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W.P.No.16671 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.06.2024

CORAM:

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

Writ Petition.No.16671 of 2023
and WMP.No.15969 of 2023

K. Palanisamy @ K.Natarajan

... Petitioner

Vs.

1. Sail Refractory Company Ltd.,
Rep., by its Chief Operating Officer,
Post Box No.565,
BSCL Road, Salem-636 005.

2. The Senior Manager (Personnel and Administration)
SAIL Refractory Company Ltd.,
Post Box No.565,
BSCL Road, Salem-636 005.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorari Mandamus after calling for the records relating to the order No.SRCL/P&A/2021/082/7415 dated 12.03.2021 passed by the 2nd respondent (Ex-A) and to quash the same as being illegal, arbitrary and contrary to the award dated 16.02.2006 passed in I.D.No.592 of 2001 and the order dated 16.03.2015 passed by the certifying officer and confirmed on 20.11.2015 by the Appellate Authority under the Industrial Employment (Standing Orders) Act, 1946 and for consequential direction to the 1st respondent to continue in service till the petitioner completes 60 years as per the ESI records which will be on 31.05.1932.



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For Petitioner : Mr.V.Govardhanan

For Respondents : Mr.C.Veeraraghavan

ORDER

This Writ Petition is filed to call for the records to relating to the order No.SRCL/P&A/2021/076/7415 dated 12.03.2021 passed by the 2nd respondent (Ex-A) and to quash the same as illegal, arbitrary and contrary to the award dated 16.02.2006 passed in I.D.No.592 of 2001 and the order dated 16.03.2015 passed by the certifying officer and confirmed on 20.11.2015 by the Appellate Authority under the Industrial Employment (Standing Orders) Act, 1946 and to issue consequential direction to the 1st respondent to continue in service till the petitioner completion of 60 years as per the ESI records which will be n 31.05.1932.

2. The facts in brief as per the affidavit enclosed to this Writ Petition are as follows:

The petitioner was employed as contract Labour by Burn Standard Company Ltd., Government of India Undertaking (hereinafter referred to as BSCL) which was taken over by the first respondent company on 16.12.2011. On 18.07.1997, BSCL entered into a settlement under



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Section 12(3) of the Industrial Dispute Act, 1947 and agreed to absorb contract labour as permanent employee. As the settlement was not honoured, the workmen through the Union raised an Industrial Dispute. On failure of conciliation, on 24.02.2000, the question of absorption was referred to adjudication to the Central Government Industrial Tribunal, Chennai as I.D.No.592 of 2001.

3. Union has raised another Industrial Dispute claiming parity of wages for permanent employees of BSCL. On 07.08.2001, the said dispute was also referred by the Government for adjudication in I.D.No.601 of 2001. Both the I.D's were disposed of on 16.02.2006 wherein I.D.No.592 of 2001, was decided infavour of the workmen and directed the BSCL to absorb contract labour prospectively. Similarly by an award dated 16.02.2002, in I.D.No.601 of 2001 was disposed of and the Tribunal has directed the BSCL to pay same wages as that of permanent workmen.

4. Aggrieved by these two awards, the Management has preferred two Writ Petitions. W.P.No.41308 of 2006 was filed aggrieved by the award regarding the absorption and W.P.No.41309 of 2006 was filed aggrieved by the award of granting parity of wages with permanent employees.



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WEB COPY 5. On 15.09.2010, as per the office memorandum issued by the Department of Heavy Industries, Government of India, BSCL was transferred to the 1st respondent with all rights, thereby, first respondent company became a successor in interest.

6. On 25.04.2013, petitioner union gave an undertaking to giving up their claim in I.D.No.601 of 2001 retrospectively and thereby, management has withdrawn W.P.No.12277 of 2007. On 19.06.2013, this Court has passed an order in W.P.Nos.41308 & 41309 of 2006 filed by the Management stating that they can work out the remedies as per the undertaking dated 25.04.2013.

