

W.A.(MD)No.14 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.08.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A.(MD)No.14 of 2023
and
C.M.P.(MD)No.244 of 2023**

V.Narayanan

... Appellant

Vs.

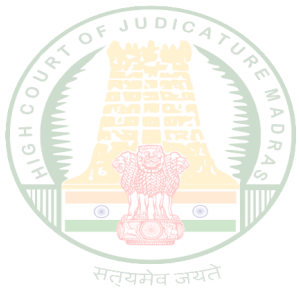
1.The Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin.

2.Superintending Engineer,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin.

3.The Presiding Officer,
Labour Court,
Tirunelveli.

... Respondents

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.(MD)No.18755 of 2017 dated 17.06.2022 on the file of this Court.



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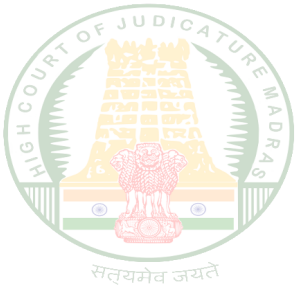
W.A.(MD)No.14 of 2023

For Appellant : Mr.G.Prabhu Rajadurai,
For M/s.Ajmal Associates.

For Respondents : Mr.Anand Gopalan,
For Mrs.P.Malini for R1 & R2

JUDGMENT
(By G.R.SWAMINATHAN, J.)

The Tamil Nadu Electricity Board had set up four thermal power stations in Tamil Nadu. One of them is in Tuticorin. Contract labour running into thousands were working in the said thermal power stations. Decision was taken to abolish the contract labour. Vide Board proceedings B.P.No.17 dated 28.04.1999, the contract labour who had worked for a period of 480 days between 06.01.1996 to 05.01.1998 were to be identified. A list of eligible contract workers was also prepared. The appellant was also working in Tuticorin Thermal Power Station. His immediate employer was one Chandy & Co. Unfortunately, the name of the appellant was not included in the said list. According to TNEB, the appellant had not worked for 480 days during the period from 06.01.1996 to 05.01.1998. He was stopped from service with effect from 28.10.1999. The only reason for such stoppage was that he had not completed 480 days during the aforesaid period.

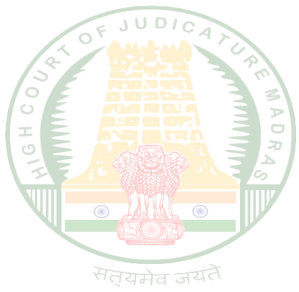


W.A.(MD)No.14 of 2023

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2.The appellant raised an industrial dispute. According to him, he was eligible to be absorbed and that his non-engagement from October 1999 was not justified. The case was taken on the file of the Labour Court, Tirunelveli in I.D.No.49 of 2005. The Labour Court passed an award adverse to the appellant on 22.08.2011. Questioning the same, the appellant filed W.P.No.13691 of 2011. The award was set aside and the matter was remanded to the file of the Labour Court.

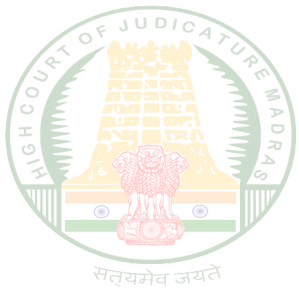
3.Following remand, after hearing both sides, the Labour Court passed award dated 31.10.2013 holding that since the workman had worked for 480 days in a period of 24 months prior to 01.11.1999, he was entitled to permanency. Since he was abruptly disengaged on 30.10.1999 without holding an enquiry and in violation of principles of natural justice, the termination was held as illegal. In that view of the matter, reinstatement was ordered with 50% of the backwages and other attendant benefits.



W.A.(MD)No.14 of 2023

4. After the award was passed by the Labour Court, the Board took the appellant in its rolls as a regular employee in February, 2014. He was appointed as Field Assistant vide order dated 23.05.2014. Though TNEB challenged the award in its entirety by filing W.P.(MD)No.18755 of 2017, in substance, the challenge was confined to grant of 50% backwages and other benefits. The learned Single Judge allowed the writ petition in the following terms:-

“10. The petitioners Board has formulated a scheme based on the recommendation of Khalid Commission. The contract laborers were absorbed in the regular post. Further, the petitioners Board had taken earnest efforts to absorb the contract laborers by issuing BP 17 Proceedings dated 28.04.1999. The said BP 17 proceedings were challenged by way of writ petition and the writ petition was dismissed affirming the said Board Proceedings and the order passed in the writ petition has attained finality. Based on the said proceedings, the service of the second respondent was calculated. Since the second respondent has not worked for 480 days during the period from 06.01.1996 to 05.01.1998 and he was not within the conditions prescribed in the Board Proceedings No.17, hence the claim of the second respondent was not considered and he was not absorbed. In the first round of



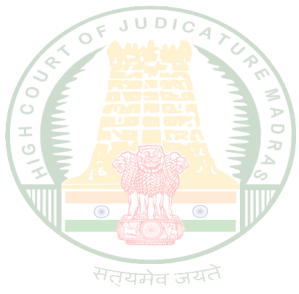
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W.A.(MD)No.14 of 2023

litigation, the Labour Court held against the workman. Aggrieved over the same, the second respondent filed a writ petition and in that writ petition, this Court set aside the award passed by the Labour Court and remanded the matter back. Thereafter, the impugned award was passed.

