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W.A.No.1661/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 26-06-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.1661 of 2021

1.J.Kadarbasha
2.R.Manoharan
3.P.Velayutham

...

Appellants

-VS-

1.The Tamil Nadu Electricity Generation &
Distribution Corporation Ltd.,
rep. by the Chairman,
No.144, Annasalai,
Chennai-2.

2.The Chief Engineer (Personnel),
Tamil Nadu Electricity Generation &
Distribution Corporation Ltd.,
No.144, Annasalai,
Chennai-2.

3.The Executive Engineer,
Tamil Nadu Electricity Generation &
Distribution Corporation Ltd.,
Kallakurichi,
Villupuram District.



4.The Superintending Engineer,
Tamil Nadu Electricity Generation &
Distribution Corporation Ltd.,
Villupuram District.

5.D.Jai

6.P.Sivapragasam

7.K.Senthil

8.G.Balasubramanian ... Respondents

Appeal is filed under Clause 15 of the Letters Patent against the order, dated 11.11.2019, passed in W.P.No.32709 of 2012 on the file of this Court.

For Appellant : Mr.N.Suresh

For Respondents 1 to 4 : Mr.Anand Gopalan,
for M/s.T.S.Gopalan & Co.

JUDGMENT

(By *S.Vaidyanathan,J.*)

This appeal has been preferred by the employees - writ petitioners, challenging the order of the learned single Judge passed in W.P.No.32709 of 2012, dated 11.11.2019.



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2. In the Writ Petition, the employees challenged the proceedings of TANGEDCO / Board in FB TANGEDCO Proceedings No.22, dated 25.10.2012, and sought to set aside the same and also consequently sought for a direction to the Board to appoint the writ petitioners as Mazdoors in the respondent Board.

3. A reading of the proceedings, which are impugned in the Writ Petition, would show that the same would be extended to the employees, who are employees under the Contractors, who have been engaged directly by the Board, on daily wages and who have received ex gratia.

4. Though it is vehemently contended by Mr.N.Suresh, learned counsel for the appellants, that the list produced by the Board in Page No.23 of the Typed Set of Papers contains several names, who have been employed for over five years and less than five years as on 05.01.1998 at Kallakurichi Division, a reading of the proceedings would make it clear that the Board has captioned the list as List of Contract Labourers. Also, though in B.P.No.22, a settlement under Section 18 (1) of the Industrial Disputes Act,1947, has been referred to, which was converted into one under Section 12 (3) of the Act on 10.08.2007, the proceedings refer to the Memos, dated 20.02.2008 and 01.03.2008. The Board Proceedings No.22, dated 25.10.2012, wherein the above two Memos have been reflected, are scanned below :



**TAMIL NADU GENERATION & DISTRIBUTION CORPORATION LTD.
(ABSTRACT)**

TANGEDCO - Contract Labourers - Contract Labourers engaged directly by the Board on need basis on daily wages who received ex-gratia payment - Absorption into Board's Service as Mazdoor (Trainee) - Orders Issued.

(Administrative Branch)

(Per.) FB TANGEDCO Proceedings No.22

Dated 25.10.2012.

Iyppael - 9, Nandhana Aandu.
Thiruvalluvar Aandu 2043.

READ:

- 1) (Per) B.P. (FB) No.11 (Adm. Branch) dated 06.09.2007.
- 2) Per B.P. (CH) No.9 (Adm. Branch) dated 09.01.2008.
- 3) CE/ Per's Memo. No.012267/G58/G582/2008-1, dt.20.02.08.
- 4) CE/ Per's Memo. No.012267/G58/G582/2008-2, dt.01.03.2008.
- 5) (Per) CMD TANGEDCO Proceedings No.119 (Adm. Branch) dated 15.10.2011.
- 6) (Per) FB TANGEDCO Proceedings No.6 (Adm. Branch) dated 09.05.2012.
- 7) Item No. 13 - Extract of the Minutes of the 27th Meeting of the TANGEDCO held on 20.07.12.

