



W.P.No.22417 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.08.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.22417 of 2021 and
W.M.P.No.23660 of 2021

P.Sivakumar

... Petitioner

Vs.

1.The Chairman-cum-Managing Director,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai 600 002.

2.The Chief Engineer (Personnel),
Tamil Nadu Generation and
Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai 600 002.

3.The Superintending Engineer,
Salem Electricity Distribution Circle,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
Salem District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent in his proceedings in Letter No.585-3/Adm2/Asst4/F.WP115/2013 dated 06.01.2020 and quash the same as illegal and consequently, direct the respondents to absorb the petitioner in the regular service of the respondents Board on par with the similarly placed persons.

For Petitioner : Mr.K.Sasindran



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For Respondents : Mr.Anand Gopalan,
Standing Counsel

ORDER

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent in his proceedings in Letter No.585-3/Adm2/Asst4/F.WP115/2013 dated 06.01.2020 and quash the same as illegal and consequently, direct the respondents to absorb the petitioner in the regular service of the respondents Board on par with the similarly placed persons.

2. Heard Mr.K.Sasindran, learned counsel for the petitioner, Mr.Anand Gopalan, learned Standing Counsel for the respondents and perused the materials available on record.

3. The learned counsel for the petitioner submitted that the petitioner along with Sugavanam and Lakshmanan have initiated proceedings before the appropriate authority under conferment of permanent status Act and got an order on 22.10.2010 by getting declaration that they are entitled to get permanency as on date when they have completed 480 days of service within a period of two years. The



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respondent Corporation challenged the said order by way of filing a Writ Petition in W.P.No.115 of 2013. However, the said Writ Petition is not disposed on merits and it has been closed by passing the following order:

"A few employees, who are also respondents herein, have submitted their representations seeking permanency based on the order impugned in this Writ Petition, wherein, this Court directed the petitioner/ Management to consider their representations and dispose of the same within a period of eight weeks, after prior notice to the parties concerned for permanent status."

4. Consequent to the said order, the petitioner has not been absorbed into service though the other two persons by name Sugavanam and Lakshmanan who were also parties to the proceedings before the appropriate authority, have been absorbed. Now, the petitioner's grievance is that the respondents have shown disparity by discriminating this petitioner alone by not considering him for absorption. It is further submitted that the order dated 22.10.2010 passed by the appropriate authority declaring permanent status will hold good.



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5. The learned Standing Counsel for the respondents submitted that the petitioner has given up his entitlement in pursuant to the order dated 22.10.2010, obtained from the appropriate authority for conferment of permanent status. It is also submitted that the petitioner did not choose to contest W.P.No.115 of 2013 on merits.

6. The fact remains that the order passed in W.P.No.115 of 2013, dated 06.10.2015 has not adverted into the merits of the order passed by the authority concerned. During the pendency of the Writ Proceedings, some of the employees who are parties to the above Writ Petition have given representation seeking permanency. A direction has been given to the Management to consider the representation and dispose the same. By believing that the above order would reap the benefits, the employees were complacent and did not contest the Writ Petition on merits.

7. But the learned Standing Counsel for the respondents submitted that the contempt petition filed by the employees for not complying the order passed in the Writ Petition in W.P.No.115 of 2013 has been



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dismissed and hence, the petitioner cannot once again seek enforcement for the order passed by the appropriate authority for conferment of permanency.

8. To be noted that W.P.No.115 of 2013 has not been filed by the employees for seeking any direction against the Corporation. It is the Writ Petition filed by the Corporation and it was disposed on the submission made by the employees that they had given representation and also on the direction given by this Court to the Corporation to consider the representation.

9. Despite the respondent Corporation knew pretty well that they are under the obligation to consider the representation of the employees only on the terms of the impugned order therein, they did not choose to agitate the matter by re-asserting that the impugned order is incapable for compliance and they are not willing to comply the impugned order. While considering the representation, an order has been passed on 06.01.2020 by absorbing two workmen by name Sugavanam and Lakshmanan who were also the respondents in the Writ Petition filed in W.P.No.115 of 2013



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and the petitioners in the earlier proceedings before the appropriate authority for conferment of permanent status.

10. In fact, the order dated 06.01.2020 would only narrate about the qualification of those employees who have been absorbed into service in terms of 12(3) settlement dated 10.08.2007. In fact, the petitioner's order for permanency is dated 22.10.2010 which is subsequent to the above 12(3) settlement dated 10.08.2007. Even the order passed in the Writ Petition in W.P.No.115 of 2013 dated 06.10.2015 which is also subsequent to 12(3) settlement dated 10.08.2007. Even the order dated 06.10.2015 does not make any reference about 12(3) settlement. Reference is made only about the impugned order which is the order passed for permanency.

11. The learned Standing Counsel for the respondents submitted that allowing the petitioner to reap the benefit of the order of permanency would amount to assuming power of the Executing Court and the petitioner is not entitled to the said relief.



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12. In fact, the petitioner has already got a direction in this regard in the order passed in W.P.No.115 of 2013 that his representation should be considered only in terms of the impugned order therein and not on the basis of any other consideration. Just because the contempt petition filed by the employees got dismissed on any other ground that will not make an order dated 22.10.2010 ineffective or unenforceable. But the fact remains that the impugned order dated 06.01.2020 has been passed unmindful of the earlier order passed for permanency on 22.10.2010 and the consequential direction given by this Court in W.P.No.115 of 2013 by making a direct reference to that.

13. The impugned order has been passed without due consideration of the earlier orders passed by both the authorities for conferment of permanent status as well as the orders of this Court. Hence, the impugned order is liable to be set aside.

14. Accordingly, this Writ Petition is allowed and the impugned order dated 06.01.2020 is set aside. It is needless to state that the



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petitioner is entitled to the consequential direction against the respondents to comply the orders passed in his favour by declaring his permanency by the authority concerned dated 22.10.2010 and give effect to the same by issuing order of absorption to the petitioner in terms of the above order.

No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes /No

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Speaking / Non-speaking

Neutral Citation : Yes / No

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R.N.MANJULA, J.

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