11. Now the issue is as to whether the service of the second respondent should be considered based on BP 17 proceedings or his services should be considered beyond the cut-off period prescribed in BP 17 Proceedings. Since the BP 17 proceedings was upheld by this Court in the writ petition wherein it was challenged, this Court is of the considered opinion that when the scheme is formulated and was upheld by High Court, the same should be followed for all the other workers who are claiming absorption. In this case, the second respondent is admittedly not coming within the purview of BP 17 Proceedings. However, it is seen from the records that the second respondent was absorbed in service as Field Assistant from 30.05.2014. Now, the only question is that whether the second respondent is eligible for 50% backwages. Since this Court has already upheld the BP 17 Proceedings and the fact that the second respondent is not coming within the purview of BP 17 Proceedings, the second respondent is not entitled to any backwages. If the claim of the second respondent is



WEB COPY



W.A.(MD)No.14 of 2023

allowed, then it will give a way to filing several writ petitions to claim similar benefits to be conferred to the other similarly placed persons. Further, regarding the contract laborers, the petitioners Board has formulated the scheme. Therefore, this Court is of the considered view that the BP 17 Proceedings are to be followed and in the event of any deviation in the scheme to absorb the contract laborers, it will lead to opening of pandora box. Moreover, as per the principles of “no work no pay”, the second respondent is not eligible for 50% backwages. Therefore, the claim of the second respondent for granting 50% backwages is declined. However, the Petitioners' Board is directed to allow the second respondent to continue in service as Field Assistant and the second respondent, however the 2nd respondent is not eligible for 50% backwages.”

5.Assailing the aforesaid order of the learned Single Judge, the workman filed this writ appeal. The learned counsel appearing for the appellant did not argue that the appellant ought to have been absorbed on the basis of Khalid Commission recommendation or B.P.No.17 dated 28.04.1999. Instead, his contention was that since the appellant had been conferred permanent status, his termination on 28.10.1999 without



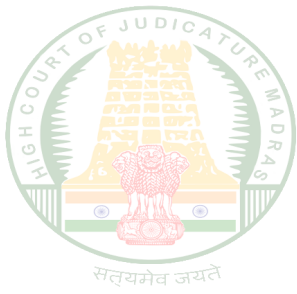
W.A.(MD)No.14 of 2023

complying with Section 25F of the Industrial Disputes Act was obviously illegal and therefore, the Labour Court rightly directed reinstatement as well as 50% backwages with attendant benefits. According to him, the learned Single Judge seriously erred in denying backwages and attendant benefits.

6. We are not swayed by the said submissions. As rightly pointed out by the learned counsel for the respondents / writ petitioners, the appellant's immediate employer was Chandy & Co. and he had worked in Tuticorin Thermal Station only as contract labour. Since contract labour was abolished with effect from 30.04.1999, he can be considered as a direct workman of TNEB only from 01.05.1999. Since he was terminated with effect from 28.10.1999, his period as workman of TNEB has to be calculated only from 01.05.1999. Section 25F prescribes certain conditions before retrenching a workman. But Section 25F will have to be read in the light of Section 25B. The Hon'ble Supreme Court in Civil Appeal No.3803 of 2018 (***Mohd. Ali Vs. State of H.P.***) held as follows:-

“8. Section 25F and Section 25B of the Act which are as follows:

“25F. Conditions precedent to retrenchment of



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W.A.(MD)No.14 of 2023

workmen. —No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

*(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; **

** * * **

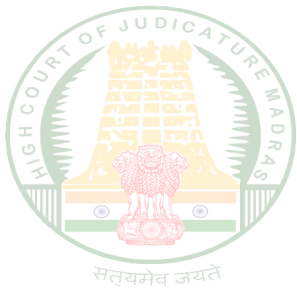
(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

“25B. Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the



WEB COPY



W.A.(MD)No.14 of 2023

meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

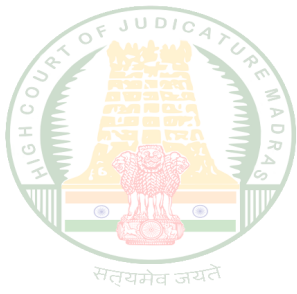
(i) ninety- five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;



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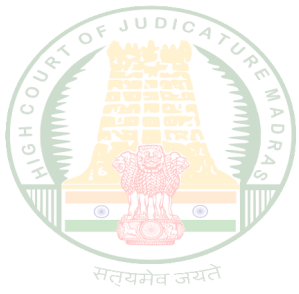
W.A.(MD)No.14 of 2023

