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W.A.No. 52 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.52 of 2023 and
C.M.P.No.499 of 2023

1. Tamil Nadu Civil Supplies Corporation,
Rep. by its Managing Director,
Old No.42, New No.12, Thambu Samy Road,
Kilpauk, Chennai- 600 010.

2. Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
H 38A/10 Manickkampalayam Housing Unit,
Nasiyanoor Road,
Erode- 638 001.

.. Appellants

-VS-

1. Tamil Nadu Civil Supplies Corporation
Employees Union,
Regn No.325/CPT,
Rep. by its State President,
Mr.M.Pechimuthu,
Old No.42, New No.12, Thambusamy Road,
Kilpauk, Chennai-10.

2. N.Naveen Kumar
3. M.A.Sadiqhassan



W.A.No. of 2018

4. Thamim Basha
5. T.Stephen
6. N.Krishnaraj
7. S.Syed Sirajudeen
8. N.Manimuthu
9. A.Subramaniam
- 10.A.Raju
11. N.J. Babu

.. Respondents

Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the final order dated 12.06.2019 passed by this Court in W.P.No.23122/2018, on the file of this Court.

For Appellants	: Mr.R.Neelakandan Additional Advocate General Assisted by Mr.C.Selvaraj Senior Counsel for TNCSC
For Respondents	: Mr.V.Prakash, Senior Counsel for Ms.Karthikeyani

J U D G M E N T

This Writ Appeal has been preferred by the Appellants challenging the order of the learned Single Judge in W.P.No.23122 of 2018 dated 12.06.2019, by granting the relief sought for by the Respondents/Writ Petitioners in directing the Appellant Corporation to post them in Class III and Class IV services depending upon the qualifications in accordance with the Clause 6 of the Settlement dated 30.01.1997.



W.A.No. ... of ...

WEB COPY

2. When the matter was taken up on 23.01.2023, learned Additional Advocate General submitted that out of the ten employees who are covered in the Writ Appeal, seven have been given permanent employment and their seniority had been given State-wise and regionwise and he sought time to get instructions in respect of remaining three employees and therefore, the matter was adjourned.

3. When the matter is taken up for hearing today, Mr.R.Neelakandan, learned Additional Advocate General submitted that out of ten employees, seven have already been employed and out of the said seven, five employees have been posted at Erode and two have been posted at Krishnagiri. He further submitted that another three employees have not completed required number of service to be absorbed in the regular post and that there is no other regional zone for consideration. He drew the attention of this Court to an order dated 04.10.2018 of the Madurai Bench of this Court in W.P.(MD)No.20699 of 2018, in which, one of us (SVNJ) has held that the Corporation has to follow the centralised seniority list.

4. The learned counsel appearing for the Respondents/Writ Petitioners submitted that when the Corporation has recruited seasonal employees to Class III and Class IV services in their regions in the past, which has not been disputed by the Corporation, it



W.A.No. ... of ...

WEB COPY

is now unfair and unreasonable on the part of the Corporation to deny the employees, the benefit of recruitment in terms of its own settlement. He further submitted that even when a notice under Section 9-A of the Industrial Disputes Act, 1947 is issued, the employer will have to wait for a period of 21 days and in case of no Industrial Dispute, it is open to the employer to change the service conditions. In the case of an Industrial Dispute, the settlement will continue to be in operation and the learned Single Judge has rightly taken note of the same and granted relief to the Writ Petitioners and therefore, the order of the learned Single Judge need not be interfered with.

5. Heard both sides. Perused the records.

6. For the sake of convenience, clauses 3 and 4 of the Settlement dated 30.01.1997 are extracted hereunder:

"(3) Allowances to Graduate Employees:

The Management agreed to enhance the existing allowance of Rs.50/- paid to the graduate employees to Rs.75/- per month over and above the figures given in clause 1 above and also to pay the arrears thereon with effect from 15.9.94.

The graduate allowance for science graduates Bill Clerks will be extended to all graduates (irrespective of subjects) for Bill Clerks and Helper as already agreed in the settlement signed on 19.09.91 before the Joint Commissioner of Labour (Conciliation), Chennai in S1/14293/91 dated 19.9.91.



