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**(2010) 08 MAD CK 0479**

**In the Madras High Court**

**Case No :** Writ Petition No"s. 3116 and 3481 of 2006 W.P.M.P. No"s. 12858 and 12859 of 2006

The Tamil Nadu Electricity Board

APPELLANT

Vs

M. Sadagopan, V. Bakthavatchalam and The Presiding Officer,  
II Additional Labour Court

RESPONDENT

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**Date of Decision :** 20-08-2010

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 2, 25F

**Citation :** (2011) 128 FLR 105 : (2011) 2 LLJ 672

**Hon'ble Judges :** N. Paul Vasanthakumar, J

**Bench :** Single Bench

**Advocate :** M. Vaidyanathan, for the Appellant; R. Parthiban, for Respondent 1 and Labour Court for Respondent 2, for the Respondent

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**Judgement**

N. Paul Vasanthakumar, J.—Both these writ petitions are filed by the Tamil Nadu Electricity Board challenging the awards of the Labour Court dated 11.9.2003 made in I.D. Nos. 243/1996 and 242/1996 respectively.

2. The first respondent in these writ petitions claim that they were employed as Contingent Water Boys in the head office of the Tamil Nadu Electricity Board in the year 1983 and from 3.1.1983 to 30.11.1985 they served without any break, that means, they continuously worked for 480 days in 24 calendar months and hence they are entitled to be conferred as permanent employees under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, however they were not made permanent. The first respondent in these writ petitions were not permitted to work from 1986. Hence they raised I.D. Nos. 243 and 242 of 1996 respectively and prayed for an award in their favour.

3. The petitioner Board resisted the said claim, however no document was filed by the TNEB and the Labour Court passed an award on 11.9.2003 and ordered that the first respondent in these writ petitions were engaged continuously from

1.8.1983 till 30.11.1985 and terminating their services is in violation of the principles of natural justice, as no notice or retrenchment compensation u/s 25F of the Industrial Disputes Act, 1947, was given by the petitioner Board.

4. The Labour Court marked Exs.W-1 to W-39 to show the employment of the first respondents from 5.8.1983 to 15.9.1985 continuously without any break. The petitioner Board had not produced any documentary proof or examined any person to disprove the contentions raised by the workmen.

5. The factual findings given by the Labour Court cannot be treated as a perverse finding, apart from the said fact that the first respondents herein have completed more than 480 days of continuous service in the petitioner Board within a period of two years and admittedly no retrenchment compensation was paid u/s 25F of the Industrial Disputes Act, 1947. There is no perversity in the said order calling for interference by this Court.

6. Similar case was considered by the Supreme Court in the decision reported in Ramesh Kumar Vs. State of Haryana, wherein a workman posted in the Chief Minister's residence for three years was granted relief by the Supreme Court. The award of the Labour Court was set aside by the High Court, which was reversed by the Supreme Court and in paragraphs 7 to 11, 18 and 19 held as follows:

7. The only point for consideration in this appeal is whether the High Court was justified in setting aside the award of the Labour Court when the appellant had established that he was in continuous service for a period of 240 days in a calendar year, particularly, when similarly placed workmen were regularised by the Government.

8. It is not in dispute that the appellant was appointed as a Mali and posted at the residence of the Chief Minister in the year 1991. The materials placed by the appellant before the Labour Court clearly show that he had worked for three years and there was no break during his service tenure. He was issued identity card to work in the residence of the Chief Minister and no reason was given for his termination. It is also his case that there was no show-cause notice and no inquiry was conducted.

9. A perusal of the order of the Labour Court clearly shows that one Shri Nasib Singh, Junior Engineer, who deposed as MW 1 on behalf of the Department has categorically stated that the workman was engaged by the Department on muster rolls as Mali in December 1991 and he worked up to 31-1-1993. He also stated that there was no break from December 1991 to January 1993 during which the workman was engaged.

10. The Labour Court as per the materials placed rightly found that the workman has continuously worked from December 1991 to 31-1-1993. It also found that the workman worked for 240 days with the Department within 12 calendar months preceding his date of termination i.e. 31-1-1993. It is useful to refer to

the definition of "retrenchment" and "workman" in the Act which reads thus:

2. (oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

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(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

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25-F. Conditions precedent to retrenchment of 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.

It is not in dispute that the appellant is a "workman" as defined u/s 2(s) and "retrenchment" if any it should be in accordance with Section 25F of the Act.

11. Admittedly, in the case on hand, the workman was not given any notice or pay in lieu of notice or retrenchment compensation at the time of his retrenchment. In view of the same, the Labour Court has correctly concluded that his termination is in contravention of the provisions of Section 25F of the Act. Though the Department has relied on a circular, the Labour Court on going through the same rightly concluded that the same is not applicable to the case of the retrenchment.

18. It is to be noted in the case of termination of casual employee what is required to be seen is whether a workman has completed 240 days in the preceding 12 months or not. If sufficient materials are shown that the workman has completed 240 days then his service cannot be terminated without giving

notice or compensation in lieu of it in terms of Section 25F. The High Court failed to appreciate that in the present case the appellant has completed 240 days in the preceding 12 months and no notice or compensation in lieu of it was given to him, in such circumstances his termination was illegal. All the decisions relied on by the High Court are not applicable to the case on hand more particularly, in view of the specific factual finding by the Labour Court.

19. Under these circumstances, the impugned order of the High Court dated 23-12-2008 passed in CWP No. 575 of 2004 is set aside.

7. For the delay in approaching the Labour Court, the first respondent in these writ petitions are denied 75% backwages. The workmen having approached the Labour Court only in the year 1996 i.e., with delay of 11 years, they are not entitled to get any backwages and therefore the order granting 25% backwages cannot be sustained.

8. The writ petitions are disposed of on the following terms:

(a) The award of the Labour Court is modified.

(b) The petitioner Board is directed to reinstate the workmen/first respondent in these writ petitions with continuity of service but without backwages, within a period of four weeks from the date of receipt of copy of this order.

(c) The 17B wages paid, till date pursuant to the order of this Court dated 27.4.2006 cannot be recovered from them.

(d) The petitioner Board is permitted to withdraw the amount deposited pursuant to the order of this Court dated 8.2.2006.

(e) There will be no order as to costs.

(f) Connected miscellaneous petitions are closed.