



W.P.Nos.19044 & 22620

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.12.2023

DELIVERED ON: 26.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.Nos.19044 & 22620 of 2011
and M.P.Nos.2 & 2 of 2011

- 1.C.Murugesan,
Assistant Operator,
Office of the Asst., Executive Engineer (Ele.),
Bevear Power House – IV,
TANGEDCO (T.N.E.B)
Erode Generation Circle,
Urachikottai,
Bhavani Taluk, Erode District.
- 2.K.Sengoden,
Gauge Reader (Mech.),
Office of the Asst., Executive Engineer (Mech.),
Urachikottai Power House – IV,
TANGEDCO (T.N.E.B)
Erode Generation Circle,
Urachikottai, Bhavani Taluk, Erode District.

...Petitioners in W.P.No.19044/2011

P.Manickam

...Petitioner in W.P.No.22620/2011

vs.

- 1.The Superintending Engineer,
Erode Generation Circle,
TANGEDCO (T.N.E.B)
Urachikottai, Bhavani Taluk, Erode District.



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2.The Chief Engineer (Hydro),
5th Floor, TANGEDCO Eastern Wing,
No.144, Anna Salai,
Chennai – 600 002.

3.The Chief Engineer (Personnel),
TANGEDCO,
No.144, Anna Salai,
Chennai – 600 002.

4.M.Palanisamy,
Asst. Operator (Electrical),
Office of the Asst. Executive Engineer (Ele.),
MHPH, Bhavanisagar,
TANGEDCO,
Gopi Taluk, Erode District.
petitions

...Respondents in both

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 3rd respondent in Memo No.046228/210/G58/G581/11-1 dated 19.07.2011 and quash the same as illegal.

For Petitioners : Mr.V.Radha Krishnan, Senior Counsel
for Mr.K.Sasindran in W.P.No.19044/2011

Mr.J.Saravana Vel in W.P.No.22620/2011

For Respondents: Mr.David Sundar Singh for R1 to R3
in W.P.No.19044/2011

Mr.K.Rajkumar for R1 to R3
Standing Counsel for TNEB
in W.P.No.22620/2011

Mr.V.Ajoy Khose for R4 in both petitions



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COMMON ORDER

These Writ Petitions have been filed challenging the order passed by the third respondent in Memo No.046228/210/G58/G581/11-1 dated 19.07.2011 and consequently directing the first respondent to cancel the promotion given to the five employees which includes the names of the petitioners herein.

2.Since the *lis* raised in these Writ Petitions are one and the same, these petitions were heard together and disposed of by a common order.

3.Heard Mr.V.Radha Krishnan, learned Senior Counsel appearing for Mr.K.Sasindran, learned counsel appearing for the petitioners in W.P.No.19044 of 2011 and Mr.J.Saravana Vel, learned counsel appearing for the petitioner in W.P.No.22620 of 2011. Mr.David Sundar Singh, learned counsel appearing for the respondents 1 to 3 in W.P.No.19044 of 2011 and Mr.K.Rajkumar, learned Standing Counsel for the respondents 1 to 3 in W.P.No.22620 of 2011. Mr.V.Ajoy Khose, learned counsel appearing for the fourth respondent in both the Writ Petitions.

4.Mr.V.Radha Krishnan, learned Senior Counsel and Mr.J.Saravana Vel the learned counsel appearing for the petitioners would submit that the petitioners were working as Contract Labourers in Mettur Thermal Power Station from the year 1987 onwards. He would submit that the Hon'ble Apex



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Court had appointed Hon'ble Mr.Justice Khalid, a retired Judge of Supreme Court to submit a Report on the issue of absorption of large number of Contract Labourers working in the Tamil Nadu Electricity Board and pursuant to the implementation of the Report of Justice Khalid Commission, the TNEB regularized the services of Casual Labourers working throughout Tamil Nadu. He would submit that the petitioners were absorbed into the services of the TNEB in the post of Helpers, the first petitioner was appointed on 23.02.1998 and the second petitioner was appointed on 19.02.1998 in Salem Electricity Distribution Circle. He would submit that the petitioner in W.P.No.22620 of 2011 was absorbed and appointed into the post of Helper on 27.01.1999 in Mettur Electricity Distribution Circle.

