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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.01.2022

PRONOUNCED ON : 10.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.26204 of 2016

1.A.Valarmani

2.A.Bose

3.N.Sadiyan

4.C.Irudyaraj

5.R.Elumalai

6.K.Chittarasu

7.E.Murugan

8.K.Sivakumar

9.G.Guna

10.B.Jagadeesan

... Petitioners

Vs.

1.The Tamil Nadu Generation &
Distribution Company Ltd.,
rep. by Managing Director,
Anna Salai, Chennai-600 002.

2.The Superintendent Engineer,
Purchase & Administrative
North Chennai Thermal Power Station,
Chennai-600 120.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents in connection with the communication bearing Ref No.431/Mo.Po/ko(&) Nir/Mu.Ni.Ni.Aa/Ni.Pi.3/Ni.Vu.2/Ko.Va.Na.28536/15/2016 dated 09.06.2016 and to quash the same and direct the respondents



herein to treat the petitioners as having been made permanent with effect from 01.04.1995 and pay them all the consequent back wages and grant them further promotions reversing their seniority.

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For Petitioners: Mr.V.Prakash, Sr. Counsel
for Mr. K.Sudalaikannu

For Respondents: Mr.Anand Gopalan
for M/s.T.S.Gopalan

O R D E R

Heard the learned counsel for the parties.

2.1. All the petitioners herein, who were earlier engaged on contract basis in North Chennai Thermal Power Station, were conferred with a permanent status by the Deputy Chief Inspector of Factories, through an order dated 16.10.1998 passed in Petition No.2729 of 1998, whereby TANGEDCO was directed to confer permanent status to them with effect from 01.04.1995, on which date they have completed 480 days of continuous service in 24 calendar months.

2.2. While the Management had prepared a list of contract labourers for the benefit of absorption, the names of these petitioners were left out, owing to which they had filed Writ Petition in W.P.No.17941 of 1999 and by an order dated 23.07.2004, the Management was called upon to pass orders in favour of these petitioners, based on the Authority's Order dated 16.10.1998. The Writ Appeal filed against these orders in W.A.No.275 of 2005, was dismissed on 16.02.2007, through a detailed order. The further appeal filed before the Hon'ble Supreme Court in SLA (Civil) No.14175 - 14176 of 2007, was also dismissed.

2.3. In this background, the Management had issued appointment orders to the petitioners as Helpers with effect from 24.12.2009. Subsequently, when these petitioners had preferred a Writ Petition in W.P.No.28536 of 2015, seeking for regularization from 01.04.1995, in accordance with the order of the Authority dated 16.10.1998, this Court had directed the Management to pass orders on the request of the petitioners, through an order dated 10.09.2015. Based on these directions, the impugned order dated 09.06.2016, came to be passed stating that the petitioners are entitled for absorption only with effect from 24.12.2009 and not from 01.04.1995. Aggrieved against the same, the present Writ Petition has been filed.



3. Mr. V.Prakash, learned Senior counsel for the petitioners submitted that once an order is passed by the Authority under Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 [hereinafter referred to as "Conferment of Permanent Status Act"] and when such an order has become final, the Management is bound to comply with the same and confer permanent status with effect from 01.04.1995, as ordered therein. It is his further contention that the reasons assigned in the impugned order cannot be sustained or canvased before this Court, since all these grounds were already raised and rejected by the High Court, as well as the Hon'ble Supreme Court and therefore hit by the principles of res judicata.

4. Per contra, Mr. Anand Gopalan, learned counsel for the first respondent-Management submitted that all these petitioners were disengaged in the year 1997 itself and therefore no relief can be granted after 1997. It is his submission that the Management had issued (Per) B.P. (FB) No.17 dated 28.04.1999, ordering for absorption of contract labourers in four Thermal Power Stations, including North Chennai Power Station, with effect from 01.05.1999 and therefore the petitioners also can be granted permanency from 01.05.1999, but without back wages.

5. I have given careful consideration to the submissions made by the respective counsels.

6. Section 3(1) of the Act confers a right to any workman, who is in continuous service for a period of 480 days, within 24 calendar months in an industrial establishment, to claim permanency. The provision starts with a non obstante clause by excluding any law that may provide or hold any other mode of conferment of permanent status. Undisputedly, the term "any law" in Section 3(1) would include any Board Proceedings (BP)/ Government Orders/ Circulars / Instructions, MoUs or any other Service Rules. This proposition has been affirmed and ratified in various decisions of this Court.

