



W.P.No.20871 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 27.03.2023

Order delivered on 25.04.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.20871 of 2015

V.R.Suresh

.... Petitioner

vs

1. The Chairman,
Tamil Nadu Distribution Generation Corporation Limited,
Anna Salai,
Chennai – 2.

2. The Chief Engineer (Personnel),
Tamil Nadu Distribution Generation Corporation Limited,
Anna Salai,
Chennai – 2.

3. The Superintending Engineer,
Tamil Nadu Distribution Generation Corporation Limited,
Chennai Electricity Distribution Circle/North,
Anna Salai, Chennai – 2.

.... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a Writ
of Certiorarified Mandamus to call for the entire records connected with the



W.P.No.20871 of 2015

WEB COPY

impugned order of the 2nd respondent vide letter No.110113/866/G.61/G.612/2011-3 dated 23.06.2012 and quash the same and direct the respondents to absorb the petitioner as Helper, with all consequential monetary and attendant benefits by implementing the award of the Inspector of Labour, Tiruvallur, passed in Na.Ka.No.E/2029/98 dated 20.09.1999 confirmed by the order passed in W.P.No.8346/2000 dated 05.01.2001.

For Petitioner : Mr.S.N.Ravichandran
For Respondents : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.

ORDER

This Writ Petition has been filed by the petitioner challenging the order passed by the 2nd respondent dated 23.06.2012, rejecting the petitioner's claim for absorption and consequently, direct the respondents to absorb the petitioner as Helper, with all consequential monetary and attendant benefits by implementing the award of the Inspector of Labour, Tiruvallur, passed in Na.Ka.No.E/2029/98 dated 20.09.1999 confirmed by the order passed in W.P.No.8346/2000 dated 05.01.2001.



W.P.No.20871 of 2015

WEB COPY

2. The brief facts of the case of the petitioner is as follows:

i) The petitioner passed ITI Fitter Trade in February 1993 and undergone one year apprentice training at Royal Enfield Motors from 24.08.1993 to 23.08.1993. Thereafter, the petitioner joined as a contract labour in the office of Junior Engineer, Ponneri in the year 1994. The petitioner had done works such as pole erection and other line works, transformer erection work etc. under K2 Chit Agreement. He worked in Ponneri office from 1994 to 24.07.1997. Thereafter, he was employed from 25.07.1997 to 31.05.1998 at Medur section and 01.06.1998 to 30.04.1999 at Andaarkuppam Section. Since from his initial engagement, the petitioner was directly employed by the respondent Board continuously, as a contract labour, without any break in service as evidence from the certificate issued by the Board.

ii) In the Tamil Nadu Electricity Board, more than 20,000 contract Labourers were employed without any absorption or permanency, despite completing 480 days of continuous service in 24 calendar months. The Trade Unions filed writ petition and ultimately, the Hon'ble Supreme Court vide order dated 10.04.1990 constituted Justice Khalid Committee to identify the contract labourers for permanent absorption into the Board Services. The



W.P.No.20871 of 2015

WEB COPY

said committee identified nearly 18,000 contract labourers and out of that 13,054 were absorbed as Helper in the respondent Board. However, the petitioner was not absorbed. The petitioner along with ninety six other contract labours approached the Inspector of Labour, Tiruvallur through the Union namely, Tamil Nadu Thozhilalar Munnetra Sangam, claiming permanency and absorption vide Na.Ka.No.E/2019/98 under section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981.

iii) An award dated 20.09.1999 was passed by the Inspector of Labour directing the respondent Electricity Board to grant permanent status to 51 contract labourers enlisted therein including the petitioner herein on completion of 48 days in 24 calendar months. As against the award of Inspector of Labour, the respondent Electricity Board filed W.P.No.8346 of 2000 and obtained an order of interim stay vide an order dated 05.06.2000. After obtaining the order of interim stay and in order to thwart the rightful claim of absorption made by the petitioner, the respondent Board denied employment to the petitioner without any notice. This Court passed an order dated 05.01.2001, dismissing the said writ petition preferred by the Electricity Board and thereby affirmed the award of Inspector of Labour vide



