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WA Nos.1478 and 1479 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

WA Nos.1478 and 1479 of 2022

- 1.The Chairman
Tamil Nadu Generation &
Distribution Corporation (TANGEDCO)
No.144, Anna Salai,
Chennai -600 002.
- 2.The Chief Engineer (Personnel),
Tamil Nadu Generation &
Distribution Corporation,
No.144, Anna Salai,
Chennai -600002.
- 3.The Superintendent Engineer,
Dharmapuri Electricity Distribution Circle,
Tamil Nadu Generation &
Distribution Corporation,
Dharmapuri -5.

... Appellants in
WA Nos.1478 and 1479 of 2022

versus
P.Manikandan

... Respondent in
WA No.1478 of 2022



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Tmt.M.Indhirani

...Respondent in
WA No.1479 of 2022

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PRAYER: Writ Appeal filed against the order of the learned Single Judge in WP Nos.16209 of 2019 and 16214 of 2019 dated 14.12.2021.

For the Appellants :Mr.Anand Gopalan
for M/s.Gopalan and Co.

For the Respondents :Mr.S.Doraisamy
for Mr.V.Elangovan

COMMON JUDGMENT

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

These Writ Appeals are filed against the order of the learned Single Judge in WP Nos.16209 of 2019 and 16214 of 2019 dated 14.12.2021.

2. Brief fact of the case

2.1. The respondents herein were appointed as part time employees by the appellant board on 04.04.2003 and 04.06.2003 respectively. These



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respondents were working continuously as part time workers for 14 years.

According to the respondents, though they were assigned work only for a period of two hours in a day, the appellant board used to extract work from these respondents for more than five hours and they were made to work till the evening every day. Though they were appointed as part time workers, they were not brought into regular time scale of pay from their original date of appointment. Therefore, the respondent employees made representations dated 09.11.2017 to the appellant Board and the same was not considered. Hence, they filed writ petition in WP No.6007 of 2018. In the said writ petition, by order dated 26.06.2018, directions were given to consider the representations of the respondents, pursuant to which, the second appellant considered and rejected the same by order dated 30.12.2018.

2.2. Challenging the aforesaid rejection order dated 30.12.2018, the respondents filed the instant writ petitions seeking for a direction to the appellants to absorb them as regular workers in the light of the order passed in Memo No.081451/1310/G42/G422/2017-1 dated 28.09.2017 on the file of the second appellant and to repost the respondents herein in the existing



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vacancy as full time regular employees with all attendant benefits instead of part time conservancy workers, based on the relief granted to similarly placed persons in WP No.25423 and 25433 of 2013 dated 09.01.2014. The writ court, by a common order dated 14.12.2021, had allowed the instant writ petitions with the following observations:

When similar direction was issued by this Court vide order dated 26.06.2018, in WP.No.6007 of 2018, their claim came to be rejected and the consideration given to those similar persons was sadly missing in the case of the petitioners. Despite this Court repeatedly confronted the counsel for the respondents as to why these two persons have been discriminated against in the matter when their claims are identically circumstanced, this Court could not get any plausible answer nor was any attempt made to justify a differential treatment meted out to the petitioners.

When the respondents have thought it fit to grant regularisation to the other similarly placed employees by graciously accepting the directions of this court and passed orders on 28.09.2017, this Court is unable to countenance the benovolence that has been shown to the 13 persons need to be shown to the present petitioners as well, there should not be any discrimination when the claims are identically placed for the same class of employees. In the instance the rejection of the claim of the petitioners is blatant violation of Article 14 of the Constitution of India. This Court



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is therefore of the view that the petitioners have made out a case for grant of relief both on the grounds of parity and equity.

2.3. Challenging the said order, the appellant Board has filed the present intra court appeals.

3. Learned counsel for the appellant Board would strongly object before this Court that at the time of issuing the appointment order, it has been clearly indicated that the respondents herein were employed only for a period of two hours in a day. They have not been engaged beyond two hours as stated by these respondents herein. He further submitted that their hours of work is only between 8 am and 10 am and only during the said hours, they have been employed. As such, they are not working more than two hours per day. Therefore, their request cannot be considered for regular employment by the Board. These aspects have not been considered by the learned Single Judge and hence seeks to set aside the order of the learned Single Judge.