7. On 06.03.2015, certifying officer has passed an order under the Industrial Employment (Standing Orders) Act, 1946, revising the age of retirement of permanent employees from 58 to 60 years. On 20.11.2015, Appellate Authority has confirmed the said order. The respondent Management intends to retire employees at the age of 58 without recognizing the fact that petitioner was absorbed in the first respondent company and the Management has given an undertaking to that effect, thereby, they shall be



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permitted to continue in service until 60 years of age.

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8. 18.02.2021, the petitioner has given a representation to the first respondent company to alter the date of birth of the petitioner as 10.05.1972 based on the school records and to continue in service upto 50 years of age. The Labour Enforcement Officer (Central), Salem has launched prosecution against the officials of the respondent company under Section 29 of the Industrial Dispute Act in S.T.C.No.10455 of 2022 before the Judicial Magistrate Court-II, Salem for violating the award dated 16.02.2006 in I.D.No.592 of 2001.

9. It is submitted by the learned counsel for the petitioner that as per the respondent records, the date of birth of the petitioner is 01.07.1964. As seen from the document dated 20.12.2013 being maintained by the respondent, it is clear that all the employees were shown to have born on first July of disfferent years. It is surprising to note that all the 119 employees were born on the same date that is first July but in different years. The respondent wanted to retire its employees basing on these dates of birth.

10. Learned counsel appearing for the respondents submits that the



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petitioner is not a regular employee and though the directions were given by the Labour Court, still it does not attained finality and the petitioner is still a contract labour, thereby they do not have any record in respect of date of birth of the petitioner and also dates of birth of other Contract labourers.

11. The contention of the respondent cannot be accepted since directions were already given by the Labour Court to absorb the petitioner and other contract employees and that the Management has also agreed to absorb them. It is also to be noted that prosecution has also been launched against the Management for not implementing the said orders. Therefore, at this stage, the respondent cannot say that the petitioner is not a workman and he is only a contract labourer.

12. Even if the petitioner is not a regular employee, he has got right to continue in service till the age of 58 years. According to the petitioner, he was born on 10.05.1972 thereby he is aged about 50 years as on the date of filing of the Writ Petition, thereby, he has got eight years of service even to retire at the age of 58 years.



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13. It is submitted by the learned counsel for the respondent that the Management has no records as to the date of birth of the petitioner. In case if the respondent is not having the records pertaining to date of birth of the petitioner and other contract employees, the respondent should have asked the petitioner and other contract employees to give proof of their dates of birth and basing on the certificates submitted by them the respondent should have corrected date of birth, the proceedings should have been issued by the respondent in respect of the retirement of the petitioner and similarly affected persons. However without opting for any such exercise, the respondents simply has dis-owned the responsibility and basing on in-consistent and incomplete and incorrect records of the date of birth of the petitioner and similar persons, the respondent wanted to retire them pre-maturely. In view of all the above, this Court cannot decide the actual date of birth of the petitioner by going through various records. It is for the respondent to conduct an enquiry and to give the finding in respect of date of birth of the petitioner.

14. In view of the discussions made above, the Writ Petition is disposed of, directing the respondent to conduct an enquiry with regard to the date of birth of the petitioner and to give a finding and basing on the finding,



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shall issue proceedings with regard to the retirement of the petitioner from service. The petitioner is directed to submit all relevant papers pertaining to his date of birth to the respondent within two weeks from the date of receipt of copy of this order. On submission of such documents, the respondent is directed to consider the same and to give finding and issue proceedings to the date of birth of the petitioner and also the date of retirement of the petitioner within four weeks thereafter and until then, the respondents are directed to continue the services of the petitioner with the respondent. No costs. Consequently, connected miscellaneous petition is closed.

26.06.2024

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Index:Yes/No

Speaking Order: Yes/No

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Dr.D. NAGARJUN, J.

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