



W.P(MD) No.1939 of 2013 etc., batch

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.01.2022

Pronounced on : 21 .07.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) Nos.1939 of 2013, 2985 of 2014 and
WP(MD).Nos.23478 to 23480 of 2017 and
WMP(MD).Nos.19741 and 19742 of 2017 and 17391/2017

S. Ganesan	:Petitioner in WP.No.1939 of 2013
K. Selvaraj	: Petitioner in WP.No.2985 of 2014
S. Bethuraj	: Petitioner in WP.No.23478 of 2017
A. Ganasekar	: Petitioner in WP.No.23479 of 2017
B.Kumaresan	: Petitioner in WP.No.23480 of 2017

..VS..

1.The Presiding Officer,
Labour Court,
Thirunelveli.

2.The Management,
Ravi Enterprises,
47-C, Caldwell Colony,
1st Street, Thoothukudi.



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3.The Management,
Tuticorin Thermal Power Station,
Thoothukudi.

: Respondents in WP.No.1939 of 2013

1.The Management,
Tuticorin Thermal Power Station,
having office at Muthiahpuram,
Thoothukudi, Thoothukudi District -628 004

2.The Presiding Officer,
Labour Court,
Tirunelveli.

Respondents in WP.No.2985 of 2014

1.Ponnaiah,
Contractor,
21-B, Oorani Otha Veedu,
Thermal Nagar,
Thoothukudi – 628 006.

2.The Management,
Tuticorin Thermal Power Station,
Thoothukudi District -628 004

3.The Presiding Officer,
Labour Court,
Thirunelveli.

Respondents in WP.Nos.23478 to 23480 of 2017

PRAYER in WP(MD).No.1939 of 2013 : Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus to call for the order dated 12.08.2011 made in Industrial Dispute No. 194/1995 passed by the Labour Court, Thirunelveli and quash the same



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and direct the 3rd respondent to compensate and reinstate the petitioner with back wages and continuation of service.

PRAYER in WP(MD).No.2985 of 2014 : Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified to call for the records relating to the proceedings of the order dated 18.05.2011 in I.A.No.1 of 1997 on the file of the 2nd respondent and quash the same.

PRAYER in WP(MD).Nos.23478 to 23480 of 2017 : Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the award passed by the 3rd respondent in I.D.No.203 of 1995 dated 13.07.2012, quash the same in so far as petitioner in concerned and consequently, direct the second respondent to reinstate the petitioner with continuity of service and back wages.

For Petitioner in WP(MD).No.1939 of 2013

: Mr. K. Mahendran

For Petitioner in WP(MD).No.2985 of 2014

: Mr. G. Prabhu Rajadurai

For Petitioners in WP(MD).Nos.23478 to 23480 of 2017

: Mr. M. Mohan Gandhi

For R3 in WP(MD).No.1939 of 2013

For R1 in WP(MD).No.2985 of 2014

For R2 in WP(MD).Nos.23478 to 23480 of 2017

: Mr. Anand Gopalan

for M/s. T.S. Gopalan & Co.,



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COMMON ORDER

WP(MD).No.1939 of 2013 is filed to call for the order dated 12.08.2011 made in Industrial Dispute No.194/1995 passed by the Labour Court, Thirunelveli and quash the same and direct the 3rd respondent to compensate and reinstate the petitioner with back wages and continuation of service.

2. WP(MD).No.2985 of 2014 is filed to call for the records relating to the proceedings of the order dated 18.05.2011 in I.A.No.1 of 1997 on the file of the 2nd respondent and quash the same.

3. WP(MD).Nos.23478 to 23480 of 2017 are filed to call for the records pertaining to the award passed by the 3rd respondent in I.D.No. 203 of 1995 dated 13.07.2012, quash the same in so far as petitioner in concerned and consequently, direct the second respondent to reinstate the petitioner with continuity of service and back wages.



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4. The brief facts of the case as stated in WP(MD).No1939 of 2013 is that the petitioner is employed under the Contractor viz., 2nd respondent and the second respondent in turn his Contractor who engaged various persons to do work in the Thermal Power Station. The petitioner is working under the third respondent Thermal Power Station, through various Contractors from 1986 onwards. The petitioner was engaged for handling coal in Unit IV, A.H.P. The Government of Tamil Nadu had issued G.O.Ms.No.950, Labour and Employment Department, dated 08.08.1990 abolishing Contract Work under Contract Labour (Abolition and Regulation) Act, 1970. The petitioner participated in the strike commenced on 11.10.1993 and the strike was called for on 16.10.1993 as per the understanding reached between the Tamil Nadu Electricity Board and the Central Organization of Tamil Nadu Electricity Employees. Thereafter, the petitioner reported to duty on 17.10.1993 but the petitioner along with 321 employees were denied the work. Thereafter, several rounds of discussions took place between the Trade Unions and the Tamil Nadu Electricity Board, Revenue Officials, Labour Department and the Hon'ble Minister for Labour and all ended futile. Thereafter, the petitioner along with 33 other employees had referred the issue to the Labour Officer,