7. In A.Palanivel and two others Vs. Tamil Nadu Khadi and Village Industries Board, rep. by the Chief Executive Officer, Kuralagam, Madras-2 and another reported in 1998 Writ L.R. 271, it was held as follows:-

"... A workman who has put in continuous service of 480 days in a period of 24 calendar months should be conferred the permanent status in the Establishment. The Act provides that period of interruption in service due to sickness or authorized leave or accident or a legal strike, lockout, lay-off effected under Standing



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Orders or under an agreement, etc., should be included in computing the days on which the workman has worked in the establishment. If during a period of twenty-four calendar months, for a period which does not exceed three months, a worker is not employed or discharged and in his place during such period a substitute is employed, such period should also be computed as days on which the workman has worked. Power is conferred on the State Government to apply the provisions of this Act, by Notification, to any industrial establishment employing such number of workmen less than fifty as may be specified in the Notification. Inspectors appointed under the Act have power to require any employer to supply or send any return or true copy of document or information relating to the provisions of the Act."

8. Likewise, in the case of The Tamil Nadu Civil Supplies Corporation Modern Rice Mill Engineering Section Employees Union, rep. by its Secretary, Sundarakottai Vs. The Tamil Nadu Civil Supplies Corporation, rep. by its Managing Director, Madras-2 & another reported in 1998 Writ L.R. 514, it was held that the workman, who have completed 480 days in 24 calendar months would be entitled for permanency status and that Section 3(1) of the Act would prevail over any law. While holding so, this Court had held that the Government Orders that deviates from the mandate under Section 3(1), is illegal and unlawful. The following are the extracts of such a proposition:-

"11. Section 3(1), being a non obstante provision, it prevails over any law for the time being in force which includes any service rules, Government orders or Government instructions. Therefore, want of sanctioned posts as required under General Service Rules cannot take away the rights conferred under Section 3(1) of the Act. Similarly, Government orders which require that the appointment should be made only through Employment Exchange also cannot be a ground to refuse the right provided under Section 3(1) of the Act of the petitioners (sic.) if they comply with the requirements prescribed under Section 3(1). Therefore, it is not open for the respondent to take shelter under any other law in force much less any Government Orders, Government instructions to deny the benefits conferred under Section 3(1) of the Act, to the petitioners if they satisfy the conditions prescribed,



therein, irrespective of the fact whether there are irrespective of the availability of sanctioned posts or sponsorship from Employment Exchange."

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9. A similar view has been taken by a learned Single Judge of this Court in the case of Management Tamil Nadu State Transport Corporation (Madurai) Ltd., Vs. Labour Inspector and another reported in 2020 (2) LLJ 130 in the following manner:-

"21. Reliance was placed on the memorandum of settlement under Section 12(3) of the I.D.Act, dated 25.09.1986 and in Clause-12 of the settlement, which deals with confirmation of temporary employees, in sub clause (a), which deals with drivers and conductors, it has been agreed to that the services of the drivers and conductors will be confirmed after satisfactory completion of 240 days of actual work in a continuous period of one year. Similar condition is found in Clause-13 of the Settlement under Section 12(3) of the I.D.Act entered in the year 1992. 22. The contentions raised by Mr.Ajay Khose, learned counsel, stating that the provisions of the Act prevail over the settlement is right and this question has been decided in several matters and it would be beneficial to take note of the decision in Metal Powder Co. Ltd., Thirumangalam and another vs. the State of Tamil Nadu and another, reported in 1985 (2) LLJ 376, which was followed by the Division Bench of this Court in the Judgment dated 30.09.2019 in W.A.Nos.2871 and 2872 of 2018 [The Managing Director, Tamil Nadu State Transport Corporation Ltd., vs. Shanmugam (died) and another]. 23. Similar issue was decided by us in favour of the workmen in the case of the Senior Regional Manager, Tamil Nadu Civil Supplies Corporation and another vs. The Joint Commissioner of Labour, Trichy, and others, W.A.(MD) Nos.353 to 357 of 2014, dated 12.03.2018."