W.A.No. of

4) Handling Charges to Loadmen:

It is agreed to enhance the existing handling charges per bag of 70 kgs as hereunder, for the loadmen engaged in the D.P.C. during monopoly procurement for receiving and unloading paddy from ryots and for transporting and standardising in TNCSC gunnies from 60 paise per bag to:-

*(1) For Kuruvai and Samba seasons
in the year 1996-97. .. 75 paise*

*(2) For Kuruvai an Samba seasons
in the year 1997-98 .. 85 paise*

*(3) For Kuruvai and Samba seasons
in the year 1998-99 .. 95 paise"*

5. PREFERENCE IN EMPLOYMENT:

As regards the demand of the workmenn for giving preference to the qualified seasonal employees in the D.P.Cs while filing the regular vacancies, it is agreed that the Clause 3 in the settlement dated 19.9.91 (regarding wage revision to D.P.C. employees) will continue for another three years i.e. whenever the TNCSC has to go to the Employment Exchange for direct recruitment's of any class III or class IV services; after exhausting the eligible candidates among the existing regular employees in the feeder categories, the qualified seasonal employees who are initially recruited through employment exchange will be given preference relaxing only the age qualification but not relaxing any other qualification, subject to the policy of reservation. In the event of absorbing the seasonal employees in the vacancies that arise in any region throughout the State of Tamil Nadu, the qualified hands will be selected by drawing the centralised seniority list in the Head Office level according to total of broken periods of service and they might be allotted to the needy regions,



WEB COPY



W.A.No. of

whereever vacancies arise, on their requisition. Where age relaxation becomes necessary, the management will get appropriate concurrence of the Government.

(6) EMPLOYMENT OPPORTUNITIES IN CONCURRENT REGIONS:

In respect of regular vacancies in class III and class IV categories which arise in Procurement Region after exhausting the eligible candidates among the existing regular employees in the feeder categories, the qualified D.P.C. employees of the respective procurement Regions, who were initially recruited through Employment Exchange will be given preference relaxing only the age-qualification: subject to the policy of Reservation. The qualified hands of the D.P.C. employees will be selected from the seniority list prepared by the concerned Procurement Regions only."

7. It is an admitted case that there was a settlement entered into by the Respondent Corporation in respect of Cauvery Delta Region on 19.09.1991, extending certain benefits to the employees and the relevant issue in that settlement was to extend seniority alone at the centralised level for the purpose of absorbing all seasonal employees in regular time scale of pay. This settlement was superseded by another settlement dated 30.01.1997, wherein the Management has agreed to have a separate seniority list in the District Level in order to employ those candidates for the procurement region. In case, there are no vacancies, those employees will be accommodated in other regions where vacancy arises in terms of centralised seniority.



W.A.No. ... of ...

WEB COPY

8. In the case on hand, admittedly, out of 10 employees, seven have already been employed and out of the said seven, five have been posted at Erode and two have been posted at Krishnagiri. All the seven persons have been posted as watchman in the regular vacancies, and three employees who are the Writ Petitioners 2 to 4 in the Writ Petition have not been accommodated for years together. It is not in dispute that as per the settlement dated 30.01.1997, appointments have to be made to Class III and Class IV services after exhausting the eligible candidates among the existing regular employees in the feeder categories. When there is a settlement wherein the employer has agreed to provide employment on permanent basis to the seasonal employees, depending upon the vacancy that may arise and based on the seniority list, depriving the employees from providing employment under Class III and Class IV depending upon the qualification as directed by this Court and non issuance of notice under Section 9-A of the Act before altering the clauses in the settlement is against the principles of natural justice and law.

9. Learned counsel appearing for the Respondents/Writ Petitioners has rightly submitted that without terminating the existing settlement by issuing a notice under Section 19 (2) of the Act, the employer cannot alter the service conditions, and in case of an Industrial Dispute, the Settlement will continue to be in operation, till such time it



W.A.No. ... of ...

is replaced by another Settlement or Award.

WEB COPY

10. In this case, the Corporation has stated that Industrial Dispute is pending conciliation and when a dispute is pending, the employer will have to continue to extend the benefits of settlement till such time it is replaced by another settlement or Award.

11. A reading of the Settlement dated 30.01.1997 would go to show that nowhere it is stated that the employees have to be put in a particular period of service to come within the zone of consideration. It is seen that sixty three persons have been absorbed and appointed as seasonal Bill Clerks and they cannot be treated differently as that of the Writ Petitioners as they are also the beneficiaries in terms of the Settlement dated 30.01.1997.

