



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN**

W.A(MD)No.488 of 2019

1.The Superintending Engineer,
Theni Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Theni.

2.The Chief Engineer,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai-2

...Appellants/Petitioners

.Vs.

1.The Labour Court,
Madurai.

2.S.Mohankumar

... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act praying this Court to set aside the order passed by this Court made in W.P(MD)No.4642 of 2026, dated 05.06.2018.



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

First Respondent :Labour Court

For Respondent-2 :Mr.R.Thangasamy

JUDGMENT

(Order of the Court was made by **P.VELMURUGAN.,J**)

This Writ Appeal is filed praying this Court to set aside the order passed by this Court made in W.P(MD)No.4642 of 2026, dated 05.06.2018.

2.Originally, the second respondent filed a claim petition in C.P.No.35 of 2011, on the file of Labour Court, Madurai.The learned Judge, Labour Court, Madurai directed the appellants Management to pay the claim amount within a period of three months and aggrieved over the same, the appellants filed a Writ Petition before the Writ Court in W.P(MD)No.4642 of 2016.The learned Single Judge after hearing the Writ Petitioner, passed the following order:

“10.This Court rejects the plea that the second respondent was lying idle all these years. Therefore, this Court is of the view that interest of justice would



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be served by permitting the second respondent to withdraw the amount already deposited by Tamil Nadu Electricity Board pursuant to the direction given by this Court on 8.3.2016 as full and final settlement of his monetary claim against the Tamil Nadu Electricity Board management. But then the writ petitioner will have to comply with the order passed by the Labour Inspector forthwith. The second respondent will have to be accommodated in the grade below that of Helper.”

Challenging the said order, the appellants have filed the present intra-Court Writ Appeal.

3.The learned counsel for the appellants would submit that the claim of the contract labour to be considered only in terms of the settlement, dated 10.08.2007. The second respondent is not entitled to the benefits of the order of Inspector of Labour.The contract labour, who claims to have been employed as contract labour as on 10.08.2007 or before contractually considered only in terms of settlement. They cannot claim in the terms of the order of Inspector of Labour as per Section 3 of the Industrial Establishments(Conferment of permanent Status) Act,1981(hereinafter called as the “Act”). Totally, there are 110 employees have filed applications before the authority under the ‘Act’.The second



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respondent claims for wages from 2002 to 2007 which is against the claim of other persons. The second respondent has not established his entitlement for amount claimed under Section 33(c)(2) of the Industrial Disputes Act and he placed reliance on the following decisions:

(1)A.Ravi .vs.The Chairman, TANGEDCO and three others made in W.A.No.2252 of 2021 and batch of cases, dated 22.02.2022.

(2)M.Rajendran and others .vs. TANGEDCO and two others made in W.A.No.2589 of 2023, dated 19.09.2023; and

(3)The Tamil Nadu Electricity Generation and Distribution Corporation Limited and others .vs. Vinayagamurthy and another made in W.A.No.592 of 2021 and batch of cases, dated 9.8.2023.

He would submit that the benefit of permanent status would be admissible to the second respondent only for the period which he has served in the appellants corporation and not for the period during which period he was not served in the appellants Corporation. While disposing the batch of Writ Petitions, this Court also made observation that if any of the Writ Petitioners therein who are similarly



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placed persons like that of the second respondent herein was either discontinued from the contract or terminated, the benefit arisen out of the order of the Labour Inspector would be only for the period in service and after discontinuation or termination for which period the Writ Petitioners therein would be at liberty to take recourse available to them, if they are so interested. So in this case also, the second respondent was not continuously working at the relevant point of time, but he also not raised the dispute however only filed the claim petition. However, the Labour Judge failed to consider the legal provisions and passed the compensation as claimed for by the second respondent. When the appellants filed Writ Petition before the learned Single Judge, the learned Single Judge failed to consider the legal provisions and passed the impugned order. In view of the decision of the Division Bench of this Court referred to above, the writ appeal to be allowed and the order passed by the learned Single Judge is liable to be dismissed.

4. The learned counsel for the second respondent would submit that once the second respondent was declared as a permanent employee on completion of 480 days of service continuously or for a period of 24 calendar months, he is entitled to time scale of pay and other usual allowances as that of the permanent



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worker in the establishment. Therefore, he filed a claim petition before the Labour Court, Madurai under Industrial Disputes Act claiming time scale of wages and other allowances entitled to permanent employees at the rate of very minimum of the time scale relevant to the last grade worker available in the establishment. Judge, Labour Court, on considering the documents and evidence, passed an award on 08.07.2015 in C.P.No.35 of 2011, computed the monetary value and ordered the appellants to pay a sum of Rs.9,90,945/- to the second respondent within three months from the date of the order. The appellants challenged the said order of the Labour Court and filed a Writ Petition in W.P(MD)No.4642 of 2016 and the learned Single Judge, by order, dated 5.6.2018 modified the order of Labour Court partly allowing his claim and ordered the appellants to accommodate him in any one of the permanent post below the cadre of Helper and permitted him to withdraw a sum of Rs.4,95,473/- which is 50% of the award amount from the deposit stood before the Labour Court. There is no merit in the appeal and the same is liable to be dismissed.