W.P.No.20871 of 2015

WEB COPY

order dated 20.06.1999. As against the same, no appeal was preferred by the Electricity Board and the same attained finality. Pursuant to the order passed by this Court in W.P.No.8346/2000 dated 05.01.2001, the other employees in the writ petition were given absorption, however, the petitioner alone was denied the benefit. Hence, the petitioner approached the Union and they informed him that batch of writ appeals and writ petitions filed by the board against the award of Inspector of Labour in respect of others involving the identical issues were pending.

iv) After the dismissal of Writ Appeal by the Division Bench of this Court by order dated 24.10.2008, the petitioner made several representations to the respondent dated 28.11.2009 and 25.03.2010 seeking for permanent absorption. However, there was no response. Hence, the petitioner filed writ petition for disposal of his representation in W.P.27322 of 2011. By order dated 2.11.2011, this Court directed the respondents to dispose of the petitioner's representation. Even after the said direction, there was no response from the respondents. The petitioner filed another writ petition in W.P.No.19892 of 2012 seeking direction to the respondents to implement the award of the Inspector of Labour dated 20.09.1999, confirmed by this Court in W.P.No.8346/2000 dated 05.01.2001.



W.P.No.20871 of 2015

WEB COPY

v) In the meantime, the 3rd respondent by order dated 23.06.2012, rejected the claim of the petitioner for absorption and permanency on the ground that the petitioner did not turn up for employment from 01.05.1999 and he was not identified as on 08.08.1998 and hence, not covered under B.P.(FB).No.44 dated 6.7.2007. While hearing W.P.No.19892 of 2011, this Court suggested to challenge the order of rejection dated 23.06.2012. Thus, this writ petition challenging the order dated 23.06.2012.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent.

4. i) Learned counsel for the petitioner would submit that in order to deny the petitioner of his due and rightful absorption, vindictively with malafide intention, denied employment to the petitioner, after obtaining an order of interim stay from this Court on 05.06.2000. Even after dismissal of the writ petition in W.P.No.8346/2000 on 05.01.2001, confirming the award of the Inspector of Labour, the respondents did not come forward to implement the same.

ii) Learned counsel would further contend that denial of employment to the petitioner at the instance of the Board, without any notice after



W.P.No.20871 of 2015

WEB COPY

completing 480 days as on 31.01.1996, is *per se* illegal and violative of principles of natural justice. The cessation of work was not due to any fault on the part of the petitioner workman but only due to the action of the Management. Hence, section 3(2) of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 will come to the aid of the petitioner.

iii) Learned counsel would further submit that it is settled principle of law that a right conferred under a statute cannot be annulled or watered down by an executive order. The contention of the Management that the Board proceedings or memos or circular or letter issued by the Electricity Board or the settlement will take primacy and precedence over the statutory provision i.e., Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workman) Act, 1981, is *ex facie* illegal and does not have any legs to stand. In this regard, he would refer to the decision of the Hon'ble Division Bench in the case of Chairman Tamil Nadu Electricity Board vs. State of Tamilnadu.

iv) Learned counsel would further submit that the petitioner hails from poor family. Due to poverty, he had to discontinue his studies in the midway. Against all odds, the petitioner completed 480 days of continuous



W.P.No.20871 of 2015

WEB COPY

service in 24 calendar months. The petitioner is the breadwinner of his family and now without employment. The present writ petition is the 4th round of litigation. Hence, he would pray to allow the writ petition.

5. i) Per contra, the learned counsel for the respondents would submit that the Inspector of Labour granted permanency by order dated 20.09.1999 and the same was confirmed by this Court as early as on 05.01.2001. The petitioner gave representation only on 28.11.2009 after 8 years. The Hon'ble Supreme Court has held that mere giving representation would not lead to revival of a right that is hit by delay and laches. The Hon'ble Supreme Court has held that, in the case of delay and laches, even if a right accrues, the same is extinguished, once the right has not been claimed on a time bound manner. In support of the above contention, learned counsel would relied on the decisions reported in 2022 SCC Online SC 249 (Surjeet Singh Sahni v. State of U.P and others) and 2015(15) SCC 1 (Prabhakar v. Sericulture Dept.)

ii) Learned counsel would further submit that the petitioner has challenged the letter dated 22.06.2012 which was sent to him in response to his representation dated 25.03.2010 seeking for absorption. In the said letter, it has been pointed out that he had not worked continuously and he



