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W.P.No.16420 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.16420 of 2016

- 1.N.Murugesan
- 2.E.Balaji
- 3.C.Selvam
- 4.V.Gnanasekaran
- 5.G.Sankar
- 6.E.Dhanasingh
- 7.S.Seenan
- 8.Parthiban
- 9.V.Charles
- 10.R.Ravichandran
- 11.C.Ravi
- 12.P.Muthukumar
- 13.R.Mani
- 14.S.Pushparaj
- 15.S.Shankar
- 16.P.Selvam
- 17.M.Murugesan
- 18.G.Ramamurthy
- 19.D.Mohan
- 20.S.Santhanam
- 21.B.Raman
- 22.K.Cholayappan
- 23.M.Mugundan
- 24.N.Devaraj
- 25.R.Nithyanandam
- 26.Srinivasan
- 27.Panneerselvam
- 28.K.N.Govindan
- 29.P.Simpson
- 30.T. Prembabu
- 31.Srinivasan
- 32.Panchatram



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33.M.John

34.R.Guruvayurappan

... Petitioners

Vs.

1.The Presiding Officer,
Principal Labour Court,
Chennai – 600 104.

2.The Chief Engineer,
Tamilnadu Electricity Board,
North Chennai Thermal Power Station,
Chennai – 600 120.

3.The Chairman,
Tamilnadu Electricity Board,
No.800, Anna Salai,
Electricity Avenue,
Chennai – 600 002.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus after calling for the records relating to the Award of the first respondent dated 01.11.2004 in I.D.Nos.171, 173 to 182, 257 to 260, 262 to 265, 267 to 269, 271, 279 to 289 of 2000, quash the same and consequently direct the second respondent to reinstate the petitioner with continuity of service and with back wages and other attendant benefits, award costs.

For Petitioner : Mr.S.T.Varadarajulu
For Respondents : Ms.S.B.Keerthanafor R3 and R3
for M/s.T.S.Gopalan and Co.



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ORDER

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The petitioners have filed this writ petition seeking issuance of Writ of Certiorarified Mandamus after calling for the records relating to the Award of the first respondent dated 01.11.2004 in I.D.Nos.171, 173 to 182, 257 to 260, 262 to 265, 267 to 269, 271, 279 to 289 of 2000, quash the same and consequently direct the second respondent to reinstate the petitioner with continuity of service and with back wages and other attendant benefits, award costs.

2.The facts of the case is that the petitioners joined service in the Tamil Nadu Electricity Board during the years 1991 and 1992 and they were paid Rs.800/- per month and had put in nearly 4 years of service, however, all of a sudden they were denied employment from 15.04.1996. Aggrieved by the same, the petitioners raised industrial dispute before the first respondent, however, the first respondent passed award in favour of the Tamil Nadu Electricity Board. Hence, this writ petition.

3.The learned counsel appearing for the petitioners submitted that the second respondent engaged various contractors and the petitioners were employed through contractors to the second



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respondent and the respective contractors have issued employment certificate to the petitioners and they were continuously employed for more than 480 days in two calender years, however, they were denied employment. Hence, the petitioners raised industrial dispute before the first respondent. In order to prove the employer and employee relationship, the petitioners marked EX.W1, Ex.W3 to Ex.W15, Ex.W17 to Ex.W36 – service certificates, however, the first respondent without considering the same, mechanically rejected the petitioner's claim which is not sustainable. The learned counsel further submitted that though the first respondent did not award reinstatement, should have atleast awarded fair compensation to the petitioners, however, the first respondent has not given any relief to the petitioners and hence, the impugned Award warrants interference.

4.Per contra, the learned counsel appearing for the respondents 2 and 3 submitted that the petitioners raised industrial disputes under Section 2 – A (2) of the Industrial Disputes Act. Hence, the primary duty of the petitioners is to establish the employer and employee relationship. In the present case, the petitioners are employed through contractors which is not binding on the respondent Board. Unless the petitioners show individual appointment orders issued in



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favour of the petitioners, they cannot claim employer and employee relationship.

5.The learned counsel appearing for the respondents 2 and 3 further submitted that as per B.P.No.17 dated 28.04.1999, orders were issued for absorbing the contract labourers who are working as on 05.01.1998 on certain conditions and accordingly contract labourers were identified and absorbed as per seniority to the regular supernumerary posts of helpers. In the present case, the petitioners were doing work under the outsourced contractors and not under the second respondent and hence, the benefit of B.P.No.17 dated 28.04.1999 cannot be extended to the petitioners.

6.The learned counsel appearing for the respondents 2 and 3 further submitted that though the petitioners claim that they were denied employment from 15.04.1996, they had raised industrial dispute only during the year 2000, after a lapse of four years. Though award was passed by the first respondent on 01.11.2004, the petitioners have filed the writ petition only during the year 2016. Hence, the writ petition is liable to be dismissed on the ground of laches.



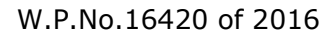
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7. Heard the arguments advanced on either side and perused the materials available on record.

8. The facts in the present case is not in dispute. Admittedly, the petitioners were engaged through outsource contractors and the outsource contractors have issued service certificates to the petitioners which have been marked as EX.W1, Ex.W3 to Ex.W15, Ex.W17 to Ex.W36, however, no document have been produced by the petitioners before the first respondent to substantiate that temporary work orders were issued by the second respondent. The non production of work orders issued by the second respondent drawn adverse remarks as against the petitioners and it proves that there is no employer and employee relationship inbetween the petitioners and the second respondent.

9. Though through B.P.No.17, dated 28.04.1999, orders were issued for absorbing the contract labourers who are working as on 05.01.1998 on certain conditions, in the present case, the petitioners were denied employment from 15.04.1996 and they were not in employment on 05.01.1998 and hence the benefit of B.P.No.17 dated



10.As rightly pointed out by the learned counsel appearing for respondents 2 and 3, though the petitioners claim that they were in employment from 15.04.1996, they had raised industrial dispute only during the year 2000, after a lapse of four years. Though writ was passed by the first respondent on 01.11.2004, the petitioners have filed the writ petition only during the year 2016. Hence, the writ petition is liable to be dismissed on the ground of delay.

11. In view of the above, this writ petition is dismissed. No costs.

05.07.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No



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M.DHANDAPANI,J.
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To

- 1.The Presiding Officer,
Principal Labour Court,
Chennai – 600 104.
- 2.The Chief Engineer,
Tamilnadu Electricity Board,
North Chennai Thermal Power Station,
Chennai – 600 120.
- 3.The Chairman,
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