



W.A.(MD)Nos.863, 918 to 926 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)Nos.863, 918 to 926 of 2018 &
C.M.P(MD)Nos.5278, 6044 to 6052 of 2018

In W.A.(MD)No.863 of 2018

R.Kalyanasundaram

...Appellant

vs.

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

2.The Assistant Engineer,
Tamil Nadu Electricity Board,
Ramarajapuram Section,
Dindigul District.

3.The Inspector of Labour,
Dindigul.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order of this Court in W.P.(MD)No.1461 of 2014 dated 04.06.2018.



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For Appellant : Mr.Ajoy Khose
For Respondents : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.
for R1 and R2
Mr.M.Sarangan,
Additional Government Pleader
for R3

COMMON JUDGMENT

(Judgment of the Court was delivered by P.VELMURUGAN, J.)

The present appeals arise out of a common order passed by the learned Single Judge in W.P.(MD)Nos.1461, 1591, 1592, 2032 to 2039 of 2014. Therefore, all the appeals are taken together and a common order is passed.

2. On perusal of the records, it is seen that, the appellants in all the appeals have filed claim petitions before the third respondent herein claiming conferment of permanency status. The third respondent passed orders dated 10.12.2010 allowing the claim petitions by directing the Management to confer permanent status to the appellants herein on the date of completion of 480 days of work in 24 consecutive months.



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Aggrieved over the said orders, the respondents 1 and 2 herein have filed various Writ Petitions before the Writ Court in W.P.(MD)Nos.1461, 1591, 1592, 2032 to 2038 of 2014. The Writ Court after hearing the matters, allowed the writ petitions by setting aside the orders passed by the third respondent and remitted the matters to the file of the third respondent to conduct fresh enquiry and to pass orders afresh in accordance with law within a period of 12 weeks from the date of receipt of a copy of that order. The third respondent was directed to invoke the powers conferred under Section 5 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 [hereinafter referred as 'the Act']. The appellants as well as the Management was given with liberty to place additional materials before the third respondent herein. Aggrieved over the common order passed by the learned Single Judge, the workmen filed the present intra-Court appeals.

3. The case of the appellants is that they were all engaged by the respondents 1 and 2 and they were working for more than 480 days in 24 consecutive calender months. Since the respondents 1 and 2 did not



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which provides for absorption of 21,000 contract workers. The issue attained finality on 24.10.2008 and the Honourable Division Bench of this Court disposed of the batch of matters in W.A.(MD)No.1302 of 2003 etc. The Division Bench also sustained the Settlement entered between the Management and the Union and directed all the parties to workout their rights in terms of the contract. The claim of the appellants is anterior to the date of Settlement i.e., 10.08.2007. Therefore, their claim can be considered only in terms of the Settlement and not *de horse* the same. The Management had constituted a Committee in this regard. Therefore, the remedy open to the workers / appellants herein, who were left out earlier was to go before the Committee.

5. The learned counsel appearing for the appellants would submit that the Act is a special enactment dealing with labour rights relating to conferment of permanency status to workmen who worked for 480 days in 24 consecutive calendar months. The third respondent considered the Chit Agreement which is a supporting document and held that the employment of the appellants was not disputed. The continuous



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employment of the appellants was duly proved based on Petty Cash Book extract and Chit Agreement, which are still available in the Office of the respondents. The third respondent considered all the materials and satisfied that the appellants were continuously working for more than 480 days in 24 consecutive calendar months and directed the Management to confer permanent status to the appellants. The third respondent while passing the orders had referred to the nature of the work carried out by the appellants and the records produced by them, such as, Petty Cash Book extract, Chit Agreement, Experience Certificate and some records relating to Educational Qualification etc. The order clearly reads that all the employees enlisted in the annexure ought to be given permanent status on completion of 480 days of service in two years. Therefore, remitting the matter for fresh consideration is unwarranted. The third respondent is the competent authority having power and jurisdiction to direct the respondents 1 and 2 to confer permanent status to the eligible workmen as per Section 3 of the Act. The appellants were working for several years without permanent absorption and other similarly placed persons have already been



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absorbed into the service on permanent basis. Some of the appellants have already become aged and some of them are at the verge of reaching superannuation. Therefore, the order of remand is adverse to their interest and it will affect their service rights accrued under the Act.