10. Likewise, in the case of The Management Metropolitan Transport Corporation (Chennai) Ltd., Chennai-600 002 Vs. the The Inspector of Labour, Kancheepuram and 2 others passed in W.P.Nos.29149 & 29150 of 2017 dated 27.01.2020, it has been held as follows:-

"8. Perusal of Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, shows that every workman, who is in continuous service



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for a period of 480 days in a period of 24 calendar months in an Industrial Establishment shall be made permanent, not withstanding anything contained in any law for the time being in force. Explanation 2 to Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, further contemplates that "law includes any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of this Act." Therefore, it is evident that even the appointment was made based on the contract of service, as in the present case, through the Government Order, such appointment cannot be a reason to deny the benefit of permanent status, if the workman otherwise had rendered continuous service for a period of 480 days in a period of 24 calendar months. In other words, any award, agreement, settlement, instrument or contract of service which may run contra to the benefit provided under Section 3 of the said Act, shall not stand against the Workman in getting the permanent status, if he satisfies the requirement under Sub-Section 1 of Section 3.

9. In 2019 (4) LLN 790 (DB) (Mad.), Management, Tamil Nadu State Transport Corporation (Madurai) Ltd., Vs. Labour Inspector, Virudhunagar and another, the Division Bench of this Court has considered the issue as to whether the settlement arrived under Section 12(3) of the Industrial Disputes Act, would stand against the Workman therein in getting their confirmation as provided under the relevant Statute. The Division Bench observed that the settlement cannot be relied on to deny the entitlement to the second respondent therein, since the settlement cannot override the provisions of the Act. At paragraph Nos. 17, 21, 22, 23, the Division Bench has observed as follows:

"17. The second contention raised before us is that the second respondent was only a reserve conductor and not a temporary conductor to be entitled for permanency. This argument is based upon the Section 12(3) settlements, dated 13.04.2015 and 04.01.2018. The completion of 480 days continuous employment in 24 calendar months by the second respondent was much prior to the settlement dated 13.04.2015, as the second respondent completed the required number of



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working days even in 2012. Therefore, those settlements cannot be relied on to deny the entitlement to the second respondent. Apart from that, a settlement cannot override the provisions of the Act.

.....

21. Reliance was placed on the memorandum of settlement under Section 12(3) of the I.D. Act, dated 25.09.1986 and in Clause-12 of the settlement, which deals with confirmation of temporary employees, in sub-clause (a), which deals with drivers and conductors, it has been agreed to that the services of the drivers and conductors will be confirmed after satisfactory completion of 240 days of actual work in a continuous period of one year. Similar condition is found in Clause-13 of the Settlement under Section 12(3) of the I.D. Act entered in the year 1992.

22. The contentions raised by Mr. Ajay Khose, learned counsel, stating that the provisions of the Act prevail over the settlement is right and this question has been decided in several matters and it would be beneficial to take note of the decision in Metal Powder Co. Ltd., Thirumangalam and another vs. the State of Tamil Nadu and another, 1985 (2) LLJ 376, which was followed by the Division Bench of this Court in the Judgment dated 30.09.2019 in W.A. Nos. 2871 and 2872 of 2018 [The Managing Director, Tamil Nadu State Transport Corporation Ltd. vs. Shanmugam (died) and another].

23. Similar issue was decided by us in favour of the workmen in the case of the Senior Regional Manager, Tamil Nadu Civil Supplies Corporation and another vs. The Joint Commissioner of Labour, Trichy, and others, W.A. (MD) Nos. 353 to 357 of 2014, dated 12.03.2018.""

11. In the light of the decisions extracted above, the legal proposition has been clearly laid down to the effect that under Section 3(1) of the Act, the workman would be entitled for permanent status, immediately after the day of his completion of 480 days of continuous service, within 24 calendar months and any contrary law including Board Proceedings (BP), Awards, Memorandum of Settlements, Government Orders etc., cannot override the provision under Section 3(1) of the Act.



12. In this legal background, when the facts of the present case were looked into, it is seen that the Authorities under the Conferment of Permanent Status Act had passed orders on 16.10.1998, conferring permanent status to these petitioners, with effect from 01.04.1995, which is the date on which they had completed 480 days of continuous service in 24 calendar months. This order came to be confirmed by this Court, as well as the Hon'ble Supreme Court. In view of these Court proceedings, the order of the Authority has reached its finality and it cannot be superceded through the board proceedings in B.P. No.17 dated 28.04.1999, as discussed in the preceding paragraphs. Thus, all these petitioners would be entitled for conferment of permanent status from 01.04.1995, together with the consequential service and monetary benefits there from.

