



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2021

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI**

**W.A.[MD]No.1153 of 2021
and
C.M.P.[MD]No.4966 of 2021**

1.B.Nagarajan
2.R.Mangalanathan
3.S.Sathiyendran
4.J.Jaiganesh Kumar
5.S.Karthikeyan

... Appellants 1 to 5/Respondents 3 to 7

Vs.

1.M/s. Valuthur Gas Turbine Power Station,
Represented by its Superintending Engineer,
Mr.R.Kamaraj,
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO) Perungulam Post,
Valantharavai,
Ramanathapuram - 623 536.

2.The Joint Director of Industrial Safety and Health
Competent Authority,
Under the Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workmen) Act, 1981,
Office of the Factories,
Thallakulam, Madurai.

3.R.Senthil Kumar ... Respondents 2&3 /Respondents 1&2

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act,
praying to set aside the order in W.P.[MD]No.2641 of 2014 dated
02.07.2019.

Prayer in WP(MD) . 2641/ 2014 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue awrit of
Certiorari to quash the order of the Respondents for records relating to the impugned order cum



direction of the first respondent in his file reference no.E/1797/I/2013 dated 2.12.2013 and quash the order of the 1st respondent and such other appropriate directions and grant such other remedy and relief to this petitioner.

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For Appellants : Mr.G.Mohan Kumar

For Respondent No.1 : Mr.Anand Gopalan

JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

Heard Mr.G.Mohan Kumar, learned Counsel appearing for the appellants and Mr.Anand Gopalan, learned Counsel appearing for the first respondent.

2.This Writ Appeal has been filed by the appellants 2 to 7 in W.P.[MD]No.2641 of 2014 dated 02.07.2019. The first respondent is a wholly owned power station of the Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO). The order which was impugned in the writ petition was passed by the second respondent, who is the competent authority under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 ['the Act', for brevity]. By the said order dated 02.12.2013, the second respondent allowed the applications filed by the appellants and held that all the appellants are entitled to permanency. After rendering such a finding, the second respondent proceeded to determine the effective date from which the appellants are entitled to permanency. It was noted by the second respondent that all the appellants had worked for more than 480 days in a continuous period of 24 calendar months and after noting the details, the authority directed conferment of permanent status of all the appellants with effect from the date of issue of his order ie., 02.12.2013.

3.The first respondent challenged the said order by filing a writ petition, contending that the authority failed to take note of the preliminary counter statement, wherein they sought for a direction to produce proof to claim that the appellants were under a direct employment under the first respondent organisation. As long as the said employer employee relationship is not established, the question of claiming permanency would not arise. Certain factual issues were also raised in the writ petition. Further, it was contended that if the appellants have any grievance about their method of engagement through their contractors, the second respondent ought to have directed them to raise a dispute for adjudication by impleading the proper and necessary persons.



4. In the writ petition, the appellants did not file counter affidavit, but, it appears that they reiterated the conclusion arrived at by the second respondent in the order impugned in the writ petition dated 02.12.2013, contending that the same was passed after undertaking examination of the facts. The learned Writ Court opined that if permanency is to be granted, it will affect the administration of the TANGEDCO. The learned Writ Court had referred to a decision of the Hon'ble Division Bench in W.A.[MD]No.1302 of 2003, etc., batch dated 24.10.2008, which appears to be a factually different case pertaining to the claim of certain workmen based on the report of the Hon'ble Justice Khalid Commission. Therefore, in our view, the said decision would have no application to the facts and circumstances of the case.

5. The observations contained in paragraph Nos.7 to 9 are matters pertaining as to how public employment should be in a transparent manner and ensure equal opportunity to all. Further, there is also an observation to the effect that the 12 (3) settlement entered into between the Board and the Union are binding between the parties and they are to follow the same for the purpose of granting the benefit of permanent status to the contract labourers who have served for more than 480 days. We find, this observation also does not have any specific reference to the case of the appellants which was considered and decided in their favour by the second respondent.

6. Ultimately, the Court disposed of the writ petition and we find that the Court has neither validated the order passed by the second respondent nor interfered with the order passed by the second respondent. However, the appellants / writ petitioners were granted liberty to submit fresh representations, setting out the facts in detail and the competent authority was directed to consider that representation. In our considered view, the Writ Petition filed by the respondent / TANGEDCO was challenging the correctness of the order passed by the second respondent who was the competent authority under the Act, who has adjudicated the claim of the appellants and granted permanency. Therefore, it would be necessary to decide as to whether the said order suffers from any error or illegality warranting interference. In our considered view, the writ petition needs to be re-heard and decided afresh. That apart, the appellants are also required to file counter affidavit in the matter and place any documents for consideration before the second respondent authority.

7. Accordingly, the Writ Appeal is allowed, setting aside the order dated 02.07.2019 and the writ petition is restored to the file of this Court and the Registry is directed to list the Writ Petition before the Hon'ble Court dealing with the said roster, preferably during the week commencing 16.08.2021. It is open to the appellants to file counter affidavit in the writ petition. However, there shall



be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

MR

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.

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The Section Officer,
Writ Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.MOHANKUMAR, Advocate (SR-22843[F] dated 16/07/2021)

+1 CC to M/s.T.S.GOPALAN & CO P.MALINI, Advocate (SR-23053[F] dated 19/07/2021)

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