



W.P.(MD)No.7483 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.09.2022

PRONOUNCED ON : 19.12.2022

CORAM

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

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- 1.Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin 628 004.
- 2.Superintending Engineer,
Tuticorin Thermal Power Station,
Tuticorin 628 004.
- 3.Executive Engineer,
Tuticorin Thermal Power Station,
Tuticorin 628 004.
- 4.Managing Director,
Tuticorin Thermal Power Station,
Industrial Co-operative Service Society Limited,
Ind No.1742,
Tuticorin 628 004.
- 5.Chairman,
Tamil Nadu Electricity Board,
Anna Salai,
Chennai-600 002.

... Petitioners



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vs.

1.S.Veeraperumal

2.The Presiding Officer,
Labour Court,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the 2nd respondent Labour Court relating to its award, dated 20.12.2007, passed in I.D.No.35 of 2002 and to quash the same as illegal and without jurisdiction.

For Petitioners	: M/s.P.Malini for M/s.T.S.Gopalan and Co.
For R1	: Mr.S.Kumar
For R2	: Court

ORDER

This writ petition is filed for issuance of writ of Certiorari, to call for the records of the 2nd respondent Labour Court relating to its award, dated 20.12.2007, passed in I.D.No.35 of 2002 and to quash the same as illegal and without jurisdiction.

2. The brief facts of the case are that the first respondent herein filed a



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petition in I.D.No.35 of 2002 under Section 2 (A) (2) of the Industrial Dispute Act, 1947, claiming that he was working as contractual labour from 01.03.1990 onwards and was working till 30.04.1999. Thereafter had worked as regular employee from 01.05.1999 consequent on abolition of contract labour system, based on the report of Justice Khalid commission. In between to the above period, the first respondent was affected by paralysis and hence, he had not turn up to duty from 1.09.1996 to 18.04.1999 and Assistant Medical Officer Mr. Muralidharan of Tuticorin Headquarters Hospital has issued a Medical Certificate for the period from 01.09.1996 to 31.07.1997. And for the period 01.08.1997 to 18.04.1999 Dr.T.Chandrakumar, Medical Officer has issued Medical certificate. The petitioner had permitted the first respondent to work from 19.04.1999 to 30.04.1999 and was removed from service on 03.05.1999 even though the second respondent rendered as Contract Labourer from 01.03.1985 to 30.04.1999 and as regular employee from 01.05.1999 to 03.05.1999. Since the second respondent was not considered by the petitioners on par with the other contract labourers who are working as regular employee with respective status. On the above grounds, the 1st respondent prayed for reinstatement into service with continuity of



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employment and also pay the back wages during the period of non-employment.

3. The petitioners had contested the claim of the 1st respondent before the Labour Court and filed a detailed counter statement contending that according to Justice Khalid Commission's recommendation, the contract labourer system was abolished with effect from 01.05.1999 and accordingly, the contract labourers identified as on 05.01.1998 were absorbed as regular Helpers subject to satisfying the conditions. The basic conditions for absorption are that the name of contract labourer must be identified and placed in the list as on 05.01.1998 and must be completed 480 days in 24 calendar months prior to 30.04.1999 and the concerned employee ought not have absented from duty continuously for 6 months. On verification of the records of the 1st respondent, it was found that he was absented from 01.09.1996 to 18.04.1999 and had not continuously worked for 480 days in 24 calendar months prior to 30.04.1999. Since the 1st respondent had absented for 2 years and 8 months, his employment was not regularized. For all the reasons stated above, the selection committee did not consider the 1st respondent for permanent absorption. The Labour court erroneously without properly



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considering the contentions of the petitioners had passed the impugned award, dated 20.12.2007, directing the reinstatement of the 1st respondent with permanent status with continuity of service and payment of backwages for the period during which the 1st respondent was not given employment and other attendant benefits. Aggrieved over the same, the present writ petition is filed.

4. The learned Counsel appearing for the petitioner submitted that the 1st respondent did not appear before the Selection Committee, when the process of permanent absorption was conducted. Moreover, the petitioner absented himself from duty during crucial period, when the petitioners were considering the contract labourers for absorption. However, the learned Counsel appearing for the 1st respondent submitted that the 1st respondent was admitted in hospital due to paralysis. To substantiate this, he has submitted two medical certificates covering two periods. It is an admitted fact that the 1st respondent has not appeared before the Selection Committee due to paralysis. Since the 1st respondent had lost the chance, he cannot claim for absorption. The 1st respondent kept silent during the crucial period and after the recruitment process are over, the



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petitioner has come up with claim petition for regularization. Moreover the 1st respondent has not worked during the crucial period, in order to calculate the 480 days in 24 calendar months, the candidature cannot be accepted simply because the he was working as contract labour to some other contractor for a brief period, he cannot claim regularization before the petitioner employer based on Justice Khalid Commission. A scheme was formulated and all the contract labourers were absorbed permanently. When the 1st respondent has lost the post, the 1st respondent cannot claim regularization now.

5. Heard M/s.P.Malini for M/s.T.S.Gopalan and Co., the Learned Counsel for the petitioners and Mr.S.Kumar, the Learned Counsel for the 1st respondent and perused the records.

6. After considering the rival submissions and on perusal of the documents, it is seen that the 1st respondent had submitted two medical certificates issued by the Medical Officers of Tuticorin Headquarters Hospital. Admittedly, the petitioner has not complied with the condition of 480 days as stated in the



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scheme. Also the first respondent failed to appear before the Selection Committee for which the first respondent submitted that he was not aware that the Selection Committee was formed and selection process was going on. The reason for not participating in the selection process is because the 1st respondent was not attending the work due to his ailment of paralysis. It is seen that the 1st respondent has submitted the medical certificate to the petitioner authorities, after the Selection Committee has completed the process of selection. Because of the 1st respondent's illness due to paralysis, the petitioner has lost the right for regularization. Had the 1st respondent appeared before the Selection Committee and explained his illness before the Committee, the petitioner's candidature would be considered as per the settlement terms. The 1st respondent ought to have taken steps to inform the petitioners institution about his illness through his family members or through somebody.

7. For the reasons stated above this Court is of the considered opinion that the case of the first respondent ought to be considered sympathetically and this equity relief is only due to the petitioner's illness which is supported by the



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medical certificates. Therefore, the first respondent is entitled to reinstatement. Since the first respondent has not worked all these years, the first respondent is not entitled to any back wages on the principles of “No Work No Pay”. As far as the continuity of service is concerned, the 1st respondent failed to appear before the committee and has not informed about the illness even through his family members. The 1st respondent is entitled to continuity of service from the date of the Labour Court award that is dated 20.12.2007. Therefore, the petitioner is directed to reinstate the 1st respondent with continuity of service from 20.12.2007 onwards. It is made clear that the relief granted to first respondent is because of his ailment during the crucial period of candidate verification, hence this judgment shall not be shown as precedent for any other persons to claim reinstatement.

8. With the above said observation, the writ petition is disposed of. No costs.

Index : Yes / No
Internet : Yes

19.12.2022

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To

The Presiding Officer,
Labour Court,
Tirunelveli.



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S.SRIMATHY, J

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

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