13. The learned counsel for the Management made an attempt to state that in view of B.P No.17 dated 28.04.1999, all similarly placed contract labourers were made permanent with effect from 01.05.1999 and therefore, the petitioners' cases can be considered for permanency with effect from 01.05.1999 onwards without back wages. He also pointed out that the petitioners were disengaged in the year 1997 and no relief can be granted from 1997 onwards. The submissions does not deserve consideration, in view of the settled principles of constructive res judicata.

14. After the Authority had passed orders of permanency on 16.10.1998, this Court had confirmed the same through its order dated 23.09.2004 in the first Writ Petition viz., W.P.No.17941 of 1999. Thereafter, orders were passed in the Writ Appeal, as well as in the Special Leave Appeal (Civil) by the Hon'ble Supreme Court. It is claimed that the Management had raised these grounds before the High Court, as well as the Hon'ble Supreme Court and were rejected. Even assuming that such grounds were not specifically raised, they were very much available for the Management to raise them as grounds, since B.P.No.17 dated 28.04.1999 was passed before the order of the High Court, as well as the Hon'ble Supreme Court and the alleged disengagement in November 1997 was also prior to the Court orders. Thus, in this background, the principles of constructive res judicata, which is based on consideration of public policy in which res judicata is based, would forbear the Management to raise them before this Court as additional grounds.

15. This legal position is well settled in various decisions of the Hon'ble Supreme Court, including the judgment in Devilal Modi V. Sales Tax Officer, Ratlam and Others reported in AIR 1965 SC 1150. The Hon'ble 5 Judges Bench in this case,



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had held such a ratio, in the following manner:-

"8. There can be no doubt that the fundamental rights guaranteed to the citizens are a significant feature of our Constitution and the High Courts under Art. 226 are bound to protect these fundamental rights. There can also be no doubt that if a case is made out for the exercise of its jurisdiction under Art. 226 in support of a citizen's fundamental rights, the High Court will not hesitate to exercise that jurisdiction. But the question as to whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Art. 226, cannot be answered merely in the light of the significance and importance of the citizens' fundamental rights. The general principle underlying the doctrine of res judicata is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice, vide *Daryao and Others v. The State of U.P. & Others* [1962 (1) SCR 574].

9. It may be conceded in favour of Mr. Trivedi that the rule of constructive res judicata which is pleaded against him in the present appeal is in a sense a somewhat technical or artificial rule prescribed by the Code of Civil Procedure. This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy to which we have just referred.

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13. The present proceedings illustrate how a citizen who has been ordered to pay a tax can postpone the payment of the tax by prolonging legal proceedings interminably. We have already seen that in the present case the appellant sought to raise additional points when he brought his appeal before this Court by special leave; that is to say, he did not take all the points in the Writ petition and thought of taking new points in appeal. When leave was refused to him by this Court to take those points in appeal, he filed a new petition in the High Court and took those points, and finding that the High Court had decided against him on the merits of those points, he has come to this Court; but that is not all. At the hearing of this appeal, he has filed another petition asking for leave from this Court to take some more additional points and that shows that if constructive res judicata is not applied to such proceedings a party can file as many writ petitions as he likes and take one or two points every time. That' clearly is opposed to considerations of public policy on which res judicata is based and would mean harassment and hardship to the opponent. Besides, if such a course is allowed to be adopted, the doctrine of finality of judgments pronounced by this Court would also be materially affected. We are, therefore, satisfied that the second writ petition filed by the appellant in the present case is barred by constructive res judicata."

Thus, the Management's attempt to rely on B.P. No.17 dated 28.04.1999, as well as bringing in new facts that the services of the petitioners were disengaged in the year 1997 itself, are additional grounds, which were available during the first round of litigation and were not raised and therefore hit by the principles of constructive res judicata.

16. Incidentally, in the case of State of U.P, Vs. Nawab Hussain reported in 1977 (2) SCC 806, the Hon'ble Supreme Court had discussed the permissibility of raising additional grounds in the second round of litigation and while differentiating it in earlier judgments, had held that such additional grounds will not bring a finality to the litigation and would be opposed to the principles of public policy and therefore held that raising of such additional grounds, would amount to constructive res judicata, which is impermissible. The relevant portion of the order reads as follows:-



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"7. The High Court then proceeded to consider this Court's decisions in Devilal Modi's case (supra) and Gulabchand's case (supra). Gulabchand's was the later of these two cases. The High Court has interpreted it to mean as follows :--

"It was held that the decision of the High Court on a writ petition under Article 226 on the merits on a matter after contest will operate as res-judicata in a subsequent regular suit between the same parties with respect to the same matter. As appears from the report the above was majority view of the Court and the question whether the principles of constructive res-judicata can be invoked by a party to the subsequent suit on the ground that a matter which might or ought to have been raised in the earlier proceedings was left open. The learned Judges took care to observe that they made it clear that it was not necessary and they had not considered that the principles of constructive res-judicata could be invoked by a party to the subsequent suit on the ground that a matter which might Or ought to have been raised in the earlier proceeding was not so raised therein."

