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W.P.No. 33724 of 2015



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 33724 of 2015

The Assistant Engineer
Tamil Nadu Electricity Board,
No. 945, Thiruvettriur High Road,
Kaladipet, Chennai -19.

vs

.. Petitioner

1.The Presiding Officer,
I Additional Labour Court, Chennai.

2. S. Sathiya,

... Respondents

Prayer: Writ Petitions filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the first respondent dated 19.08.2014 of the learned I Additional Labour Court, Chennai in I.D.No. 851 of 2002, wherein the Labour Court had directed the Board to reinstate the second respondent into service with continuity of service from the date of termination dated 31.08.1997 and whilst rejecting the claim of back wages of the second respondent directed his petitioner to pay Rs. 3000/- as costs.

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

For Respondents : R1- Labour Court
Mr. R. Radha Pandian
for R2



ORDER

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The award dated 19.08.2014, passed in I.D.No. 851 of 2011, is under challenge in the present writ petition.

2. The petitioner is Tamil Nadu Electricity Board. The second respondent workman raising an industrial dispute under Section 2-A (2) of the Industrial Disputes Act with a prayer for reinstatement with backwages and continuity of services.

3. The Labour Court adjudicated the issues. The contention of the second respondent workman was that he was working as a contract labourer in the Tamil Nadu Electricity Board for about 9 years and the Assistant Engineer, Tamil Nadu electricity Board issued a service certificate to the second respondent workman and therefore he is entitled for permanent absorption by reinstating him in service.

4. The Labour Court accepted the service certificate issued by the Assistant Engineer, Tamil Nadu Electricity Board (Ex. W.2) and formed an opinion that the workman is an employee of the Tamil Nadu Electricity Board



and accordingly passed an award of reinstatement with backwages.

Challenging the award, the present writ petition is filed.

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5. The learned counsel for the writ petitioner made a submission that no doubt the second respondent workman was employed as a contract labourer and was performing the job in Tamil Nadu Electricity Board. However, the second respondent was neither appointed by the competent authorities of the electricity board nor terminated by any such authority. He was not an employee of the Tamil Nadu Electricity Board. He was engaged by a private contractor to execute certain works in the Tamil Nadu Electricity Board. Therefore, the reinstatement if at all to be ordered, it is to be against the contractor, who engaged the second respondent and not the Tamil Nadu Electricity Board.

6. The Tamil Nadu Electricity Board regularised the services of such contract labourer in a phased manner pursuant to the orders of the Hon'ble Supreme Court and the recommendation of the Justice Khalid Commission. Eligible contract labourers were permanently absorbed in a phased manner in a sanctioned post in the time scale of pay. Therefore, the second respondent if at all eligible under the Scheme of permanent absorption, he has to



approach the competent authorities with all relevant records. Mere issuance of service certificate by the Assistant Engineer of the Tamil Nadu Electricity Board would not confer any right on the second respondent to claim permanent absorption or regularisation.

7. Pertinently, the private contractor, who engaged the second respondent has not been impleaded as a respondent in the industrial dispute. Therefore, the Labour Court ought not to have directed the petitioner Tamil Nadu Electricity Board to reinstate the petitioner since the second respondent was not appointed by the Tamil Nadu Electricity Board in accordance with the recruitment rules in force.

8. Further, it is contended that the scope of dispute under Section 2 A of the Industrial Disputes Act is restricted only to see whether the dismissal, termination or retrenchment is just and valid. The scope of Section 2 A of the Industrial Disputes Act does not cover regularisation and permanent absorption and in the present case, the second respondent workman was not appointed by the Tamil Nadu Electricity Board and thus the 2 A petition against the Tamil Nadu Electricity Board is not maintainable.



9. The Labour Court found that the petitioner management had not filed any document to establish that the second respondent was a Contract Labourer and served in the Board.

10. The burden of proof cannot be shifted on the employer in such circumstance. The person who raised an industrial dispute has to establish a prima facie case that he was appointed by the employer concerned then alone the question of entertainability of the dispute would arise but not otherwise.

11. In the present case, the second respondent workman himself has stated in the petition that he was a contract labourer. While so, he was engaged by a private contractor while executing certain works in the Tamil Nadu Electricity Board pursuant to the agreement between the private contractor and the Tamil Nadu Electricity Board.

12. In such circumstances, the contract labourer engaged by the private contractor cannot be considered as an employee of the electricity board since no appointment order was issued to such contract labourers by the competent authorities of the Tamil Nadu Electricity Board in accordance with the recruitment rules applicable to the Board.

13. In the present case, the Labour court had erroneously considered



the principles of burden of proof and it is to be established by the workmen who approach the Labour Court at the first instance that he is an employee appointed/engaged by the employer. However, in the present case, the second respondent workman was engaged by a private contractor for execution of works in the Tamil Nadu Electricity Board. Therefore, he cannot be construed as an employee of the Tamil Nadu Electricity Board, more so, the private contractor engaged the second respondent who was not impleaded as a respondent in the industrial dispute and for all these, this Court finds that the award of the Labour Court is perverse and not in consonance with the established principles.

14. If at all the second respondent workman is eligible for permanent absorption based on the recommendations of Justice Khalid Commission, then he has to approach the competent authorities of the Electricity Board in the prescribed format and by submitting all relevant documents.

15. In view of the facts and circumstances, the award of the Labour



Court dated 19.08.2014 passed in ID No. 851 of 2001 is quashed and the writ petition stands allowed.

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Index : Yes / No

Speaking order / Non-Speaking order

To

1. The Presiding Officer,
I Additional Labour Court, Chennai.
2. I Additional Labour Court,
Chennai

S.M.SUBRAMANIAM, J.



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