5.He would submit that based on the request of the petitioners, both were transferred to Erode Generation Circle and the first petitioner joined as Helper on 09.02.2001, the second petitioner joined on 12.02.2001 and the petitioner in W.P.No.22620 of 2011 joined as Helper on 07.02.2001. He would further submit that the first respondent published a seniority list of Regular Work Establishment as on 01.01.2002, in which the petitioners were listed in the bottom most rank in the seniority list in the category of Helpers working in Erode Generation Circle. He would submit that the TNEB in B.P.No.3(FB)(Adm. Br.) dated 29.01.2001 had absorbed 126 Contract Labourers working in Erode Hydro Generation Circle and those labourers were



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selected and appointed as Helpers and were posted in Erode Circle under the control of the first respondent. He would contend that the fourth respondent is one among the 126 Casual Labourers and the fourth respondent joined on 12.02.2001 and others joined on 13.02.2001.

6.He would submit that in the seniority list published by the first respondent as on 01.01.2002, the name of the fourth respondent is shown at Sl.No.139. He would contend that the fourth respondent is the senior most Helper among the helpers appointed under B.P.No.3 (Adm. Br.) dated 29.01.2001. He would submit that the TNEB had published another seniority list as on 01.01.2004 in respect of Erode Generation Circle in that Seniority list, the seniority of the petitioners in the category of Helper in Erode Generation Circle were shown at Sl.Nos.77 & 78 and the petitioner in W.P.No.22620 of 2011 was shown at Sl.No.72. The fourth respondent name was shown at Sl.No.86. He would contend that in the year 2006, a seniority list was published as on 01.01.2006 and there was no change in the seniority position of the petitioners and yet another seniority list was published on 01.01.2009 in that list also, the petitioners names were found at Sl.Nos.15 & 16 and the name of the petitioner in W.P.No.22620 of 2011 was shown at Sl.No.12, while the fourth respondent name was found at Sl.No.17. He would contend that from this seniority list, it is to be understood that the 126 Casual Labourers who were appointed under B.P. (FB) No.3 (Adm. Br.) dated 29.01.2001 were treated as



juniors to the petitioners and the same has attained finality.

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7.He would submit that the next avenue of promotion for Helpers in the service of the TNEB is Wireman and the first respondent in his Memo No. 140/2009/Adm-1 (3)/F.Doc./dated 28.11.2009 published an approved Panel of Helpers in Erode Generation Circle for promotion to the post of Wireman and equivalent category. He would submit that in the panel, the name of the petitioners were at Sl.Nos.14 & 15 and the name of the petitioner in W.P.No.22620 of 2011 was shown at Sl.No.11, while the name of the fourth respondent were at Sl.No.16. The first respondent in his Memo No.140-1/2010/Adm.1(3) dated 30.06.2010, promoted 29 Helpers including the petitioners and the fourth respondent to the post of Wireman and equivalent grade. He would submit that the first petitioner was promoted as Assistant Operator (Electrical) and the second petitioner as well as the petitioner in W.P.No.22620 of 2011 were promoted as Gauge Reader (Mechanical) and the first petitioner joined in the said post on 09.07.2010, the second petitioner joined on 14.07.2010 and the petitioner in W.P.No.22620 of 2011 joined on 13.07.2010 respectively.

8.He would submit that the seniority list of Helpers in Erode Generation Circle was published in the year 2002, 2004, 2006 and 2009. These lists have been widely circulated and every one was put on notice regarding seniority



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position. But neither the fourth respondent nor any of the Contract Labourers who were absorbed and appointed as Helpers under BP (FB) No. 3 (Adm. Br.) dated 29.01.2001 objected to the seniority position nor wanted that their services in the respondent Board should be reckoned from the date of the order viz., 29.01.2001. In the absence of any such individual plea by any of the employees, the respondents have no jurisdiction to revise the seniority and cancel the promotion given to the petitioners based on the existing seniority list.

9.He would further submit that the order issued by the third respondent is in violation to the Service Regulations particularly, Regulation 97(d) which states that an application of revision of seniority by a person shall be submitted to the Appointing Authority within a period of 3 years from the date of such service/category/grade or within a period of 3 years from the date of order fixing seniority as the case may be. In this case, no such application was submitted to the Appointing Authority by any of the employees aggrieved over the seniority position. Secondly, the present attempt to revise the seniority is made after a period of 10 years without any request for revision of seniority. He would submit that in the absence of any such representation, there is no occasion for the respondents to revise the seniority list.

