



W.A.No.1451 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.1451 of 2021

K.Hareesh

.. Appellant

-VS-

1.The Superintending Engineer,
Tamilnadu Electricity Board,
Villupuram Taluk,
Villupuram Electricity Distribution Circle,
Villupuram.

2. The Inspector of Labour,
Villupuram.

3. S.Senthil Kumar,
4. Sasiraja
5. T.Mahalingam
6. M.Janagiraman
7. V.Ilangovan
8. M.Arunkumar
9. T.Raja
10.S.Jayavadhanan
11.M.Vijayakumar
12.S.Ganesan

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of the



W.A.No.14 of 2019

learned Single Judge dated 22.11.2019 in W.P.No.42504 of 2016.

WEB COPY

For Appellant : Mr.N.Suresh

For Respondents : Mr.Anand Gopalan for
M/s.T.S.Gopalan (R1 and R2)

J U D G M E N T

This Writ Appeal has been preferred against the order of the learned Single Judge dated 22.11.2019, made in W.P.No.42504 of 2016, in allowing the Writ Petition filed by the 1st Respondent /Petitioner by setting aside the order of the 2nd Respondent.

2. The facts in nutshell as stated by the Appellant/Workman are as follows:

(i) The Appellant/Workman joined the services of the Electricity Board as daily labourer on 20.08.1998 and has completed 480 days of continuous service in 24 calendar months. As he was not made permanent, he, along with others applied for conferring permanent status on him under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status) Act, 1981, in the year 2008. The authority viz., Inspector of Labour, after conducting due enquiry, conferred permanent status on him and others, vide order dated 02.03.2016. The said order was questioned by the Electricity Board by filing a Writ Petition before this Court in W.P.No.42504 of



W.A.No.1...

WEB COPY

(ii) Before the Writ Court, the 1st Respondent/Electricity Board made a plea that when there is a settlement binding between the Workman and Management, more so, one under Section 12 (3) of the Industrial Disputes Act, 1947, the case of the Appellant/Workman would be considered provided, he comes within the purview of the said settlement. It is also the case of the Workman that he is a Workman under the contractor and not a contract Labourer.

(iii) The learned Single Judge, vide order dated 22.11.2019, allowed the Writ Petition by setting aside the order dated 02.06.2016, passed by the Authority. The operative portion of the order dated 22.11.2019 passed by the learned Single Judge reads as under:

"28.However, it is made clear that the cases of the respondent/workman are also to be considered with reference to the judgment of the Hon'ble Division Bench of this Court rendered in the case of Superintending Engineer, Nagapattinam Electricity Distribution Circle Vs. Inspector of Labour, Pedari Koil Street, Thiruvarur, reported in 2009 (4) MLJ 472 and the 12 (3) Settlement dated 10.08.2007 and also in the light of B.P.(Chairman) No.9, Administrative Branch, dated 09.01.2008. If the respondent/workman are otherwise eligible and qualified with



W.A.No.1... of 2020

WEB COPY

reference to the terms and conditions of the 12 (3) Settlement as well as the Board proceedings, their cases are to be considered by verifying the eligibility criteria and other requisite qualifications as prescribed in the above orders.

29. Under these circumstances, the order passed by the Inspector of Labour dated 02.03.2016, in Pa.Mu.No.A/1322/2008, is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed. "

Being aggrieved by the said order, the present Writ Appeal came to be filed.

3. When the matter was taken up for hearing, the learned counsel appearing for the Appellant produced the Judgment of a Division Bench of this Court dated 20.01.2023 in ***Selvaraju & Ors Vs. The Superintending Engineer, Namakkal Electricity Distribution Circle and Others (W.A.Nos.273 & 275 of 2020)*** in which one of us (SVNJ) is a member.

4. The learned counsel appearing for the Appellant/Workman submitted that in the light of the Judgment stated supra, the matter needs to be decided by the authority concerned and in case, the authority comes to the conclusion that there is a contract and if it is sham and nominal, the authority has no power to decide the issue and the matter has got to be decided either before the Industrial Adjudicator or the authority under the



W.A.No.1302 of 2003

Contract Labour (Regulation and Abolition) Act, 1970, for the appropriate relief.

WEB COPY

5. Mr.Anand Gopalan, learned counsel appearing for the Electricity Board relied upon the subsequent Judgment of this Court dated 27.02.2023, in ***G.Gnanajothi Vs. The Superintending Engineer, Tiruvannamalai Electricity Distribution Circle & Ors (W.A.No.2055 of 2021)*** in which also one of us (SVNJ) is a member and stated that in the said case, the authority had granted permanent status, which was questioned by the employer, and the employees succeeded before the learned Single Judge and matter was taken on appeal before the Division Bench in W.A.No.1302 of 2003 and during the pendency of the said Appeal, a Settlement under Section 18 of the Industrial Disputes Act, 1947, was entered into and, thereafter, Board Proceedings were also issued by the Electricity Board. He further submitted that in the aforesaid case, this Court has held that after entering into the Settlement, by giving up certain benefits, the Workmen cannot claim that they should be given benefit of the order of the authority and it is also held that any settlement, contrary to the statutory provision, cannot be enforced and cannot be a valid one.

6. Taking note of the submissions made by both the parties, since the Workman is entitled to put forth his submissions before the appropriate authority, we are inclined to



W.A.No.14 of 2023

follow the Judgment dated 20.01.2023 passed in W.A.Nos.273 and 275 of 2020. We also make it very clear that whether the Workman is entitled to permanent status or not, whether the contract is sham and nominal and whether the Workmen are bound by the Settlement or not need to be taken note of by the authority and it is open to the Electricity Board to rely upon the decision of this Court dated 27.02.2023 to deprive the employee of the relief.

With the above directions, this Writ Appeal stands disposed of. It is made clear that the relief is granted insofar as the Appellant is concerned. The authority is directed to issue notice to the parties concerned within a period of thirty days from the date of receipt of a copy of this Judgment. No costs.

[S.V.N., J.] [K.R.S., J]
05.06.2023

Index: Yes / No
Internet: Yes / No
arr



WEB COPY



W.A.No.14 of 2022

To

- 1.The Superintending Engineer,
Tamilnadu Electricity Board,
Villupuram taluk,
Villupuram Electricity Distribution Circle,
Villupuram.
2. The Inspector of Labour,
Villupuram.

S. VAIDYANATHAN,J.,
and



WEB COPY



W.A.No.1451 of 2021

K.RAJASEKAR,J

arr

W.A.No.1451 of 2021

05.06.2023