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Tuticorin and the conciliation ended in failure. Then the issue was referred as Industrial Dispute by G.O.(D).No.1315, Labour and Employment Department, dated 07.11.1995 and it was taken on file in I.D.No.194 of 1995 as against the second respondent / Contractor. In the meanwhile a meeting was held in the chambers of the Chairman and an understanding was reached on 28.02.1998, wherein it was resolved that all the 21 cases pending before the Labour Court should be withdrawn and the 84 workers will be taken back to service and their past service will be taken into account. Based on this a joint memo dated 15.04.1999 was filed to withdraw the I.D.No.194 of 1995 and the same was accepted by the Labour Court and the Labour Court has dismissed the same as dismissed as withdrawn. Even thereafter, the respondents 2 and 3 had not kept up the promise and only few were given employment. Hence, the petitioner filed W.P.No.17819 of 2000 for directing the Chairman, TNEB to reinstate the 84 workers as per the undertaking dated 27.02.1998 and this Court vide order dated 15.01.2001 has held that the appropriate remedy is only by invoking Industrial Dispute and the petition was dismissed. Thereafter, the workers union filed a petition to set aside the order of dismissal passed in I.D.No.194 of 1995 dated 04.11.1999 and the said I.D was restored.



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Initially in the said I.D.No.194 of 1995 the second respondent viz., Management Ravi Enterprises alone was the respondent. The third respondent Management, Tuticorin Thermal Power Station was not impleaded as party at all. Therefore, the petitioner filed I.A.No.140 of 2009 in I.A.No.140 of 2009 in I.D.No.194 of 1995 to implead the third respondent Thermal Power Station. Thereafter, the claim statement was modified with respect to second respondent to direct them to reinstate with back wages. The petitioner and the respondents 2 and 3 filed certain documents as exhibits. After elaborate arguments the Labour Court vide order dated 12.08.2011 declined to grant relief of reinstatement and back wages along with continuation of service and dismissed the I.D.No.194 of 1995. Aggrieved over the present Writ Petition is filed.

5. The third respondent / Thermal Power Station has filed a detailed counter and contended that in the original ID the third respondent was not at all a party. The I.D was withdrawn vide order dated 15.04.1999. Thereafter, the third respondent was impleaded vide order dated 17.07.2009 in I.A.No.140 of 2009. Aggrieved by the order passed in I.A. the third respondent could not file Writ Petition, since the Supreme Court



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and the High Courts have held the Writ Petition is not maintainable against orders passed I.A.'s. Moreover, the dispute was raised under Section 2K and only the Union alone has power to raise the Industrial Dispute and the petitioner cannot seek to prosecute the dispute in his individual capacity. The decision of the Union "willing to withdraw" the dispute cannot be questioned by the petitioner. Hence, the order of the Labour Court restoring the dispute by an application by the petitioner as an individual, which was withdrawn by the Union, is not sustainable, which is against the provisions of law. The Union has raised the dispute by making only the first respondent as a party before the Labour Court, which has power to withdraw the dispute based on the reference ought not to have implemented the first respondent is a party. Since the Government has referred the case only against the first respondent, the claim of the petitioner with regard to the termination of service by the Contractors who had admittedly gone on strike, therefore, the dispute is between the Contractor and the Employees, the third respondent was neither a necessary party nor a proper party. The reference by the Government was also with regard to the non-employment of the workers whose cause the Union was espousing and was not for regularization or absorption of their



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services with this respondent. As far as the discussions held with Chairman is concerned, it was agreed that Union will withdraw the 21 cases pending before the Labour Court unconditionally and unilaterally and after withdrawal, Tamil Nadu Electricity Board will persuade the concerned contractors to accommodate the 84 workers easing out the juniors. In the meanwhile on 29.04.1999, Tamil Nadu Electricity Board issued BP No. 17 abolishing the appointment of contractors in all the circles and it was further ordered that all the Contract Labourers being engaged as on that date and who had put in 480 days in the preceding 24 Calendar months will be considered for absorption with effect from 01.05.1999 and further agreed that no contract labour will be engaged after 01.05.1999.

