Board held that, the punishment of removal/dismissal from service imposed by the Superintending Engineers for production of bogus Certificates for qualification/age by contract labourers absorbed as Helpers shall be cancelled and in such cases, the punishment of dismissal and removal imposed will be modified to that of reduction of pay to the minimum of the time scale of pay of the post held on the date of issuance of the order for a period of three years which will operate for future increments.

8. It is further contended by the learned counsel for the Appellants/Board that, the Superintending Engineer of the Electricity Board, VadaChennai Anal Min Nilayam, Chennai vide individual communication dated 19.07.2004 to the Writ Petitioners, has stated that, their request for absorption as Helpers in the Board cannot be countenanced, as, on verification, they were found to have produced bogus School Certificates. Hence, according to the learned counsel, when it has been found that, the Writ Petitioners produced bogus School Certificates, they ought not to have been absorbed as Helpers vide proceedings dated 19.07.2011. He also pointed out that, the employees concerned in the above Writ Appeals are not a part of the Khalid Commission dispute.

9. Citing reference to the proceedings dated 22.04.1999 of the Appellant/Electricity Board, learned counsel for the Appellants further stated that, the Board decided to absorb contract labourers working in all the four Thermal Stations as on 05.01.1998, as there will be no contract labour system from 01.05.1999. As per the Board's proceedings, Contract labourers who were on rolls on 30.04.1999 and who had completed 480 days of service in a period of 24 calendar months also would be regularized/absorbed. According to the learned counsel, Respondents herein will not come under the said category.

10. Learned counsel appearing for the Respondents/Writ Petitioners submitted that, all the Respondents herein have completed 480 days of continuous service in 24 calendar months, as early as in January 1998, and they were on the rolls on 30.04.1999. He went on to state that, the Electricity Board has issued Identity Cards to the Respondents/Writ Petitioners and it is incorrect on the part of the Appellant/Electricity Board to contend that, the Respondents/Writ Petitioners are not on the rolls. He further stated that, the Respondents/Writ Petitioners were on rolls between 01.05.1999 and 27.10.1999 and they have been disengaged from the services of the Appellant/Board on the ground of production of bogus School Certificates. However,



when the order dated 23.11.2009 passed by the learned Single Judge was questioned as regards the date of regularization of the employees, the learned Single Judge, vide order dated 30.08.2018 passed an order clarifying that, the employees shall be regularized w.e.f. 27.09.1999 and not from 27.09.2009, as it is only a typographical error.

11. According to the learned counsel appearing for the Respondents/Writ Petitioners, the learned Single Judge has not postponed the date of regularization to 27.10.2009 and on the request made by the Writ Petitioners, the learned Single Judge has clarified that, the relief has to be extended w.e.f. 27.09.1999, as it is only a typographical error. He went to state that, based on the order dated 23.11.2009, the Appellant/Board passed an order dated 19.07.2011 absorbing the Writ Petitioners as Helpers in the Board. It is his contention that, there is no bar in seeking clarification from the learned Single Judge as regards the year of regularization, which should be 1999 instead of 2009, as the learned Single Judge is well within the powers to correct a typographical error at any point of time and hence, sought for dismissal of the Writ Appeals.

12. In reply, learned counsel for the Appellant/Board submitted that, the Respondents/Writ Petitioners were not on the rolls for a period of two years between 1999 and 2009 and reiterated that, the Writ Petitioners are not among the employees concerned under the Khalid Commission. When the employees have produced bogus School Certificates to the employer, which is found to be fake at a later point of time, they will not be entitled to any benefit. Further, taking note of the original order dated 23.11.2009 passed by the learned Single Judge and the proceedings dated 19.07.2011 granting relief to the Writ Petitioners on par with other similarly placed employees, the concession given to the Respondents/Writ Petitioners cannot be demanded as a matter of right.

