



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2022

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P. (MD) Nos.4826, 4827, 4829, 4830, 4832
and 4833 & 4834 of 2020

V.Thangapandiyan	... Petitioner In WP (MD) No.4826 of 2020
R.Suresh	... Petitioner in WP (MD) No.4827 of 2020
M.Devaraj	... Petitioner in WP (MD) No.4829 of 2020
K.T.Ramesh	... Petitioner in WP (MD) No.4830 of 2020
P.Sethuramalingapandiyan	... Petitioner in WP (MD) No.4832 of 2020
M.Chinna Ayyanan	... Petitioner in WP (MD) No.4833 of 2020
K.Karthikeyan	... Petitioner in WP (MD) No.4834 of 2020

-Vs-

1.The Chairman (Administration)

TANGEDCO

(formerly Tamil Nadu Electricity Board),

No.800, Anna Salai,

Chennai - 600 002.

2.The Chief Engineer (Personnel),

TANGEDCO, Anna Salai,

Chennai.

3.The Superintending Engineer,

Theni Electricity Distribution Circle,

Tamil Nadu Electricity Board,

Theni - 625 531.

4.The Assistant Executive Engineer,

Construction & Improvement

Tamil Nadu Electricity Board,

Periyakulam, Theni District.

... Respondents in all WPs

Prayer In W.P. (MD) No.4826 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 3rd respondent in Lr.No.1326/94/SE/TNI/Adm.O/Adm.II/ A.1/F./2020-6 dated 20.02.2020 quash the same and consequently direct the respondents herein to approve the petitioner appointment from 1991 and regularize the petitioner employment as permanent status on par with similarly placed persons and grant all consequential benefits thereof as per conditions in paras 3 & 5 of the proceedings in Per.B.P.(CHAIRMAN)

<https://hcservices.ecourts.gov.in/hcservices/>



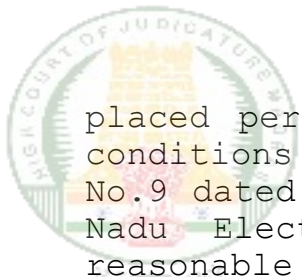
No.9 dated 9.1.2008 issued by Chief Engineer / Personnel (I/C), Tamil Nadu Electricity Board and in accordance with law within a reasonable time as may be fixed by this Court.

Prayer in WP(MD)No.4827/ 2020 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records relating to the impugned order of the 3rd respondent in Lr.No.1326/94/SE/TNI/Adm.O/Adm.II/ A.1/F./2020-4 dated 20.02.2020 quash the same and consequently direct the respondents herein to approve the petitioner appointment from 1991 and regularize the petitioner employment as permanent status on par with similarly placed persons and grant all consequential benefit thereof as per conditions in paras 3 and 5 of the proceedings in Per.B.P (CHAIRMAN) No.9 dated 9.1.2008 issued by Chief Engineer/ Personnel (I/C) Tamil Nadu Electricity Board and in accordance with law within a reasonable time as may be fixed by this Honourable Court.

Prayer in WP(MD)No.4829/ 2020 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records relating to the impugned order of the 3rd respondent in Lr.No.1326/94/SE/TNI/Adm.O/Adm.II/ A.1/F./2020-5 dated 20.2.2020 quash the same and consequently direct the respondents herein to approve the petitioner appointment from 1991 and regularize the petitioner employment as permanent status on par with similarly placed persons and grant all consequential benefit thereof as per conditions in paras 3 and 5 of the proceedings in Per.B.P (CHAIRMAN) No.9 dated 9.1.2008 issued by Chief Engineer/ Personnel (I/C) Tamil Nadu Electricity Board and in accordance with law within a reasonable time as may be fixed by this Honourable Court.