6. The learned counsel appearing for the respondents 1 and 2 would submit that the appellants have not produced any evidence to show that they had worked for 480 days in 24 consecutive calendar months. In the absence of the same, the third respondent has passed the order directing the respondents 1 and 2 to confer permanent status to the appellants. The Act would not be applicable to the case of the appellants. After the implementation of Mr. Justice V. Khalid (retired) Commission, the contract labours furnished in the list before the Commission were fully accommodated and compliance report was submitted before the Honourable Supreme Court and the Honourable Supreme Court also closed the said issue. However, even without any details with regard to the initial date of appointment or the date of completion of 480 days in two years, the third respondent passed orders directing the respondents 1



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and 2 to confer permanent status to the appellants, which is against the provisions of law and there are no materials produced by the appellants to substantiate their case. Further, he would submit that the appellants were not directly employed by the Tamil Nadu Electricity Board and hence, the Board is not the principal employer of the appellants. The appellants were only contract labours. Therefore, the Management is not maintaining any records in this regard. Hence, it is not possible to find out as to whether they have worked for a period of 480 days in 24 consecutive calendar months. The very applicability of the Act itself is in question. Since the third respondent without any materials has passed the orders, the Writ Court rightly remitted the matter to the third respondent for fresh consideration and the same warrants no interference.

7. Heard rival submissions of both the counsel and perused the materials available before this Court.

8. Admittedly, the appellants filed petitions in C.P.S.Nos.1 of 2008, 24, 27, 18 to 23 and 25 of 2009 respectively on the file of the third



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respondent. The third respondent after hearing the parties, passed orders dated 10.12.2010 allowing the claim petitions and directing the Management to confer permanent status to the appellants on the date of completion of 480 days in 24 consecutive calendar months. Challenging the same, the respondents 1 and 2 have filed writ petitions before this Court in W.P.(MD)Nos.1461, 1591, 1592, 2032 to 2039 of 2014. The Writ Court after considering the facts and hearing the parties, set aside the orders of the third respondent and remitted the matter to the third respondent for fresh consideration. Challenging the same, the present appeals have been filed.

9. In the present case on hand, from the materials, it is evident that the appellants were engaged as contract labours. The only question that arises is whether they are entitled to get the relief of conferment of permanency status on completion of 480 days in 24 consecutive calendar months, for which, it has to be necessarily established that all the appellants were engaged by the Tamil Nadu Electricity Board. The case of the Management is that the Tamil Nadu Electricity Board is not the



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principal employer of the appellants and they were engaged through contract. The Management is not maintaining any records and in the absence of the proof to the effect that the appellants worked with the Board directly for 480 days in 24 consecutive calender months, permanent status cannot be conferred to them. Therefore, there are two things that have got to be proved. Firstly, as to whether the appellants were engaged by the Tamil Nadu Electricity Board as contract labours and secondly, whether they worked for a period of 480 days in 24 consecutive calender months.

10. From a reading of the material evidence and the orders passed by the third respondent as well as the learned Single Judge, it is not clear from the date on which the appellants were engaged by the respondents 1 and 2 as contract labours and the date on which they completed 480 days of work in 24 consecutive calender months. When the third respondent is passing the orders for conferment of permanency, it is for him to mention specifically from which documents, he came to know that the appellants completed 480 days of work in 24 consecutive calender



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months. However, the orders passed by the third respondent did not indicate the same. Therefore, the learned Single Judge has set aside the orders of the third respondent and remitted the matter for fresh consideration.

11. The respondents 1 and 2 have not denied that the appellants were engaged as contract workers. However, they have stated that Tamil Nadu Electricity Board is not the principal employer of the appellants and they were apparently engaged as contract labours. Therefore, while passing the orders of conferment of permanency status, the third respondent ought to have stated when the appellants were engaged as contract labours by the Tamil Nadu Electricity Board and when they completed 480 days of work in 24 consecutive calendar months. The third respondent failed to do so. In view of the same, this Court does not find any reason to interfere with the order passed by the learned Single Judge and the Writ Appeals are liable to be dismissed.



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12. Accordingly, the Writ Appeals are dismissed and the common order passed by the learned Single Judge in W.P.(MD)Nos.1461, 1591, 1592, 2032 to 2039 of 2014 are confirmed. The parties are at liberty to produce additional documents, if any, before the third respondent and the third respondent is directed to give opportunity to both the parties i.e., the appellants and the Management and thereafter, pass orders afresh on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

(P.V., J.) (K.K.R.K., J.)
29.10.2024

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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