



Writ Petition No.10773 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.09.2022

DELIVERED ON : 31.10.2022

CORAM:

THE HON'BLE MR.JUSTICE K. KUMARESH BABU

Writ Petition No.10773 of 2011

S.Dharman

...Petitioner

VS

1.Tamil Nadu Electricity Board,
Rep by its Chief Engineer (Personnel)
No.144, Anna Salai,
Chennai 600 002

2.Superintending Engineer,
Tamil Nadu Electricity Board,
Tiruvannamalai Electricity Distribution Circle,
Tiruvannamalai.

3.Inspector of Labour,
Tiruvannamalai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, directing the respondents to implement the order of Inspector of Labour, Tiruvannamalai dated 12.06.2000 bearing Na.Ka.(A)3587/99 by absorbing the services of the employees whose names are mentioned in the annexure to the order in the post of Mazdoor from the date when they completed 480 days of continuous service within a period of



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24 calendar months in terms of section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981 pay them all benefits, continuity of service.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.Anand Gopalan for R1 & R2
for M/s.T.S.Gopalan & Co.

: Mr.C.Selvaraj for R3
Additional Government Pleader

ORDER

This instant Writ Petition has been filed seeking for a direction to direct the respondents to implement the order passed by the 3rd respondent dated 12.06.2000 by absorbing the services of the employees whose names are mentioned in the annexure to the said order in the post of Mazdoor from the date when they completed 480 days of continuous service within a period of 24 calendar months in terms of section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981 pay them all benefits, continuity of service.

2.Heard Mr.Balan Haridas, learned counsel appearing for the petitioner and Mr.Anand Gopalan, the learned counsel appearing for the 1st and 2nd respondents and perused the materials available on record before this Court.



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3.Mr.Balan Haridas, learned counsel appearing for the petitioner, would submit that the petitioner was termed as contract labourer, that they discharge the work under direct supervision and control of the respondent. The petitioner along with various other persons had approached the 3rd respondent seeking for conferment of permanent status. According to him, the 3rd respondent by order dated 12.06.2000 had passed orders directing conferment of permanent status to 61 persons whose name were listed in the annexure, the petitioner's name was in S.No.1 of the said annexure and therefore, he should be granted a permanent status. There were several other such orders passed by various Inspectors of Labour throughout the State of Tamil Nadu which were all challenged before this Court and the same were all rejected. The Board had filed intra Court appeals against the orders of the learned Single Judge pending the Writ Appeal, a settlement was arrived on under Section 12(3) of the Industrial Dispute Act, 1947 on 10.08.2007. Considering the same, the Division Bench of this Court had held that the Writ Appeals have become infructuous.

4.He further contended that the settlement entered under Section 12(3) of the Industrial Dispute Act will not over write the order of the Inspector of



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Labour which has not been disturbed in any manner by this Court. Hence, he submitted that there is no reason for the respondent Board to absorb all the employees covered under the order with effect from the date on when they have completed 480 days of continuous services within a period of 24 calender months and give them consequential benefits. In such circumstances, non implementation of the order of the 3rd respondent is wholly arbitrary and therefore, the respondent should be directed to implement the same.

5.Countering his arguments, Mr.Anand Gopalan, appearing on behalf of the respondents 1 and 2, submitted that the order passed in the cases of the petitioner and others by the 3rd respondent was challenged in W.P.No.6560 of 2003 which was dismissed on 19.12.2003. Being aggrieved against the same, the respondent preferred a Writ Appeal in W.A.No.2618 of 2004. The said Writ Appeal was also disposed of by a common order passed by the Division Bench of this Court by taking into consideration of the settlement arrived under Section 18(1) of the Industrial Dispute Act, 1947 on 10.08.2007. The Division Bench while disposing of the said batch of cases has held that the settlement entered into by the Board with the Workmen and the Union is valid and enforceable.



6.Considering the fact that the 18(1) settlement has been arrived on between the parties, the Division Bench of this Court had held that the claim of the persons before the Labour Inspectors' which have been allowed and who have come before this Court seeking for Mandamus for enforcement will now be considered under Section 18(1) of the Settlement. The Writ Petition filed by the Electricity Board challenging the order of the Labour Inspector will now be dismissed as infructuous having regard to the 18(1) settlement like that the appeal filed by the Board against the order of the learned Single Judge were also dismissed. Therefore, he would plead that the Mandamus as prayed for could not be granted as the order of the 3rd respondent has merged with the 18(1) settlement that have been arrived at by the Board with the Workmen and the Union. Hence, he prayed that this Court may decline the request of the petitioner to grant relief as prayed for.

7.Considered the rival submissions made by the learned counsels appearing on either side.

8.It is an admitted case that the 3rd respondent had passed orders on



12.06.2000 directing the conferment of permanent status to the petitioner and other persons who were shown in the annexure to the said order. It is also not in dispute that the Board has challenged the same before this Court in W.P.No.6560 of 2003. The Writ Petition has also been dismissed, against which the Board had preferred an intra court appeal. It is also not in dispute that the said intra court appeal was also a part of batch which was disposed of by the Division Bench in its judgment dated 24.10.2008. It would be relevant to extract the relevant para of the judgment of the Division Bench stated supra. For better appreciation, the said portion is extracted hereunder:

*"25. We therefore, direct that persons who ought to have been taken in employment against vacancies that were directed to be filled 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 a mandamus for enforcement will now be considered under the 18(1) settlement.** The writ petitions filed by the Electricity Board challenging the orders of*



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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 stands 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 on their claims in I.D. 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."

9.A perusal of the same would show that cases wherever the Mandamus was sought for by the workmen to implement the orders passed by the Inspector of Labour, the Division Bench of this Court had directed their claims to be considered based upon the 18(1) Settlement. The present Writ Petition is also seeking for a direction to implement the order passed by the 3rd respondent herein. The contentions of the Mr.Balan Haridas is that the order of the 3rd respondent, passed under Section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981 cannot be replaced by the settlement, in view of the non-obstante clause of Section 3(1) is out of context. A non-obstante clause in a provision would definitely override any previous law that was in force. Law would also



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include ordinance, order, bye law, rules, regulations, notification, custom or usage. In the present case, the settlement has been arrived at between the parties on 10.08.2007. Admittedly, the petitioner was issued with an order of conferment status in the year, 2000. After such orders were passed there was a settlement arrived at by the Board and the workmen and their Union. When being so, all the orders passed by the Inspector of Labour including the one that is sought to be implemented gets merged with the settlement arrived at between the interested persons and therefore, as rightly pointed out by Mr.Anand Gopalan, learned counsel appearing for the 1st and 2nd respondent, the order of the Inspector of Labour dated 12.06.2000 cannot be directed to be implemented. In view of the same, the Mandamus as prayed for cannot be granted. However, the claim of the petitioner can be considered in terms of the settlement arrived under Section 18(1) of the Industrial Dispute Act, 1947 dated 10.08.2007.

10.Accordingly, this Writ Petition stands disposed of. However, there shall be no order as to costs.

31.10.2022



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Index: Yes/no
Speaking/non-speaking
gba

To

- 1.The Chief Engineer (Personnel),
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No.144, Anna Salai,
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- 2.Superintending Engineer,
Tamil Nadu Electricity Board,
Tiruvannamalai Electricity Distribution Circle,
Tiruvannamalai.
- 3.Inspector of Labour,
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K.KUMARESH BABU, J.

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A Pre-delivery order in

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