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W.P.No.10703 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.10703 of 2018

and

W.M.P.Nos.12646 & 19321 of 2018

1.The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
144, Anna Salai,
Chennai – 600 002.

2.The Superintending Engineer,
Electricity Distribution Circle,
Mettur Dam.

... Petitioners

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.G.Palanisamy

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the first respondent in I.D.No.98 of 2015 and quash the award dated 11.09.2017.

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



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For Respondents : Labour Court [R1]
Mr.K.Selvaraj [R2]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records of the first respondent in I.D.No.98 of 2015 and quash the award dated 11.09.2017.

2. The case of the petitioner is that, the second respondent entered the service as casual labourer on 01.07.1987 and he rendered 19 years of service upto 12.11.2006. Thereafter, he claimed that met with an accident and he is unable to join duty, thereby, he repeatedly approached the petitioners/TANGEDCO for re-employment. However, employment was not provided to him, thereby, he raised an industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (in short 'the I.D. Act') in I.D.No.98 of 2015 on 28.08.2015 before the first respondent/Labour Court. The Labour Court passed an award for reinstatement with backwages. Challenging the same, the TANGEDCO is before this Court.

3. The learned counsel appearing for the TANGEDCO submitted



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that, there was an oral termination in the year 2007, however, the second respondent raised an industrial dispute in the year 2015, which is well beyond the limitation prescribed under Section 2A(3) of the I.D. Act. Further, the Labour Court have no power to entertain the industrial disputes under Section 2A(2) of the I.D. Act after a lapse of three years, since Section 2A(3) amendment was introduced in the year 2010. Hence, after the year 2010, if any dispute is raised, that has to be raised only within the period of three years and if it is raised beyond the period of three years, the Labour Court or this Court have no power to entertain the same. Therefore, he submits that the impugned award passed by the first respondent is not sustainable and accordingly, he prays for allowing the writ petition.

4. The learned counsel appearing for the second respondent submitted that, though there was an oral termination in the year 2006, however, the second respondent raised industrial dispute in the year 2015. He also submitted that the plea in the present writ petition is not raised before the Labour Court and it is a fresh plea, which cannot be entertained by this Court. Further, the Labour Court, after elaborate



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discussion arrived at a conclusion that the second respondent is entitled for reinstatement. In the present case, the second respondent was in continuous employment of 19 years with the TANGEDCO from 1987 to 12.11.2006 and the TANGEDCO decided to absorb the contract labourers who have been identified as on 08.08.1998. Even the TANGEDCO identified the second respondent as contract labourer vide memorandum dated 07.09.2007, in which, his name was found in S.No.62. Therefore, he is entitled for absorption in the TANGEDCO and even though the Labour Court entertained the dispute raised by the second respondent contrary to Section 2A(3) of the I.D. Act, this Court can mould the relief to the second respondent by issuing a direction to the TANGEDCO to consider the second respondent for absorption in terms of memorandum dated 07.09.2007 and pass appropriate orders, within a time frame that may be stipulated by this Court.

5. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the second respondent and perused the materials available on record.

6. The second respondent claimed that he was orally terminated in



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the year 2006 and thereafter, he raised industrial dispute in the year 2015. However, as per Section 2A(3) of the I.D. Act, industrial disputes should be raised within a period of three years from the year 2010, since the Section 2A(3) amendment was introduced in the year 2010. Admittedly, the second respondent raised the industrial dispute beyond the period of limitation prescribed under Section 2A(3) of the I.D. Act, thereby, the impugned award passed by the Labour Court is perverse and the same is liable to be set aside.

7. This Court perused the memorandum dated 07.09.2007, from which, it is clear that the persons who have been identified by a Committee consisting of officers of Board on 08.08.1998, they are entitled for absorption. Admittedly, the name of the second respondent was found in S.No.62 of the memorandum of the TANGEDCO vide Memo.No.107609/G.58/G.582/2007-1 dated 07.09.2007. Therefore, the second respondent is also entitled for absorption in terms of the said memorandum.

8. In view of the above, the impugned award passed by the first



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respondent in I.D.No.98 of 2015 dated 11.09.2017 is set aside and this Court, directs the petitioners-TANGEDCO to consider the absorption of the second respondent in terms of the memorandum vide Memo.No.107609/G.58/G.582/2007-1 dated 07.09.2007 and pass appropriate orders, within a period of four (4) weeks from the date of receipt of a copy of this order.

9. With the above observations and direction, this writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

01.09.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

The Presiding Officer,
Labour Court,
Salem.



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M.DHANDAPANI, J.,

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