



W.P.(MD).Nos.16267, 16452, 16455 of 2012,
477 of 2013 and 13724 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.11.2022

PRONOUNCED ON : 11.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.16267, 16452, 16455 of 2012,
477 of 2013 and 13724 of 2017

and

M.P.(MD).Nos.1 to 3 of 2012 and 1 of 2013

and

W.M.P.(MD)No.10705 of 2017

W.P.(MD)No.16267 of 2012:

1.The Management,
Tuticorin Thermal Power Station,
Tuticorin – 628 004.

2.The Chief Engineer/Personnel,
Tamilnadu Electricity Board,
144, Annasalai,
Chennai – 600 002.

... Petitioners

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.M.Sahayajeya

3.A.Xavier

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,



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praying this Court to issue a Writ of Certiorari, to call for the records in pursuant to the impugned order passed by the 1st respondent in I.D.No.36 of 2009, dated 22.08.2011 and to quash the same.

W.P.(MD)No.16452 of 2012:

1.The Chairman,
Tamilnadu Electricity Board,
Chennai.

2.The Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin.

... Petitioners

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.S.Sundari

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in pursuant to the impugned order passed by the 1st respondent in I.D.No.37 of 2009, dated 05.09.2011 and to quash the same.

W.P.(MD)No.16455 of 2012:

1.The Management,
Tuticorin Thermal Power Station,
Tuticorin.

2.The Chief Engineer,
Personnel, TNEB,
Chennai – 600 002.

... Petitioners



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Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.M.Sahayajeya

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in pursuant to the impugned order passed by the 1st respondent in C.P.No.22 of 2012, dated 24.09.2012 and to quash the same.

W.P.(MD)No.477 of 2013:

1.The Chairman,
Tamilnadu Electricity Board (TANGEDCO),
Chennai.

2.The Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin.

... Petitioners

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.S.Sundari

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in pursuant to the impugned order passed by the 1st respondent in C.P.No.17 of



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2012, dated 21.09.2012 and to quash the same.

W.P.(MD)No.13724 of 2017:

1.The Superintending Engineer,
Tuticorin Thermal Power Station,
Tuticorin – 628 004.

2.The Chief Engineer (Personnel),
Tamilnadu Electricity Board,
144, Annasalai,
Chennai – 600 002.

... Petitioners

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.M.Sahayajeya

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the 1st respondent in C.P.No.7 of 2016 and to quash the order, dated 25.07.2016.

In all cases:

For Petitioners	: Mr.Anand Gopalan for M/s.T.S.Gopalan and Co.
For R1	: Labour Court
For R2	: Mr.S.Kumar

In W.P.(MD)No.16267 of 2012:

For R3	: Mr.B.Rajesh Saravanan *****
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COMMON ORDER

The Writ Petition in W.P.(MD)No.16267 of 2012 is filed for issuance of a Writ of Certiorari, to quash the impugned order passed by the 1st respondent in I.D.No.36 of 2009, dated 22.08.2011.

2.The brief facts as stated in the affidavit filed in W.P.(MD)No.16267 of 2012 are that the settlement was reached between the TNEB and the Unions regarding contractor employees. Thereafter, the contract labourers working in four Thermal Power Station, namely, ETPS, MTPS, NCTPS and TTPS were considered for absorption based on their seniority and need basis subject to condition that no disciplinary proceedings shall be pending against them. The Board has issued orders in memo No. 00083/IR, 1(1)/98-1, dated.05.01.1998, that no additional contract labourers would be engaged other than those who had already been engaged. The TNEB has decided to implement the GO.Ms.No.950, dated 08.08.1990, issued by the Government Labour and Employment Department, regarding abolition / prohibition of contract system in TNEB including Thermal Stations with effect from 01.05.1999 by terminating the contract employment system on 30.04.1999. However the TNEB had taken the contract labourers who were on the rolls of the respective



