



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)Nos.14205, 14206 of 2011, 2145 & 2146 of 2015
and
M.P. (MD)Nos.1,1 of 2011 and 1 and 1 of 2015

1.W.P(MD)No.14205 of 2011:-

1. The Assistant Engineer (Civil),
Tamil Nadu Electricity Board,
Tuticorin - 628 001.
2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Tuticorin Electricity Distribution Circle,
Kadarkarai Salai,
Tuticorin - 628 001. ... Petitioners

Vs.

- 1.B.Velmurugan
- 2.The Labour Court,
Tirunelveli. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records pertaining to the award passed by the second respondent in C.P.No.105 of 2003, dated 28.04.2010 and quash the same.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan

For Respondents : Mr.D.Saravanan for R-1

2.W.P(MD)No.14206 of 2011:-

1. The Assistant Engineer (Civil),
Tamil Nadu Electricity Board,
Tuticorin - 628 001.



2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Tuticorin Electricity Distribution Circle,
Kadarkarai Salai,
Tuticorin - 628 001.

... Petitioners

Vs.

1.A.Deivanayagam

2.The Labour Court,
Tirunelveli.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records pertaining to the award passed by the second respondent in C.P.No.104 of 2003, dated 28.04.2010 and quash the same.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan

For Respondents : Mr.D.Saravanan, for R-1

3.W.P(MD)No.2145 of 2015:-

(Old Address)

1. The Assistant Engineer (Civil),
TNEB Office, Thoothukudi,
Thoothukudi District - 628 001.
2. The Superintending Engineer,
TNEB Office,
Thoothukudi Distribution Division,
Thoothukudi District.

(Present Address)

1. The Assistant Engineer (Civil),
TNEB Office,
131 & 132 Etteyapuram Road,
Thoothukudi - 628 002,
Thoothukudi District.
2. The Superintending Engineer,
TNEB Office,
Thoothukudi Distribution Division,
131 & 132 Etteyapuram Road,
Thoothukudi - 628 002.

... Petitioners



Vs.

1. The Presiding Officer,
The Labour Court,
Tirunelveli.

2.A.Deivanayagam

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records pertaining to the award passed by the first respondent in E.P.No.23 of 2013, dated 21.01.2015 and quash the same.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan

For Respondents : Mr.D.Saravanan for R-2

4.W.P (MD) No.2146 of 2015:-

(Old Address)

1. The Assistant Engineer (Civil),
TNEB Office, Thoothukudi,
Thoothukudi District - 628 001.
2. The Superintending Engineer,
TNEB Office,
Thoothukudi Distribution Division,
Thoothukudi District.

(Present Address)

1. The Assistant Engineer (Civil),
TNEB Office,
131 & 132 Etteyapuram Road,
Thoothukudi - 628 002,
Thoothukudi District.
2. The Superintending Engineer,
TNEB Office,
Thoothukudi Distribution Division,
131 & 132 Etteyapuram Road,
Thoothukudi - 628 002.

... Petitioners

Vs.



1. The Presiding Officer,
The Labour Court,
Tirunelveli.

2.P.Velmurugan

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records pertaining to the award passed by the first respondent in E.P.No.24 of 2013, dated 21.01.2015 and quash the same.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan

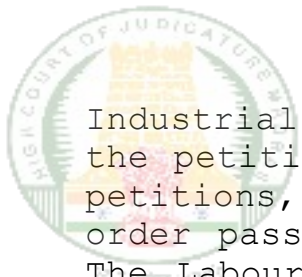
For Respondents : Mr.D.Saravanan for R-2

* * * * *

COMMON ORDER

Since a common issue is involved in all the above writ petitions, they are taken up together and disposed of by this common order.

2. The case of the petitioners is that the contesting respondents herein have filed claim petitions in C.P.Nos.104 and 105 of 2003, on the file of the second respondent Labour Court claiming wages on par with the other permanent workers at the rate of 950-20-1050-30-1500 prior to 1996 and at the rate of 3050-75-3950-80-4590 from 1996. They claimed the above salary from 01.07.1989 onwards. The contesting respondents laid the above claim on the basis that they have successfully completed 480 days service since they entered into service on 01.03.1998. They further claimed that they could have been made permanent in the petitioners Board as per the orders of Labour Inspector, dated 05.06.2003 in view of Section 3(1) of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981. Therefore, it was claimed by the contesting respondents that they are entitled for wages as claimed in claim petitions. The claim petitions were contested by the petitioners as well as the contesting respondents in the writ petitions. The Labour Court, after taking into consideration the rival contentions of the parties in the petitions, dismissed the claim petitions, by order dated 30.10.2009. The Labour Court observed that there were no award or settlement entitling the contesting respondents to claim monetary benefit and further it held that the contesting respondents in the writ petitions have no pre-existing right to claim the monetary benefit based on Section 33(c)(2) of the



Industrial Disputes Act. While so, the contesting respondents in the petitions having suffered the order of dismissal of the claim petitions, have filed interlocutory applications for reviewing the order passed by the Labour Court in I.A.Nos.214 and 215 of 2009. The Labour Court, without appreciating the defence raised by the petitioners' Electricity Board, without the power to review its own order, passed an order setting aside its earlier order and allowed the claim petitions, by acting as an Appellate Court, vide order dated 28.04.2010. Against the said award, the petitioners filed W.P. (MD)Nos.14205 and 14206 of 2011.

