



W.A.No.2062 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2023

CORAM :

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**

**and**

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

**W.A.No.2062 of 2019 and**

**CMP No.13891 of 2019**

1. The Tamil Nadu Electricity Generation  
and Distribution Corporation Ltd.  
Rep. by the Chairman, No.144,  
Anna Salai, Chennai-2.
2. The Chief Engineer/Personnel,  
TANGEDCO, No.144, Anna Salai,  
Chennai-2.
3. The Superintending Engineer,  
Tamil Nadu Electricity Generation and  
Distribution Corporation Ltd.,  
Dharmapuri Electricity Distribution Circle,  
Dharmapuri

... Appellants

Vs.

1. J.Kasithangam
2. J.Adhimoolam

... Respondents



W.A.No.2062 of 2019

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.23101 of 2012 dated 09.09.2014 on the file of this Court.

For Appellants : Mr.Anand Gopalan  
for Mr.T.S.Gopaland and Co.

For Respondents : Mr.N.Suresh

### J U D G M E N T

(Judgment of the Court was delivered by D.KRISHNAKUMAR, J.)

Challenging the order dated 09.09.2014 made in W.P.No.23101 of 2012, the intra Court Appeal has been filed by Tamil Nadu Electricity Board.

2. The brief facts, which leading to file the present appeal is as follows.

The respondents herein are the writ petitioners. The husband of first respondent and father of the second respondent, namely, Jaganathan, died on 07.10.2008, while he was in service. Hence, they made requests before the appellant Board to give compassionate appointment to any one of the



W.A.No.2062 of 2019

legal heirs of the deceased and also to give gratuity, pensionary and other terminal benefits. The appellant Board rejected their request, stating that the deceased was appointed as Temporary Casual Labourer and he rendered service only for 8 months from 11.02.2008 to 07.10.2008 hence, their claim cannot be granted. As against the orders passed by the appellant Board, the writ petitioners filed W.P.No.23101 of 2012 before this Court and this Court, vide order dated 09.09.2014, has allowed the writ petition and directed the appellant Board, as extracted hereunder

37. In the result, the writ petition is allowed and the impugned orders are quashed with the following directions to the respondents.

- (i) to pay gratuity to the petitioners,
- (ii) to pay family pension to the first petitioner,
- (iii) to pay other terminal benefits to the petitioners as per the Rules and
- (iv) to give compassionate appointment to any of the legal heirs of the deceased workman Thiru.Jaganathan.)

Challenging the above order, this Writ Appeal has been filed by the Government.



W.A.No.2062 of 2019

3. The primordial contention of the learned counsel appearing for the appellants is that the Board has entered into a settlement dated 10.08.2007 under Section 12(3) of the Industrial Dispute Act with the employees, thereby the employees, who had worked under contract basis were appointed as Temporary Casual Labourers and they will be covered by Contributory pension Scheme prospectively with effect from 01.12.2007. As per the above settlement, Jaganathan was appointed as Temporary Casual Labour on 11.02.2008, subject to the condition that he will be engaged for a minimum of 20 days in a month for a period of 1 year and will be paid Rs.70/- per day. Since Jaganathan died on 07.10.2008, i.e. before completing one year service, and even he was only a Temporary Casual Labourer under the Board and not a regular employee, the claim of the writ petitioners cannot be granted.

4. It is the contention of the learned counsel for the appellants that, the appellant Board adopting the Tamil Nadu Pension Rules 1978 amended orders as early as 03.12.2001 and as per the amendment in G.O.Ms.No.145 Finance (Pension) Department dated 27.03.1997, the qualifying service of



W.A.No.2062 of 2019

30 years was made eligible for full pension, that will be determined based on 50% of average emoluments last drawn during the last 10 months of service rendered or 50% of pay last drawn by the Board employee. On this score also, Janaganathan was not eligible for family pension, as he had not become a Board employee.

5. The another contention of the counsel for the appellants is that, if at all the writ petitioners are entitled for Gratuity, pension and other terminal benefits of the deceased Jaganathan, their remedy is only before the Labour Court and not before this Court. He further submitted that, in partial compliance of the order passed by the Writ Court, the second writ petitioner, namely, J.Athimoolam was given compassionate appointment and hence the other reliefs granted by the learned Single Judge is liable to be dismissed.

6. The learned counsel for the writ petitioners/respondents herein justified the order passed by the learned Single Judge. He also admitted that the second respondent was given compassionate appointment by the Board.

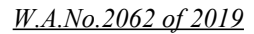


W.A.No.2062 of 2019

7. Heard the learned counsel for the appellants and the learned counsel for the respondents and perused the materials on record.

8. It is an admitted fact that the deceased Jaganathan, husband of the first writ petitioner and father of the second writ petitioner died on 07.10.2008, while he was in service. According to the writ petitioners, though the deceased Jaganathan was absorbed into service as temporary casual labourer on 05.02.2008, he was working from the year 1989 as contract Labour and hence, his earlier service has to be taken into account for granting pension and other terminal benefits, thereby, they are entitled to the said benefits.

9. The learned Single Judge in his order discussed elaborately and observed that the deceased was not worked as contract workman, but was employed directly by the TANGEDCO and hence, he is entitled to be regularised on completion of 480 days of work in two years as per Section 3(1) of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. Further it is observed by the learned Single



10. At this juncture, it is to be mentioned that, the deceased Jaganathan was appointed as Temporary Casual Labour on 05.02.2008, only based on the 12(3) Settlement dated 10.08.2007 and hence he was bounded to the terms of the said settlement. It is also to be mentioned that, the deceased Jaganathan himself gave undertaking that he will not claim provident fund for the period worked under Contractor as contract labuorer, as he was given job permanency in the Tamil Nadu Electricity Bord. Therefore, there is no necessity to discuss further on the points discussed by the learned Single Judge,

Page 7 of 10



W.A.No.2062 of 2019

service and hence, he is not eligible for gratuity. In view of the same, the writ petitioners are not entitled for pension and other terminal benefits, as claimed by them.

12. Insofar as the claim of compassionate appointment is concerned, already the second writ petitioner, namely J.Athimoolam was appointed as Temporary Casual Labourer, vide order of the Superintending Engineer, Dharmapuri Elec. Distn. Circle, dated 30.09.2015. It is also reported by the learned counsel for the respondents that, the said J.Athimoolam is now working under the Board. Therefore, in so far as the other relief granted by the Single Judge is concerned, we are of the considered view that the same warrants interference by this Court.

13. At this juncture, the learned counsel for the respondents fairly submitted that liberty may be given to the respondents to approach the Labour Court, seeking their remedy.



W.A.No.2062 of 2019

14. Accordingly, this Writ Appeal is partly allowed and the reliefs granted by the learned Single Judge in the order dated 09.09.2014 in W.P.No.23101 of 2014 at paragraph no.37 (i) to (iii) are set aside. No costs. Liberty is granted to the respondents/writ petitioner to approach the Labour Court seeing their remedy and their claim shall be decided independently, on its own merits.

**(D.K.K.J.) (K.G.T.J.)**

**10.04.2023**

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W.A.No.2062 of 2019

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W.A.No.2062 of 2019

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