Prayer in WP(MD)No.4830/ 2020 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records relating to the impugned order of the 3rd respondent in Lr.No.1326/94/SE/TNI/Adm.O/Adm.II/ A.1/F./2020-1 dated 20.2.2020 quash the same and consequently direct the respondents herein to approve the petitioner appointment from 1991 and regularize the petitioner employment as permanent status on par with similarly placed persons and grant all consequential benefit thereof as per conditions in paras 3 and 5 of the proceedings in Per.B.P (CHAIRMAN) No.9 dated 9.1.2008 issued by Chief Engineer/ Personnel (I/C) Tamil Nadu Electricity Board and in accordance with law within a reasonable time as may be fixed by this Honourable Court.

Prayer in WP(MD)No.4832/ 2020 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records relating to the impugned order of the 3rd respondent in Lr.No.1326/94/SE/TNI/Adm.O/Adm.II/ A.1/F./2020-3 dated 20.2.2020 quash the same and consequently direct the respondents herein to approve the petitioner appointment from 1991 and regularize the petitioner employment as permanent status on par with similarly



placed persons and grant all consequential benefit thereof as per conditions in paras 3 and 5 of the proceedings in Per.B.P (CHAIRMAN) No.9 dated 9.1.2008 issued by Chief Engineer/ Personnel (I/C) Tamil Nadu Electricity Board and in accordance with law within a reasonable time as may be fixed by this Honourable Court.

Prayer in WP(MD)No.4833/ 2020 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records relating to the impugned order of the 3rd respondent in Lr.No.1326/94/SE/TNI/Adm.O/Adm.II/ A.1/F./2020-2 dated 20.2.2020 quash the same and consequently direct the respondents herein to approve the petitioner appointment from 1991 and regularize the petitioner employment as permanent status on par with similarly placed persons and grant all consequential benefit thereof as per conditions in paras 3 and 5 of the proceedings in Per.B.P (CHAIRMAN) No.9 dated 9.1.2008 issued by Chief Engineer/ Personnel (I/C) Tamil Nadu Electricity Board and in accordance with law within a reasonable time as may be fixed by this Honourable Court.

Prayer in WP(MD)No.4834/ 2020 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records relating to the impugned order of the 3rd respondent in Lr.No.1326/94/SE/TNI/Adm.O/Adm.II/ A.1/F./2020 dated 19.2.2020 quash the same and consequently direct the respondents herein to approve the petitioner appointment from 1991 and regularize the petitioner employment as permanent status on par with similarly placed persons and grant all consequential benefit thereof as per conditions in paras 3 and 5 of the proceedings in Per.B.P (CHAIRMAN) No.9 dated 9.1.2008 issued by Chief Engineer/ Personnel (I/C) Tamil Nadu Electricity Board and in accordance with law within a reasonable time as may be fixed by this Honourable Court.

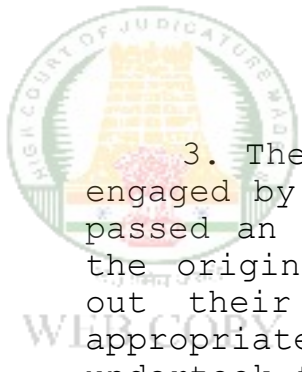
For Petitioner : Mr.S.Alagarsamy in all WPs

For Respondents : Mr.T.S.Gopalan in all WPs

COMMON ORDER

The orders of rejection, rejecting the claim of the writ petitioners for grant of permanency in proceedings dated 20.02.2020 and 19.02.2020 are under challenge in the present writ petitions.

2. The petitioners admittedly were engaged as a contract labours in Periyakulam Division for Constructions and Improvements of the TANGEDCO Scheme. The claim of the petitioners was that they were continuously engaged for 480 days and therefore, they are entitled for permanent status under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981



3. The issue of similar nature in respect of contract employees engaged by the TANGEDCO was considered by this Court and this Court passed an order on 24.04.2018, directing the authorities to verify the original service records of those contract labourers and find out their eligibility for grant of permanent status and pass appropriate orders. Pursuant to the said direction, the TANGEDCO, undertook the process of verification and in the present case also, the respondents have considered the service records and rejected the claim of the writ petitioners.