13. Heard the learned counsel on either side and perused the material documents available on record.

14. It is not in dispute that, Respondents/Writ Petitioners were employed as contract labourers in the Appellant/Electricity Board. As and when it came to light that, the School Certificates produced by them were fake, their services have been disengaged. Though, it has been contended by the Appellants/Electricity Board that, Respondents/Writ Petitioners did not complete 480 days of continuous service in a period of 24 calendar months and they were not on rolls after 01.05.1999, this Court is not inclined to go into the said aspect, as, pursuant to the original order dated 23.11.2009 passed by this Court in the Writ Petitions, proceedings dated 19.07.2011 have



been issued by the Appellant/Electricity Board, absorbing the Respondents herein in service.

15. Knowing well that, there is a typographical error in the original order dated 23.11.2009, it is not correct on the part of the Writ Petitioners to knock at the doors of this Court after a decade, seeking clarification on the same. However, the benefit of the retrospective date i.e. 27.10.1999 has to be given to the Respondents/Writ Petitioners, taking note of the fact that, there is a typographical error in the original order dated 23.11.2009 passed in the above Writ Petitions. In the original order dated 23.11.2009, the learned Single Judge has nowhere observed that, Writ Petitioners have sought the relief only from 27.10.1999 and it has been postponed to 27.10.2009. Hence, it is vivid that, the date mentioned in paragraph 6 of the order as '27.10.2009' is only a typographical error.

16. The contention of the learned counsel for the Appellants/Electricity Board that, typographical error cannot be corrected after a distant point of time, cannot be accepted. The Court is here to render justice and when there is a typographical error, moreso pertaining to date, the Court is empowered to correct the same, as powers of this Court are not curtailed and the learned Single Judge has not become functus officio.

17. We find force in the arguments of the learned counsel on either side. However, for the delay in seeking clarification, moreso during the pandemic situation, monetary benefits due to the Respondents/Writ Petitioners need to be curtailed.

18. Admittedly, Respondents/Writ Petitioners are in employment as per the Board's proceedings in B.P.Nos.16 and 17, dated 28.04.1999. While the entire period of service rendered by the Respondents/Writ Petitioners from 27.10.1999 will have to be taken into account for the purpose of continuity of service and eligibility of pension, as they were not in employment during the period of 12 years from 1999 to 2011, the said period has to be ignored by the Appellants/Electricity Board while arriving at the calculation for extending terminal benefits alone. However, for the purpose of granting gratuity, the said period will have to be taken into account, as if, they have rendered sufficient service.

19. Except for the above modification, we make it clear that, no other monetary benefits will be extended to the Respondents/Writ Petitioners between 1999 and 2011.

20. Since it is represented that, two employees viz.



R.Thanikachalam and P.Dakshinamoorthy (Respondent in W.A.No.2081 of 2021) died, Appellants/Electricity Board is expected to settle the terminal benefits due to them, to their legal heirs, within a period of three months from the date of receipt of a copy of this judgment.

21. Taking note of the peculiar facts and circumstances of the case, as orders have been passed in favour of the Appellant/Electricity Board, this order cannot be treated as a precedent.

22. In fine, above Writ Appeals are disposed of with the above direction and observation. No costs. Consequently, C.M.P.Nos.13116, 13117, 13119, 13126, 13134, 13147, 13156, 13160, 13165 of 2021 are closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

(vm/aeb)

To

1. The Chief Engineer (Personnel),
Tamilnadu Electricity Board,
800 Anna Salai,
Chennai 600 002.
2. The Chief Engineer,
North Chennai Thermal Power Station,
Chennai 600 120.
3. The Superintending Engineer (P&A)
North Chennai Thermal Power Station-I,
Chennai 600 120.

+1cc to M/s.T.S.Gopalan & Co, Advocate, S.R.No.52300
+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.52367

Writ Appeal Nos.2072, 2073, 2074, 2075,
2076, 2077, 2079, 2081 and 2082 of 2021

SMI (CO)
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