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contractor having completed 480 days of continuous service in a continuous period of 24 calendar months as on 30.04.1999 alone are eligible for absorption and the said date is the cut-off date. TNEB in BP (FB) No.17 (SB), dated 28.04.1999, has issued orders that the contract labourers identified as on 05.01.1998 and not engaged in the four thermal stations including TTPS shall be absorbed based on the seniority in respective stations to the extent of the regular sanction and supernumerary posts for each station mentioned in the said BP for each Thermal stations. For this purpose, the Board has issued the procedure / guidelines to be followed in the Board proceedings, dated 28.04.1999 and in Memo. No. 025908/35/CL/A2/99-4, dated 29.04.1999 and Memo.No.025908/35/CL/A2/99-5, dated 07.05.1999.

3. One of the important conditions is that the contract labourers who have put in a continuous service of 480 days in a continuous period of 24 calendar months (without any break of service more than 6 months) **as on 30.04.1999** are eligible for absorption as per Tamilnadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. Based on the above, it was decided to absorb 3003 contract labourers engaged in TTPS in phased manner. It was also decided that the contract labourer should have found a



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place in a provisional list prepared based on those who were on the rolls of registered contractors as on 05.01.1998 and have completed 480 days of continuous service in 24 calendar months as on 30.04.1999. The 2nd respondent was included in the provisional list prepared by the Board as on 05.01.1998 and on verification of service particulars available with the respective contractor's wage Register, wage slips, EPF recoveries and other records. The committee found that the 2nd respondent had not completed 480 days in the 24 calendar months as on 30.04.1999. Hence, the Committee had not selected him for permanent absorption. The 2nd respondent had filed I.D.No.36 of 2009 seeking permanent absorption after a lapse of 10 years. The 2nd respondent was absent from 19.01.1998 to 30.04.1999. Since she was absent for 15 months during her employment, she could not have been regularized as per the Board proceedings and Guidelines. Thus, the Selection Committee did not consider the permanent absorption of the 2nd respondent. The Labour Court passed an award, dated 22.08.2011, wherein it has directed the Management (Petitioner herein) to reinstate the worker to the post of Helper. Aggrieved over the same, the present writ petition in W.P.(MD)No.16267 of 2012 is filed.



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4. The 2nd respondent in the writ petitions have filed written statements stating that the 2nd respondent in W.P(MD)No.16267 of 2012 was employed as contract labour from 03.04.1996 to 19.01.1998. The 2nd respondent in W.P(MD)No.16452 of 2012 was employed as contract labour from 01.11.1995 to 30.04.1999 and she had worked under Birundha Engineering construction from 01.11.1995 to 30.04.1999 and worked under Ravi enterprises from 01.11.1997 to 31.01.1999 on three days alternative basis in a week under both contractors. By Board proceeding No.17, dated 28.04.1999, the petitioner Management decided to absorb all contract labours who have completed 480 days within 24 calendar months in continuous service prior to 05.01.1998 and later the cutoff date was extended to 30.4.1999 on the request of labour union. Both workmen names were identified and included in the list. As regards the workman in W.P(MD)No.16267 of 2012 has completed 480 days continuous service within 24 calendar months from 03.04.1996 to 19.01.1998 prior to 05.01.1998 but she was not made as permanent employee on the ground that she has not completed 480 days prior to 30.04.1999 i.e., another cutoff date. Likewise, as far as workman in W.P(MD)No.16452 of 2012 is concerned, she has completed 480 days continuous service but her service was not made permanent by stating that she has worked 351 days from 01.05.1997 under



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Birundha Engineering construction as additional worker and work rendered under Ravi Enterprises was not taken into account saying that she has worked as surplus additional worker from 01.11.1997 to 31.01.1998 and EPF is not implemented. Therefore, the 2nd respondent in both the writ petitions raised industrial dispute before the Labour Court in the year 2007 and 2008 respectively. The Labour court, vide orders, dated 22.08.2011 and 05.09.2011, ordered to reinstate the both work women and denied back wages. Challenging the said orders, the writ petitioners have filed the writ petitions.

