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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.8242 of 2016

V. Mahalakshmi

.. Petitioner

Vs.

1.The Chief Engineer (Personnel)

Tamil Nadu Generation and Corporation Limited,
8th Floor, N. P. K. R. R Maligai,
No.144, Anna Salai,
Chennai – 2.

2.The Chairman -cum- Managing Director,

Tamil Nadu Generation and Corporation Limited,
10th Floor, N. P. K. R. R Maligai,
No.144, Anna Salai,
Chennai – 2.

3.The Superintending Engineer,

Purchase and Administration,
Tamil Nadu Generation and Corporation Limited,
Tuticorin Thermal Power Station,
Tuticorin – 4.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 3rd respondent in Memo No.780/Adm-II/A.1/2011 dated 02.01.2012 insofar as the order deems the petitioner as



fresh appointment against the order of the competent authority under the Tamil Nadu Industrial Establishments (Conferment Status to Workmen) Act 1981 dated 02.01.2001 as illegal and arbitrary and consequentially directing the 1st respondent to confer permanent status to the petitioner from the date of her joining in the service of the 3rd respondent entitling the service benefits of promotion, back wages, continuity of service, family pension benefits and all other concomitant service benefits eligible to the petitioner.

For Petitioner	.. Mr. R. Suresh Kumar for Mr. K. M. Vijayan Associates
For Respondents	.. Mr. Venkatesh Prasad A. P for Mr. T. S. Gopalan & Co.

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records relating to the proceedings of the 3rd respondent / the Superintending Engineer, Purchase and Administration in Memo No. 780/Adm-II/A.1/2011 dated 02.01.2012 insofar as the order deems that the petitioner had been appointed afresh which was contrary to the earlier order of the competent authority dated 02.01.2001 established under the Tamil Nadu Industrial Establishments (Conferment Status to Workmen) Act, 1981 and consequentially to direct the 1st respondent, the Chief Engineer



(Personnel), Tamil Nadu Generation and Corporation Limited, Chennai, to confer permanent status to the petitioner from the date of she joined in the service of the 3rd respondent together with all attendant benefits.

2.The writ petitioner herein, was originally employed as contract labourer under the 3rd respondent from the year 1997 - 1998. She claimed that she had put in service for more than 480 days, which would qualify her category as permanent employee. Since employment was not regularized, she had approached the competent authority under the Tamil Nadu Industrial Establishments (Conferment of Status to Workman) Act, 1981. The competent authority had passed an order on 02.01.2001. The said order was passed after examining the counter filed by the respondent, the Chief Engineer, Tamil Nadu Electricity Board, Tuticorin. The competent authority also noted the deposition of the petitioner herein, that she had completed 480 days of continuous service. There were some disputes relating to the continuance of service, but it had been recorded that the respondents had finally agreed that the petitioner had worked in their establishment and had put in continuous service of 480 days in 24 calendar months.



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3.This is the crucial aspect, which has to be examined. The contract worker who had worked for 480 days in two calender years or in 24 months, is normally expected to be regularized in that particular post, in view of the continuous service. If it is not so done, there is an authority which is established under the aforementioned Act. The said authority, the Deputy Inspector of Factories, Thirunelveli, by proceedings in R.O.C. No.A1 / 3266 / 2000 passed orders on 02.01.2001, after examining the rival contentions and giving opportunity to both the sides. Finally, the petitioner's application was allowed and a direction was given to the respondents to appoint the petitioner as permanent worker in Tuticorin Thermal Power Station, Tuticorin.

4.This order had attained finality, consequent to it being examined by the learned Single Judge of this Court in W.P.No.34699 of 2002, which had been preferred by the respondents herein. The learned Single Judge in the course of the order, took note of earlier observations of the Division Bench in a similar matter, wherein a similar issue was raised in ***W.A.No.311 of 2004, the Chairman, Tamil Nadu Electricity Board and others Vs. State***



of Tamil Nadu, rep. by its Secretary to Government, Energy Department

and others), and after reducing the ratio therein was of the firm opinion that the order of the authority need not be interfered with and dismissed the writ petition. The relevant paragraph of the said order of the learned Single Judge are as follows:

“2. When the matter was taken up for disposal, the learned counsel appearing for the petitioner fairly submitted that the issue involved in the present writ petition is covered by a judgment dated 17.11.2008, rendered by a Division Bench of this Court, passed in W.A.No.311 of 2004, in the case of (The Chairman, Tamil Nadu Electricity Board and others Vs. State of Tamil Nadu, rep. by its Secretary to Government, Energy Department and others).

