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W.P.(MD)No.18755 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 21.04.2022
DELIVERED ON : 17.06.2022

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P.(MD)No.18755 of 2017

W.M.P.(MD).No.15122 of 2017

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

2.Superintending Engineer,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin.

...Petitioner

/Vs./

1.The Presiding Officer,
Labour Court, Tirunelveli.

2.V.Narayanan @ Narayanaperumal

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the first respondent in I.D.No.49 of 2005 and quash the award dated 31.10.2013.

For Petitioner	: Mr.Anand Gopalan for Mr.T.S.Gopalan & Co
For Respondents	: R1-Labour Court Mr.V.Thirumal for R2

O R D E R

This Writ Petition has been filed to quash the award dated 31.10.2013 passed in I.D.No.49 of 2005 by the first respondent.

2. The brief facts of the case as stated in the affidavit is that the Tamil Nadu Electricity Board, Predecessor in title to TANGEDCO has set up four Thermal Power Stations in Ennore, North Chennai, Mettur and Tuticorin. In the year 1997, it was decided to make a scientific study of its man power requirement of the four Thermal Power Stations and on determination of the same, if additional vacancies were required, they were to be created and filled up. The National Productivity Council was appointed to conduct a work study. Based on the study, it was found that there was additional manpower requirement to be created and those vacancies were to be duly filled up. Apart from filling up the

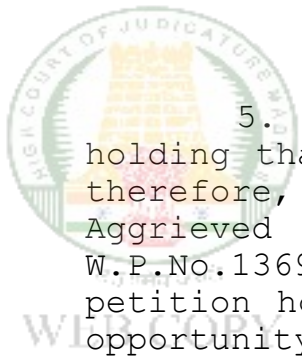


existing vacancies, the vacancies for the additional manpower requirement are to be created and these vacancies were to be duly filled up. It was decided that the vacancies for the additional manpower requirement were to be filled up by absorption of contract labour.

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3. As per the recommendations of Khalid Commission and the judgment rendered by Hon'ble Mr. Justice R.Jayasimha Babu, when the absorption of the contract labour as envisaged by Mr.Justice Khalid was completed, the Board was free to engage the candidates who satisfied the qualification prescribed in the service regulations. However, purely on humanitarian grounds, the Board decided to create additional vacancies for absorption of the contract workmen. By the Board proceedings BP 17 dated 28.04.1999, the contract labourers, who had worked for a period of 480 days between 06.01.1996 to 05.01.1998, were to be identified. Accordingly, on 08.01.1998, the eligible contract workmen were identified and a list was prepared. The second respondent had not admittedly worked for 480 days during the period from 06.01.1996 to 05.01.1998 and therefore, his name was not included in the list. In fact, the Board proceedings prescribing the criteria for absorption was challenged by way of writ petition and the same was dismissed affirming the said Board proceedings. The second respondent has taken a plea for absorption on the ground that even though the employee had not worked for 480 days during the period from 06.01.1996 to 05.01.1998, if the employee had earlier worked for 480 days for a period of 24 months, he was entitled for absorption.

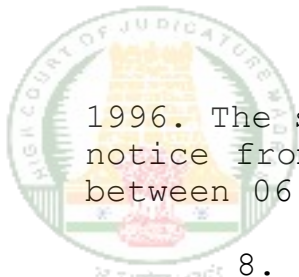
4. Thereafter by way of Board Proceedings dated 28.04.1999, the engagement of contract labour was abolished and those contract workmen, who were identified as having worked for 480 days during the period from 06.01.1996 to 05.01.1998, were required to appear before the Committee and establish their credentials for absorption. Based on the recommendations of the Committee alone, they were to be appointed. The engagement of contract labour in the four Thermal Power Stations was stopped on 30.04.1999. All contract labourers, who were engaged on 30.04.1999, were thereafter continued as Temporary Casual Labour on the rolls of the Board on daily wages. This process had been continued upto 31.10.1999. Once that process was completed, those contract workmen, who had not worked for 480 days between 06.01.1996 and 05.01.1998, had to be dispensed with. The contention of the petitioner is that they might have worked in the Board between 01.05.1999 and 31.10.1999, but such cessation of engagement would not amount to retrenchment. Hence, the second respondent raised an Industrial Dispute alleging that he had been identified as eligible for absorption that he had worked for 480 days in a period of 24 calendar months and his non-engagement from October 1999 was not justified. The said dispute was taken to the first respondent for adjudication and it was numbered as I.D.No.49 of 2006.



