



W.P.(MD).No.9960 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.9960 of 2009

and

M.P.(MD).No.1 of 2009

and

W.M.P.(MD).Nos.15293 of 2017

The Assistant Engineer,
Vaigai Micro Hidal Power Station,
Tamil Nadu Electricity Board,
Vaigai Dam,
Theni District.

... Petitioner

Vs.

1.V.Manikandan

2.The Presiding Officer,
Labour Court,
Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the order passed by the second respondent Labour Court dated 12.08.2008 in I.D.No.54 of 2002 and quash the same.



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

For R-1 : Mr.T.Ravi Chandran

For R-2 : Labour Court

ORDER

This Writ Petition is filed challenging the I.D.No.54 of 2002 dated 12.08.2008.

2. The first respondent has filed I.D.No.54 of 2002 stating that he was working with the petitioner's Board continuously from 20.11.1991 to 20.04.1997 and received the monthly salary of Rs.650/-. On 21.04.1997, without issuing charge memo and without conducting any enquiry, the petitioner's Board orally terminated the service of the first respondent. Aggrieved over the same, the first respondent has filed conciliation petition and after failure, he has raised I.D. before the Labour Court. The petitioner's Board has filed counter stating that the first respondent was never appointed in the Board service and prayed to reject the claim of the first respondent. The first respondent was not identified by Khalid Commission. Hence, he is not entitled to the absorption in the Board service.



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3. The first respondent submitted a petition before the Labour Court stating that he was serving in the petitioner's Board as contract labour for a period from 20.11.1991 to 05.06.1994, thereafter, from 06.06.1994 to 20.04.1997. Therefore, the Labour Court considering the period of service which the first respondent has rendered which is more than 480 days in 24 calendar months granted the relief of permanency. Aggrieved over the same, the petitioner's Board has filed this Writ Petition.

4. The petitioner's Board while abolishing the engagement of contract labours has formulated a scheme to absorb the existing contract labours. Thereafter had entered into 12(3) settlement with the Union and had issued B.P.No.17, dated 28.04.1999. The contention that was prescribed in the above scheme is that the first respondent ought to have served in the Board and ought to have been identified by Khalid Commission as on 05.01.1998. After identification, the first respondent ought to have continued as employee of the petitioner's Board for 248 days. Thereafter, the first respondent would have been absorbed. In the present case, the first respondent was not identified on 05.01.1998 and has not fulfilled the conditions stated in the scheme / B.P.No.



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17, dated 28.04.1999. The scheme formulated by the petitioner's Board was also upheld by the Hon'ble Court when the validity of the proceeding was questioned. In such circumstances, since the first respondent is not coming within the purview of the B.P.No.17, dated 28.04.1999 and the scheme, the claim of the first respondent cannot be entertained. These facts were also taken into account by the second respondent while passing the order.

5. The issue of granting permanency was elaborately dealt with by this Court in W.P.(MD)No.14 of 2008 vide order dated 30.11.2022, W.P.(MD)No. 16267 of 2012 vide order, dated 11.11.2022. The relevant portion is extracted hereunder:

“8. The next contention of the petitioner management is that the claim of regularization ought to be in terms of B.P. No.17, wherein it provides for absorption of contract labourers if they had fulfilled the conditions prescribed in the said B.P.No.17. The conditions are that they should have been identified as on 05.01.1998 by the committee, should have now engaged as on 30.04.1999 and should have engaged for 480 days in 24 calendar months preceding 30.04.1999. In the case of M.Sahayajeya did not work after 19.01.1998 and she was not engaged from 19.01.1998, hence she was not engaged on 30.04.1999. Moreover she might have been engaged on 05.01.1998, but admittedly not engaged after 20.01.1998, hence she could not have completed minimum 480 days preceding 30.04.1999. The said M.Sahayajeya has worked from 01.05.1997 to 19.01.1998 only for 263 days and was not engaged after 20.01.1998 and hence she has not worked for 480 days preceding 30.04.1999.



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9. The Learned Counsel appearing for the 2nd respondents / contract labourers submitted that the Labour Court has given specific finding that both the contract labourers have completed 480 days continuous service within 24 calendar month based on the documents and the said finding of Labour Court cannot be inferred with under Article – 226 of Constitution of India unless there is an error apparent on face of record as per the decision of the Hon'ble Supreme Court rendered in *Iswaralal Mohanlal Thakkar Vs. Paschim Gujarat Vij Company Limited* and another reported in 2014 (6) SCC page 634 para 15 and also decision in *W.P.No.8538 of 2018*, dated 11.04.2019, in para 19 and 20. Further submitted that as per section 3 (1) of Tamilnadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, has contemplated that every workman who is in continuous service for a period of 480 days in a period of 24 calendar months in an industrial establishment shall be made permanent and it never required the workman should be in service on the date of permanent absorption and also never says the workman should have worked under one contractor. It only requires workman should have completed 480 days in 24 calendar months and the same is complied by both workman in the present case.