5.It is seen from the records that the appellants entered into a 12(3) Settlement on 10.08.2007 with all the Trade Unions, wherein, it was accepted to



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absorb 21,600 contract labourers in a phased manner and the Tamil Nadu Electricity Board accordingly passed an order in (Per) B.P(FB)No.44, dated 06.09.2007 incorporating all the terms of settlement. The employees who were identified as contract labourers on 08.08.1998 and who were paid exgratia from 1997-1998 to 2005-2006 were absorbed. The employees who were not paid the exgratia from 1997-1998, were not entitled for absorption under the said settlement. The above settlement, dated 10.08.2007 and the TNEB orders thereon never spoke anything about the employees who were conferred with permanent status on completion of two years of service with a minimum of 480 days of service as stipulated under Section 3(1) of the 'Act', 1981. However, the settlement did not consider the claim of the workers, who obtain orders of conferment of permanency from the respective Inspector of Labour. When the appellants refused to provide permanent employment, the second respondent claimed the benefit in the lowest time scale of Rs.3050-75-3959-80-4590 made applicable to the lowest category of employees in the appellants establishment from 01.01.2002 and he filed a detailed calculation sheet along with recovery statement. The total claim came to Rs.9,90,945/-.The Labour Court allowed the said claim petition and passed an award. The appellants have not raised any



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objection over the calculation and produced no witness to prove that the said claim was false. The Labour Judge, after giving opportunity and after conducting a detailed enquiry, allowed the claim of the second respondent on 08.07.2015 and therefore, the contention of the appellants are not acceptable. Under these circumstances, the scope of judicial review under Article 226 of the Constitution of India is very much limited. The appellants have not challenged the calculation memo submitted by the second respondent before the Labour Court. However, the learned Single Judge, considering the facts and circumstances of the case, ordered to withdraw 50% of the award amount and also directed to give the lowest post of employment.

6. Admittedly, the second respondent is also one among the employees, who employed in the appellants-Corporation and he also filed a claim petition before the Labour Court, since he was declared as permanent employee and also the appellants have admitted that there was a settlement and they have to comply with the terms and conditions stipulated in the settlement. So based on the settlement, the second respondent filed a claim petition before the Labour Court, Madurai in C.P.No.35 of 2011 and the learned Judge, Labour Court, Madurai after



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enquiry considered the matter and passed an award. Challenging the same, the appellants filed a Writ Petition and on considering the Writ Petition, the learned Single Judge passed the impugned order, as referred to above.

7.It is pertinent to note that the claim of the second respondent before the Labour Court in C.P.No.35 of 2011 is only the monetary benefit. A reading of the relief sought for in the claim petition, after settlement, the appellants have refused to give service to the second respondent. Therefore, he filed claim petition for recovery of the award as per the award passed in the settlement. However, when the appellants challenged the same, the learned Single Judge gone to the extent that the appellants are directed to provide employment to the second respondent which is not sought for by the second respondent before the Labour Court and the learned counsel for the appellants fairly conceded that the order of the learned Single Judge may be modified with reference to the direction of giving employment to the second respondent, though the monetary benefit comes only to Rs.1,31,040/- but the Labour Court passed an exorbitant amount and that too, without any reason.

8.Admittedly, the second respondent is covered under the settlement and



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according to the second respondent, he did not join the employment after settlement. But according to the second respondent, as per the claim petition, he was not allowed to join in the employment with the appellants Corporation and therefore, the second respondent filed a claim petition before the Labour Court. Once the second respondent filed a claim petition only for the monetary benefit and not claimed for providing employment, the learned Single Judge could not have gone to the extent of granting the relief of employment which is not the case of the second respondent.

9.However, considering the facts and circumstances of the case, this Court finds that the order passed by the learned Single Judge in respect of issuing direction to accommodate the second respondent in the grade below that of Helper is liable to be set aside and accordingly set aside and the order passed by the Labour Court in C.P.No.35 of 2011 is hereby confirmed. The appellants are directed to deposit a sum of Rs.9,90,945/- as ordered by the Labour Court, Madurai, less the award amount, if any, already deposited together with accrued interest, if the award amount is deposited in any of the interest bearing deposit, the second respondent is permitted to withdraw the same without any formal application.



WEB COPY 10. With the above direction, the Writ Appeal is partly allowed. No costs.

[P.V.,J.] [K.K.R.K.,J.]
23.09.2024

NCS : Yes/No

Index : Yes / No

Internet : Yes / No

vsn

To

The Judge,
Labour Court,
Madurai.



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P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.

vsn

JUDGMENT MADE IN
W.A(MD)No.488 of 2019

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