



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2021

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. (MD) No. 671 of 2016

and

W.M.P (MD) Nos.545 and 546 of 2016

1.The Superintending Engineer,
Theni Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Theni.

2.The Assistant Engineer, (Civil)
RCC Yard,
Theni Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Vaigai Dam Post,
Theni District.

... Petitioners

-vs-

1.The Inspector of Labour,
Theni.

2.D.Ganesan

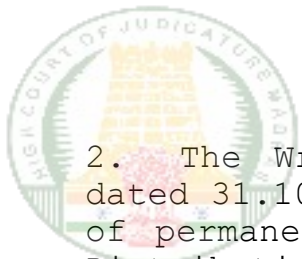
... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to award passed by the 1st respondent in I.D.No.28 of 2011 dated 31.10.2014 and quash the same.

For Petitioners : Mr. Anand Gopalan
for M/s. T.S. Gopalan & Co.,
For Respondent R1: Mr. R.Murugan
Additional Government Pleader
For Respondent R2: Mr. K.Appadurai

O R D E R
(through video conference)

Heard Mr. Anand Gopalan, Learned Counsel for the Petitioners, Mr. R.Murugan, learned Additional Government Pleader for the First Respondent and Mr. K.Appadurai, Learned Counsel appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.



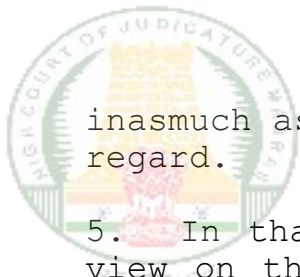
2. The Writ Petition challenges the Order in I.D.No.28 of 2011 dated 31.10.2014 passed by the First Respondent granting the benefit of permanent status to the Second Respondent in Theni Electricity Distribution Circle of Tamil Nadu Electricity Board (hereinafter referred to as 'TNEB' for short and now renamed as 'TANGEDCO') under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter referred to as the 'Act' for short).

3. Learned Counsel for the Petitioners assertively contends that the Act would not be applicable to the claim made by the Second Respondent for the following reasons:-

- (i) the conferment of permanent status on the Second Respondent would not be in accordance with the constitutional mandate requiring equality of opportunity in public employment under Articles 14 and 16 of the Constitution of India as held by the Constitution Bench of the Hon'ble Supreme Court of India in **Secretary, State of Karnataka -vs- Umadevi** [(2006) 4 SCC 1];
- (ii) the Second Respondent had not been initially appointed in sanctioned posts following statutory rules governing the employment in TANGEDCO, which would be in contravention of the dictum laid down by the Hon'ble Supreme Court of India in **A. Umarani -vs- Registrar, Cooperative Societies** [(2004) 7 SCC 112]; and
- (iii) the Theni Electricity Distribution Circle of TNEB, where the Second Respondent claim to have been worked is not an 'industrial establishment' within the meaning of Section 2(3) of the Act.

These contentions of the Petitioners, which are vehemently opposed by the Second Respondent, who is armed with the impugned order passed under the Act, requires further examination after hearing the Learned Counsel for the parties.

4. Be that as it may, the Division Bench of this Court in **Superintending Engineer, Nagapattinam -vs- Inspector of Labour** [(2009) 4 MLJ 472] has earlier considered the claims made by similarly placed persons for absorption in TNEB and has ruled that the same would have to be determined only on the basis of the Settlement dated 10.08.2007 entered by TNEB with the Labour Unions under Section 12(3) of the Industrial Disputes Act, 1947, which has been given effect in the Board Proceedings in (Per) B.P. (FB) No. 44 dated 06.09.2007 and Per.B.P. (CHAIRMAN) No. 9 dated 09.01.2008 issued by the Administrative Branch of Tamil Nadu Generation and Distribution Corporation Limited (hereinafter referred to as 'TANGEDCO' for short). In a number of subsequent cases that have followed, this Court had reiterated that legal position. It is borne out from the materials placed on record that there had not been any earlier occasion for the concerned authority of TANGEDCO to consider the claim of the Second Respondent for absorption on that basis



inasmuch as no such application had been made by them so far in that regard.

5. In that view of the matter, this Court without expressing any view on the merits of controversies involved and without prejudice to the rival contentions of the respective parties in this Writ Petition, requires the concerned authority of TNEB to examine the claim of the Second Respondent for absorption in service in terms of the Settlement dated 10.08.2007 entered by TNEB with the Labour Unions under Section 12(3) of the Industrial Disputes Act, 1947, which has been given effect in the Board Proceedings in (Per) B.P. (FB) No. 44 dated 06.09.2007 and Per.B.P. (CHAIRMAN) No. 9 dated 09.01.2008 issued by the Administrative Branch of TANGEDCO, in the following manner:-

- (i) The Second Respondent shall submit his application to the Superintending Engineer, Theni Electricity Distribution Circle, TANGEDCO, Theni along with a copy of the same to the Chief Engineer (Personnel), Tamil Nadu Generation and Distribution Corporation Limited, Eighth Floor, Eastern Wing, NPKRR Maligai, 144, Anna Salai, Chennai - 600 002 supported by relevant documents to substantiate his claim for absorption in service, on or before 31.05.2021;
- (ii) If the concerned authority after the scrutiny of the application is not satisfied with the prescribed requirements or eligibility criteria for extending that benefit to the applicant, the deficiencies in that regard shall be informed in writing to him requiring the same to be furnished within a time frame of not less than 10 working days that may be granted for that purpose.
- (iii) In the event of the concerned authority not being satisfied with the compliance of the requirements even thereafter, an enquiry shall be conducted affording opportunity of personal hearing to the applicant to explain his position in that regard;
- (iv) Thereafter, the application of the Second Respondent shall be considered by the concerned authority on merits and in accordance with law dealing with each of the contentions and a reasoned order shall be passed, which shall be communicated to the applicant under written acknowledgment by 30.06.2021.
- (v) The report of action taken shall be filed in the Registry of this Court by 05.07.2021.



Post the matter for further hearing and passing orders under the caption 'Electricity Board - Conferment of Permanent Status cases' on 08.07.2021.

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ASSISTANT REGISTRAR (CRL SIDE)

WEB COPY

TRUE COPY

30/04/2021

SUB ASSISTANT REGISTRAR (CS IV)

Ns/SRM

To

- 1.The Superintending Engineer,
Theni Electricity Distribution Circle,
Generation and Distribution Corporation Ltd.,
Theni.
- 2.The Assistant Engineer,
RCC Yard,
Theni Electricity Distribution Circle,
Generation and Distribution Corporation Ltd.,
Vaigai Dam Post,
Theni District.

Copy to

D.Ganesan,
Labour,
RCC Yard,
Vaigai Dam,
Theni District.

W.P. (MD) No. 671 of 2016
and
W.M.P (MD) Nos.545 and 546 of 2016

Dated : 27.04.2021

RK
30/04/2021
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