



W.P.(MD).No.16289 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated :21.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

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- 1.G.Rajnarayanan
Contract Labour,
TANGEDCO,
PSC & RCC Yard
Samayanallur, Madurai District.
- 2.A.Saravanamuthu
Contract Labour,
TANGEDCO,
PSC & RCC Yard,
Samayanallur, Madurai District.
- 3.K.Satheesh,
Contract Labour,
TANGEDCO,
PSC & RCC Yard,
Samayanallur, Madurai District.
- 4.A.Senthilkumar,
Contract Labour,
TANGEDCO,
PSC & RCC Yard,
Samayanallur, Madurai District.
- 5.G.Rajkumar,
Contract Labour,
TANGEDCO
PSC & RCC Yard,
Samayanallur, Madurai District.



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6.A.Maruthamuthu
Contract Labour
TANGEDCO
PSC & RCC Yard,
Samayanallur, Madurai District.

7.M.Venkatesh
Contract Labour,
TANGEDCO,
PSC & RCC Yard,
Samayanallur, Madurai District.

... Petitioners

Vs.

- 1.The Chief Engineer,
(Employment Establishment)
TANGEDCO, No.800, Anna Salai,
Chennai 600 002.
- 2.The Superintending Engineer,
TANGEDCO,
Madurai Electricity Desultory Circle,
K.Pudur, Madurai-7.
- 3.The Assistant Executive Engineer,
TANGEDCO,
PSC & RCC Yard (Civil)
Samayanallur, Madurai.
- 4.The Assistant Engineer,
TANGEDCO
PSC & RCC Yard (Civil)
Samayanallur, Madurai.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents herein to consider the representations of the petitioners



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dated 24.03.2018, 26.03.2018, 26.03.2018, 06.04.2018, 06.04.2018, 10.04.2018 & 05.07.2018 for absorption as per the common order of this Court dated 24.04.2018 in W.P.Nos.16591 of 2010 batch etc, in the light of B.P.No.9 dated 09.01.2008 and in accordance with law within a reasonable time.

For Petitioner : Mr.K.Appadurai

For Respondents : Ms.P.Malini for
M/s.T.S.Gopalan & Co.

ORDER

This writ petition has been filed to issue a writ of mandamus directing the respondents herein to consider the representations of the petitioners dated 24.03.2018, 26.03.2018, 26.03.2018, 06.04.2018, 06.04.2018, 10.04.2018 & 05.07.2018 for absorption as per the common order of this Court dated 24.04.2018 in W.P.Nos.16591 of 2010 batch etc, in the light of B.P.No.9 dated 09.01.2008 and in accordance with law.

2. The contention of the petitioners is that they were engaged as contract labours in the post of helpers and posted to work continuously in various circles of the respondents from the year 2007. The petitioners are now working as helpers in RCC Yard, Samayanallur, Madurai District



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and was engaged continuously since 2007. Earlier, they were posted to work in various circle in Sivaganagai and Tirunelveli District. The nature of work is erecting poles by digging earth, connecting lines and cables, installing transformers and doing repair works. The nature of work is perennial in nature since the electricity is a basic and fundamental need in the day-to-day life and to ensure uninterrupted supply of electricity to the domestic and industries.

3. The respondent corporation has been absorbing the contract labourers into regular establishment as per Board Standing Orders and as statutory obligations. Similarly placed contract labourers engaged subsequent to the petitioners in various circles were already been absorbed. But the petitioners were not considered for absorption despite having put in 11 years of continuous service as contract labourers. Admittedly the petitioners are workmen, not connected with office work in management or administration. Under Sec.3 of the Employment Exchanges (Compulsory Notification of Vacancies) Act 1959, any employment to do unskilled office work has been exempted from the purview of the said Act. Hence engaging the petitioner workmen on temporary basis for labour work cannot be construed as back door entry.



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4. The provisions of Section 3(1)(c) of the Tamil Nadu Industrial Establishments Conferment of Permanent status to Workmen Act 1981 contemplates conferment of permanent status on workman who is employed 480 days continuously in 24 calendar months. The petitioners have been working continuously since 2007 till date without any break. The work of the petitioners is a public service and electricity is the basic amenity and fundamental right to public in day-to-day life. Hence the petitioners are entitled to be considered for absorption under the above provisions. Conferment of a permanent status on an employee or a workman is intended to bring about an improvement in the conditions of the labourer / workman, thus fulfilling the constitutional mandate of providing justice to poor oppressed class of society apart from meeting the requirements of the interest of the general public to maintain tranquillity and peace in the industrial world besides the development of the industry.