W.P.No.20871 of 2015

WEB COPY

has not been engaged as contract labourer after 01.05.1999. These facts are not disputed by the petitioner. In any event, these are questions of facts which require adjudication and this Hon'ble Court may not entertain such factual disputes in the writ petition.

iii) Learned counsel would further submit that admittedly, the petitioner was not engaged even as a contract labourer after 1999 and the petitioner had admitted the said fact in his representation dated 25.03.2010. As the petitioner has not been employed after 1999 and as he has not challenged his non-employment, he cannot be granted any relief in the present writ petition. The petitioner ought to have challenged his non-employment on a time bound manner. Without challenging his non-employment, the petitioner cannot maintain a claim merely based on the order of the Inspector of Labour. Hence, he would pray to dismiss the writ petition.

6. This Court, considered the submissions made on either side and perused the materials available on record.

7. It is not in dispute that the petitioner workmen has completed 480 days in 24 calendar months. A reading of Section 3(1) of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act, 1981 read



W.P.No.20871 of 2015

with the ratio of the order passed by the Division of this Court in the case of R.Lakshmi v. Chief Engineer Personnel, reported in 2012 (3) LLN 681 (DB)(Mad), makes it clear that on completion of 480 days, the workmen is deemed to be permanent.

8. Further, the Award of the Inspector of Labour was confirmed by this Court in W.P.No.8246 of 2000 dated 05.10.2001 and the same had attained finality. On a conjoint reading of Section 3(1) and section 3(2) of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act, 1981, it is clear that any settlement cannot override the Act. Further, 51 contract labourers were made permanent and denial of the benefit to the petitioner is a clear case of discrimination.

9. It is settled principle of law that a right conferred under a statute cannot be annulled by an executive order. This is evident on a conjoint reading of Section 3(1) along with Explanation II provided thereof, which reads as follows:

*"3. Conferment of Permanent Status to Workmen - (1)
Notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty four calendar months in an industrial establishment shall be made permanent.*

....



W.P.No.20871 of 2015

(Explanation II - For the purpose of this section 'law' includes any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of this Act.)"

Hence, the main contention of the Management that the Board Proceedings or Memos or Circular or Letter issued by the Electricity Board or the Settlement will take primacy and precedence over the statutory provision (i.e.) Sec.3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Statutes to Workman) Act, 1983, is ex facie illegal and impermissible .

10. The petitioner had completed 480 days of continuous service in 24 calendar months. Despite fulfilling all the requisite criterion for absorption and permanency, the petitioner was denied the benefits for extraneous reasons. Though the award passed by the Inspector of Labour, Thiruvallur was confirmed in W.P.No.8346 of 2000 dated 05.06.2001, the petitioner was not only denied the benefit of absorption but was denied the work by the Board. The petitioner is without any employment and his livelihood is at stake. Therefore, this Court is of the opinion that the impugned order passed by the 2nd respondent dated 23.06.2012 is liable to be quashed. The award passed by the Inspector of Labour, Tiruvallur, has to be implemented.



W.P.No.20871 of 2015

WEB COPY

However, it is also made clear that the petitioner is not entitled to backwages during the period of his non-employment on the principle of 'No work No pay', but is entitled to continuity of service and all other attendant benefits.

11. Accordingly, the Writ Petition is allowed. The impugned order dated 23.06.2012 is set aside. The respondents are directed to absorb the petitioner as Helper by implementing the award of the Inspector of Labour Trivallur dated 20.09.1999, with continuity of service and all other attendant benefits, however, without backwages. No costs.

25.04.2023

Index:Yes/No
Speaking/Non-speaking order
vsi

To

1. The Chairman,
Tamil Nadu Distribution Generation Corporation Limited,
Anna Salai,
Chennai – 2.
2. The Chief Engineer (Personnel),
Tamil Nadu Distribution Generation Corporation Limited,
Anna Salai, Chennai – 2.
3. The Superintending Engineer,
Tamil Nadu Distribution Generation Corporation Limited,



W.P.No.20871 of 2015

Chennai Electricity Distribution Circle/North,
Anna Salai, Chennai – 2.

WEB COPY

J.NISHA BANU,J.



WEB COPY



W.P.No.20871 of 2015

vs

Pre-delivery order made in

W.P.No.20871 of 2015

25.04.2023