10.He would submit that the first respondent sought approval for modification of the seniority of Helpers and the second respondent had rejected the said proposal stating that the existing seniority as per B.P.(FB) No.3 (Adm.



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Br.) dated 29.01.2001 does not require any modification. He would submit that thereafter the first respondent had sent a proposal to the third respondent to revise the seniority list of Helpers dated 25.03.2011 and the same was accepted by the third respondent and consequently directed the first respondent to cancel the promotion given to the five employees which includes the names of the petitioners. He would submit that out of the five employees, two had already been selected under internal quota for some other higher category. He would submit that no opportunity was given to the petitioners as to why their promotions should not be cancelled and as to why their seniority should not be revised. The third respondent had passed the order in Memo No. 046228/210/G58/G581/11-1 dated 19.07.2011 and if the impugned order is implemented, the petitioners will be ranked as juniors to all the 126 Casual Labourers, who were absorbed and appointed under B.P. (FB)No.3 (Adm. Br.) dated 29.01.2001. Aggrieved against the order of the third respondent, the petitioners have filed these Writ Petitions.

11.Countering his arguments Mr.David Sundar Singh, learned counsel for the respondents 1 to 3 would submit that the petitioners were posted as Helper in the Office of Salem Electricity Distribution as per B.P.No.3 (Adm. Branch) dated 29.01.2001, the seniority among them for the above absorbed Helpers was based on the number of working days and when the Employees Union raised objection to the seniority list, the first respondent had sought clarification from



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the third respondent and the seniority for the 126 absorbed Helpers from Contract Labourers was prepared based on the actual number of days of wages earned. He would submit that in the revised list, the fourth respondent stood at the top of the list and these Helpers were paid back wages with effect from 29.01.2001 as per BP.No.3(Adm.Branch) dated 29.01.2001.

12.He would submit that in the seniority list as on 01.01.2002 published by the first respondent as on 12.03.2002, the date of joining was not shown as 29.01.2001 because of the erroneous decision. He would submit that if it had been correctly decided then for among all the 126 Contract Labourers, the petitioners would have been placed below them. He would submit that the serial number of the petitioners and the fourth respondent in the seniority list as on 01.01.2004 and as on 01.01.2009 are correct but the position of the fourth respondent had advanced due to the revised seniority list. He would submit that the Employees Union had made representation and based on the representation, a proposal had been sent to the Chief Engineer, Chennai for the revision of the seniority in the Superintending Engineer / Erode Generation and the second respondent had negated the proposal of revision in the seniority of Helper cadre reckoning the date of joining of the Contract Labourers as on 29.01.2001 as per BP.No.3.

13.He would further submit that the first respondent felt it reasonable to



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revise the date of joining of Helpers absorbed from Contract Labourers as per the orders of the relevant BPs and consequently, the combined seniority of Helper category was drawn based on the date of joining. He would submit that the revision had affected the petitioners and two others who got promoted due to the mistakes committed by the first respondent, hence, it was necessary to revise the list. He would further submit that the reversion approval of the third respondent was sought for in the first respondent Office Letter No. 016650 / 2011/ Adm.1(3)/ dated 23.05.2011. He would submit that the third respondent approved the reversion proposal in his Office Memo.No.046228/d 2011/G.58/G.581 / 11-1, dt. 19.07.2011 and further has been approved to revise the date of joining of the 126 Contract Labourers as 29.01.2001.

14.He would submit that the third respondent order dated 19.07.2011 was only a direction to the first respondent, who was the Appointing Authority for the Helper cadre. He would contend that as it was only a direction, there was no necessity for the third respondent to issue any show cause notice to the petitioners. He would submit that the first respondent has approved the revised seniority list considering the date of joining of the 126 contract labourers as on 29.01.2001. He would submit that the order of the third respondent dated 19.07.2011 was the approval for the attempts of the first respondent to rectify the errors based on the fact placed before his Office. He would submit that as

per the Service Regulation and the settled principles of law that it is the



petitioners who had not made use of the redressal mechanism and avenues available.