5. Heard Mr.Anand Gopalan for M/s.T.S.Gopalan and Co. the Learned Counsel for the petitioner and Mr.S.Kumar the Learned Counsel for the 2nd respondent and Mr.B.Rajesh Saravanan the Learned Counsel appearing for 3rd respondent in W.P.(MD)No.16267 of 2012 and perused the records.

6. The contention of the writ petitioner is that the 2nd respondents have raised industrial dispute belatedly and no reasons stated for such huge delay, hence the claim is hit by delay and laches and relied on the judgment rendered in the case of U.P. SRTC Vs Babu Ram (2006) 5 SCC 433, wherein it is held that the industrial dispute should be raised within reasonable time. U.P. SRTC



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Vs Ram Singh (2008) 17 SCC 627, wherein it is held delay should not be unreasonable and delay of 13 years is unreasonable. Assistant Executive Engineer, Karnataka Vs. Shivaling (2002) 10 SCC 167, wherein it held that there was a serious dispute or doubt of the employer become relevant, thus record of the employer became relevant, the long delay of more than nine years would impede the maintenance of records. Assistant Engineer, CAD Vs. Shan Kunwar (2006) 5 SCC 481, wherein it has been held that reference as to the justifiability of retrenchment of the workman was sought and made after the delay of eight long years and such delay in the absence of justifiable reasons would disentitled the workman to relief. Prabhakar Vs. Sericulture Department 2015 (15) SCC 1, wherein it has been held as under:

“However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanations for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers’ financial arrangement and to avoid dislocation of an industry”

However, the Learned Counsel appearing for the 2nd respondent submitted that such plea was not raised before the Labour Court and raised for the first time in the writ petition and the said plea is not tenable in view of decision reported in



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Ajaib Singh vs Sirhind Cooperative Marketing Cum Processing Service Society Limited and another reported in **1999(6) SCC Page 82**, in para 10 and 11. The 2nd respondent also relied on the order passed in W.P.No.8538 of 2018 para 23. Also relied on the judgment rendered in the Management of Kattabomman Vs. The Labour Court and another reported in **2004 (1) LLJ Page 776** para 5. All these judgments rely on Ajaib Singh's case. The relevant portion of Ajaib Singh is extracted hereunder:

*"10. It follows, therefore, that the provisions of [Article 137](#) of the Schedule to [Limitation Act](#), 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mold the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned Counsel for the respondent-management on the full bench judgment of the Punjab and Haryana High Court in *Ram Chancier Morya v. State of Haryana* (1999) 1 SCT 141 is also of no help to him. In that case the High Court nowhere held that the provisions of [Article 137](#) of the [Limitation Act](#) were applicable in the proceedings under the Act."*

7. In the judgment it has been held that the Court ought to have seen whether the dispute is still exists or not and the Court can mold the relief in respect of backwages alone and it cannot be rejected on the grounds of laches.



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The facts in those cases are that the said employees were already employed in the respective institutions and they were dismissed or retrenched from service. In such circumstances that Hon'ble Supreme Court has held that delay and latches cannot be raised and even if raised then the prayer can be molded by rejecting backwages. In the present case the respondents are seeking regularization / absorption and the same was granted based on certain criteria wherein the respective employees ought to have completed **480 days in 24 calendar months preceding 30.04.1999**. The judgments referred were cases of disciplinary proceedings, where punishment was reduced and directed the employers to reinstatement without backwages. Hence those judgements cannot be relied on in the present case. In the present case it is a case of granting regularization based on Justice Khalid Commission recommendations. The regularization was granted if the contract labour had completed 480 days in 24 calendar months preceding 30.04.1999. The 2nd respondents had claimed after a lapse of 10 years and it definitely hit by delay and latches, since the employer cannot wait endlessly for the contract labourers to make a claim. Moreover, if the claim of the 2nd respondent is entertained after a lapse of 10 years it would have unsettling effect which would affect the employers' financial arrangement and dislocate the industry as held in the case of in Prabhakar Vs. Joint Director



