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W.P.(MD)Nos.14 of 2008 and 4288 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.14 of 2008 and 4288 of 2013

W.P.(MD)No.14 of 2008:

Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin.

... Petitioner

vs.

1.T.Chelladurai

2.The Management,
Subitha Steel Constructions,
No.16, Jayalani Colony,
Palayamkottai Road,
Tuticorin-8.

3.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 3rd respondent/Labour



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Court relating to its Award, dated 29.11.2005, passed in I.D.No.95 of 2022 and to quash the same as illegal and without jurisdiction.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.
For R1 : Mr.K.Jeyamohan
For R3 : Labour Court

W.P.(MD)No.4288 of 2013:

Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.T.Chelladurai

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records in pursuant to the impugned order passed by the 1st respondent in C.P.No.21 of 2012, dated 24.09.2012 and to quash the same.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.
For R1 : Labour Court
For R2 : Mr.K.Jeyamohan



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COMMON ORDER

These writ petitions are filed by the Chief Engineer, Tuticorin Thermal Power Station.

2.The writ petition in W.P. (MDNo.14 of 2008 is filed challenging the order passed in I.D.No.95 of 2002, dated 29.11.2005. The 1st respondent had filed the impugned industrial dispute before the 2nd respondent Labour Court claiming that the petitioner has engaged the 1st respondent as contract labourer for a period up to 30.04.1999. The contention of the petitioner management is that they were engaged by the Contractors namely Subitha Steel Construction, Tuticorin, who is a sub-contractor of M/s. Engineering Projects of India Limited (Main contractor) in the works contract of construction of conveyor arrangements in external coal handling plant of mechanical construction of Tuticorin Thermal Power Plant. But the first respondent was not covered by EPF scheme and not received the wage increase, etc. Subsequently, a large number of contract labourers started claiming absorption in the petitioner power station. Hence, certain guidelines and schemes



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were formulated under B.P.No.17, dated 28.04.1999 and other guidelines, dated 29.04.1999 and 07.05.1999, were formulated. The 1st respondent is not entitled to absorption as Helper as per these B.P. Proceedings and guidelines, since the petitioner was not identified either by the committee or by the Khalid Commission. Moreover, the petitioner has not completed 480 days in the petitioner power station. The 1st respondent filed industrial dispute by including the Contractor as one of the respondents before the Labour Court. However, the respondents have not considered the claim of the petitioner management and directed to absorb the 1st respondent with continuity of service without back wages. Aggrieved over the same, the present writ petition is filed.

3.In the meanwhile, the 1st respondent has filed C.P.No.21 of 2012 and was same allowed, vide order, dated 24.09.2012. Aggrieved over the Claim petition, the Tuticorin Thermal Power Station has filed W.P.(MD)No.4288 of 2013. the issue of absorption of contract labourers was considered by this Court elaborately in the case of Sahayapriya in W.P.(MD)No.16267 of 2012 vide order, dated



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11.11.2022 and the relevant portion is extracted here under:

“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.

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 Iswarlal 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



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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 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



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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 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



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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."

4.The first respondent was engaged by the Sub-Contractor Sabitha Steel Construction. The Sub Contractor was engaged by the Main Contractor M/s. Engineering Projects India Ltd., to execute small portion of the construction of Tuticorin Thermal Power project. The said construction work stated in the year 1986 and was completed in February 1992. After the completion of the work the first respondent was not continued. Even as per Exhibits W-3, the first respondent had worked from 01.09.1993 to 19.05.1995. As on the date of considering for absorption based on B.P.No.17, the second respondent was not service at all. Also, as on the date of filing of the petition before the Labour Court the petitioner



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was not in service. Moreover, the first respondent was not identified as on 05.01.1998 and has not completed 480 days in the petitioner power station, hence the 1st respondent is not entitled to absorption. Hence, the impugned orders in both the writ petitions are set aside.

5.For the reasons stated above, the writ petitions are allowed. No costs.

Index : Yes / No
Internet : Yes

30.11.2022

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To

The Presiding Officer,
Labour Court,
Tirunelveli.



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S.SRIMATHY, J

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