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W.P.No.26138 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2025

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.26138 of 2011

And

M.P.No.1 of 2011

- 1.The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai,
Chennai – 2.
 - 2.The Chief Engineer/ Personnel,
Tamil Nadu Electricity Board,
VII Floor, No.144, Anna Salai,
Chennai – 2.
 - 3.The Superintending Engineer,
Tamil Nadu Electricity Board,
Chennai Electricity Distribution Circle/ North,
791, Anna Salai,
Chennai – 2.
 - 4.The Superintending Engineer,
Tamil Nadu Electricity Board,
Chennai Electricity Distribution Circle/ West,
Tirumangalam SS Complex,
Anna Nagar,
Chennai – 40.
- ... Petitioners

Vs.

- 1.The Government of Tamil Nadu
Rep. by its Secretary to Government,
Energy Department,
Chennai – 9.



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2.The Government of Tamil Nadu,
Rep. by its Secretary to Labour and
Employment Department,
Chennai – 9.

3.The Inspector of Labour,
IIIrd Circle, Nandanam,
Chennai – 35.

4.A.Rajkamal
5.C.Kannan
6.A.Prabu
7.C.Innaci
8.C.Ramu
9.K.Siva
10.A.Desappan
11.S.Giri
12.S.Vijayaragavan
13.D.Ruban Chakkaravarthi
14.M.Ramanan
15.S.Udayar
16.E.Loganathan

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the third respondent relation to his proceedings in the Pa.Mu.E.1614/2010 dated 03.05.2011 directing the petitioner to confer permanent status to the respondents 4 to 16 as workers in TANGEDCO/Chennai Electricity Distribution Circle/Chennai and quash the same as illegal.

For Petitioners : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.
For Respondents : Mr.M.Murali for R1 to R3
Government Advocate
Mr.V.Prem Kumar for R4 to R16



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ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records of the third respondent relating to his proceedings in the Pa.Mu.E.1614/2010 dated 03.05.2011 directing the petitioner to confer permanent status to the respondents 4 to 16 as workers in TANGEDCO/Chennai Electricity Distribution Circle/Chennai and quash the same as illegal.

2.The case of the petitioner is that, the private respondents/workmen filed claim petitions under Section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 (in short 'the Act') before the third respondent/Labour Court. The private respondents are contract labourers and they are hired by independent contractors and the said contract is registered contract as per the provisions of Contract Labour (Regulation and Abolition) Act, 1970. The third respondent/Labour Court, inadvertently adjudicated the issue and passed award in favour of the private respondents/ workmen that their claim can be entertained in terms of Section 3 of the Act. Challenging the same, the above writ petition has been filed.



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3.The learned counsel for the petitioner submits that, the private respondents/workmen were engaged through contractor and their claim can be adjudicated either under the Contract Labour (Regulation and Abolition) Act, 1970 or under the Industrial Disputes Act, 1947. In the present case, the third respondent/Labour Court, without jurisdiction, adjudicated the issue under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, which is not sustainable. In support of his contention, he relied upon the judgment of this Court in W.A.Nos.273 & 275 of 2020, dated 20.01.2023. Accordingly, he prays for allowing the above writ petition.

4.The learned counsel appearing for the respondents 4 to 16 did not dispute the facts submitted by the learned counsel appearing for the petitioner.

5.Heard the learned counsel for the petitioner, learned Government Advocate appearing for the respondents 1 to 3 and the learned counsel appearing for the respondents 4 to 16 and perused the materials available on records.



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6.The Division Bench of this Court, in W.A.Nos.273 & 275 of 2020, has passed the following judgment on 20.01.2023 :

"Learned counsel appearing for the appellants workmen would submit that the issue involved in these appeals is squarely covered by a Division Bench decision of this Court in W.P.No.4061 of 2013 and Batch, dated 07.03.2022.

2. Paragraph 34 of the above said decision reads as under :

"34. We have considered the submission aforesaid and find that the order passed by the Labour Inspector needs to be interfered with remand of the case. It is, however, to be made clear that the Labour Inspector would not cause enquiry beyond the powers given under the Act of 1981 and thereby would not be having jurisdiction to adjudicate the complicated questions of fact and law in reference to any other statute than the Act of 1981. The Labour Inspector may, for the purpose of conducting summary enquiry, allow the parties to produce documents and if any of the workmen has completed 480 days



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of continuous service in 24 calendar months, appropriate directions can be issued for granting permanency. However, even if such an order is issued, it should be with a clear finding about each workman and the number of working days by referring to the period of 24 calendar months. The benefit as to the consequences thereupon would be only for the period of employment and if any of the workmen is discontinued or not in service, he would be entitled to the benefit only for the period of service and not beyond that and, that too, after the completion of continuous service of 480 days in 24 calendar months, and not for a prior period. The direction aforesaid is not driven by the settlement for the reason that the workmen herein are those who were not extended the benefit of settlement and, therefore, sought claims by maintaining claim separately. However, it would not preclude both the sides from entering into settlement, if they so choose, during the period of summary enquiry by the Labour Inspector. The issue as to whether the respondents fall within the definition of



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"workman" is however decided against the petitioner Corporation, as not only a settlement was entered, but adjudication about claim to seek permanency has been decided earlier in reference to similarly placed."

3. In view of the above said decision of this Court, these Writ Appeals are also disposed of. However, we make it clear that the authority can go into the question as to whether the contract is sham and nominal and, if it is sham and nominal, he has no authority to decide the issue and the matter has got to be decided either before the Industrial Adjudicator or the authority under the Contract Labour (Regulation and Abolition) Act, 1970. The authority is expected to decide the issue as early as possible on day-to-day basis, without adjourning the matter beyond seven working days at any point of time, as the same is pending for more than 25 years. No costs."

7. In view of the above said decision of this Court, the impugned order passed by the third respondent/Labour Court, dated 03.05.2011 is set aside. The private respondents/workmen are at liberty to raise a dispute either under Section 2(k) of the Industrial Disputes Act, 1947



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or under the Contract Labour (Regulation and Abolition) Act, 1970 before the Industrial Tribunal in the manner known to law.

8. Accordingly, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

06.02.2025

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

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