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Sericulture stated supra. Therefore, this Court is of the considered opinion that the judgments referred by the respondents cannot be relied on and the same is not applicable in the present cases. The 2nd respondent has filed the impugned I.D.No.36 of 2009, after a lapse of 10 years and the 2nd respondent has not stated any reason for raising the said dispute after a lapse of 10 years, hence this Court is holding that the claim of the respondents hit by delay and laches.

8. The next contention of the petitioner management is that the claim of regularization ought to be in terms of B.P. No.17, wherein it provides for absorption of contract labourers if they had fulfilled the conditions prescribed in the said B.P.No.17. The conditions are that they should have been identified as on 05.01.1998 by the committee, should have now engaged as on 30.04.1999 and should have engaged for 480 days in 24 calendar months preceding 30.04.1999. In the case of M.Sahayajeya did not work after 19.01.1998 and she was not engaged from 19.01.1998, hence she was not engaged on 30.04.1999. Moreover she might have been engaged on 05.01.1998, but admittedly not engaged after 20.01.1998, hence she could not have completed minimum 480 days preceding 30.04.1999. The said M.Sahayajeya has worked from



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01.05.1997 to 19.01.1998 only for 263 days and was not engaged after 20.01.1998 and hence she has not worked for 480 days preceding 30.04.1999.

9.The Learned Counsel appearing for the 2nd respondents / contract labourers submitted that the Labour Court has given specific finding that both the contract labourers have completed 480 days continuous service within 24 calendar month based on the documents and the said finding of Labour Court cannot be inferred with under Article – 226 of Constitution of India unless there is an error apparent on face of record as per the decision of the Hon'ble Supreme Court rendered in Iswarlal Mohanlal Thakkar Vs. Paschim Gujarat Vij Company Limited and another reported in 2014 (6) SCC page 634 para 15 and also decision in W.P.No.8538 of 2018, dated 11.04.2019, in para 19 and 20. Further submitted that as per section 3 (1) of Tamilnadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, has contemplated that every workman who is in continuous service for a period of 480 days in a period of 24 calendar months in an industrial establishment shall be made permanent and it never required the workman should be in service on the date of permanent absorption and also never says the workman should have worked under one contractor. It only requires workman should have completed



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480 days in 24 calendar months and the same is complied by both workman in the present case.

10. After hearing the rival submissions and after perusing the records on this ground this Court has given due consideration. Admittedly all the individual “Contract Labourers” were engaged by the Contractor. The petitioner management had engaged various Contractors, wherein the said Contractors engaged workmen to execute the work of the petitioner management. Several claims arise to absorb them in the Tamilnadu Electricity Board or TTPS Service. After several litigations, based on Justice Khalid Commission recommendations the petitioner management agreed to absorb the contract labourers. The Tamil Nadu Electricity Board (TANGEDCO) passed Board Proceeding No.17 dated 28.04.1999, wherein it states if the contract workers fulfil the criteria laid down in the proceedings would be absorbed. The contract labourer should have been identified on 05.01.1998 by the Committee. The contract labourer should have been engaged as on 30.04.1999 and should have been engaged for 480 days for 24 calendar months preceding 30.04.1999. The said M.Sahayajeya had worked from 01.05.1997 to 19.01.1998 i.e. only for 263 days and not worked from 20.01.1998 to 05.05.1999, because of ill health,