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15.He would submit that the panel was prepared relying on the seniority list as on 01.01.2009 and the Letter dated 25.08.2008 of the second respondent was with regard to the revision of seniority among the 126 and 61 Helpers absorbed in batches from Contract Labourers and has no relevance to the order passed by the third respondent dated 19.07.2011. He would further submit that the seniority list published by the first respondent were erroneous due to mistake of fact and as such the petitioners gained undue promotion and due to the reversion, no legitimate rights of the petitioners will be affected. Therefore, the order passed by the third respondent does not warrant any interference and hence seeks to dismiss the Writ Petitions.

16.Mr.V.Ajoy Khose, learned counsel for the fourth respondent would submit that as per the Report of the Hon'ble Mr.Justice Khalid, the Board issued B.P.No.17 dated 28.04.1999 abolishing the Contract Labour system in four Thermal Power Stations and issued directions for absorption of all the Contract Labourers with effect from 01.05.1999. He would submit that the Board issued B.P.(FB) No.3, Administrative Branch dated 29.01.2001 ordering absorption of 500 Contract Labourers and out of which, 126 workmen employed as Contract

Labourers were directed to be regularized and absorbed as Helpers with effect



from 29.01.2001. He would further submit that the fourth respondent was one among the 126 workmen who were directed to be regularized and absorbed as Helpers in Erode Hydro Generation Circle.

17.He would submit that the first respondent being the Appointing Authority issued appointment orders and orders of regularization and absorption on 09.02.2001 and the fourth respondent joined duty on 13.02.2001. He would submit that the third respondent instead of recording the date of issuance of B.P.No.3 as the date of appointment had wrongly mentioned the appointment date as 13.02.2001 in the Service Register and other records in respect of five workmen absorbed among 126 and in respect of other 121 workmen, the first respondent mentioned their date of joining as their date of appointment in the records. He would submit that it was the mistake on the part of the third respondent in which the date of appointment of the five persons were wrongly mentioned and the same was also not rectified and did not record the date of issuance of B.P. i.e., dated 29.01.2001 as their date of appointment was contrary to the condition imposed in the Board Proceedings.

18.He would submit that the Board issued B.P.(FB)No.14 Administrative Branch dated 05.08.2005 for absorption of the remaining 295 Contract Labourers who were originally directed to be regularized in B.P.No.22 dated



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14.05.1999 but not included in B.P.No.3 dated 29.01.2001. He would contend that in those Proceedings also the workmen who were already in service and on the rolls were directed to be absorbed from the date of issuance of B.P., i.e., from 05.08.2005. But in this case also, the first respondent wrongly reckoned the date of joining as the date of appointment instead of taking 05.08.2005 as their date of appointment. He would further submit that the Union of Electricity employees of Erode Branch made a representation to consider the date of B.P.No.3 i.e., 29.01.2001 as the date of appointment for 126 workmen and also to fix the seniority based on the said date. He would submit that the Union raised an Industrial Dispute before the Labour Officer and the first respondent submitted a letter dated 07.02.2009 before the Labour Officer, Erode agreeing to prepare the seniority list as per B.P.No.3 dated 29.01.2001 and showing the said date as their date of appointment and to prepare the seniority list accordingly.

19.He would further submit that in accordance with the assurance given before the Labour Officer and in accordance with the Service Regulation viz., Regulation No.97 and in accordance with the condition in Paragraph 3 of B.P. No.3 dated 29.01.2001, the third respondent had issued the order dated 19.07.2011, rectifying the mistake committed by the first respondent in setting right the date of joining and seniority. He would further submit that if the date of



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joining of the fourth respondent is taken as 29.01.2001, then including him and all other Helpers who were absorbed pursuant to B.P.No.3 in Erode Generation Circle will become seniors to the petitioners. He would submit that showing the petitioners as seniors to the fourth respondent and others is only a mistake and illegality. The third respondent was correct and justified in issuing orders to cancel the promotion given to the five persons including the petitioners in both the Writ Petitions.

20.He would submit that the Writ Petitions are not maintainable on the ground of non joinder of proper and necessary parties who are likely to be affected if the prayer in the Writ Petitions are granted in favour of the petitioners, as the petitioners had stated that the fourth respondent is added in a representative capacity on behalf of all the 126 persons but they had not filed any application under Rule 2(a). Therefore, he would submit that there is no infirmity in the order passed by the third respondent. Hence seeks to dismiss the Writ Petitions.

21.I have heard the submissions on behalf of the respective parties and have perused the materials available on record before this Court.

