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W.P.No.30044 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.30044 of 2018
and
W.M.P.No.35060 of 2018

1.The Chief Engineer,
TANGEDCO,
North Chennai Thermal Power Station,
Chennai – 600 120.

2.The Administrative Supervisor,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin.

... Petitioners

Vs.

A.Paul Ramachandran

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the II Additional Labour Court, Chennai in I.D.No.350 of 2005 and quash its award dated 13.09.2012.

For Petitioners : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.

For Respondent : Mr.Balan Haridass
for M/s.S.N.Ravichandran



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ORDER

WEB COPY This Writ Petition has been filed by the petitioners challenging the award dated 13.09.2012 in in I.D.No.350 of 2005 passed by the II Additional Labour Court, Chennai. 13.09.2012.

2. The case of the petitioners is that the respondent was a contract employee of the petitioners and Board Proceedings Nos.16 and 17 dated 28.04.1999 were issued sanctioning supernumerary posts to Thermal Power Stations and to identify contract workmen engaged for 480 days between 06.01.1996 to 05.01.1998. Board proceedings dated 29.04.1999 were issued fixing criteria for absorption of temporary contract workmen in Thermal Power Stations. Subsequently, on 01.05.1999, Contract Labour System was abolished on all Thermal Power Stations and few contract workers were engaged as temporary casual workmen on daily wages. Whiles, BP regarding absorption and appointment of contract labour was issued. On 27.10.1999, the respondent was issued with an appointment order as supernumerary helper. Thereafter, on 01.11.1999, the respondent has submitted an application form with a certificate issued by the Assistant Executive Engineer. During the month of December, 1999, a unanimous letter was received by the 1st petitioner that the



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respondent working in coal handling division from 01.05.1999, thereby

charge sheet was issued to the respondent charging for the misconduct of having obtained employment by false representation. On 20.05.2000, the respondent gave a reply admitting that he worked in Tuticorin Thermal Power station and according to him, he was a contract workman from 01.04.1997. After conducting disciplinary proceedings, the respondent was dismissed from service on 04.03.2002. Aggrieved by the same, he raised an industrial dispute u/s 2(A) of the Industrial Disputes Act, 1947 (in short 'the ID Act') before the labour court in I.D.No.350 of 2005. The labour court, vide award dated 13.09.2012, held that the domestic enquiry conducted was not fair and proper and ordered for reinstatement with 50% backwages. Challenging the same, the present writ petition has been filed before this Court.

3. Learned counsel for the petitioners submitted that though the petitioners have challenged the award passed in I.D.No.350 of 2005 dated 13.09.2012 after a lapse of six years, however the fact remains that the respondent was reinstated into service in the year 2023. The only issue arises for consideration is with regard to payment of backwages. Further, he submitted the respondent will be given notional continuity of



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service from the date of oral termination for the purpose of pay fixation and not for the purpose of old pension, since he was not in service under the petitioners for about 12 years. Even persons reinstated in the year 2018 were given new pension scheme and not the old pension scheme. Accordingly, he prays for appropriate orders.

4. Per contra, learned counsel appearing for the respondent submitted that though the impugned award was passed in the year 2012, however the present writ petition was filed in the year 2018 after a lapse of six years and hence, this writ petition has to be dismissed on the ground of delay and laches. Further, he submitted that the petitioners have to count the service of the respondent from the date of oral termination till the date of reinstatement and he is entitled for old pension. However, this Court may consider for granting some back-wages in respect of the respondent. Accordingly, he prays for appropriate orders.

5. Heard the learned counsel for the parties and also perused the materials available on record.



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WEB COPY 6. Admittedly, the respondent is a contract employee and the petitioners-Electricity Board has taken a policy decision to observe the contract employees. However, for non-consideration of regularization and appointment, the respondent raised a dispute before the labour court in I.D.No.350 of 2005 challenging the order of termination dated 04.03.2002 and the labour court has passed the impugned award, assailing which the present writ petition has been filed.

7. It is an undisputed fact that the order of termination was passed in the year 2002 however, the respondent had raised the dispute only in the year 2005 and award was passed in the year 2012. Some of the similarly situated persons like that of the respondent herein reinstated into the service of the petitioners in the year 2018, however the petitioners claims that the respondent was requested to join duty in the year 2018 along with other person as a fresh employee. However, he refused to join as a fresh employee in the year 2018, but without prejudice, he joined in the year 2023.



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WEB COPY 8. The issue arises for consideration in this writ petition is whether the respondent is entitled for payment of wages in respect of old pension or not ?

9. In the light of the admitted fact that the respondent was not in employment with the petitioners from the year 2002 to 2023, for nearly 21 years, granting old pension in favour of the respondent would adversely affect the interest of the Electricity Board, however, this Court is inclined to grant continuity of service from the year 2002 to 2023 for the purpose of pay fixation.

10. Therefore, the respondent is entitled to continuity of service from the year 2002 to 2023 for the purpose of pay fixation and the petitioners-Electricity Board is directed to fix the pay of the respondent on par with other similarly situated persons. It is made clear that the respondent is entitled to pensionary benefits only in terms of new pension scheme.



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WEB COPY 11. Accordingly, this Writ Petition is disposed of. No costs.

Consequently, the connected miscellaneous petition is closed.

04.04.2025

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

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M.DHANDAPANI, J.

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