5. The Legislations have attempted to fulfil the mandate of Article 46 of the Constitution of India and taken a step forward that the same is not frustrated. The conferment of permanent status by operation of law is to undo the injustice and inequality meted out to the workers by engaging



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them on temporary basis indefinitely which is prevalent in the industrial field. The power to 'regularise' and irregular appointment can be exercised if it is made within the competence of the appointing authority. The petitioners have submitted their representations on 24.03.2018, 26.03.2018, 26.03.2018, 06.04.2018, 06.04.2018, 10.04.2018 & 05.07.2018 to the respondents to consider their absorption as regular employees which are pending without there being any consideration. Hence this writ petition.

6. The learned counsel for the respondent submitted that the writ petition is not maintainable. The petitioners are claiming permanency under Conferment of Permanent Status Act for which evidence is necessary. Moreover, the affidavit is bereft of any service particulars of the alleged workers. Hence without any pleadings and evidence, the prayer for permanency under writ jurisdiction cannot be maintained. Further under Article 226 evidence cannot be gone into, hence the writ petition is not maintainable. Moreover, the petitioners claim they are working from 2007 onwards in "K2 agreement". The said K2 agreement is executed by the respondent with the contractor to execute the contract and the said agreement is not executed with the petitioners / workers.



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Therefore, the said K2 Agreement cannot be relied on to claim absorption.

Therefore, the Learned Counsel prayed to dismiss this petition.

7. Heard Mr.K.Appadurai, the Learned Counsel appearing for the petitioners and Ms.P.Malini for M/s.T.S.Gopalan & Co. the Learned counsel appearing for the respondents and perused the materials available on records.

8. On perusing the representation of the first petitioner, namely, Rajanarayanan, wherein he has submitted that he had worked under K2 Agreement from 2010-2011 to 2016-2017. It is seen that the K2 Agreement is a contract executed by one P.Nedunchezhia Pandian, Engineering Contractor and Chief Engineer and Superintending Engineer, TANGEDCO. The said P.Nedunchezhia Pandian has issued a certificate in his Letter Head, wherein the said P.Nedunchezhia Pandian claimed himself to be an “Engineering Contractor” had certified that the petitioners had worked as Contract Labour for erecting poles etc. under K2 Agreement. The said certificate of P.Nedunchezhia Pandian, Engineering Contractor is extracted hereunder:



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P.Nedunchezhia Pandian
176, Ashok Nagar, 1st Street,
Madurai – 625 018
Email:nedunchezhaipandian1951@gmail.com

Engineering Contractor
***** Mobile Numbers

K2 AGREEMENT CONTRACT LABOUR WORK

CERTIFICATE

This is to certify that Thiru.G.Rajnarayanan, S/o.N.Ganesan residing at 23/40, Burma Colony, Keelavaithyanathapuram, Thathaneri, Madurai-18 has worked in Tamilnadu Electricity Board, Madurai Distribution Circle at Samayanallur Civil PSC/RCC Pole casting yard from 2010-2011 to 2016-2017 as a Contract Labour under K2 Agreement Contract vide Agreement No. below:

1.SE/SEDC/C/No.13/2010-2011

2.CE/CD/SE/CH & PCC/01/2013-2014 Contract

Period for Three Years

(2013-2014 & 2015-2016)

3.CE/D/TIRUNELVELI/01/2/2016-2017

4.CE/D/TIRUNELVELI/02/2/2016-2017

During the above period conduct character and performance were found good.

9. On perusing the said certificate it is seen that the petitioner Rajanarayanan had worked in contract issued in SE/SEDC/C/No.13/2010-2011, but the said Contract is granted to P.Nedunchezhia Pandian.



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Hence the said P.Nedunchezhia Pandian is the employer. From the above certificate it is seen that there is no contract for the period from 2011-2012 and hence it is evident there is no continuous employment for the writ petitioner, namely, Rajanarayanan. From the above it is further evident that the petitioners were not engaged as contract labourer by the TANGEDCO. The petitioners were engaged by P.Nedunchezhia Pandian, the Engineering Contractor.

10. Likewise, the other petitioners have relied on the same certificate issued by the said P.Nedunchezhia Pandian, the Engineering Contractor. Therefore, there is no employee and employer relationship between the petitioners and the respondents. Therefore, the claim of the petitioners to confer permanent status cannot be entertained.

11. Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs.

20.04.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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(Employment Establishment)
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Chennai 600 002.
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S.SRIMATHY, J.

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