6. The Unions acting on the minutes of the meeting dated 28.02.1998 withdrew the cases in November 1999. However, by that time as the engagement of contract labour had been stopped and hence, the question of persuading the contractors engaging the 84 persons mentioned in the Union's letter could not be fulfilled. This Court in W.P.No.17819 of 2000 has concluded that the minutes of the meeting dated 28.02.1998 did not create any enforceable right in favour of the concerned contractor



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labour and disposed of the Writ Petition. The petitioner was admittedly, engaged by the second respondent Contractor and if there is any violation on provisions of natural justice cause, it is for the second respondent to answer. The award was passed in the year 2012 and the petitioner has filed the Writ Petition after five years and the petition is hit by principles of delay and laches and prayed to dismiss the Writ Petition.

7. Heard Mr. K. Mahendran, Mr. G. Prabhu Rajadurai, Mr. M. Mohan Gandhi, the learned counsels appearing for petitioners and Mr. Anand Gopalan, for M/s. T.S. Gopalan & Co. appearing for the respondents and perused the materials available on record.

8. The contention of the Management TTPS is that the individual employee cannot persuade any dispute under Section 2k, since the dispute raised by the Union and when the Union has decided to withdraw the case. The individual and the Board has not filed any petition as per the provisions of law to withdraw the case. This Court as well as the Hon'ble Supreme Court has held that the case is not maintainable by an



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individual. The respondent relied on the judgment rendered in ***Ram Prasad Vishwakarma Vs. Chairman Industrial Tribunal, Patna and others*** reported in ***1961 (3) SCR*** has held that “the individual workmen is at no stage a party to the industrial dispute independently of the union. The union of those workmen who have by their sponsoring turned the individual dispute into an industrial dispute, can therefore, claim to have a say in the conduct of the proceedings before the Tribunal and hence, the individual cannot maintain any petition under Section 2k”. The Management TTPS also relied on Judgment rendered by the Hon'ble Supreme Court reported in ***1996 (10) SCC 446*** in the case of ***KCP Ltd., Vs. Presiding Officer***, wherein it has been held as under:

“It is also not in dispute that parties to the settlement were the appellant company on the one hand and respondent No. 2 - union on the other, which acted on behalf of all the 29 dismissed workmen for whom reference was pending in the Labour Court. It was duly signed by both these parties. Under these circumstances, respondent Nos. 3 to 14 also would be ordinarily bound by this settlement entered into by their representative union with the company unless it is shown that the said settlement was ex-facie, unfair, unjust or malafied. No such case could be even alleged much less made out by the dissenting respondent Nos. 3 to 14 before the trial court. It is interesting to note that before the Labour Court the only argument put forward on



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behalf of the respondent Nos 3 to 14 was that they were not parties to the settlement and therefore, it was not binding on them. Once it is kept in view that the entire industrial dispute was raised by respondent No. 2 union on behalf of all the 29 dismissed workmen and as it was not an industrial dispute covered by Section 2A whereunder individual dismissed workman could come in the arena of contest, it could not be held, as wrongly assumed by the Labour Court that this settlement was not entered into under Section 18(1) of the Act by these dissenting workmen when the respondent - union did represent them from beginning to end and is still representing them as they are members of the union even at present. In the case of Ram Prasad Vishwakarma Vs. The Chairman Industrial Tribunal 1961 (3) SCR 196 a Bench of three Hon'ble Judges of this Court had an occasion to consider the effect of a settlement entered into by the union of workmen which had espoused the cause of its members by raising an industrial dispute under Section 2(k) of the Act and further question whether under these circumstances an individual workman had any independent locus standi in proceedings before the reference court. Rejecting the contention on behalf of the individual workman, it was observed by Das Gupta, J. speaking for the court that the concerned workman was not entitled to separate representation when already represented by the Secretary of the union which espoused his cause. A dispute between an individual workman and an employer cannot be an industrial dispute as defined in Section 2(k) of the Act unless it is taken up by a union of workmen or by a considerable number of workmen. When an



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individual workman becomes a party to a dispute under the Act he is a party, not independently of the union which has espoused his cause. It was further observed that although no general rule can be laid down in the matter, the ordinary rule should be that representation by an officer of the trade union should continue throughout the proceedings in the absence of exceptional circumstances justifying other representation of the workman concerned.

Therefore this Court is of the considered opinion that the petitioner's cannot maintain individual dispute when the Union has withdrawn the Industrial Dispute and on this ground the Writ Petition fails.

9. The next contention raised by the Management TTPS is that the dispute is only for reinstatement and not employment and there was no prayer or reference with regard to observation or the regularization. Admittedly, the petitioner was engaged by the private respondent, if it all there is any claim the private respondent Contractor ought to have provided reinstatement and not the Management TTPS. Both the petitioner and the respondents admitted the fact that the petitioner was engaged by the private management alone. Infact the original I.D.No.194 of 1995 was filed against the private management Contractor alone. Therefore, the



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claim against the Management TTPS is not maintainable. The claim of the Management TTPS is that the Labour Court ought not to have impleaded the Management TTPS by allowing the I.A.No.140 of 2009. Therefore this Court is of the considered view that the claim of the petitioners are that their appointment is by the private management, once it was declined the burden should not be fasten on the Management TTPS and hence the claim of the petitioners fails.

