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W.P.No.14099 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14099 of 2015

M.Sudhakar

...Petitioner

Vs

1.The Chief Engineer/Personnel,
Tamil Nadu Electricity Board,
NPKRR Maaligai, 8th Floor,
No.144, Anna Salai,
Chennai - 600 002.

2.The Superintending Engineer,
Generation Circle/Kundah,
Kundah Bridge Post,
The Nilgiris - 643 219.

...Respondents

PRAYER: Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in Lr.No.001284/Adm.III/A.1/F.Court Case/2015-1 dated 13.02.2015, quash the same and consequently direct the respondents to appoint the petitioner in Generation Circle/Kundah in Helper post.

For Petitioner : Mr.M.Vijayakumar

For Respondents : Mr.A.B.Venkatesh Prasath
for M/s.T.S.Gopalan & Co.



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ORDER

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The order of rejection dated 13.02.2015, rejecting the claim of the petitioner for permanent absorption, is under challenge in the present writ petition.

2. The petitioner states that he was engaged as a Contract Labourer in the respondent Tamil Nadu Electricity Board. The petitioner states that he served during the period from 02.05.1998 to 20.06.1999. The Board issued B.P.No.22, dated 14.05.1999 to absorb Contract Labourers in the sanctioned post in the time scale of pay. The Labour Unions made a representation for such permanent absorption of Contract Labourers. The petitioner states that he filed W.P.No.22677 of 2010 and this Court directed the respondents to consider the representation submitted by the petitioner on 09.08.2010 based on the earlier judgement passed in W.P.No.1454 of 2001.

3. The learned counsel for the petitioner made a submission that no enquiry was conducted with reference to the facts and circumstances of the case in a right perspective. The petitioner was not allowed to serve 480 days and he was discharged on the

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disciplinary grounds and, thereafter, no opportunity was granted to the petitioner to prove his innocence or otherwise. The respondents have not verified the documents properly and they have not conducted any enquiry, pursuant to the directions issued by this Court to consider the representation. It is contended that the High Court issued a direction to conduct enquiry and take a decision and no such enquiry was conducted in accordance with the procedures contemplated and therefore, the impugned order is liable to be set aside.

4. The learned counsel for the petitioner reiterated that the petitioner is now over aged and he worked as a Contract Labourer in one spell engaged by the Board directly and therefore, he is entitled to be absorbed in the sanctioned post on par with other employees, who were absorbed, pursuant to the board proceedings in B.P.No.22, dated 14.05.1999.

5. The learned counsel for the respondents objected the said contention by stating that the petitioner is not eligible for such permanent absorption, as he has not completed 480 days of Board's service, as contemplated in B.P.No.22. The case of the petitioner was



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considered based on the records and the Board found that the petitioner was not eligible for permanent absorption and therefore, the petitioner was not granted with the benefit of conferment of permanent status and permanent absorption.

6. The respondents have stated that the claim of the petitioner is that he was engaged as a Contract Labourer in Generation Circle/ Kundah between 02.05.1998 and 20.06.1999. The petitioner also claims that he was engaged directly and paid by the Board from 10.06.1999 to 20.06.1999 and therefore, he must be treated on par with the persons who were absorbed in the year 2001/2005.

7. The learned counsel for the respondents states that there was an enormous delay even in approaching the authorities by the petitioner. Even after the year 1999, the petitioner took 5 years to file the first writ petition. Thus, this writ petition is liable to be rejected on the ground of laches. It is further contended that regarding the disputed facts, the same cannot be adjudicated in a writ proceedings.

8. The learned counsel for the petitioner made a submission



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that there is no laches on the part of the petitioner, as the respondent-Board passed an order dated 26.08.2008 and thereafter, the petitioner approached the authorities seeking permanent absorption.

9. As per the claim of the petitioner, he had worked for 13 months, which was far less than 480 days as stipulated in B.P.No.22, dated 14.05.1999. Thus, the petitioner was not found eligible for inclusion of his name in the list prepared on 05.01.1998. As per the respondent-Board, the persons who have fulfilled the terms and conditions stipulated in B.P.No.22, were identified and they were absorbed subsequently on 29.01.2001 and on 05.08.2005. The crucial date was on 05.01.1998 and as on that date, the petitioner was not engaged as a Contract Labourer by the Board. Therefore, B.P.No.22 was not applicable to the petitioner and B.P.No.3, dated 29.01.2001 and B.P.No.14, dated 05.08.2005 would be applicable to decide whether Contract Labourers were eligible to be absorbed in the services of the respondents.

10. The order impugned stipulates that the case of the petitioner was examined with reference to his representation and along with the relevant records. As per the order of this Court dated



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04.12.2014 passed in W.P.No.31775 of 2014, the contract labourers have been engaged on need basis and there was no Contract Labour post in the Electricity Board. The petitioner was not engaged directly by the Board and he was engaged by a private contractor. The Board found that there was no material evidence to form an opinion that the petitioner had completed 480 days of service and therefore eligible for permanent absorption, as per the Board proceedings. The petitioner was not engaged prior to 05.01.1998, as per the records available in the Board, and therefore, he was not identified by the Selection Committee of the Board for absorption during the relevant point of time.

11. This Court is of the considered opinion that when several such disputed facts prevail between the parties, High Court cannot adjudicate such disputed facts in a writ proceeding under Article 226 of the Constitution of India.

12. In respect of the Contract Labourers, who claim permanent absorption or for conferment of permanent status, they have to exhaust the remedy available under the particular statute, more specifically, for adjudication of disputed facts with reference to the



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original documents and evidences. In the present case, the petitioner has approached this Court without exhausting the statutory remedies contemplated. At this juncture, the learned counsel for the petitioner states that the petitioner approached the Labour Officer. But, there is no award or otherwise which is placed before this Court.

13. The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure the processes through which a decision is taken by the competent authorities in consonance with the statutes and rules in force, but not a decision itself. Thus, a roving enquiry cannot be conducted in a writ proceeding, which requires a trial natured adjudication by the competent authorities. That exactly is the reason the Constitutional Courts are emphasizing the importance of exhausting the statutory remedies contemplated under various statutes. Only after the finding of facts by the original authority and appellate authority under the statutes, the High Court would be in a position to exercise its decision in a judicial review in an effective manner. Thus, the importance of exhausting such statutory remedies at no circumstances would be undermine. Exhausting a statutory remedy is the rule and the legislative intention is to exhaust such remedy as that will be of greater relief for the



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aggrieved persons. Approaching the High Court without exhausting the alternate remedy or an appellate remedy is only an exception.

Thus, High Court need not dispense with the alternate remedy or the appellate remedy in a routine manner, but only in exceptional cases where there is a gross injustice or the damage cannot be compensated. This being the principles to be followed, the petitioner no doubt has approached the competent authority. The competent authority has verified the documents that formed a opinion that the petitioner has not completed 480 days, which is admitted by the petitioner.

14. The learned counsel for the petitioner states that the petitioner was not permitted to serve for about 480 days and he was discharged on disciplinary grounds and thereafter, no opportunity was granted. However, the fact remains that the petitioner is not eligible, as per the Board proceedings, as he has not complied with the requisite terms and conditions for the benefit of permanent absorption.

15. This being the factum, this Court do not find any infirmity in respect of the reasons stated in the impugned order. Accordingly, the



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Writ Petition stands dismissed. No costs.

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Index:Yes
Internet:Yes
Speaking order
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