PROCEEDINGS :

1) The Tamil Nadu Electricity Board has absorbed 21,600 Contract Labourers in a phased manner as per the 12 (3) settlement. A settlement under section 18(1) of I.D. Act 1947, which was signed with the unions on 10.08.2007 was converted into a settlement under section 12(3) of I.D. Act 1947, before the Commissioner of Labour on 10.08.2007 by the representatives of the Board and the unions representing the workmen of TNEB and Contract Labourers.

2) After that, the Board (now TANGEDCO) after careful consideration decided and constituted a committee vide B.P. second read above to examine the cases of Contract Labourers who were worked continuously and not covered in the 12(3) Settlement. Accordingly, orders have been issued vide Memos third and fourth as read above to continue to engage the Contract Labourers who have worked continuously on need basis on daily wages. The Superintending Engineers in their orders have also informed that the engagement of contract labourers as per the said orders will not confer upon them, any right for absorption etc. and the decision of the committee in their cases will be final.



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From the above, it is clear that the employees should have been in employment under the Contractors and that they should have been taken into service by the Board on need basis on daily wages.

5. Admittedly, the appellants/writ petitioners are unable to show that they were in employment under the Board between 2007-2008 and 2012, when the settlement was entered into. No documentary evidence has been produced before us by the appellants to show that they worked during the said period 2007-2012 under the respondent Board and even the documents produced before this Court have been disputed by the Board on the ground that the appellants were not engaged directly but were employed through private contractors.

6. We are not inclined to go into the disputed question of fact in the present appeal. The Board has taken a specific plea in their counter in the Writ Petition and the same is extracted below :

"8. I submit that, having considered the B.P.No:44 dated 06.09.2007 and B.P.No:9 dated 09.01.2008, the Chief Engineer Personnel issued a memo dated 20.02.2008 to continue to engage contract labourers on daily wages at Rs.70/- subject to the conditions stipulated in the memo. Had the petitioners ever worked as contract labourers at the above point of time, they would have been identified and engaged by the respondent Board."



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7. The relief sought for to declare Board Proceedings No.22, dated 25.10.2012, as illegal cannot be acceded, as several employees have got into employment based on the said proceedings. Firstly, there is no documentary evidence satisfying us to grant the relief sought for by the appellants/writ petitioners. Secondly, if we interfere with the said Board Proceedings, all those employees, who have got into employment in the Board based on the said Board Proceedings, will have to be sent out. Further, it is stated that several employees, who are similarly placed like the appellants, have approached the Court and are waiting for an order to be passed in this appeal, so that they can also seek for similar relief, in case of a favourable decision.

8. We cannot allow Pandora's Box to open. The fact, according to the appellants, that they are still working with the Board but paid through the Contractor, which is sham and nominal, and that they are direct employees of the Board cannot be gone into in this appeal, as the same is a disputed question of fact. It is needless to mention that if the appellants are governed by various settlements and Board Proceedings, it is open for them to seek the relief by making a representation to the Board, asking them to take a decision, which we expect that the Board will consider the said representation and pass appropriate orders thereon within two months thereafter. Representation to the Board shall be given within two weeks from the date of receipt of a copy of this order. It is open for the appellants to raise an industrial dispute or seek



any other relief available to them to get permanent employment under the respondent Board. This Court cannot grant the relief as sought for by the appellants/writ petitioners and the learned single Judge has rightly rejected the Writ Petition.

9. We make it clear that all the observations made in the Writ Petition by the learned single Judge and in this Writ Appeal by us are only for the purpose of disposal of the matters pending before this Court and no observation will bind the parties to the litigation, in case the matter is not settled and further litigation takes place.

10. Writ Appeal is disposed of accordingly. No costs.

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking Order
dixit

(S.V.N.,J.) (K.R.S.,J.)
26-06-2023

To

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