



W.P.No.3016 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

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THE HONOURABLE MRS. JUSTICE R.N. MANJULA

W.P.No.3016 of 2010
and M.P.No.1 of 2010

Executive Engineer (Civil Maintenance/Kuthiraikkalmedu),
Tamil Nadu Electricity Board,
Kuthiraikkalmedu,
Kadappanullur Post,
Bhavani Taluk, Erode District.

... Petitioner

Vs.

1. N. Kandasamy

2. The Presiding Officer,
Labour Court, Salem.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, to call for the records of the second respondent Labour Court relating to its Award dated 08.09.2008 passed in I.D.No.542 of 2000 and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.Anand Gopalan
for M/s. T.S. Gopalan & Co.

For Respondent : M/s.K.V.Shanmuganathan
No.1

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ORDER

This Writ Petition has been filed challenging the award passed by the Presiding Officer, Labour Court, Salem, dated 08.09.2008 made in I.D.No.542 of 2000.

2. An industrial dispute was filed by the first respondent/workman and an award was also passed by setting aside the order of dismissal dated 12.11.2000 with a direction to reinstate the first respondent/workman as a Helper with continuity of service and with monetary benefits of increment after three years by fixing the minimum salary of the first respondent/workman when he reports to duty.

3. The learned counsel for the petitioner Management submitted that the first respondent/workman is only a contractual labourer and has not been absorbed as a regular employee at any point of time. Though the status of the first respondent/workman is objected, the said point has not been properly adverted to by the Labour Court and it has proceeded to give him the benefit of Board Proceedings dated 07.11.2002. According to the learned counsel for the



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petitioner Management, the first respondent/workman is not included in the above Board Proceedings even though such proceedings have been passed to absorb some other workers into regular service. So, it is claimed by the petitioner Management that as the first respondent/workman's very status itself is questioned, he ought to have raised a dispute under 2(k) and not under 2(a) of the Industrial Disputes Act. It is submitted that the first respondent/workman has never been absorbed and hence, there is no question of termination and hence, the award of the Labour Court is misguided.

4. However, the learned counsel for the first respondent/workman submitted that even in the counter filed by the petitioner Management before the Labour Court, it has been admitted that the first respondent/workman has been absorbed as a regular employee and hence, there is no question of considering him as a contractual labourer. It is further submitted that the fact that the first respondent/workman was under the services of the petitioner Management is not denied even though it is claimed by the petitioner Management that the first respondent/workman is only a contractual labourer. Even from the pleadings made by the petitioner Management before the Labour Court, it is stated that while steps have been taken to absorb the first respondent/workman into regular service, they came to know that the first



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respondent/workman has produced bogus certificate and hence, he was denied permanency. It is further claimed that the first respondent/workman had failed to produce the genuine certificate even while the certificate verification was done for contractual labourers by the Selection Committee pursuant to Board Proceedings No.22 dated 14.05.1999. The fact remains that the first respondent/workman was very well considered for absorption and the entitlement to absorption has been crystallized as against the first respondent/workman vide Board Proceedings No.22, dated 14.05.1999. Even though the first respondent/workman missed the opportunity to get the order of absorption in view of the allegation that he did not produce the genuine educational certificate, there is no dispute with regard to his status and his coverage for getting benefit under Board Proceedings No.22, dated 14.05.1999. The first respondent/workman has claimed that instead of absorbing him as a regular employee, he has been terminated from service and hence, it is an illegal termination. Thus, he raised an Industrial Dispute under Section 2-A of the Industrial Disputes Act. The circumstance on which the first respondent/workman raised the Industrial Dispute is only to challenge the termination on the ground that he is entitled to regular absorption but, his services have not been utilized and he has been terminated. Even according to the first respondent/workman, he did not claim that he has been absorbed in



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regular service and thereafter, he was terminated. So, the background in which the first respondent/workman has made his claim for reinstatement would justify that he can maintain the claim under Section 2-A of the Act.

5. The Presiding Officer of the Labour Court has relied on the earlier proceedings initiated in this regard against some of the employees. In this connection, a writ appeal was pending in W.A.No.3621 of 2002. Subsequent to the disposal of the writ appeal and batch, the Board has considered the representation of the writ appellants therein and passed an order stating that the punishment of removal / dismissal imposed shall be modified to that of reduction of pay to the minimum of the time scale of pay of the post held on the date of issue of orders for a period of 3 years which will operate for future increments.

6. By taking cue from the above order, it appears that the Labour Judge has tried to strike parity between the similarly placed persons and passed an order modifying the punishment to stoppage of increment for 3 years.

7. However, the learned counsel for the petitioner Management has



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endeavoured to make a distinction by stating that all those Writ Appellants who have involved in those cases had already been absorbed into service and the case came to be dismissed subsequently on the allegation that they have produced bogus certificates. But, the fact remains that those writ appellants have also been absorbed into service only by getting the benefit of B.P. No.22, dated 14.05.1999 and hence, it is right for the Presiding Officer to hold that the first respondent/workman also stands on the same footing.

8. Since the impugned order passed by the Labour Court has been stayed, the first respondent/workman has not been absorbed into service so far, though the award is in his favour. Further, the dismissal of this writ petition would only amount to confirming the award of the Labour Court and hence, the first respondent/workman's entitlement to get absorption into the service remains good. Since the first respondent/workman's right to get absorption has been upheld, he is entitled to get attendant and monetary benefits as per the award, as though he has been absorbed into service in compliance of the award and hence, the petitioner Management is directed to pay the said benefits to the first respondent/workman.



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This writ petition stands disposed of on the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

03.09.2024

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To

The Presiding Officer,
Labour Court, Salem.



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R.N. MANJULA, J.

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