



W.P.No.30522



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.30522 of 2019

R.Muthusamy

... Petitioner

Vs.

1. The Chief Engineer/ Personnel,
TANGEDCO, No.144, Anna Salai,
Chennai – 600 002.

2. The Superintending Engineer,
General Construction Circle,
TANTRANSCO,
Coimbatore – 12.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order dated 13.03.2019 passed by the 2nd respondent by post with covering letter in கு.ஆ.எண்.0739/95/நிபி/2.2/கோ.கழுக்கம்/2019 dated 13.03.2019 and quash the same.

For Petitioner

: Mr.S.Balasubramanian
for Mr.R.Vinayaga Vishnu

For Respondents

: Mr.A.P.Venkatesh Prasad
for M/s.T.S.Gopalan & Co.,



ORDER

The petitioner herein was inducted as 'Contract Labour' in the year 1987 and worked there till the year 1992 and again, the petitioner worked in the said circle from 1994 to 1996. Thereafter, the petitioner claims to have worked from the year 1996 to 1997 at Udumalpet and in General Construction Circle, Coimbatore from 1998. Aggrieved by the action of the respondents in not regularizing the services of the petitioner and other similarly placed persons, they filed a case through Tamil Nadu Electricity Labour Progressive Union, represented by its Secretary, Coimbatore, i.e., an application dated 21.04.1999 under Section 6(4) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, claiming that the petitioner and others having completed 480 days as 'Contract Labour' are entitled for permanent status. The said claim made by the petitioner through the Union was accepted by the Labour Inspector, Coimbatore through proceeding bearing Na.Ka.No.E/8789/99 dated 06.09.2000. However, the said proceedings was challenged by the respondent/ Board by filing W.P.No.14770 of 2001 and on the other hand, the petitioner along with others filed W.P.No.9702 of 2004, seeking implementation of the said order dated 06.09.2000. The said Writ Petition filed by the respondent/ Board was dismissed and the Writ Petition filed by the petitioner and others was allowed by this Court by an order dated 19.04.2004 by following the order passed



in another batch of Writ Petitions in W.P.No.17692 of 1999 etc., dated 09.12.2003. In spite of the said order dated 19.04.2004 passed by this Court, the respondents have not implemented the order dated 06.09.2000 passed by the Labour Inspector, Coimbatore.

2. Thus, it is the grievance of the petitioner that, in spite of the orders passed by this Court as above, the case of the petitioner was not considered for permanent status on the ground that the petitioner was involved in criminal cases in C.C.No.1045 of 2013 and C.C.No.997 of 2014 and also stated that the petitioner was acquitted from the above referred criminal cases by judgments dated 06.06.2016 and 23.11.2016 respectively and thereafter, the petitioner approached the respondents to reinstate the petitioner into service and he was appointed as 'Mazdoor (Trainee)' notionally with effect from 04.10.2013 (FN) and regularized as "Mazdoor" on 03.10.2014 notionally and also promoted as "Field Assistant" with effect from 05.12.2016 (FN) notionally from the date of actual joining without any backwages, but the case of the petitioner was not considered for permanent status in terms of the order dated 06.09.2000 passed by the Labour Inspector, Coimbatore. According to petitioner, the above orders were issued during pendency of W.P.No.26802 of 2012 filed by him and when the said matter is about to come up for final disposal and in view of the above orders



issued by the respondents, appointing the petitioner on notional basis, the said Writ Petition was closed as infructuous by granting liberty to the petitioner to submit a representation in case of any left over grievance. It is pursuant to the said liberty granted to the petitioner by order dated 02.07.2018 passed in W.P.No.26802 of 2012, the petitioner submitted a representation dated 01.08.2018, seeking retrospective absorption on par with other similarly situated persons. The said claim of the petitioner was negated by the respondents by passing an order dated 13.03.2019. It is aggrieved by the said proceedings dated 13.03.2019, the petitioner approached this Court by filing the present Writ Petition.

3. In response to the notice issued by this Court, the respondents filed a detailed counter-affidavit contending that the order dated 06.09.2000 passed by the Labour Inspector, Coimbatore though was directed to be implemented by an order dated 19.04.2004 passed in W.P.No.9702 of 2004 by following the order passed in W.P.No.17692 of 1999 dated 09.12.2003. The said order dated 09.12.2003 passed in W.P.No.17692 of 1999 was set aside by a learned Division Bench of this Court, considering the Settlement that was entered into between the Union and the respondent/ Board with regard to absorption of 'Contract Labour', and passed an order upholding the settlement by an order dated 24.10.2008.