(iii) *he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and*

(iv) *in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks. ”*

9) *It is a well known fact that the Industrial Disputes Act is a welfare legislation. The intention behind the enactment of this Act was to protect the employees from arbitrary retrenchments. For this reason only, in a case of 7 retrenchment of an employee who has worked for a year or more, Section 25F provides a safeguard in the form of giving one month's prior notice indicating the reasons for retrenchment to the employee and also provides for wages for the period of notice. Section 25B of the Act provides that when a person can be said to have worked for one year and the very reading of the said provisions makes it clear that if a person has worked for a period of 240 days in the last preceding year, he is deemed to have worked for a year. The theory of 240 days for continuous service is that a workman is deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of retrenchment has actually worked under the employer for not less than 240 days.*

11.In Mohan Lal vs. Management of M/s Bharat Electronics Limited (1981) 3 SCC 225, it was held as follows:-



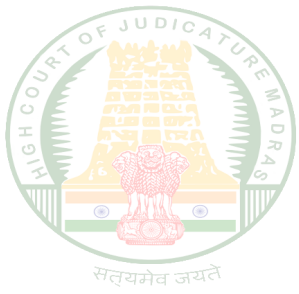
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W.A.(MD)No.14 of 2023

“12. Sub-section (2) incorporates another deeming fiction for an entirely different situation. It comprehends a situation where a workman is not in continuous service within the meaning of sub-section (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year or six months, as the case may be, if the workman during the period of 12 calendar months just preceding the date with reference to which calculation is to be made, has actually worked under that employer for not less than 240 days. Sub-section (2) specifically comprehends a situation where a workman is not in continuous service as per the deeming fiction indicated in sub-section (1) for a period of one year or six months. In such a case he is deemed to be in continuous service for a period of one year if he satisfies the conditions in sub-clause (a) of clause (2). The conditions are that commencing (sic) the date with reference to which calculation is to be made, in case of retrenchment the date of retrenchment, if in a period of 12 calendar months just preceding such date the workman has rendered service for a period of 240 days, he shall be deemed to be in continuous service for a period of one year for the purposes of Chapter V-A.””

Thus, in the aforesaid case, the Hon'ble Supreme Court noted that though the workmen had completed 240 days during the years 1980, 1981, 1982 and 1986 to 1989, they had worked only for 195 days, in the year 1990 and 195 days in the immediate preceding year of his dismissal. Since it was below the threshold of 240 days of working in the period of 12 calendar months preceding the date of dismissal, it was held that the workmen were not entitled to take the benefits of Section 25F of the Industrial Disputes Act.



W.A.(MD)No.14 of 2023

7. In the present case also, applying Section 25B (2)(a)(ii) of the ID Act, the appellant's continuous service immediately prior to his termination falls below 240 days. Therefore, he cannot invoke Section 25F of the Act. Once Section 25F is out of the way, no illegality can be attached to the termination of the appellant on 28.10.1999 without conducting enquiry.

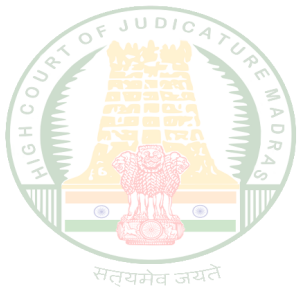
8. Section 2(4) of Tamil Nadu Act 46 of 1981 defines “workman” as follows:-

“2.Definitions. (4) “Workman” means any person employed in any Industrial Establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied [and includes a badli workman], but does not include any such person, --

(a) who is employed in the police service or as an officer or other employee of a prison ; or

(b) who is employed mainly in managerial or administrative capacity ; or

(c) who, being employed in a supervisory capacity, [draws wages exceeding three thousand and five hundred rupees per mensem] or exercises, either by the nature of the



W.A.(MD)No.14 of 2023

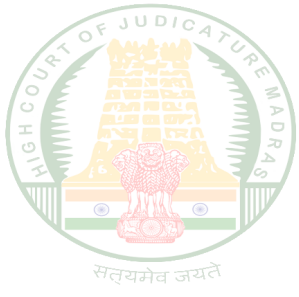
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duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

9.The aforesaid definition does not include a contract labour. The appellant had worked in Tuticorin Thermal Power Station as a contract labour upto 30.04.1999. Only from 01.05.1999, he was engaged as casual employee by TTPS. His service as a casual employee of TTPS was less than 240 days. The appellant cannot include the period during which he served TTPS as a contract labour. We, therefore, hold that for the reasons mentioned above, the appellant cannot claim back wages or any other benefit from TTPS from the date of his termination. This writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.,) & (K.R.S. J.,)
08.08.2025

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W.A.(MD)No.14 of 2023

G.R.SWAMINATHAN, J.
and
K.RAJASEKAR, J.

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W.A.(MD)No.14 of 2023

08.08.2025