

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

Writ Petition Nos.21539 to 21548 of 2014
&
M.P.Nos.1of 2014

D.Roselin Joyce ...Petitioner in W.P.No.21539/2014
S.Maickam ...Petitioner in W.P.No.21540/2014
S.Jaya ...Petitioner in W.P.No.21541/2014
M.Malikknisha ...Petitioner in W.P.No.21542/2014
E.Malliga ...Petitioner in W.P.No.21543/2014
J.Lakshmi ...Petitioner in W.P.No.21544/2014
V.Vijaya ...Petitioner in W.P.No.21545/2014
N.Vasantha ...Petitioner in W.P.No.21546/2014
G.Gomathy ...Petitioner in W.P.No.21547/2014
R.Nagalakshmi ...Petitioner in W.P.No.21548/2014

Vs

- 1 Tamil Nadu Civil Supplies Corporation Ltd.
Rep. by its Chairman and Managing Director
No.42, Thambusamy Street, Kilpauk, Chennai-10.
- 2 The Manager (Administration)-I
Tamil Nadu Civil Supplies Corporation Ltd.
Head Office No.42, Thambusamy Street, Kilpauk, Chennai-10.
- 3 The Senior Regional Manager
Tamil Nadu Civil Supplies Corporation Ltd.
Cuddalore Region, Nellikuppam Road,
Cuddalore. ...Respondents 1 to 3 all the WPs
- 4 The Senior Regional Manager,
Tamilnadu Civil Supplies Corporation,
Sidco Complex, Vengikkal,
Thiruvannamalai District. ...4th Respondent in W.P.No.21548/2014

W.P.No. 21539 to 21548 of 2014:

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus calling for the entire records relating to the Impugned Order in Na.Ka.No. L.3/1704/96 dated 10.09.2001 passed by the 3rd respondent and the consequential common order passed by the 2nd respondent in O.Mu.Na.Ka.No. AE12/25129/2012 dated 30.04.2013 (served on 07.07.2014) and quash the same insofar as it relates to (i) fixing the date of regularization with effect from 10.09.2001 (ii) fixing minimum wages and (iii) denying the back wages and consequently direct the respondents to regularise the services of the petitioner from 15.07.1987, 15.07.1987, 01.09.1993, 01.06.1988, 15.07.1987, 01.06.1995, 01.06.1996, 15.07.1987, 01.08.1992, 06.06.1988 fix the time scale of pay and pay the arrears of salary and other attendant benefits with interest at the rate of 12% p.a. from 15.07.1987, 15.07.1987, 01.09.1993, 01.06.1988, 15.07.1987, 01.06.1995, 01.06.1996, 15.07.1987, 01.08.1992, 06.06.1988 to till the date of payment.

For Petitioner in
all Writ Petitions : Mr.K.Premkumar

For Respondents in
all Writ Petitions : Mr.C.Munusamy

COMMON ORDER

These Writ Petitions are directed against the individual orders dated 10.9.2001 on the file of the third respondent and the consequential common order passed by the second respondent dated 30.4.2013 insofar as it relates to fixing the date of regularization with effect from 10.9.2001, (ii) fixing minimum wages, and (iii) denying backwages.

2. The petitioners were initially engaged as Casual Labourers in the Non-rationed commodities' Godown at Cuddalore. The petitioners have worked in the packing section. The petitioners were all paid daily wages. The petitioners invoking the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, approached the competent authority at Cuddalore seeking permanent status and related benefits.

3. The Inspector of Labour, who is stated to be the competent authority passed an order dated 27.8.1998, whereby and whereunder direction was issued to the first respondent to grant permanent status to the petitioners from the date of their completion of 480 days of service in 24 calendar months. The said order was challenged by the management in Writ Petition No.3061 of 1999. The Writ Petition was dismissed as withdrawn by order dated 19.04.2006. The third respondent has implemented the order passed by the competent authority by regularizing the service of the petitioners.

4. It is the grievance of the petitioners that while regularizing their service, the third respondent negatived the plea of fixing time scale of pay and denied them the benefits of earlier service. The impugned orders are challenged primarily on the ground that the Corporation has no right to fix two different yardsticks, one in the case of male employees and another in the case of female employees, inspite of the fact that nature of work of both male and female employees are one and the same.

5. Even though sufficient time was given, the respondents failed to file counter affidavit.

6. Heard the learned counsel for the petitioner and the learned Standing Counsel for Tamil Nadu Civil Supplies Corporation.

7. There is no dispute that the order passed by the competent authority under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, has become final. The petitioners were all given permanent status, pursuant to the order dated 10.9.2001 and the consequential order dated 30.4.2013. However, they were not given the time scale of pay, notwithstanding the fact that employees similarly situated were all given time scale of pay. The order proceeds as if different pay scale is in operation with regard to female employees. When it is made out that the nature of work undertaken by both male employees and female employees are one and the same, there is no question of fixing two different time scales of pay, one for male employees and another for female employees. I am in agreement with the contention taken by the petitioners with regard to discriminatory treatment.

8. The Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women workers. Section 4 of the said Act reads thus:

"4. Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature:-

(1) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature."

9. The order passed by the second respondent fixing time scale of pay to the male employees working as Packers and fixing a different scale of pay to the female employees, doing the same work, would violate Section 4 of the Equal Remuneration Act, 1976.

10. The other contention relates to fixing the date of regularization. It is the grievance of the petitioners that they were not given regularization with effect from 10.09.2001. The petitioners should be given regularization with effect from 10.09.2001, for the purpose of fixing their service benefits. However, they would not be entitled to monetary benefits. Similarly, there is no question of giving them backwages for the period in question. They have been regularized only pursuant to the order passed by the competent authority and as such they would be paid wages only from the date of regularization and not by taking into account the order passed by the competent authority. Therefore, I am of the view that the matter requires fresh consideration by the second respondent.

11. In the result, the impugned orders are set aside insofar as it denies time scale of pay applicable to the post of Packer and fixing the date of regularization with effect from 10.09.2001. It is made clear that earlier service also should be counted for the purpose of fixing the total period of service. It is needless to point out that the petitioners are not entitled for backwages. The second respondent is directed to pass appropriate orders on merits, taking into account the above observation, within a period of two months from the date of receipt of a copy of this order.

12. The Writ Petitions are allowed to the extent indicated above. No costs. The connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

ajr

To

1 The Chairman and Managing Director
Tamil Nadu Civil Supplies Corporation Ltd.
No.42, Thambusamy Street
Kilpauk, Chennai-10.

2 The Manager (Administration)-I
Tamil Nadu Civil Supplies Corporation Ltd.
Head Office No.42, Thambusamy Street
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3 The Senior Regional Manager
Tamil Nadu Civil Supplies Corporation Ltd.
Cuddalore Region, Nellikuppam Road
Cuddalore.

4 The Senior Regional Manager,
Tamilnadu Civil Supplies Corporation,
Sidco Complex, Vengikkal,
Thiruvannamalai District.

1 CC to Mr.C.Munusamy, Advocate SR.No. 8551

10 CCs to Mr.K.Premkumar, Advocate, SR.No. 8658

W.P.Nos.21539 to 21548 of 2014

AD (CO)
PSI (13.03.2015)

सत्यमेव जयते

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