5. On 22.08.2011, the first respondent passed an award holding that the second respondent had not worked for 480 days and therefore, he was not entitled to be considered for absorption. Aggrieved by the said award, the second respondent filed W.P.No.13691 of 2011. On 10.12.2011, this Court disposed the writ petition holding that the second respondent was not given adequate opportunity to establish his eligibility criteria. Hence, the award of the first respondent dated 22.08.2011 in I.D.No.49 of 2005 was set aside and the matter was remanded. Thereafter, the first respondent passed an award on 31.10.2013 holding that the second respondent had worked for 480 days in a period of 24 months prior to 1996 and based on that, he was entitled to permanency. Admittedly, the services of the second respondent were terminated on 31.10.2009 for which he was not given any notice. Therefore, he was entitled for reinstatement. After holding that he was entitled to reinstatement, the first respondent has also held that he was entitled to permanency and a direction was given to the petitioners to reinstate the second respondent with 50% backwages.

6. It is contended that the provisions of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act would not apply to the petitioner's Establishment. It is not one of the establishments enumerated in Section 2(3) of the said Act. Further, as far as the cessation of employment of the second respondent on 30.10.1999 was concerned, he was in the service of the Board as casual worker only between 01.05.1999 and 30.10.1999 and that he had not put in one year of continuous service. Therefore, his cessation would not be violative of Section 25F of the Industrial Disputes Act nor did it warrant notice or retirement compensation. Though the award was received in November 2013, only in February 2014, the Board decided to reinstate him and challenge the award insofar as it awarded 50% of backwages and other benefits. Accordingly, by order dated 23.05.2014, the second respondent was appointed as Field Assistant and he joined duty on 30.05.2014.

7. The second respondent has filed a counter affidavit stating that it is not correct that the second respondent had not admittedly worked for 480 days during the period from 06.01.1996 to 05.01.1998. Though the name of the second respondent has been enlisted in 302nd position in the seniority list, his name was not included in the final list of laborers of TTPS for absorption, citing the reason that he had not worked for a period of 480 days in 24 calendar months. But, on perusal of available records from April 1996 to April 1999, the second respondent has served for a minimum period of 336 days and a maximum period of 451 days, according to the calculation of the Superintending Engineer, Mechanical-I, TTPS. However, while calculating the total number of days of service, the second petitioner has left out the National holidays for calculation and they have not detailed the documents on the basis of which the days of service were calculated. Moreover, the petitioners have not

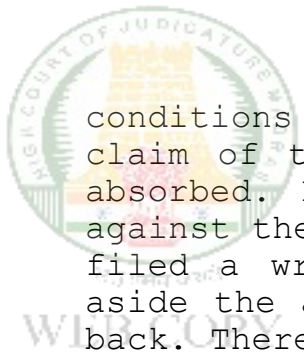


1996. The second respondent was also terminated from service without notice from 30.10.1999 stating that he had not worked for 480 days between 06.01.1996 to 05.01.1998.

