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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.13723 of 2017
and
W.M.P.(MD)No.10704 of 2017

1.The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai-600 002.

2.The Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin. ... Petitioners

Vs.

1.The Presiding Officer,
Labour Court, Tirunelveli.

2.S.Sundari ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the 1st respondent in C.P.No.6 of 2016 and quash the order dated 25.07.2016.

For Petitioners : Mrs.P.Malini,
for M/s.T.S.Gopalan & Co.
For R1 : Court
For R2 : No Appearance

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ORDER

Challenging the order of the 1st respondent dated 25.07.2016 made in C.P.No.6 of 2016, this Writ Petition is filed.

2.According to the petitioners, the 2nd respondent was engaged as contract labour in the 2nd petitioner's Power Station. By proceedings dated 07.05.1999, instructions were issued to the Selection Committee that contract workmen, who have put in a continuous service of 480 days in a period of 24 calender months, should be identified for absorption as per the Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. Pursuant to the same, seeking absorption, the 2nd respondent raised an industrial dispute in I.D.No.37 of 2009 before the 1st respondent, where, vide order dated 05.09.2011, the 1st respondent directed the petitioners to reinstate the 2nd respondent along with back wages.

3.Aggrieved by the same, the petitioners filed W.P.(MD)No.16452 of 2012, where this Court, vide order dated 11.11.2022, quashed the said order passed in I.D.No.37 of 2009. The 2nd respondent also filed C.P.No.6 of 2016 before the 1st respondent, claiming wages from December, 2013 to August 2015, which amounts to Rs.5,80,581/-. The said claim petition was allowed by

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the 1st respondent, vide order dated 25.07.2016, directing the petitioners to settle the amount to the 2nd respondent. Challenging the same, the petitioners have filed this Writ Petition.

4.The learned counsel appearing for the petitioners would submit that the claim petition was filed subsequent to the order passed in the said I.D.No.37 of 2009. Since the order passed in the said I.D.No.37 of 2009 was set aside by this Court vide order dated 11.11.2022 made in W.P.(MD)No.16452 of 2012, the 2nd respondent is not entitled to claim any relief based on the order passed in the claim petition in C.P.No.6 of 2016. Further, the 2nd respondent has not filed any appeal against the order passed in W.P.(MD)No.16452 of 2012. Therefore, there cannot be any claim by the 2nd respondent.

5.Though notice was served to the 2nd respondent and her name is printed in the cause list, none appeared for her, which shows that she is not interested in pursuing the matter.

6.Heard the learned counsel for the petitioners and perused the documents, particularly, the order passed by this Court dated 11.11.2022 made in W.P.(MD)No.16452 of 2012, wherein the 2nd respondent is also one of the

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respondents, which was filed against the order passed in ID.No.37 of 2009. This Court had allowed the said Writ Petition by quashing the order passed by the 1st respondent dated 05.09.2011, stating that the 2nd respondent is not entitled for reinstatement. The relevant portion is extracted herein:-

> *" 11.As far as the writ petition filed against Sundari in W.P.(MD)No.16452 of 2012 is concerned, she has claimed that she had worked in Ravi Enterprises from 01.11.1997 to 31.01.1998 on three days alternative basis and that comes to 197 days. She further claimed she had worked in Birndha Engineering construction from 01.11.1995 to 30.04.1999 and that comes to 351 days. If both is taken together then it comes to 548 days and hence had claimed absorption. The petitioner management submitted that the 2nd respondent claims she had worked in said Ravi Enterprises, but for the said period the Ravi Enterprises has not paid any Employment Provident Fund in favour of the said Sundari for the said period. The 2nd respondent has not produced any other evidence to substantiate the claim. In such circumstances, the period from 01.11.1997 to 31.01.1998 cannot be considered. As far as the period worked in Birndha Engineering Construction from 01.11.1995 to 30.04.1999, it comes to 351 days. If the preceding 2 years is considered from 30.04.1999, the said Sundari has not W.P. (MD).Nos.16267, 16452, 16455 of 2012, 477 of 2013 and 13724 of 2017 completed 480 days. But the learned Counsel for the 2nd respondent claimed that if the entire period from 01.11.1995 to 30.04.1999 is considered, then the said Sundari has completed 480 days. Even according to the conferment of Permanent Status Act, a*

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person would be entitled to be considered only if a person had completed 480 days in 24 calendar months and not 480 days in 48 calendar months. Therefore, the claim of the said Sundari is liable to be rejected and she is not entitled to absorption and hence, the writ petition filed against the said Sundari ought to be allowed."

7.In view of the above, this Court finds that since the reinstatement along with back wages was set aside by this Court, the 2nd respondent is not entitled for the order passed in C.P.No.6 of 2016, dated 25.07.2016. Therefore, it is liable to be set aside, accordingly, it is set aside. This Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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