



W.A.Nos.1356 of 2021
and W.A.No.489 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.07.2024
DELIVERED ON : 12.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MR.JUSTICE P.DHANABAL

W.A.Nos.1356 of 2021 and 489 of 2022
and
CMP.21205 to 21208 of 2023 & CMP.8466 of 2021

- 1.The Chief Engineer(Personnel)
Tamil Nadu Electricity Board
TANGEDCO, 800 Anna Salai
Chennai-600 002
- 2.The Chief Engineer
North Chennai Thermal Power Station-I
Chennai 600 120
- 3.The Superintending Engineer
(Purchase and Administration)
North Chennai Thermal Power Station-I
Chennai 600 120
- 4.The Asst.Executive Engineer
Electrical Maintenance
North Chennai Thermal Power Station-I
Chennai 600 120

..Appellants/Petitioners
in W.A.No.1356 of 2021
..Respondents 1 to 4 in W.A.489/2022
Vs



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and W.A.No.489 of 2022

1. The Presiding Officer
The III Additional Labour Court
Chennai.

..R1 in WA.1356/2021
R5 in WA.489/2022

2.M.Yesu

... Respondent No.2 in WA.1456/2021
...Appellant in W.A.No.489 of 2022

COMMON PRAYER: Writ Appeals filed under Clause XV of the Letters Patent Act, as against the order dated 11.04.2019 passed in W.P.No.8538 of 2018.

For Appellants in WA.1356/2021
for R1 to R4 in W.A.489 of 2022 : Mr. Anand Gopalan

For respondents :
for R1 : Court
for R2 in WA.1356/2021
for Appellant in WA.489/2022 : Mr.Balan Haridas for
Mr.S.N.Ravichandran

COMMON JUDGMENT

Per J.NISHA BANU, J.

W.A.No.1356 of 2021 is filed by the Electricity Board and W.A.No.489 of 2022 has been filed by the employee under Electricity Board. Both appeals are filed challenging the order dated 11.04.2019 passed in W.P.No.8538 of 2018.



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2. The appellant-Electricity Board raised the grounds that there was no explanation for the long delay in raising the dispute by the workman i.e., after a delay of 10 years and therefore, the learned Single Judge ought not to have granted any relief to the workman and should have held that the dispute itself was not maintainable.

3. The second ground raised by the learned counsel for the appellant-Electricity Board is that in a dispute under Section 2A of the I.D.Act, the question of absorption and regularisation in service cannot be gone into. The 2nd respondent was not eligible for absorption as he has not completed the qualifying criteria of 480 days in 24 calendar months as on 30.04.1999 or 05.01.1998.

4. Mr.Anand Gopalan strenuously contend that Section 2A pre-supposes the existence of the relationship of master and servant. Hence can only be against the employer who had brought about the cessation of employment. Regularisation and absorption cannot form part of a dispute under Section 2A, it can only be adjudicated in a dispute under Section 2(k).



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5. The learned counsel would further contend that the claim of the 2nd respondent also in fact was only in terms of the Scheme. The labour court has not gone into that question. In terms of the scheme, the 2nd respondent would not be entitled for absorption. As per the scheme and the claim statement of the respondent, the contract labourers should have been in service as of 30.04.1999 and ought to have completed 480 days preceding 30.04.1999.

6. W.A.No.489 of 2022 is filed by the workman(2nd respondent in W.P.8538/2018) . Mr.Balan Haridas, learned counsel appearing for the workman would contend that the order of the learned Single Judge in denial of back wages to the workman from 28.10.1999 to till the date of reference and consequently ordering for 25% back wages from the date of reference till the date of award is not tenable. The award passed by the Labour court which ordered for full back wages to the workman to that of no backwages from 28.10.1999 to till the date of reference and 25% backwages from the date of reference till the date of award is not based on any reasons.

7. The learned counsel appearing for the workman would further contend that



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the workman made several oral and written representations to the Board and filed W.P.No.10572 of 2004 and by order dated 20.04.2004 this court directed the Board to consider the claim of the workman. The Board rejected the claim of the workman on untenable grounds. Aggrieved by the rejection order, the workman filed petition before the Labour officer. The conciliation ended in failure and the workman raised I.D.No.112 of 2009. Therefore, the learned Single Judge failed to consider the said facts. As such, there was no delay attributable to the workman.

8. Heard both sides and perused the records carefully.

9. As against the concurrent findings arrived by the Labour court and the writ court, the Electricity Board has preferred the writ petition with delay. As far as the grounds raised by the Electricity Board in respect of delay and laches on the part of the workman in approaching the Labour court, existence of employer and employee relationship, scope and ambit of Section 2A of the ID Act to order for absorption and permanency and eligibility and fulfilment of condition by workman for absorption are concerned, the order passed by the learned Single Judge held that as far as grant of backwages for the entire period of non employment is modified and that the workman is not entitled to back wages from 28.10.1999 till the date of reference of the dispute before the Labour Court, but he is entitled to 25% of back



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wages from the date of reference till the date of the Award since admittedly, the delay in raising the dispute for nearly ten years is on the part of the workman and the principle of 'no work, no pay' will apply to the case.

10. The above observation of the learned Single Judge is well founded. We do not think that the workman deserve to be suited in respect of backwages and other benefits on the ground of delay. Considering the factual position and the conclusion arrived at by the learned Single Judge, the claim of the workman for entire backwages is clearly unsustainable.

11. As far as absorption is concerned, verifying the number of days worked by the workman and the claim of the workman that he worked for 480 days during the relevant 24 calendar months was fully supported by the materials beyond any doubt. The learned Single Judge confirmed the findings of the Labour court in this regard and cited the judgment of the Division Bench in W.A.No.504 of 2016 dated 20.04.2016 wherein it was held that the regularisation is only a follow up action of reinstatement in service.



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12. As far as employer employee relationship is concerned, the non-production of attendance register by the Appellant-Board for the period from 17.07.1995 to May 1997, despite the order of the Labour court calling upon them to produce the same, mandates the drawing of adverse inference against the Electricity Board. Therefore, the argument of the learned counsel for the workman that the workman's name was found in the seniority list prepared by the Chief Engineer Personnel for granting absorption and permanency, is to be accepted.

13. As far as backwages to the workman is concerned, paragraph 25 of the order of the learned Single Judge is very clear and the Electricity Board, shall make the payment forthwith, if there are any dues to be paid as per the order of the learned Single Judge.

14. In view of the aforesaid reasonings, the order passed by the learned Single Judge, is confirmed in all respects. Under the circumstances, both Writ Appeals lack merit and deserves to be dismissed.

15. Accordingly, Writ Appeal No.1356 of 2021 filed by the Electricity Board



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is dismissed. W.A.No.489 of 2022 filed by the workman is also dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Index:Yes/No
Internet :Yes/No

[J.N.B.,J.] [P.D.B.,J.]
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nvsri

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