4. In respect of the rejected claim, another set of writ petitions were filed and this Court elaborately adjudicated the issues involved on merits on the issues raised by the parties to the writ petitions and the Judgment was delivered on 24.10.2019 in W.P.Nos.18275 of 2019 etc., batch and the relevant portion of the Judgment is extracted hereunder:-

"5. In the earlier writ petition filed for implementation of the order of the Inspector of Labour, this Court issued a direction to consider the claim of the writ petitioners in the light of 12(3) Settlement as well as the proceedings issued by the Electricity Board in B.P.No.9, Administrative Branch, dated 09.01.2008. Such a direction was given on the ground that individual facts regarding the employment are to be verified with reference to the original documents as well as the evidences available. Such disputed errors cannot be adjudicated in writ proceedings under Article 226 of the Constitution of India. Under these circumstances, this Court directed the competent Authorities of the Electricity Board to receive the documents and representations from the employees concerned, the conduct an enquiry and pass a speaking order with reference to claim for implementation of the orders of the Inspector of Labour passed in favour of the workman.

6. Such an exercise was done by the competent Authorities and labour Court, and an order was passed in proceedings dated 31.05.2019, which is impugned in the present writ petition. Admittedly, the workman has submitted their representations afresh along with the documents to establish their employment or otherwise.

7. The learned counsel appearing on behalf of the respondent reiterated that the Electricity Board has meticulously prepared questionnaire in order to provide genuine hearing and opportunity to those affected employees. Various questions were formulated and an enquiry was conducted to find out whether these workmen are entitled for the benefit of permanent absorption or not.

<https://hcservices.apn.gov.in/hcservices/> in para 9 of the impugned order, the



absorption.

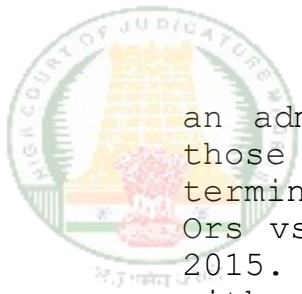
11. Further you last worked a Contact Labour in the year 2007 you have not challenged your disengagement. Given the limitation prescribed under the Industrial Disputes Act, the disengagement has become final. Therefore, you cannot be considered for absorption on the ground that the alleged relationship of master and servant snapped as early as 2007."

8. Pursuant to the findings of the competent authorities in the impugned order, this Court is of the opinion that the eligibility criteria and the requisite qualifications etc., considered for grant of permanent absorption in the 12(3) Settlement as well as in the proceedings No. B.P.No.9, Administrative Branch, dated 09.01.2008 were not met out in respect of the writ petitioners in the present writ petitions. In other words, the writ petitioners were found not eligible for permanent absorption with reference to 12(3) Settlement as well as the proceedings issued by the Tamil Nadu Electricity Board in B.P.No.9 Administrative Branch, dated 09.01.2008. The respondent found that the writ petitioners were not identified by the Committee constituted by the Board for identification of contract labourers dated 08.08.1998, in terms of 12(3) Settlement dated 10.08.2007. When the writ petitioners were not identified either by the Committee constituted or benefited by 12(3) Settlement, they are not identified for benefit of permanent absorption. This apart, it is held that the ex-gratia prescribed is not received by the writ petitioners.

9. For all these reasons, the claim of the writ petitioners is rejected. This Court does not find any infirmity in the order passed by the Authorities of the Tamil Nadu Electricity Board. The learned counsel appearing on behalf of the respondent made a submission that the writ petitioners were disengaged from service in the year 2007 onwards, and in some cases, 2008 onwards.