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4. Learned counsel for the respondent employees strongly objected the contention of the appellant board relying upon the directions given in the order dated 09.01.2014 in WP.Nos.25423 and 25433 of 2013, pursuant to which, 13 employees who worked as part time employees under the respondent board were considered and their service have been regularized and the same has not been disputed by the board. Therefore, he contends that the respondents herein are also entitled for regularization of service in the appellant board, as they are also similarly placed. Hence, according to respondents, the rejection order passed by the Board is in violation of Article 14 of the Constitution, arbitrary and discriminatory one among the same set of employees. Therefore, he submits that the order of the writ court is perfectly valid and nothing warrants to interfere with the impugned order of the writ court.

6. Learned Counsel appearing for the appellant board further submits, the respondents herein were employed as part time employee as Sweeper and Scavenger and the respondents were working in the appellant board for



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two hours per day and beyond that there is no work for the sweepers and scavengers in the office of the respondent board. Therefore, they cannot be equated with the regular employees and they are not entitled to be considered for regular scale of pay on par with other regular employees. Learned counsel for the appellant Board further submits that the case of the 13 employees is altogether a different one. Even on 20.11.2011, they were regularized as part time conservancy workers in the time scale of pay, but their services were not regularized as full time workers. Therefore, they gave representation on 30.06.2013 to repost them in the existing vacancy as Full time regular employees with all attendant benefits. Accordingly, the 13 employees were considered and appointed in the regular vacancies, pursuant to the order dated 09.01.2014 passed by the Hon'ble Court in W.P.Nos.25423 and 25433 of 2013. However, the case of the respondents in the instant appeals is different. They have been appointed only as part-time employees. Therefore, they cannot seek grant of similar relief of regularization of service on par with persons, who were already regularized as part time conservancy workers. Rules do not permit for regularization of service of these respondent employees, because they have been appointed as



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part time employees and therefore, their claim for regularization is totally unfounded and the same is liable to be rejected.

7. The learned counsel appearing for the respondent employees has strongly contended before this Court that they are working in the appellant board for more than 19 years as Sweeper and Scavenger, however the appellant board as a role model employer has not come forward to regularize their services, whereas similarly placed persons have been granted the benefit of regularisation of service. He further submitted that the statement made by the appellant that the respondent employees have been working only for two hours, is not correct. They have been working for more than two hours. The appellant Board used to extract work from them for more than 2 hours per day and this fact has not been placed before the Court correctly and therefore the learned counsel submits that to verify the correct working hours of these employees in the appellant board, it is appropriate to appoint a Commissioner.

8. Heard the parties and perused the materials available on record.



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9. It is seen that no materials have been placed before this Court to show that these respondent employees have been working for more than 2 hours in the office of the appellant board. Further, these are all disputed facts and this court cannot go into such disputed facts between the parties under Article 226 of the Constitution of India. If the statement of the appellant board is contrary to the factual position, and that the respondent employees are working for more than 2 hours, then they have appropriate remedy available to them before the appropriate forum, where they can seek enhancement of wages.

10. We make it clear that if the appellant Board has extracted work from these employees for more than two hours, then the respondent employees are entitled for the additional wages from the appellant Board, depending upon the working hours per day, proportionate to the salary presently paid. To that extent, if there is any dispute in the fact of working hours, it is for the respondents herein to approach the appropriate forum to seek remedy for enhancement of wages for the extra hours of work they did



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in the office of the appellant Board.

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11. The prayer, as sought for by the respondent employees, to regularize their service, the issue has already been decided by the Hon'ble Supreme Court in a catena of judgments, which are to the effect that regularization of service is not permissible under law for a part time employee, compared to regular employees. However, the learned counsel for the appellant Board fairly stated that if any future regular vacancy arises in the appellant board, based on seniority, these respondents will be considered for employment as scavenger and sweeper etc. in such regular vacancy. For the present, as there is no regular vacancy, the request of the respondent employees for regularization cannot be considered.

12. In view of the above said facts and circumstances, we are inclined to pass orders as follows:

i) If the respondent employees are working more than two hours, then the appellant board is directed to pay them additional wages for the extra hours, proportionate to the wages presently paid.

ii) If any regular vacancy arises in future, the respondent employees



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will be considered for appointment as full time regular employees in such regular vacancies

13. With the above directions, the order of the writ court in W.P.Nos.16209 and 16214 of 2019 dated 14.12.2021 are set aside and consequently, the writ appeals stand allowed. There shall be no order as to costs. Consequently, CMP Nos.9728 and 9732 of 2022 are closed.

[D.K.K., J.] [K.B., J.]
18.06.2024

Index : Yes/No
Neutral Citation : Yes/No
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D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

(mrn)

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