22.In both the Writ Petitions, the fourth respondent had been impleaded as the respondent and the reason for impleading him as a respondent was shown to be for the reason that he was one amongst the 126 Casual Labourers who was



appointed as Helper in Erode Hydro Generation Circle and that the fourth respondent is the senior most of them. For better appreciation, the relevant averments made in the affidavit filed in support of the Writ Petition is extracted hereunder:

“I submit that the Tamil Nadu Electricity Board in the meanwhile, in B.P.No.3(FB) (Adm. Br.) dated 29.01.2001 absorbed 126 Contract Labourers working in Erode Hydro Generation Circle. On being absorbed, the 126 Casual Labourers later on were selected and appointed as Helpers and all of them were posted in Erode Generation Circle under the control of the 1st Respondent. The 4th Respondent is one among the 126 Casual Labourers who were appointed as Helpers in Erode Hydro Generation Circle. All of them joined in Erode Hydro Generation Circle on 13.02.2001, except Respondent 4 and another who joined on 12.02.2001 A.N. In the seniority list published by the 1st respondent as on 01.01.2002 in respect of RWE category working in Erode Generation Circle, the 4th respondent's name is shown at sl.no.139. The 4th Respondent is the senior most Helper among the helpers appointed under B.P.No.3(Adm.Br.) dated 29.01.2001. Hence, he is impleaded as a party Respondent in this Writ Petition. All along they have been treated as juniors to the Petitioners for all purposes by the Respondents 1 to 3 herein.”



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23.The petitioners in these Writ Petitions are seeking to challenge the order, wherein their promotions were sought to be cancelled. The main contention in the Writ Petitions is that the seniority list had been revised where the 126 persons as stated in Paragraph No.4 of their affidavit as extracted supra, were placed above them by rectifying the seniority list that had been hitherto adopted. An objection had been raised by the learned counsel for the fourth respondent that the petitioners were aware that in the event of them succeeding in the Writ Petitions, they would have to be placed above the said 126 persons. All of them had not been added as parties to the Writ Petitions.

24.He would strongly rely upon Rule 2(a) of the Rules to regulate the proceedings under Article 226 of the Constitution framed by this Court, the said Rules reads as thus under:

“2(a).All the Affidavits filed in support of the petition, counter affidavits, affidavits in reply to the counter affidavit and any other supplementary affidavits filed by any person in a writ petition or miscellaneous petition shall clearly state at the concluding portion of such affidavit whether the statements made in the affidavit are based on knowledge, information and belief or on records. Where statements are based on information, the source of such information should be disclosed. Where statements are based on records, sufficient particulars of records as far as practicable, should be given to enable



proper identification of records. Contentions in the affidavit should be verified as based on legal advice.”

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25.The said Rule postulates that when there are numerous persons who may be affected in the event of an order passed in the Writ Petition in favour of the petitioners, a necessary permission ought to have been obtained from the Court to file a single petition against one or more of such persons who may be affected designating & describing them as representing all such persons. When such a permission is sought to be made, this Court while granting such permission to implead such respondent in a representative capacity may also direct publication of notice in the prescribed form so that every person likely to be affected will have an opportunity of coming on record if he so chooses. Form 12 of the aforesaid Rule also prescribes such a notice.

26.In the present Writ Petitions, the petitioners even though had pleaded in their affidavit that the fourth respondent has been impleaded as he being senior most amongst the 126 persons who may be affected by the order have impleaded him in the representative capacity. No permission had been sought for while these Writ Petitions were filed nor have they complied with Rule 2(a).

27.In such circumstances, I am of the opinion that the Writ Petitions itself could not be maintained by the petitioners. Further, they had also not challenged



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the revised seniority list based upon which their promotion were sought to be cancelled.

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28.In such view of the matter, I am of the view that the contentions raised by the petitioners in the Writ Petitions cannot be adjudicated for non joinder of parties at the instance of the petitioners.

29.In fine, the Writ Petitions are dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

26.02.2024

Index: Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To
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- 1.The Superintending Engineer,
Erode Generation Circle,
TANGEDCO (T.N.E.B)
Urachikottai, Bhavani Taluk, Erode District.
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K.KUMARESH BABU, J.

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**A pre-delivery common order in
W.P.Nos.19044 & 22620 of 2011**