12. In an identical situation where the employees sought to extend the benefits of 12(3) settlement dated 30.01.1991 in W.P.No.19899 of 2017, this Court on 05.09.2019, dismissed the Writ Petition on the ground that the matter has to be adjudicated before the appropriate forum and this Court cannot issue a Mandamus in writ proceedings under Article 226 of the Constitution of India and the said order came to be challenged



W.A.No. of

by way of filing a Writ Appeal in W.A.No.19899 of 2017 and this Court vide judgment

dated 20.08.2020 held as under:

WEB COPY

"22. Thus, in conclusion, we dispose of this writ appeal as follows:

(i) The Settlement dated 30.01.1997 is void;

*(ii) The TNSTC is not entitled to unilaterally proceed on the basis that the Settlement dated 30.01.1997 or the 'preference in employment' clause is **inoperative**;*

(iii) Subject to the observations made herein, the impact of the termination notice in the context of the alleged change in law on the Settlement dated 30.01.1997 shall be duly determined by the competent Labour Court upon reference of a dispute as per the provisions of ID Act;

(iv) In the event the parties fail to get it conciliated, it will be open to them to seek an appropriate remedy for the purpose of referring the matter to the Industrial Tribunal and in the event, such reference is made, the Industrial Tribunal shall endeavour to dispose of this long standing dispute as expeditiously as possible; and

(v) Except to the extent indicated above and subject to the observations in the judgment, we affirm the conclusion of the Writ Court that parties should avail of the alternative statutory remedy. No costs. Consequently, connected Miscellaneous Petition is closed."

13. The learned Additional Advocate General appearing for the Corporation tried to explain the word 'inoperative' in paragraph 22 (ii) of the judgment in the Writ Appeal. We are not inclined to accept the said contention. A reading of the said clause would reveal that the Court has categorically held that the Settlement dated 30.01.1997 is 'in operation' and inadvertently the said word may be typed as **inoperative** instead of



W.A.No. ... of ...

in operation. That apart, as stated *supra*, a settlement will be in operation, till it is replaced by another settlement or award.

WEB COPY

14. Hence, we make it very clear that the settlement dated 30.01.1997 is in operation. In the light of the judgment of the Apex Court in the case of *The L.I.C. Vs. D.J.Bahadur and others* reported in *1980 AIR 2181*, the employer is bound to extend the Settlement till an Award is passed by the competent Labour Court or Tribunal.

15. Though the decision relied on by the learned Additional Advocate General in W.P. (MD) No.20699 of 2018 dated 04.10.2018, pertains to seasonal Bill Clerks, like the one in the case on hand, nowhere it had been stated that the employee concerned was working in a procurement region to accommodate that person in the region-wise seniority.

16. It has been stated by the learned counsel for the Corporation that the Corporation is following only the centralised seniority list and the eligible candidates would be considered and appointed.



W.A.No. ... of ...

WEB COPY

17. Now, going by the two Settlements of the years 1991 and 1997, it is clear that the Settlement dated 30.01.1997 is intact and in terms of Clause 6 of the said Settlement, seasonal employees are to be appointed based on district-wise seniority, in case, they come under the purview of that region.

18. As we find much force in the contention of the learned counsel appearing for the Respondents/Writ Petitioners, we are of the view that benefits of the Settlement dated 30.01.1997 with regard to Clause 6 will have to be extended to them and the pendency of the Industrial Dispute on the notice issued to them under Section 19 (2) cannot be put against the employees by taking note of the pendency of the dispute before the Conciliation Officer and the Conciliation Officer has no power to render any finding. Since the Union is not willing to enter into a settlement on the subject matter of notice of termination, we direct the Government to refer the dispute to the competent Industrial Disputes Tribunal and the said Tribunal shall render a finding, following the time of grant of adjournment stipulated as per Rule 34 of the Tamil Nadu Industrial Tribunal (Central Procedure) Rules, 1958 . Till such time a Settlement is arrived at or an Award is passed by the competent Tribunal/Labour Court, the benefits of the existing settlement cannot be altered; if altered it would attract Section 29 of the Industrial Disputes Act, 1947.



WEB COPY



W.A.No.52 of 2023

S. VAIDYANATHAN,J.,
and
R.KALAIMATHI.,J

arr

19. With the above directions, this Writ Appeal is disposed of. No costs.
Consequently, connected Miscellaneous Petition is closed.

[S.V.N., J.] [R.K.M., J]
13.02.2023

Index: Yes / No

Internet: Yes / No

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Note: Issue order copy on 28.04.2023.

To

Tamil Nadu Civil Supplies Corporation
Employees Union,
Regn No.325/CPT,
Rep. by its State President,
Mr.M.Pechimuthu,
Old No.42, New No.12, Thambusamy Road,
Kilpauk, Chennai-10.

W.A.No.52 of 2023



WEB COPY



W.A.No. 13 of 2022