



W.P.(MD).No.2677 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 16.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.2677 of 2016

R.Thiruganana Sambantham

... Petitioner

Vs.

1.The Chairman,
Tamil Nadu Generation & Distribution Corporation Limited,
Tamil Nadu Electricity Board,
No.144, Annasalai, NPKRR Maligai,
Chennai – 600 002.

2.The Chief Engineer Personnel,
Tamil Nadu Generation & Distribution Corporation Limited,
Tamil Nadu Electricity Board,
No.144, Anna Salai, Chennai – 600 002.

3.The Superintending Engineer,
Trichy Electricity Distribution Circle (Metro),
Tamil Nadu Generation and Distribution Corporation Limited,
Tamil Nadu Electricity Board,
Mannarpuram,
Trichy – 20.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the second respondent in Letter No.049202/200/G.19/G.192/2014-2 dated 11.11.2014 and quash the same and consequently direct the respondents to regularize the services rendered by the petitioner from 01.04.1982 to 18.11.2005 and the same shall be taken into account for counting the service for pensionary benefits and to pay pension and consequential arrears within a stipulated time may be fixed by this Court.

For Petitioner : M.Saravana Kumar

For Respondents : M/s.P.Malini,
for M/s.T.S.Gopalan & Co

ORDER

This Writ Petition has been filed to quash the impugned order dated 11.11.2014 and consequently direct the respondents to regularize the service of the petitioner from 01.04.1982 to 18.11.2005 and the same service shall be counted for pensionary benefits.



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WEB COP 2. The brief facts as stated in the affidavit are that the petitioner was engaged as contract labour in the Tamil Nadu Electricity Board from 01.04.1980. Thereafter, the Union raised Industrial Dispute through the Labour Court under Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 and obtained an order granting permanent status in Case No.8240/1999 dated 21.12.2000. The Board filed Writ Petition and Writ Appeal against the order of the Labour Court and the same was ended up in dismissal. Finally, the petitioner was posted as Mazdoor in permanent status only on 18.11.2005. The contention of the petitioner is that from 01.04.1980 till the permanency was granted to the petitioner, the petitioner was in employment without any break in the Electricity Board. The petitioner claims that he ought not to have filed the permanent status case as when the Electricity Board itself identified about 18,000 contract labourers as per Mr. Justice Khalid Commission. The petitioner's name was also included in the list and the petitioner is one among 18,000 contract labours that was absorbed in the Board service. Without taking into account these facts, the petitioner was regularized only from 18.11.2005 in an arbitrary manner. The petitioner has completed 480 days that is on 01.04.1982 itself. Therefore, the petitioner submitted a



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representation dated 11.02.2013. Since the representation was not considered, the petitioner filed W.P.(MD).No.7040 of 2014 with a prayer to direct the respondents to regularize the service and the Hon'ble Court vide order dated 23.04.2014 directed the respondents to consider the representation. The respondents without considering the representation had passed the impugned order dated 11.11.2014. The contention of the petitioner is that the impugned order is against the dictum laid down by the Hon'ble Division Bench in W.A.No.311 of 2004 dated 07.11.2008. Since in an identical issue, the respondents by proceedings dated 24.02.2010 implement the order of the Deputy Chief Inspector of Factories, Tirunelveli dated 02.01.2001, as per the order of the Hon'ble Division Bench dated 07.11.2008 in W.A.No.311 of 2004. The respondents ought to have regularized the petitioner's service atleast from 2001 onwards. The petitioner is aggrieved over the impugned order and hence this Writ Petition.

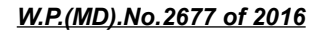
3. The respondents have not filed any counter but relied on the judgment rendered in W.A.(MD).No.785 of 2015, wherein, the issue of regularization of the contract labours was considered in detail including several special issues which were raised by contract labours. As per this judgment, the petitioner is



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not entitled to the benefits as claimed by the petitioner. The Division Bench has dealt with G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009. This Government Order was subsequently incorporated in the pension rules as Rule 11(4). The summary substance of Rule 11(4) is to calculate 50% of past service. However, the issue of calculating 50% of past service was elaborately dealt with in the Hon'ble Full Bench judgment, wherein, it has been held that if any person is employed prior to 2003 and regularized prior to 2003, then 50% of past service shall be calculated. However, if the person is employed prior to 2003 and regularized subsequent to 2003, then the petitioner is not entitled to calculate 50% of past service. In the present case, the petitioner has put in 8 years service. Hence, the petitioner is not entitled to any of the benefits and hence the respondents prayed to dismiss the Writ Petition.

4. Heard M.Saravana Kumar, the Learned Counsel appearing for the petitioner and M/s.P.Malini for M/s.T.S.Gopalan & Co, Learned Counsel appearing for the respondents and perused the records.



6. The second issue that the petitioner raised is that the Labour Court has granted permanency to the petitioner in C.P.No.8240 of 1999 dated 21.12.2000. In the Claim Petition, it has been directed the respondents ought to grant permanency to the petitioner. The claim of the respondents is that after this order based on 12(3) settlement, the petitioner was taken into service. The petitioner had agreed and executed an agreement that the petitioner would not claim any permanency prior to the regularization period. Having accepted so, now the petitioner cannot turn around and seek any relief. Therefore, the learned counsel for the respondents submitted that 12(3) settlement will prevail over since the petitioner was regularized based on 12(3) settlement. If the petitioner is aggrieved, the petitioner ought to have filed a petition challenging the 12(3) settlement and at this stage, the petitioner is barred from doing so. Based on 12(3) settlement, several employees were regularized and some of



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them were retired also. The respondents are absolutely right in stating that the petitioner having accepted the terms of 12(3) settlement cannot turn around and claim permanency. The petitioner has not challenged the 12(3) settlement. The petitioner cannot be permitted to challenge the settlement at this stage, since more than 30,000 persons were regularized based on the 12(3) settlement. If the petitioner is permitted to challenge, then the 30,000 persons would challenge the same and the respondents would be pushed to pay the monetary benefits to all the persons seeking permanency, which will put the respondents in a vulnerable financial status. The respondents are already in weak financial position.

7. Therefore, this Court is of the considered opinion that the petitioner is not entitled to calculate the 50% of the past service. Therefore, this Writ Petition is devoid of merits and hence, this Writ Petition stands dismissed. There shall be no order as to costs.

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Index : Yes / No
Internet : Yes/ No
Nsr



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S.SRIMATHY, J.

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