As we shall show, that was quite an erroneous view of the decision of this Court ,on the question of constructive res-judicata. It will help in appreciating the view of this Court correctly if we make a brief reference to the. earlier decisions in Amalgamated Coalfields Ltd. and others v. Janapada Sabha, Chhindwara(1) and Amalgamated Coalfields Ltd. and another v. Janapada Sabha, Chhindwara,(2) which was also a case between the same parties. In the first of these cases a writ petition was filed to challenge the coal tax on some grounds. An' effort was made to canvass an additional ground, but that was not allowed by this Court and the writ petition was dismissed. Another writ petition was filed to challenge the levy of the tax for the subsequent periods on grounds distinct and separate from those which were rejected by this Court. The High Court held that the writ petition was barred by res-judicata 'because: of the earlier decision of this Court. The matter came up in appeal to this Court in the



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second case. The question which directly arose for decision was whether the principle of constructive res judicata was applicable to petitions under articles 32 and 226 of the Constitution and it was answered as follows:

"It is significant that the attack against the validity of the notices in the present proceedings is based on grounds different and distinct from the grounds raised on the earlier occasion. It is not as if the same ground which was urged on the earlier occasion is placed before the Court in another form. The grounds now urged are entirely distinct, and so, the decision of the High Court can be upheld only if the principle of constructive res judicata can be said to apply to writ petitions filed under Art. 32 or Art. 226. In our opinion, constructive res judicata which is a special and artificial form of res judicata enacted by section 11 of the Civil Procedure Code should not generally be applied to writ petitions filed under Art. 32 or Art. 226. We would be reluctant to apply this principle to the present appeals all the more because we are dealing with cases where the impugned tax liability is for different years."

It may thus appear that this Court rejected the application of the principle of constructive res judicata on the ground that it was a "special and artificial form of res judicata" and should not generally be applied to writ petitions, but the matter did not rest there. It again arose for consideration in *Devilal Modi's case* (supra). *Gajendragadkar, J.* who had spoken for the court in the second case of *Amalgamated Coalfields Ltd.* spoke for the Court in that case also. The petitioner in that case was assessed to sales tax and filed a writ petition to challenge the assessment. The petition- was dismissed by the High Court and he came in appeal to this Court. He sought to make some additional contentions in this Court, but was not permitted to do so.. He. there- fore filed another writ petition in the High Court raising ,those' additional contentions and challenged the order of assessment for the same year. The High Court dismissed the petition



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on merits, and the case came up again to this Court in appeal. The question which specifically arose for consideration was whether the principle of constructive res judicata was applicable to writ petitions of that kind. While observing that the rule of constructive res judicata was "in a sense a somewhat technical or artificial rule prescribed by the Code of Civil Procedure", this Court declared the law in the following terms:

"This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy to which we have just referred."

While taking that view, Gajendragadkar C.J., tried to explain earlier decision in *Amalgamated Coalfields Ltd. v. Janapada Sabha, Chhindwara* (supra) and categorically held that the principle of constructive res judicata was applicable to writ petitions also. As has been stated, that case was brought to the notice of the High Court, but its significance appears to have been lost because of the decisions, in *Janakirama Iyer and others v. P.M. Nilakanta Iyer* (supra) and *Gulabchand's case* (supra). We have made a reference to the decision in *Janakirama Iyer's case* which has no bearing on the present controversy, and we may refer to the decision in *Gulabchand's case* as well. That was a case where the question which specifically arose for consideration was whether a decision of the High Court on merits, on a certain matter after contest, in a writ petition under article 226 of the Constitution, operates as res judicata in a regular suit with respect to the same matter between the same parties. After a consideration of the earlier decisions in England and in this



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country, Raghubar Dayal J., who spoke for the majority of this Court, observed as follows:

"These decisions of the Privy Council well lay down that the provisions of s. 11 C.P.C. are not exhaustive with respect to an earlier decision in a proceeding operating as res judicata in a subsequent suit with respect ,to the same matter inter parties, and do not preclude the. application to regular suits of the general principles of res judicata based on public policy' and applied from ancient times."