10. The Learned Counsels appearing for the petitioners submitted that the Chairman had conducted a compromise meeting and it was agreed that the petitioner would be taken into service. On perusing the contents of the memo it is seen that the Chairman has agreed that “the Tamil Nadu Electricity Board **will persuade the concerned contractors** to accommodate the 84 workers”. There is not commitment from the TNEB that TNEB would accommodate the said 84 workers, it is only the TNEB “**would persuade the concerned contractors**” to accommodate the said 84 workers and hence the claim of the petitioners to enforce the said memo fails. This Court is of the considered opinion that the said



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memo is not enforceable under law and the claim of the petitioner to reemployment in TTPS is not substantiated through any evidence.

11. Taking all these into considerations, ***W.P(MD) No.1939 of 2013 and WP(MD) Nos. 23478 to 23480 of 2017*** are dismissed. However, if the Management TTPS has any future scheme, they may consider the petitioners also. However, this direction cannot be considered as a positive direction.

12. As far as W.P(MD) No.2985 of 2014 is concerned, the Writ Petition is filed against the order passed in I.A.No.1 of 1997 on the file of the Labour Court, in so far as it is denied back wages. The Labour has come to the conclusion that the petitioner has not worked in order to grant back wages. The brief facts how the petitioner was granted employment has been narrated in the counter, wherein it is stated that the petitioner Viz., Selvaraj is one among the said 84 employees who have been dismissed due to the strike. The petitioner had filed petition under collective dispute and has independently filed a petition under Section 2A(2) of the Industrial Disputes Act challenging the alleged non



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employment from 17.10.1993 and the said dispute was numbered as I.D.No.1 of 1997 and based on the discussion dated 27.02.1988, by which it was agreed that the petitioner would be provided employment. The said joint memo was filed by the Corporation on 03.11.1999. Since the joint memo was signed by the Superintending Engineer, Tuticorin Thermal Power Station, apart from this memo none of the memos were signed by the Superintending Engineer. The Superintending Engineer, TNEB has not signed. Since the minutes of the meeting was not acted upon in respect of any of the employees, the memo signed with the petitioner was also not acted upon in the case of the petitioner as well. The petitioner accepting the position that the joint memo is no longer valid filed an application to set aside the Award passed based on the joint memo. The said application was filed in the year 2001 and it was ordered on 21.02.2008 and in this manner the dispute raised by the petitioner came to be restored and thereafter, adjudicated. However, without appreciating the fact, the Labour Court has come to the conclusion that the name of the petitioner would have found place in Justice Khalid Commission's report and he ought to have been considered for absorption in terms of the said report. But, that such finding of the Labour Court is erroneous and not based on any



records, but only assumption.

13. On perusal of records it is admitted fact that the petitioner Selvaraj was an employee under the Contractor and who was in fact shown as the second respondent in the collective dispute. The Labour Court has carried away by the joint memo dated 04.11.1999. The said memo was culmination of the minutes of the meeting dated 28.02.1988 and in the said memo it was agreed the TNEB would persuade the concerned contractors to provide employment to the 84 persons. Since these facts was not brought to the notice of the learned Single Judge, the Writ Petition filed by the respondent TNEB was dismissed and Management TTPS was forced to provide employment and the petitioner was taken up for employment with effect from 29.04.2015. Admittedly, all the 84 employees were not given any employment. Since the petitioner has not served from the date of strike till he was given employment until 2015. Therefore, on the principles of “No Work No Pay” the petitioner is W.P(MD).No. 2985 of 2014 is not entitled to any back wages. This Court is of the considered opinion that that Labour Court has rightly come to the conclusion that the petitioner is not entitled to the backwages. Therefore, the W.P(MD).No.



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2985 of 2014 is dismissed confirming the award passed by the Labour Court, Tirunelveli.

14. For the reasons stated above, the W.P(MD) No.1939 of 2013, WP(MD) Nos. 23478 to 23480 of 2017 and W.P(MD).No.2985 of 2014 are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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Index: Yes/No
Internet: Yes/No
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To



W.P(MD) No.1939 of 2013 etc., batch

The Presiding Officer,
Labour Court,
Thirunelveli.

S. SRIMATHY, J.,



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Pre Delivery Order made in
W.P(MD) Nos.1939 of 2013, 2985 of 2014 and
WP(MD).Nos.23478 to 23480 of 2017 and
WMP(MD).Nos.19741 and 19742 of 2017

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