3. Pursuant to the said award, the contesting respondents in both petitions filed E.P.Nos.23 and 24 of 2013 and the same were allowed by the Labour Court, without considering the writ petitions pending before this Court. Against the said order, the petitioners have filed W.P.(MD)Nos.2145 and 2146 of 2015.

4. Learned Counsel appearing for the petitioners submit that the Industrial Tribunal is a creature of statute and it has no powers except those conferred by the statute either expressly or by necessary implication and when a very provision of law is available, the Labour Court is not entitled to entertain any review application to review its own order and that issue was settled before this Court in the case of ***The Management of Kammavar Achukudam Ltd., Coimbatore and Others Vs. The Industrial Tribunal, High Court Buildings, Madras*** and another reported in **72 L.W. 332** and further it was also settled before the Honourable Supreme Court in the case of ***Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd., & Anr. (2005 (13) SCC 777)***. Therefore, the order of the Labour Court reviewing its own order in the Execution Petitions is necessarily be interfered with by this Court. Accordingly, the learned Counsel for the petitioners pray for appropriate orders.

5. Learned Counsel appearing for the contesting respondents submit that if erroneous order is passed, without considering the subsistence of the case, the Labour Court enjoys the ancillary power and inherent power to review its own order and the said issue stands settled by the Honourable Supreme Court in ***Grindlays Bank Ltd., Vs. The Central Government Industrial Tribunal & Ors. (1980 (0) SCC 517)***. Hence, the learned Counsel appearing for the contesting respondents pray for dismissal of the writ petitions.

6. Heard the learned Counsel appearing for the petitioners and the learned Counsel appearing for the contesting respondents and perused the materials placed on record.



7. The core issue that arises for consideration in the present case is:-

"Whether the Tribunal has powers to review its own order, which was already decided against the contesting respondents."

8. The facts in the present case are not in dispute. Admittedly, the first respondent filed claim petitions under Section 33(c)(2) of the Industrial Disputes Act on the ground that they have pre-existing right for conferment of permanent status on completion of 480 days service, as per the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981. It is the stand of the first respondent that even after completion of 480 days service, they were not given permanent status on the sole ground that they filed claim petitions earlier. However, It is not in dispute that earlier the claim petitions were rejected by the Labour Court vide order dated 30.10.2009. Thereafter the contesting respondent filed review applications in I.A.Nos.214 and 215 of 2009 in C.P.Nos.104 and 105 of 2003 and the said interlocutory applications and the claim petitions were taken up together and the Labour Court reviewed its earlier order and allowed the claim petitions filed in C.P.Nos.104 and 105 of 2003, vide order dated 28.04.2010.

9. The above order is assailed on the ground that the Labour Court is not clothed with power to review its earlier order. Admittedly, there is no express provision available under the Industrial Disputes Act providing the Labour Court to review its order. That being the case, without there being any express provision under the Act, which would give the Labour Court power to review its order, entertaining of the interlocutory application for reviewing its earlier order is wholly impermissible and unsustainable and is beyond the jurisdiction of the Labour Court.

10. Similar issue has already been considered by this Court in the case of ***the Management of Kammavar Achukudam Ltd., Coimbatore and Others Vs. The Industrial Tribunal, High Court Buildings, Madras & Anr. (72 L.W. 332)***, which view has been endorsed by the Honourable Supreme Court in ***Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd., & Anr. (2005 (13) SCC 777)***. In the aforesaid decisions, both this Court and the Hon'ble Supreme Court have held that so long as the recall or review is on procedural aspect, the same may be permitted, but where the review or recall is on merits, the Labour Court neither has authority nor jurisdiction to entertain and pass orders on such a review. Further, it was held therein that in the absence of any provision under the Act conferring power on the Tribunal, either expressly or impliedly, such a review was not permissible.



11. Though learned counsel for the contesting respondents has pressed into service the decision in *Grindlays Bank case (supra)*, however, the said decision would not be applicable to the facts of the present case, as the review, which has been dealt with in the said case relates to recall or review of an order passed by the Labour Court relating to procedural aspects and not in respect of reconsidering the issue on merits.

12. In the case on hand, it is evident from the records that though the Labour Court had initially dismissed the petitions filed by the contesting respondents herein, however, in the interlocutory applications filed, the Labour Court had traversed the path of appreciating the merits of the case once over, which petitions had already attained finality and allowed the review in favour of the petitioners in the claim petitions, which is nothing but reappreciating the case in review and adjudicating the same on merits. The said act of the Labour Court is wholly impermissible and deplorable and the Labour Court, not clothed with authority and jurisdiction and in the absence of any provision under the statute, the order passed by the Labour Court in review is *per se* unsustainable and deserves to be interfered with.

13. For the reasons aforesaid, the order passed by the Labour Court in C.P. Nos.104 and 105 of 2003, dated 28.04.2010 and the consequential order passed in E.P. Nos.23 and 24 of 2013, dated 21.01.2015 are set aside and the writ petitions are allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SSL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



WP(MD)Nos.14205, 14206 of 2011, 2145 & 2146 of 2015

To

The Labour Court,
Tirunelveli.

WEB COPY

+1 CC to M/s.T.S.GOPALAN, Advocate (SR-12340[F] dated
19/03/2021)

+4 CC to M/s.D.SARAVANAN, Advocate (SR-12404 TO 12407[F] dated
19/03/2021)

W.P(MD)Nos.14205, 14206 of 2011,
2145 & 2146 of 2015
18.03.2021

VB(03/06/2021) 8P / 7C