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W.P.No.17332 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17332 of 2018

K.Ramakrishnan

... Petitioner

Vs.

1.The Chairman / Managing Director, (TANGEDCO)
NPKRR Maligai, 8th Floor,
No.144, Anna Salai,
Chennai – 600 002.

2.Superintending Engineer
Chennai Electricity Distribution Circle
Central, Chennai – 600 034.

3.The Administrative Officer,
O/o. Superintending Engineer
Chennai Electricity Distribution Circle
Central, Chennai – 600 034.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the record pertaining to the order No.Ku.A.No.019645/Ni.Pi.2/Ko Court case / 2016 dated 28.01.2016 of the 3rd respondent and quash that portion of the order regularising the service of the petitioner from September 2007 and calculating 50% back wages for the entire period from 05.06.1994 to 30.06.2014 and consequently to direct the respondents to regularise his



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service after completion of 480 days from September 1998, pay remaining 50% back wages from 02.11.2004 to 30.06.2014 and pension from July 2014 and other terminal benefits to the petitioner.

For Petitioner : Mr.S.T.Varadarajulu
For R1 to R3 : Mr.Anand Gopalan
For M/s.T.S.Gopalan & Co.

ORDER

The order dated 28.01.2016 issued by the 3rd respondent is sought to be quashed in the present writ petition and a direction is sought for to calculate 50% of the back wages for the entire period from 05.06.1994 to 30.06.2014 and consequently, direct the respondents to regularise his services after completion of 480 days from September 1998 and pay the balance 50% back wages and for consequential terminal benefits.

2. The petitioner joined in the services of the respondents / Electricity Board in 1991 as a daily wage employee. On 05.07.1994, while he was on duty, he met with an accident due to short circuit. He got treatment for about 8 months. Thereafter, he made a request for re-engagement. Challenging the non-employment, the petitioner raised an Industrial Dispute in I.D.No.567 of 2000 on the file of the I Additional Labour Court, Chennai. The Labour



Court passed an award on 01.11.2004 in I.D.No.567 of 2000, directed the respondent to reinstate the petitioner with continuity of service and with 50% of back wages from 06.07.1994.

3. The respondents/Board challenged the award in W.P.No.9688 of 2006, which was dismissed on 21.01.2015. Thereafter, the respondents implemented the award and calculated the back wages and paid a sum of Rs.5,19,625/-. However, the writ petitioner was brought under the regular establishment with effect from September 2007. Under those circumstances, the petitioner claimed that he should have been given regular employment atleast from August 2000. However, by quoting the 12(3) Settlement of the year 2007, the respondents / Electricity Board regularised the services of the writ petitioner only with effect from September 2007, which is arbitrary. That apart, the 50% back wages was also erroneously calculated in violation of the award of the Labour Court. Thus, the petitioner is constrained to move the present writ petition.

4. The learned counsel for the writ petitioner mainly contended that the award of the Labour Court became final. On the implementation of the



award, the petitioner is entitled for 50% of the back wages from the year 1994 onwards, the date on which the employment was denied to him. That apart, benefit of regularisation also must be granted from the date on which the petitioner completed 480 days of service under the provisions of the Tamil Nadu Conferment of Permanent Status Act, 1981. It is contended that the petitioner discontinued consequent to the accident occurred, while he was on duty. Therefore, the respondents ought to have re-employed the petitioner at least pursuant to the award of the Labour Court. The petitioner attained the age of superannuation on 30.06.2014 and therefore, he is entitled for the balance back wages and for the consequential terminal and pensionary benefits due to him.

5. The learned counsel for the respondents objected the said contention by stating that the petitioner was engaged as contract labourer in Chennai Central Distribution Circle of the respondents. Therefore, he was not a daily rated employee directly engaged by the Board. The award of the Labour Court was challenged in W.P.No.9688 of 2006 and the High Court passed an order on 20.01.2015. Meanwhile, the petitioner attained the age of superannuation on 30.06.2014 itself. Both the Labour Court as well as



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the High Court directed the Electricity Board to consider the writ petitioner as casual workman and not as a regular or permanent workman of the respondent / Electricity Board. Accordingly, the respondents / Electricity Board passed an order on 28.04.2016, granted the petitioner back wages and other benefits as held by the Labour Court followed by communication of the Board's order dated 15.03.2016.

6. The petitioner has filed the writ petition as if he is a daily wage employee engaged by the Board. In fact, he was a contract labourer and in respect of those contract labourers, the Board entered into a settlement with the Labour Union, representing the contract workers on 10.08.2007 with regard to regularisation and permanent absorption of eligible contract workers. Though there was no direction by the High Court to extend the benefit of permanent absorption to the writ petitioner, the respondent had benevolently passed an order, absorbing the petitioner as Mazdoor with effect from 08.09.2007, in terms of the settlement dated 10.08.2007.

7. The Labour Court in its award dated 21.01.2015 in I.D.No.567 of 2000 had only held that the petitioner to be reinstated as a casual worker



with continuity of service and 50% back wages and a learned Single Judge of this Court had also upheld that award passed by the Labour Court. Under these circumstances, in terms of the award, if at all the petitioner is of an opinion that the 50% balance back wages are to be paid, the course of action is to prefer a petition under Section 33(c)(2) of the Industrial Disputes Act, 1947 and he cannot maintain a writ petition before the High Court.

8. The petitioner is not entitled for regularisation or permanent absorption under the Tamil Nadu Conferment of Permanent Status Act, 1981, which would be of no application in respect of the contract labourers served in the Tamil Nadu Electricity Board, which is stated under Article 12 of the Constitution of India. As far as the casual labourers, who were engaged by the private contractors, the Board itself considered their claim based on the settlement entered into between the Board and the Labour Union and accordingly, eligible contract labourers were absorbed permanently in the time scale of pay in the sanctioned post. The said benefit was extended to the writ petitioner beyond the scope of the award and as per the settlement entered in September 2007. That being the case, the petitioner is not entitled for any further relief.



9. This Court is of the considered opinion that the petitioner was initially engaged as contract labourer. Due to accident, his services were discontinued as contract labourer. He approached the Labour Court and an award was passed in his favour, directing the respondents to reinstate with continuity of service and with 50% back wages. However, the award did not speak anything about the regularisation or permanent absorption of the casual labourers in the sanctioned post in the time scale of pay. The award was confirmed by the High Court and accordingly, the back wages are settled in favour of the writ petitioner. Not satisfied with that, the petitioner raised a claim that he is entitled for Conferment of Permanent Status Act since he had completed 480 days of service.

10. Grant of permanent status under the Act is not automatic. Therefore, the petitioner cannot claim permanent status based on the award of the Labour Court. However, there was a settlement between the respondents Board and Labour Union and pursuant to the Settlement, the petitioner was provided with the benefit of regularisation and permanent absorption with effect from September 2007 and therefore, permanent



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absorption of the petitioner from the year 2007 is unconnected with the scope of the Labour Court award. As per the Labour Court award, the benefits were settled and even beyond that the benefit of regularisation was also granted to the writ petitioner and this being the factum established, the petitioner is not entitled for any other relief as such sought for in the present writ petition.

11. Accordingly, the Writ Petition stands dismissed. No costs.

29.11.2022

Jeni/Kak

Index : Yes

Speaking order

To

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S.M.SUBRAMANIAM, J.



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