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which is the crucial period to absorb the 2nd respondent, hence she is not entitled to absorption. On the other hand, the Learned Counsel appearing for the said Sahayajeya submitted that she has completed 480 days, if the date is taken from 03.04.1996 to 19.01.1998 and based on the Conferment of Permanent Status Act the date should be reckoned from 03.04.1996 to 19.01.1998. The 2nd respondent admittedly was an employee under the Contractor during the period from 03.04.1996 to 19.01.1998 and was never been an employee under the petitioner management. If at all the 2nd respondent claims permanency, then it ought to be against the Contractor, who is a party to the proceedings in the Labour Court. The petitioner management had formulated a scheme to absorb 30,000 contract labourers were absorbed. In that in TTPS some 9065 were considered for absorption. The petitioner management agreed to accommodate and created 5032 supernumerary posts were created and based on seniority the contract labourers were absorbed. The said contract labourers were identified as on 05.01.1998, they were serving for 480 days preceding 30.04.1999. But the said Sahayajeya admittedly was not as on 30.04.1999. When the petitioner management has formulated a scheme and the said scheme was upheld in several judgments, the 2nd respondent cannot deviate from the scheme. Admittedly the 2nd respondent was engaged either by



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the petitioner management or by the contractor from 20.01.1998 till 30.04.1999 and hence the said Sahayajeya fails to fulfill the criteria and hence she is not eligible to absorption. Therefore, for the above reasons the 2nd respondent is not entitled to absorption.

11. As far as the writ petition filed against Sundari in W.P.(MD)No.16452 of 2012 is concerned, she has claimed that she had worked in Ravi Enterprises from 01.11.1997 to 31.01.1998 on three days alternative basis and that comes to 197 days. She further claimed she had worked in Birndha Engineering construction from 01.11.1995 to 30.04.1999 and that comes to 351 days. If both is taken together then it comes to 548 days and hence had claimed absorption. The petitioner management submitted that the 2nd respondent claims she had worked in said Ravi Enterprises, but for the said period the Ravi Enterprises has not paid any Employment Provident Fund in favour of the said Sundari for the said period. The 2nd respondent has not produced any other evidence to substantiate the claim. In such circumstances, the period from 01.11.1997 to 31.01.1998 cannot be considered. As far as the period worked in Birndha Engineering Construction from 01.11.1995 to 30.04.1999, it comes to 351 days. If the preceding 2 years is considered from 30.04.1999, the said Sundari has not



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completed 480 days. But the learned Counsel for the 2nd respondent claimed that if the entire period from 01.11.1995 to 30.04.1999 is considered, then the said Sundari has completed 480 days. Even according to the conferment of Permanent Status Act, a person would be entitled to be considered only if a person had completed 480 days in 24 calendar months and not 480 days in 48 calendar months. Therefore, the claim of the said Sundari is liable to be rejected and she is not entitled to absorption and hence, the writ petition filed against the said Sundari ought to be allowed.

12. Therefore, this Court is of the considered opinion that the claim of the 2nd respondents in both the writ petitions is hit by delay and laches and the claim of the 2nd respondents are stale claim since they have not completed 480 days in 24 calendar months as stated supra and there is no dispute between the parties, hence the petition filed by the petitioner management ought to be allowed. On merits also the 2nd respondents are not entitled to absorption as stated supra. Therefore, the writ petitions W.P.(MD)No16267 of 2012 and W.P.(MD)No. 16452 of 2012 are allowed and the impugned orders passed by the Labour Court are quashed. No costs.



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13. The writ petition in W.P.(MD)No.16267 of 2012 filed against the order passed in I.D.No.36 of 2009 dated 22.08.2011 is allowed. Hence the writ petitions filed in W.P.(MD)Nos.16455 of 2012 and 13724 of 2017 challenging the impugned orders passed in claim petitions are also allowed.

14. The writ petition in W.P.(MD)No.16452 of 2012 filed against the order passed in I.D.No.37 of 2009 dated 05.09.2011 is allowed. Hence the writ petition filed in W.P.(MD)No.477 of 2013 challenging the impugned order passed in claim petitions is also allowed.

15. Hence, all the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

Internet : Yes/ No

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