10. The writ petitioners were admittedly not in employment or in service with effect from the year 2007-08. Therefore, they are not entitled to raise any dispute in this regard. Such disengagement was of the year 2007 and 2008, to substantiate his contention, the learned counsel appearing on behalf of the respondent cited the judgment of Oshiar Prasad & others Vs. Sudamadih Coal Washery, reported in (2015) 4 SCC 71 and the relevant paragraphs of the said judgment are extracted herein;

<https://hcservices.ecourts.gov.in/hcservices> 183. Coming now to the facts of this case, it is



an admitted case that the services of the appellants and those at whose instance the reference was made were terminated long back prior to making of the Oshiar Prasad & Ors vs Emp.In Rel.To Mgt.Of S.C.Washery ... on 2 February, 2015. These workers were, therefore, not in the services of either Contractor or/and BCCL on the date of making the reference in question. Therefore, there was no industrial dispute that "existed" or "apprehended" in relation to appellants' absorption in the services of the BCCL on the date of making the reference.

24.Indeed a dispute regarding the appellants' absorption was capable of being referred to in reference for adjudication, had the appellants been in the services of Contractor or/and BCCL. But as said above, since the appellants' services were discontinued or/and retrenched (whether rightly or wrongly) long back, the question of their absorption or regularization in the services of BCCL, as claimed by them, did not arise and nor this issue could have been gone into on its merits for the reason that it was not legally possible to give any direction to absorb/regularize the appellants so long as they were not in the employment.

25. It is a settled principle of law that absorption and regularization in the service can be claimed or/and granted only when the contract of employment subsists and is in force inter se employee and employer. Once it comes to an end either by efflux of time or as per the terms of the Contract of employment or by its termination by the employer, then in such event, the relationship of employee and employer comes to an end and no longer subsists except for the limited purpose to examine the legality and correctness of its termination.

26. In our considered opinion, the only industrial dispute, which existed for being referred to the Industrial Tribunal for adjudication was in relation to termination of appellants' employment and - whether it was legal or not? It is an admitted fact that it was not referred to the Tribunal and, therefore, it attained finality against the appellants.

27. In our considered opinion, therefore, the reference, even if made to examine the issue of absorption of the appellants in the services of BCCL, the same was



misconceived."

11. In para 27 of the above judgment, the Hon'ble Supreme Court held that the reference, even if made to examine the issue of absorption of the appellants in the services of BCCL, the same was misconceived. Thus, the disengagement which was effected in the year 2007-08 would not provide any right for claiming right of absorption after this length of time and after the provisions of Section 2A of the I.D.Act was amended, prescribing the limitation period for raising an industrial dispute which also expired long back in the present case.

12. This being the circumstances of the case, the reasons stated in the impugned order are candid and convincing. In the absence of establishing any right for absorption within the prescribed time and with reference to the criterias as fixed in the 12(3) Settlement as well as in the Board Proceedings in B.P.No.9 Administration Branch, dated 09.01.2008, this Court cannot grant the benefit of permanent absorption in violation of the recruitment rules and as per the one time scheme issued pursuant to the recommendations of Hon'ble Justice Khalid Committee. The writ petitions are devoid of merits and the same are therefore dismissed. No costs."

5. In view of the said Judgment, the relief as such sought for in the present writ petitions cannot be granted. Accordingly, the writ petitions stand dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MPK

To

1.The Chairman (Administration)
TANGEDCO
(formerly Tamil Nadu Electricity Board),
No.800, Anna Salai, Chennai - 600 002.

2.The Chief Engineer (Personnel),
TANGEDCO, Anna Salai, Chennai.



3.The Superintending Engineer,
Theni Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Theni - 625 531.

4.The Assistant Executive Engineer,
Construction & Improvement
Tamil Nadu Electricity Board,
Periyakulam, Theni District.

+1 CC to M/s.P.MALINI, Advocate (SR-11279[F] dated 10/03/2022)

+4 CC to M/s.S.ALAGARSAMY, Advocate (SR-11410[F] dated 11/03/2022)

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