10. After hearing the rival submissions and after perusing the records on this ground this Court has given due consideration. Admittedly all the individual “Contract Labourers” were engaged by the Contractor. The petitioner management had engaged various Contractors, wherein the said Contractors engaged workmen to execute the work of the petitioner management. Several claims arise to absorb them in the Tamilnadu Electricity Board or TTPS Service. After several litigations, based on Justice Khalid Commission recommendations the petitioner management agreed to absorb the contract labourers. The Tamil Nadu Electricity Board (TANGEDCO) passed Board Proceeding No.17 dated 28.04.1999, wherein it states if the contract workers fulfil the criteria laid down in the proceedings would be absorbed. The contract labourer should have been identified on 05.01.1998 by the Committee. The contract labourer should have been engaged as on 30.04.1999 and should have been engaged for 480 days for 24 calendar months preceding 30.04.1999. The said M.Sahayajeya had worked from 01.05.1997 to 19.01.1998 i.e. only for 263 days and not worked from 20.01.1998 to 05.05.1999, because of ill health, which is the crucial period to absorb the 2nd respondent, hence she is not entitled to



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absorption. On the other hand, the Learned Counsel appearing for the said Sahayajeya submitted that she has completed 480 days, if the date is taken from 03.04.1996 to 19.01.1998 and based on the Conferment of Permanent Status Act the date should be reckoned from 03.04.1996 to 19.01.1998. The 2nd respondent admittedly was an employee under the Contractor during the period from 03.04.1996 to 19.01.1998 and was never been an employee under the petitioner management. If at all the 2nd respondent claims permanency, then it ought to be against the Contractor, who is a party to the proceedings in the Labour Court. The petitioner management had formulated a scheme to absorb 30,000 contract labourers were absorbed. In that in TTPS some 9065 were considered for absorption. The petitioner management agreed to accommodate and created 5032 supernumerary posts were created and based on seniority the contract labourers were absorbed. The said contract labourers were identified as on 05.01.1998, they were serving for 480 days preceding 30.04.1999. But the said Sahayajeya admittedly was not as on 30.04.1999. When the petitioner management has formulated a scheme and the said scheme was upheld in several judgments, the 2nd respondent cannot deviate from the scheme. Admittedly the 2nd respondent was engaged either by the petitioner management or by the contractor from 20.01.1998 till 30.04.1999 and hence the said Sahayajeya fails to fulfill the criteria and hence she is not eligible to absorption. Therefore, for the above reasons the 2nd respondent is not entitled to absorption.

11. As far as the writ petition filed against Sundari in W.P.(MD)No. 16452 of 2012 is concerned, she has claimed that she had worked in Ravi Enterprises from 01.11.1997 to 31.01.1998 on three days alternative basis and that comes to 197 days. She further claimed she had worked in Birndha Engineering construction from 01.11.1995 to 30.04.1999 and that comes to 351 days. If both is taken together then it comes to 548 days and hence had claimed absorption. The petitioner management submitted that the 2nd respondent claims she had worked in said Ravi Enterprises, but for the said period the Ravi Enterprises has not paid any Employment Provident Fund in favour of the said Sundari for the said period. The 2nd respondent has not produced any other evidence to substantiate the claim. In such circumstances, the period from 01.11.1997 to 31.01.1998 cannot be considered. As far as the period worked in Birndha Engineering Construction from 01.11.1995 to 30.04.1999, it comes to 351 days. If the preceding 2 years is considered



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from 30.04.1999, the said Sundari has not completed 480 days. But the learned Counsel for the 2nd respondent claimed that if the entire period from 01.11.1995 to 30.04.1999 is considered, then the said Sundari has completed 480 days. Even according to the conferment of Permanent Status Act, a person would be entitled to be considered only if a person had completed 480 days in 24 calendar months and not 480 days in 48 calendar months. Therefore, the claim of the said Sundari is liable to be rejected and she is not entitled to absorption and hence, the writ petition filed against the said Sundari ought to be allowed.

12. Therefore, this Court is of the considered opinion that the claim of the 2nd respondents in both the writ petitions is hit by delay and laches and the claim of the 2nd respondents are stale claim since they have not completed 480 days in 24 calendar months as stated supra and there is no dispute between the parties, hence the petition filed by the petitioner management ought to be allowed. On merits also the 2nd respondents are not entitled to absorption as stated supra. Therefore, the writ petitions W.P.(MD)No16267 of 2012 and W.P. (MD)No. 16452 of 2012 are allowed and the impugned orders passed by the Labour Court are quashed. No costs."

6. In the present case, the first respondent had worked with the Contractor from 20.11.1991 to 05.06.1994, thereafter, from 06.06.1994 to 20.04.1997, but has not worked on 05.01.1998 and was not identified by the Khalid Commission on 05.01.1998. The first respondent has not completed 240 days in the petitioner establishment from 05.01.1998. Since the first respondent has not satisfying the conditions stated in B.P.No.17, the first respondent is not entitled to get permanency. These factors were not taken into account by the second respondent and hence the impugned order cannot be sustained and it is liable to be quashed.



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7. For the reasons stated above, the impugned order is quashed and the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
Nsr

To

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