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W.P.No.21278 to 21280 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21278 to 21280 of 2018

K.Manikam	...Petitioner in W.P.No.21278 of 2018
R.Tamilselvan	...Petitioner in W.P.No.21279 of 2018
R.Logidasan	...Petitioner in W.P.No.21280 of 2018

Vs.

1.The Management,
Tamil Nadu Electricity Board,
(presently known as Tamil Nadu Generation and
Distribution of Electricity Co)
Superintendent Engineer,
Dharmapuri Distribution Center,
Dharmapuri – 5.

2.The Assistant Executive Engineer,
Operation & Maintenance (Rural)
Dharmapuri District.

..Respondents in all W.Ps

Prayer in W.P.No.21278 of 2018 : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertains to the Award passed in I.D.No.173/2010 dated 10.4.2014 passed by the Labour Court, Salem, quash the same and direct the first and second respondent to reinstate him service with back wages and all other attendant benefits.



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Prayer in W.P.No.21279 of 2018 : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertains to the Award passed in I.D.No.181/2010 dated 10.4.2014 passed by the Labour Court, Salem, quash the same and direct the first and second respondent to reinstate him service with back wages and all other attendant benefits.

Prayer in W.P.No.21280 of 2018 : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertains to the Award passed in I.D.No.174/2010 dated 10.4.2014 passed by the Labour Court, Salem, quash the same and direct the first and second respondent to reinstate him service with back wages and all other attendant benefits.

For Petitioner : M/s.M.Sreela
For Mr.R.Diwakaran
[in all W.Ps]

For R1 & R2 : Mr.Anand Gopalan
For M/s.T.S.Gopalan & Co
[in all W.Ps]

COMMON ORDER

The issues involved in the present writ petitions are one and the same and hence they are disposed of by this common order.

2. The writ petitions have been filed, challenging the awards passed in



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I.D.No.173 of 2010, I.D.No.181 of 2010 and I.D.No.174 of 2010

respectively dated 10.04.2014 on the file of the Labour Court, Salem.

3. The petitioner in W.P.No.21278 of 2018 states that he was working under the first respondent Management on daily wage contract basis for several years. From 25.05.1980 to 1986 at Paiyarnaikenpatti and from 01.10.1987 at Pappirettipatti (Construction section) and from 1991 to 1993, under the contractor of Mr.Vengan (presently known as Anandan) and from 05.03.1993 to 21.05.1997 at Kottapatti (O & M).

3.1. The petitioners in W.P.Nos.21279 & 21280 of 2018 states that they were working under the first respondent Management on daily wage contract basis for several years. From 01.10.1987 to 30.08.1991 at Pappirettipatti (Construction section) and from 1991 to 1993, under the contractor of Mr.Vengan (presently known as Anandan) and from 01.06.1990 to 30.08.1991 at Morappur and from 01.11.1993 to 30.10.1995 at A.Pallipattu.

4. The petitioners were receiving daily wage salary. The wages paid



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are entered in the Petty cash book maintained in the Tamil Nadu Electricity

Board.

5. During the services rendered by the petitioners, the Assistant Engineers have given certificates, stating that they were working as contract employees under the Board.

6. Pursuant to the recommendations of Hon'ble Mr.Justice Khalid Commission, the TANGEDCO permanently absorbed the contract labourers in a phased manner and based on the availability of sanctioned posts. The petitioners state that they were fully qualified for permanent absorption and their cases were not considered for permanent absorption without any valid reason. Thus, the petitioners approached the Labour Court in I.D.No.173 of 2010, I.D.No.181 of 2010 and I.D.No.174 of 2010 respectively under Section 2-A of the Industrial Disputes Act, 1947. In the petitions itself, the petitioners have stated that they were discharged from duty on 01.03.1999 and therefore, they prayed before the Labour Court that they must be reinstated with continuity of service from 01.03.1999 with full backwages. The Labour Court adjudicated the issues and dismissed the petitions in awards dated 10.04.2014. Thus, the petitioners are constrained to move the present writ



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petitions.

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7. The learned counsel for the petitioners mainly contended that the colleagues, who are similarly placed like that of the petitioners were permanently absorbed by the TANGEDCO. Even the contract labourers, who were engaged subsequent to the petitioners were also permanently absorbed. While so, the case of the petitioners was not considered without any valid reason. The petitioners served for long years and therefore, the Labour Court also committed an error in not appreciating the facts, which all are established by the petitioners.

8. The learned counsel appearing on behalf of the respondents raised a preliminary objection by stating that the writ petitions are not maintainable. Even as per the petitioners and as per the petitions filed by them before the Labour Court, they were discharged from service on 01.03.1999. But, they approached the Labour Court by raising an Industrial Dispute only on 21.12.2009, after a lapse of about 10 years from the date of discharge. Thus, there was an enormous delay even in approaching the Labour Court.

9. That apart, the Labour Court passed awards on 10.04.2014 and the



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present writ petitions were filed on 16.08.2018, again after a lapse of about 4 years from the date of passing of the awards. Thus, the writ petitions also were filed belatedly and liable to be rejected on the ground of laches.

10. Thirdly, the learned counsel for the respondents reiterated that the petitions under Section 2-A of the Industrial Disputes Act are also not maintainable. The contractor, under whom, the petitioners served, was not impleaded as a party though he is a necessary party. The petitioners were engaged through a private contractor and thus, the petitions filed before the Labour Court itself is defective and not entertainable. Pertinently, the name of the petitioners was not included in the list of eligible contract labourers, who were considered for permanent absorption as per the recommendations of Hon'ble Mr. Justice Khalid Commission. Now at this length of time, the case of the petitioners cannot be considered.

11. This Court is of the considered opinion that the petitioners have slept over their right if at all existed. Even as per the petitioners, they were discharged from service on 01.03.1999. But, they filed petitions before the Labour Court, after a lapse of about 10 years. The Labour Court passed awards in the year 2014 and they filed writ petitions after a lapse of about 4



years. Again, there was a delay of 4 years even in filing the writ petitions.

However, the petitioner are not in contract services for the past about 23 years.

12. Even as per the petitioners, they were contract labourers on the date of termination and therefore, they were not the employees of the respondent Board during the relevant point of time. Thus, the contention of the respondents that the petitioners would have terminated by the Contractor is also to be taken note of. That apart, the petitioners have not fulfilled the conditions for the purpose of inclusion of their name in the list of eligible contract labourers for permanent absorption as per the Hon'ble Mr. Justice Khalid Commission report. In the present cases, the petitioners did not fulfill the twin conditions required for the purpose of permanent absorption.

13. The dispute has been referred under Section 2-A of the ID Act. The scope of a dispute under Section 2-A is restricted to only to see whether the dismissal, termination or retrenchment is just and valid. The Scope of Section 2-A of the ID Act does not cover regularization and permanent absorption and thus, the dispute itself is not maintainable.



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14. Beyond all these aspects, the petitioners have not pursued their remedy vigilantly for the past about many years. The dispute itself was referred after a lapse of about 10 years from the date of termination and such a long delay in approaching the Labour Court by the workmen cannot be condoned in the absence of any valid and acceptable reason.

15. Thus, the petitioners have not established any acceptable ground for the purpose of interfering with the awards of the Labour Court passed in I.D.No.173 of 2010, I.D.No.181 of 2010 and I.D.No.174 of 2010 dated 10.04.2014 and therefore, the said awards stand confirmed and consequently, the writ petitions stand dismissed. No costs.

14.10.2022

Index : Yes
Speaking order: Yes
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S.M.SUBRAMANIAM, J.

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