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W.P.No.31418 of 2005



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.09.2022

DELIVERED ON : 31.10.2022

CORAM:

THE HON'BLE MR.JUSTICE K. KUMARESH BABU

W.P.No.31418 of 2005

and W.P.M.P.No.34442 & 375 of 2005

and W.V.M.P.No.39 of 2009

The Superintending Engineer,
Hydro Generation Circle,
Tamil Nadu Electricity Board,
Erode.

... Petitioner

Vs

1.K.Mailsamy

2.The Presiding Officer,
Labour Court, Salem.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, to call for records of the 2nd respondent relating to its Awar dated 21.03.2005 passed in I.D.No.54 of 2003 and quash the same.

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

For Respondents : Mr.V.Ajoy Khose of R1

: R2 – Labour Court



ORDER

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The present Writ Petition has been filed challenging the Award of the Labour Court, Salem made in I.D.No.54 of 2003 dated 21.03.2005, wherein, the Award was passed directing the reinstatement of the 1st respondent within a period of 3 months with continuity of service from 01.01.2003 but without backwages and other attendant benefits.

2.Heard Mr.Anand Gopalan for M/s.T.S.Gopalan & Co, learned counsel appearing for the petitioner and Mr.V.Ajoy Khose, learned counsel appearing for the 1st respondent workmen. The appearance of the 2nd respondent is dispensed with as it is adjudicating authority.

3.The case of the petitioner is that the 1st respondent has been working as a contract labourer and pursuant to the decision of the Board to abolish the contract labour system, decided to absorb all the contract labourers who have been continuously working for a period of more than 480 days into the services of the Tamil Nadu Electricity Board on basis of the seniority and need basis. A condition was



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stipulated that such persons should not have any criminal cases against them. Accordingly, a list was prepared and the 1st respondent's name did not figure in the same as he was facing criminal proceedings, and therefore, he was not entitled for any absorption . However, the 1st respondent had approached the Labour Court with an application, claiming that the petitioner had refused employment from 17.06.1999 and that his non-employment was without following due process of law and therefore he should be reinstated into the services by way of absorption. The petitioner had duly contested the same by bringing it to the notice of the Labour Court that the petitioner was not entitled to be absorbed as the 1st respondent has been involved in a criminal case and he was disqualified based upon the Board proceedings which permitted the absorption of the contract labourers working during the relevant point of time.

4.He further contended, even though the Labour Court held that it cannot be said that the non-selection could not be said to have illegal had directed absorption of the workmen with continuity of service from 01.01.2003, but without backwages and without other benefits. He



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further contended that the Award of the Labour Court that the workmen, eventhough, entitled to be absorbed, ought not to have been stopped from doing any work which would amount to retrenchment and that on his acquittal from criminal case he should be absorbed. He would contend that such a finding is wholly uncalled for as the board proceedings itself was to do away with the contract labourers and bring them to regular stream of work by absorption. Hence, he sought inteference with the Award by the Labour Court.

5.Countering the arguments, Mr.V.Ajoy Khose, learned counsel appearing for the 1st respondent would vehemently contend that the work done by the workmen was perennial and therefore, even at that point of time, he would be entitled for absorption. There is no question of him being denied of any work. He would further place reliance of judgment of this Court in W.P.Nos.10738 and 10739 of 2010 and contended that in cases of similarly placed person who had also had the same issue of criminal case pending against them, in which they were acquitted, confirmed the Award, wherein, the workmen were directed to be absorbed. He further stated that the said order passed by the learned



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Single Judge was also confirmed in the Writ Appeal in W.A.Nos.190 and 191 of 2021. He therefore, prayed that the Award shall be confirmed and the Writ Petition is to be dismissed.

6.I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record before this Court.

7.It is an admitted case that the name of the workmen was not included in the list as there were pending criminal cases against him in which he was finally acquitted. I have also perused the judgments relied upon by Mr.V.Ajoy Khose, learned counsel appearing on behalf of the 1st respondent workmen. The issue in this case is squarely covered in the said judgment. A perusal of the judgment in Writ Appeal would reveal that the Board has also agreed to certain terms in which the contesting respondents therein were issued orders of appointment with effect from 05.08.2005, as given to other contract labourers and their seniority were also agreed upon by the Board. For better appreciation, the relevant paragraph of the judgment in Writ Appeal in W.A.Nos.190



& 191 of 2021 dated 05.08.2021 is extracted hereunder.

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“3. When the matter was taken up for hearing on the earlier occasion, the First Bench has suggested resolution of the dispute. The following major issues are accordingly agreed upon:-

(i) The appellant shall issue orders of appointment to contesting respondents with effect from 05.08.2005 as given to the other contract labourers. The said orders would be issued within a period of four weeks from the date of receipt of a copy of this judgment.

(ii) In terms of the Board proceedings No.14 dated 05.08.2005, 48 persons had been absorbed in the appellant Hydro Station and therefore, the contesting respondents would be treated as 49th and 50th persons and accordingly, fit in the appropriate post upon joining the duty.

(iii) The contesting respondents would be deemed to have worked from 05.08.2005 for



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the purpose of gratuity, pension and other terminal benefits as applicable. However, they are not entitled for any mandatory benefit till they join duty.

(iv) The 17B wages being the last drawn will have to be paid to the contesting respondents by the appellant from the date of dismissal of the writ petitions till the date of issuance of the appointment orders.

The above are the agreed terms. However, the dispute is with respect to the appointment as Foremen.”

8.I see no reasons as to why such an measure be applied to the facts of the present case. In view of the same, I direct the 1st respondent to be issued with an order of appointment on and from 05.08.2005, when contract labourers similar to that of the 1st respondent were given orders. He shall be placed in the seniority list at the last place of such persons who were appointed in terms of the Board proceedings No.14 dated 05.08.2005 and the 1st respondent will be deemed to have worked



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from 05.08.2005 for the purpose of gratuity, pension and other terminal benefits as applicable. However, he would not be entitled for monetary benefit. He would only be entitled for monetary benefits from the date on which he joined duty.

9.In view of the above, this Writ Petition is disposed of with the above terms and the petitioner is directed to issue orders of appointment within a period of four weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed

31.10.2022

Index: Yes/no
Speaking/non-speaking
gba

To

The Presiding Officer,
Labour Court, Salem.



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K. KUMARESH BABU, J.

gba

A Pre-delivery order in
W.P.No.31418 of 2005
and
W.P.M.P.No.34442 & 375 of 2005
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