



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE M. S. RAMESH

W.P. (MD) No.20021 of 2020

and

W.M.P (MD) No.16678 of 2021

WEB COPY

A.Kavitha

...Petitioner

Vs

1.Tamil Nadu Generation and Distribution Corporation,
Rep by its Chairman cum Managing Director,
TANGEDCO,
144, Anna Salai,
Chennai-02.

2.The Chief Engineer (Personnel),
TANGEDCO,
144, Anna Salai,
Chennai-02.

3.The Chief Engineer,
O/o. the Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin,
Tuticorin District-4.

4.The Superintending Engineer,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin,
Tuticorin District-4.

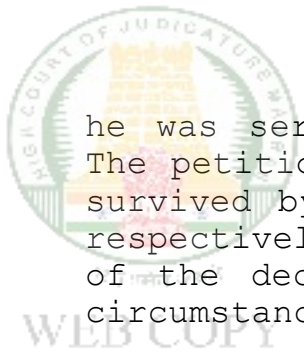
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter No.0561/014/NiPi.3(2)/Ko. Neethimandram/2017-6 dated 21.09.2020 on the file of the third respondent and quash the same as illegal and consequently direct the respondents No.1 to 3 to provide appointment to the petitioner on Compassionate Grounds in a suitable post.

For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.T.Sakthikumaran
Standing Counsel

O R D E R

The petitioner herein seeks appointment on compassionate ground. According to the petitioner, her husband was a Bonafide Contract Labour, who died in a fatal accident on 16.10.2016, while



he was serving at Tuticorin Thermal Power Station V unit boiler. The petitioner, who is the widow of the Contract Labourer, was also survived by three minor children aged about 17 , 14 and 12 years respectively. The averments in the counter indicate that the family of the deceased employee was and continues to be in distressed circumstances and also belong to a socially depressed class.

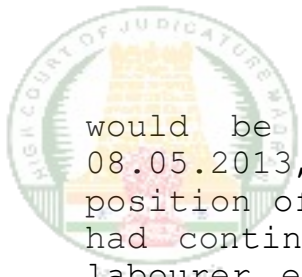
2.The petitioner herein had made applications to the second respondent herein on 05.12.2016, 22.12.2016 and 10.06.2020, seeking for compassionate appointment to the legal heir of her husband and by an order dated 21.09.2020, issued by the second respondent herein, the petitioner's claim was rejected on the ground that her husband was not a Bonafide Contract Labourer. The rejection order is put under challenge in the present writ petition.

3.It is not in dispute that the legal heirs of the Bonafide Contract Labourer would be entitled for compassionate appointment. The proceedings of the respondents in FB.TANGEDCO Proceedings No.12, dated 08.05.2013, enable such compassionate appointment on certain conditions. One among the conditions is that the proposal for compassionate appointment to the legal heirs of the Bonafide Contract Labourer, who happened to die in a fatal electrical accident and who would have been absorbed as a permanent employee if had continued in service, would be eligible to seek for such appointment.

4.The status of the petitioner's late husband is not disputed. The impugned order seems to suggest that the petitioner's husband was not identified as a Bonafide Contract Labourer.

5.The term Bonafide Contract Labourer has not been defined under the regulation of the respondents. It is possibly for this reason that the Board Proceedings No.12, dated 08.05.2013, gives a meaning to the term by describing such persons as those who, in view of their long service as Contract Labourer, would have been absorbed as permanent employees, had they continued in service as Contract Labourer.

6.The counter affidavit filed by the respondents indicate that the petitioner's husband was engaged as a labourer under a registered contractor, namely, M/s.Brinda Engineering Construction, Tuticorin. The counter affidavit, though admits that the petitioner was engaged under the registered Contractor of TANGEDCO, makes a reference that the petitioner's husband was not a Bonafide Contract Labourer and does not give any further particulars as to why he was not treated as a Bonafide Contract Labourer, particularly, when M/s.Brinda Engineering Construction, Tuticorin, was admitted to be a registered contractor under TANGEDCO. As such, the only criteria which requires to be considered for the purpose of determining as to whether the contract Labourer is bonafide or not,



would be in accordance with Board Proceedings No.12, dated 08.05.2013, which states that such an employee should be in the position of capable of being absorbed as a permanent employee, if he had continued in service. It is needless to point out that the labourer engaged by M/s.Brinda Engineering Construction, who is a registered contractor, is deemed to be bonafidely engaged in contract work in view of the recognition of M/s.Brinda Engineering Construction as a principal contractor. It would also be appropriate to mention that if the deceased contract labourer was actively engaged in contract employment at the time of his death, the respondent Board should draw an inference that such employee's services would have been retained continuously by his employer.

7.In view of the fact that the respondents had not taken into consideration the deceased employee's length of service and the criteria for regularizing the employment of Contract Labourer, which is the requirement under FB.TANGEDCO Proceedings No.12, dated 08.05.2013, it would be appropriate to direct the respondents to reconsider the petitioner's husband's case by taking into account his length of service and his possibility of being absorbed as a permanent employee, had he continued as a contract Labourer.

8.In the light of the above observation, the impugned order passed by the third respondent in Letter No.0561/014/NiPi.3(2)/Ko. Neethimandram/2017-6, dated 21.09.2020, is set aside and the matter is remanded back to the third respondent herein for fresh consideration. The third respondent shall reconsider the petitioner's application dated 10.06.2020, in the light of the above observation made and by taking into account the petitioner's husband engagement as a Contract Labourer and the possibility of he being absorbed as a permanent employee, if he had continued in the services as a Contract Labourer and pass appropriate orders, at least, within a period of twelve weeks from the date of receipt of a copy of this order.

9.This Writ Petition is Ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

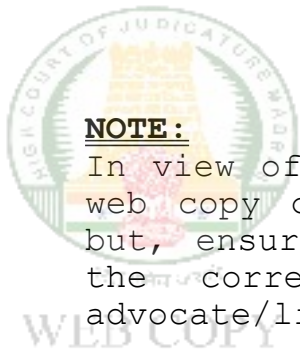
Sd/-

Assistant Registrar (CSIII)

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Sub Assistant Registrar(CS)



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.

To:-

The Chief Engineer,
O/o. the Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin,
Tuticorin District-4.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-13498[F] dated 25/03/2021)

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-13638[F] dated 25/03/2021)

W.P. (MD) No.20021 of 2020
24.03.2021

SR(CO)
KB(11.05.2021) 4P 4C