He made a reference to the decision in Daryao and others v. The State of U.P. and others(1) on the question of res judicata and the decisions in Amalgamated Coalfields Ltd. and others v. Janapada Sabha, Chhindwara(2) and Devilal Modi's case (supra) and summarised the decision of the Court as follows :--

"As a result of the above discussion, we are of opinion that the provisions of s. 11 C.P.C. are not exhaustive with respect to an earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit and that on the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject matter. The nature of the former proceeding is immaterial."

He however went on to make the following further observation:

"We may make it clear that it was not necessary, and we have not considered,



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whether the principles of constructive res judicata can be invoked by a party to the subsequent suit on the ground that a matter which might or ought to have been raised in the earlier proceeding was not so, raised therein."

It was this other observation which led the High Court to take the view that the question whether the principle of constructive res judicata could be invoked by a party to a subsequent suit on the ground that a plea which might or ought to have been raised in the earlier proceeding but was not so raised therein, was left open. That in turn led the High Court to the conclusion that the principle of constructive res judicata could not be made applicable to a writ petition, and that was why it took the view that it was competent for the plaintiff in this case to raise an additional plea in the suit even though it was available to him in the writ petition which was filed by him earlier but was not taken. As is obvious, the High Court went wrong in taking that view because the law in regard to the applicability of the principle of constructive res judicata having been clearly laid down in the decision in Devilal Modi's case (supra), it was not necessary to reiterate it in Gulabchand's case (supra) as it did not arise for consideration there. The clarificatory observation of this Court in Gulabchand's case (supra) was thus misunderstood by the High Court in observing that the matter had been "left open" by this Court."

17. The learned counsel for the Management made a faint attempt to state that the workmen had voluntarily stopped coming for work from the year 1997 and that the term "disengaged" employed by them in paragraph 6 of their original counter affidavit was a mistake, which has been corrected in their additional affidavit dated 04.01.2022. A perusal of the additional affidavit filed does not support such a contention of the Management. What is sought to be done through the additional affidavit dated 04.01.2022 is a rectification of the original stand taken by them in paragraph 6 of the counter affidavit dated 07.03.2020, by stating that the contract labourers, who were ineligible were stopped from November 1999 and insofar as these workmen are concerned, they have not worked after 1997. The additional affidavit does not retract their



original statement that these workmen were "disengaged" from their respective services. Thus, such an oral submission, which is not backed by an affidavit, cannot be sustained. It is also not disputed that these workmen, who were supported by an order of the Authority for permanency, were not issued with any order of termination or disengagement of services. Even otherwise, these grounds were not raised by the Management during the earlier round of litigation.

18. When the petitioners had requested the Management to confer permanent status with effect from 01.04.1995, the same was rejected through the impugned order dated 09.06.2016, stating that they would be entitled for permanency from 24.12.2009 only, which is their date of appointment as Helpers. In the light of the aforesaid discussions, such conferment of permanent status from a date succeeding the date ordered by the Authority and placing reliance on the board proceedings, cannot be sustained.

19. For all the foregoing reasons, the impugned order dated 09.06.2016 passed by the respondents in Ref. No.431/Mo.Po./Ko (&)Nir/Mu.Ni.Ni.Aa/Ni.Pi.3/Ni.Vu.2/Ko.Va.Na.28536/15/2016, is quashed. Consequently, there shall be a direction to the respondents herein to pass orders granting permanent status to each of the petitioners herein, with effect from 01.04.1995 and grant them all consequential service and monetary benefits, including continuity of service, within a period of four weeks from the date of receipt of a copy of this order. This Writ Petition stands allowed accordingly. There shall be no orders as to costs.

Sd/-

Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

DP

To

1.The Managing Director,
Tamil Nadu Generation &
Distribution Company Ltd.,
Anna Salai, Chennai-600 002.



2.The Superintendent Engineer,
Purchase & Administrative
North Chennai Thermal Power Station,
Chennai-600 120.

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+1cc to M/s.T.S.Gopalan & CO, Advocate SR.No.8587

W.P.No.26204 of 2016

KSM(CO)
GMY(16/02/2022)