Accordingly, in terms of the said Settlement dated 10.08.2007 entered into under Section 12(3) of the Industrial Disputes Act, 1947, the claim of the petitioner was considered along with 15 others and the said 16 persons were recommended for absorption. But in the meanwhile, the petitioner involved in criminal cases and therefore, the claim of the petitioner was not considered and it is only after the petitioner was acquitted in the said criminal cases, the claim of the petitioner was considered and accordingly, he was extended the benefit on par with other similarly situated persons, by giving notional benefit. The relevant paragraphs from the said counter-affidavit filed by the respondents reads as under:-

“ 7. I state that in 2012, Board Proceedings No. 22 dated: 25.10.2012 was passed for absorption of 4273 persons, 13 out of the 16 persons including the petitioner, were found to be eligible and were recommended for absorption. I state that the Petitioner was due to be inducted as Mazdoor (trainee). However, on 06.07.2013 the Petitioner and one Mr. Savarimuthu involved in a theft of materials stored in the Coimbatore Tatabad Electricity General Construction Circle. Upon which a criminal case was filed against both of them. I state that the petitioner was disengaged as admitted by him from July 2013. Except the Petitioner and other two, who didn't report to duty, 10 persons of the 16, who were found eligible and were offering themselves for service were absorbed.



8. *I state that, thereafter the Petitioner was acquitted as the case was not proved beyond reasonable doubt by the Judicial Magistrate No. II, Coimbatore in the Criminal Cases C.C. No. 1045 of 2013 dated 06.06.2016, and C.C. No. 997 of 2014 vide order dated 23.11.2016.*

9. *I state that thereafter Petitioner started making representation to be inducted into the services of the Board in view of the acquittal in the criminal case. I state that as many years had passed and as he had not challenged his disengagement in 2013, the Respondent was not legally obligated to consider the case of the Petitioner. However, as a benevolent gesture the Respondent gave an order of appointment to the Petitioner into the service of the Board. Infact considering the facts instead of appointing him as a Mazdoor, he was appointed as a helper from 25.04.2018 and placed along with others.”*

4. Heard Mr.S.Balasubramanian, learned counsel for the petitioner and Mr.A.P.Venkatesh Prasad, learned counsel for the respondents and perused the entire material on record.

5. The entire basis for the petitioner to claim permanent status is the order



dated 06.09.2000 passed by the Labour Inspector, Coimbatore through proceedings bearing Na.Ka.No.E/8789/99 and the order dated 19.04.2004 passed by this Court in W.P.No.9702 of 2004. If the said order has become final, no doubt the petitioner would be entitled for permanent status in terms of the order dated 06.09.2000. But, as contended by the respondents, the order dated 09.12.2003 passed in W.P.No.17692 of 1999 etc., which is the basis for allowing W.P.No.9702 of 2004 was set aside by a learned Division Bench of this Court upholding the settlement dated 10.08.2007 under Section 12(3) of the Industrial Disputes Act, 1947. In view of the same, the question of giving effect to the order dated 06.09.2000 passed by the Labour Inspector, Coimbatore does not arise. Further, as seen from the counter-affidavit and from the paragraphs extracted above, it is noticed that the petitioner was extended all the benefits on par with the other similarly situated persons after the petitioner was acquitted in the criminal case and the same is also admitted by the petitioner in the affidavit filed in support of the Writ Petition itself. The relevant portion from the affidavit filed by the petitioner is extracted hereunder:-

“In view of the acquittal, workman R.Muthusamy pleaded for restoration to his erstwhile employment, and consider him for absorption. His representation was considered and based on the discussion, a consensus was arrived at that and he wil be appointed as a Mazdoor



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Trainee notionally on 04.10.2013 (FN) and regularized as Mazdoor on 03.10.2014 notionally and also promoted as Filed Assistant with effect from 05.12.2016 FN notionally only from the actual date of joining and without backwages and posting will be issued by SE/GCC/Coimbatore.”

In the light of the above admission and the counter-affidavit filed by the respondents, the grievance of the petitioner, if any, can be said to be only in respect of backwages. But, no such claim is made in the present Writ Petition for such backwages, though the petitioner has accepted the notional benefit of appointment given to the petitioner as noted above and retired from service on 31.08.2019. Even assuming that there is any such claim of the petitioner for backwages, the same cannot be granted as the petitioner was involved in criminal cases and it is only after his acquittal from the said criminal cases, his case was considered by the respondents in terms of the settlement dated 10.08.2007 and appropriate orders have been passed. If at all the petitioner is aggrieved by the said orders passed by the respondents extending the notional benefit as Mazdoor, Helper etc., the petitioner ought to have taken appropriate steps against the said proceedings, but the petitioner has not taken any such steps. On the other hand, joined in the service and continued as such till the date of attaining the age of superannuation and retired from service.



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6. In the light of the above, it is evident that practically the relief that is being sought by the petitioner was already granted by the respondents and the same is also admitted by the petitioner. Hence, in the considered view of this Court, there is no error or illegality in the impugned order passed by the respondents and accordingly, the writ petition is dismissed. No costs. Connected Miscellaneous Petitions are closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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