3. In the said judgment, the Division Bench, after considering the relevant provisions, has observed as follows:-

“There is no dispute on the facts of this case that the contract labourers in question right from the date when they were appointed as contract labourers till they were dispense with from service, had put in more than 480 days of service, except on labourer, Mohamed Rafi, who



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had completed 479 days. The bone of contention of Mr.V.Radhakrishnan, learned Senior Counsel for the appellants is that while calculating the total period of service, the cut-off date as on 30.04.1999, should be taken into consideration. In our considered view, the said argument cannot be accepted. A provision of statute should be applied with all its force and that too in respect of a provision contained in the beneficial legislation like the one on hand, viz., Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workman) Act, 1981. In fact, Section 3 by itself confers a permanent status on a contract labourer provided if he complies with the condition relating to the service of 480 days in a period of 24 calendar months. Such a right conferred under the beneficial provision cannot be taken away by the letter issued by the Tamil Nadu electricity Board, fixing a cut-off date. If such power on the Tamil Nadu Electricity Board is recognized, that would defeat the very purpose of the provisions of the Act. We need no authority for the said proposition, as neither the circular nor the administrative instruction can override the statutory provision. In fact, the Court has gone to the extent of holding that even the rules framed under a particular enactment cannot go beyond the main provisions of the



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Act. As the letter fixing the cut-off date cannot be a ground and the Act contemplates permanent status on a workman by virtue of completion of 480 days of service in a period of 24 calendar months, we find no infirmity in the order of the Learned Single Judge. Accordingly, the Writ Appeal fails and it is dismissed accordingly. As the order of the Inspector directing the Tamil Nadu Electricity Board to absorb each of the contract labourer in question was made as early as on 02.01.2001 and so far the said order could not be implemented due to the pendency of the writ petition and writ appeal, we hereby direct the appellant-Board to implement the order of the Inspector dated 02.01.2001, in letter and spirit within a period of two months from the date of receipt of a copy of this order.”

4.Considering the ratio, laid down by the Division Bench in the judgment referred to supra and applying the same to the facts of the present case on hand, this Court is of the view that the writ petition is liable to be dismissed and accordingly, the same is dismissed. However, there shall be no order as to costs.”

In effect the order of the Deputy Inspector of Factories dated 02.01.2001, had been upheld on all aspects.



6.This order defies logic. The issue of regularization has arisen only because the petitioner had put in 480 days of continuous service, when she was working as a contract labour. That was the basis on which her service regularized and it is not on the basis of whims and fancies of the respondents to appoint her on particular date and regularize her as regular appointee. If that has to be done, they should follow the rules and regulations. They had recognized that she had put in 480 days of continuous service and consequent to such service, the regularization had been given by the Deputy Inspector of Factories on 02.01.2001 and had been confirmed by



the learned Single Judge in the aforementioned writ petition. The respondents ought to have recognized that she was a permanent employee, which service is to be regularized from the date when such regularization was expected or recognized by the competent authority. That was recognized by order dated 02.01.2001. Therefore, her regularization should relate back to that particular date namely, 02.01.2001 and not to any arbitrary date as determined by the respondents. The petitioner, as a matter of right, is entitled for that particular recognition, consequent to her working continuously for 480 days in a space of two calendar years and which has been accepted by the respondents.

7.I am also informed that similarly placed employees who were prejudiced by similar orders passed without relating to the order of the competent authority had filed ***W.P.Nos.10054 to 10057 of 2011, E. Sekar and others Vs. The Chief Engineer (Personnel) Tamil Nadu Generation and Corporation Limited and others***. A learned Single Judge of this Court by judgment dated 12.06.2014 had recognized this very liberty and had directed that the petitioners therein should be deemed to be recognized as



being in regular service from the date of the order of the competent authority. Consequent to the directions of the learned Single Judge, though a writ appeal was filed, the same suffered an order of dismissal. The respondents had realized the duty to their workmen and had passed consequential orders on 23.01.2016 by determining the seniority of all the four petitioners therein from the date of the order of the Deputy Inspector of Factories, Thirunelveli, namely 02.01.2001.

8.The petitioner herein stands on the very same footing. There cannot be discriminations as between two similarly placed employees by one employer. That would go to the root of the labour jurisprudence and the respondents herein will necessarily have to abide by their own or by affirming the orders of the learned Single Judge. It is very important and imperative that the respondents as a responsible organization, are compelled to follow the rule of law and they are compelled to follow the orders of this Court.

9.In view of the aforementioned reasons, this Writ Petition deserves to be allowed. A specific direction is given that the respondents should



absorb the petitioner herein and recognize her from 02.01.2001 from the date of the order of the Deputy Inspector of Factories / Competent Authority under the the Tamil Nadu Industrial Establishments (Conferment Status to Workmen) Act, 1981 and extend to the petitioner with all attendant benefits from that particular date onwards.

10. With the above observations, this Writ Petition stands allowed. No Costs.

11. The learned counsel for the respondents after orders had been dictated placed reliance on the judgment of the writ appeal in ***W.A.No.1544 of 2022, R. Palani Vs. The Chairman -cum- Managing Director, Tamil Nadu Electricity Generation and Distribution Corporation Ltd., Chennai and others***, dated ***15.07.2022***. The writ petition which had been filed by the petitioner herein and referred by this Court was specific to this writ petitioner and when orders specific to this writ petitioner had been earlier passed the petitioner is entitled for the benefit of that particular order. It is also noted that the writ appeal filed by the respondents as against the writ petition filed by the respondents relating to this petitioner had been



dismissed and hence the petitioner is entitled for the benefit as stated above.

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WEB COPY



14

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