8. The provisions of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act are applicable to the petitioner's Establishment in terms of the various Board proceedings issued regarding the absorption of the contract laborers. The contention of the petitioners that the second respondent was in service as casual worker only between 01.05.1999 to 30.10.1999 is without any basis. The termination of the second respondent who had continuously served for a period of 480 days in 24 months without notice is violative of Section 25F of the Industrial Disputes Act, 1947. The second respondent was appointed as Field Assistant by order dated 23.05.2014 and he joined duty on 30.05.2014. Still, he is continuing his services. The award of the first respondent was passed with due diligence, considering the various oral and documentary evidences produced by the parties concerned. The Labour Court has rightly taken the fact that the contract laborers, who were entertained during 1986 and 1989 onwards and had put in continuous service of 480 days in a period of 24 calendar months, but had worked less than 480 days during the period from 06.01.1996 to 05.01.1998, are eligible for absorption subject to the condition that the continuous period of break in service should not exceed six months. In such cases, the continuous period of service of 480 days should be reckoned only from the subsequent date of joining in duty. The first respondent has rightly held that the petitioners have failed to establish that the second respondent has absented from service for a period of more than six months from 1996 and have miserably failed the basis on which the total days of service of the second respondent was calculated by them. The first respondent has rightly held that it cannot be decided that the second respondent has not been continuously in service for 40 days. Hence, the second respondent prayed to dismiss the present writ petition.

9. Heard Mr.Anand Gopalan for Mr.T.S.Gopalan & Co, learned Counsel for the petitioner and Mr.V.Thirumal for the respondent and perused the materials available on record.

10. The petitioners Board has formulated a scheme based on the recommendation of Khalid Commission. The contract laborers were absorbed in the regular post. Further, the petitioners Board had taken earnest efforts to absorb the contract laborers by issuing BP 17 Proceedings dated 28.04.1999. The said BP 17 proceedings were challenged by way of writ petition and the writ petition was dismissed affirming the said Board Proceedings and the order passed in the writ petition has attained finality. Based on the said proceedings, the service of the second respondent was calculated. Since the second respondent has not worked for 480 days during the period from 06.01.1996 to 05.01.1998 and he was not within the



conditions prescribed in the Board Proceedings No.17, hence the claim of the second respondent was not considered and he was not absorbed. In the first round of litigation, the Labour Court held against the workman. Aggrieved over the same, the second respondent filed a writ petition and in that writ petition, this Court set aside the award passed by the Labour Court and remanded the matter back. Thereafter, the impugned award was passed.

11. Now the issue is as to whether the service of the second respondent should be considered based on BP 17 proceedings or his services should be considered beyond the cut-off period prescribed in BP 17 Proceedings. Since the BP 17 proceedings was upheld by this Court in the writ petition wherein it was challenged, this Court is of the considered opinion that when the scheme is formulated and was upheld by High Court, the same should be followed for all the other workers who are claiming absorption. In this case, the second respondent is admittedly not coming within the purview of BP 17 Proceedings. However, it is seen from the records that the second respondent was absorbed in service as Field Assistant from 30.05.2014. Now, the only question is that whether the second respondent is eligible for 50% backwages. Since this Court has already upheld the BP 17 Proceedings and the fact that the second respondent is not coming within the purview of BP 17 Proceedings, the second respondent is not entitled to any backwages. If the claim of the second respondent is allowed, then it will give a way to filing several writ petitions to claim similar benefits to be conferred to the other similarly placed persons. Further, regarding the contract laborers, the petitioners Board has formulated the scheme. Therefore, this Court is of the considered view that the BP 17 Proceedings are to be followed and in the event of any deviation in the scheme to absorb the contract laborers, it will lead to opening of pandora box. Moreover, as per the principles of "no work no pay", the second respondent is not eligible for 50% backwages. Therefore, the claim of the second respondent for granting 50% backwages is declined. However, the Petitioners' Board is directed to allow the second respondent to continue in service as Field Assistant and the second respondent, however the 2nd respondent is not eligible for 50% backwages.

12. Accordingly, this Writ Petition is allowed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar (CS)



To சென்ட்ரல்

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The Presiding Officer,
Labour Court, Tirunelveli.

+1 CC to M/s.P. MALINI, Advocate (SR-26334[F] dated 17/06/2022)

+1 CC to M/s.V. THIRUMAL, Advocate (SR-26690[F] dated 20/06/2022)

+1 CC to M/s.K. GANDHIAMMAL, Advocate (SR-26825[F] dated 20/06/2022)

Order made in
W.P.(MD)No.18755 of 2017

Dated:
17.06.2022

= SS/01/07/2022/ 6P 5C