

In the High Court of Judicature at Madras

Dated : 28.1.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice P.R.SHIVAKUMAR

Writ Appeal Nos.1352 to 1354 of 2013

against

W.P.No.2562 to 2564 of 2012

R.Gowri

...Appellant in
WA.No.1352/2013

S.Kuppan

...Appellant in
WA.No.1353/2013

V.Dasarathan

...Appellant in
WA.No.1354/2013

Vs

1.The Commanding Officer, Project
Managing Authority, Naval Air
Station, Arakkonam, Vellore District.

2.The Lieutenant, INS Rajali, Naval
Air Station, Arakonam, Vellore District.

3.The Administration Officer II,
Commander Works Engineers,
Pallavan Salai, Chennai-2.

4.The Collector, Vellore District,
Vellore.

5.The Special Tahsildar (Land
Acquisition), Naval Air Station,
Project Office, III Arakonam,
Vellore District.

6.The Commander Works Engineer
(Navy), Fort.St.George, Chennai-9.

(R6 impleaded as per order of court dated 3.2.2014 made in
M.P.Nos.1, 1 and 1 of 2013 in W.A.Nos.1352 to 1354 of 2013).

...Respondents in
all the WAS

APPEALS under Clause 15 of the Letters Patent against the
common order dated 9.1.2013 made in W.P.Nos.2562 to 2564 of 2012.

These writ petitions are filed under Article 226 of the
Constitution of India for the relief of issuance of a writ of
mandamus directing the respondents 1 and 2 herein to provide
employment in the cadre Class III and Class IV to the petitioner
in the Naval Air Station Arakkonam or in any other Defence
Establishment located in the regions falling within Vellore
District (previously Chengalpet District) and City of Madras
respectively.

For Appellants : Mr.M.S.Subramanian

For Respondents 1 to 3 : Mr.K.Mohana Murali

For Respondents 4 & 5 : Mr.P.Chinnadurai, GA

COMMON JUDGMENT

(Judgment was delivered by V.RAMASUBRAMANIAN,J)

These three writ appeals arise out of a common order passed
in a batch of four writ petitions by a learned Judge, seeking the
relief of a direction to the first respondent herein to provide
employment to the land losers.

2. Heard Mr.M.S.Subramanian, learned counsel for the
appellants, Mr.K.Mohana Murali, learned Senior Central Government
Standing Counsel appearing for the respondents 1 to 3 and
Mr.K.Chinnadurai, learned Government Advocate appearing for the
respondents 4 and 5.

3. Two persons by name S.Dharanipathy and M.Lakshmi Devi
filed writ petitions in W.P.Nos.4398 and 7866 of 1996 on the file
of this Court seeking a Mandamus to direct the respondents
herein to fulfil the promise given to them with regard to the
employment in the Naval Air Station at North Arcot Ambedkar
District in the Cadre of Class III and Class IV posts. The writ
petitions were allowed by a learned Judge by a common order dated
14.3.1997 with certain directions. The said order was confirmed
on appeals before a Division Bench in W.A.Nos.326 and 327 of 1998
by a judgment dated 31.8.2007.

4. Complaining that the orders were not complied with, three contempt petitions were filed before this Court. The contempt petitions were disposed of by a common order dated 25.11.2009, expressing the hope that the respondents would accommodate the family members of the land losers at the earliest considering the relaxation of age and qualifications as found in the directions given by the Division Bench. It appears that thereafter, a few persons were provided with employment. Based upon the action taken in pursuance of the aforesaid orders, four persons filed writ petitions in W.P. Nos.2562 to 2565 of 2012 seeking a Mandamus to direct the Commanding Officer, Project Managing Authority, Naval Air Station, Arakonam to provide employment in Class III and Class IV posts. These writ petitions were allowed by the learned Judge by an order dated 9.1.2013, recording the fact that 32 vacancies are in existence in the Naval Air Station and that the writ petitioners could be considered for appointment to those posts.

5. Though the said order was actually in favour of the writ petitioners and though one of the four writ petitioners also got appointment subsequently, the other three writ petitioners have come up with the above writ appeals, on a limited ground that by the present order, their right to appointment is sought to be confined only to the posts available in the Naval Air Station and not to the entire Defence Establishment.

6. In other words, the petitioners, who have actually succeeded before the learned Judge, are aggrieved by the limited nature of the success. The grievance of the writ petitioners can be best appreciated by looking into the previous orders.

7. In the first set of two writ petitions that were disposed of on 14.3.1997, this Court had issued two directions, upon which, reliance is placed, which read as follows :

"4. Whenever necessary, fourth respondent shall relax the age and qualifications in favour of such member of the displaced family taking into consideration of their long waiting. Even where one employment could not be provided in Class III/IV for non availability of eligible candidates, the members of families be provided either unskilled or semi skilled posts or shall be engaged in providing facilities or allow them to have preference in locating bunks or other shops wherever permissible.

5. The fourth respondent is expected to render all assistance in finding out employment at least to one member of the displaced family either in the fourth respondent establishment or in any other Defence Establishment located in the regions

falling within North Arcot, Chingleput and City of Madras."

8. On an appeal by the Commanding Officer of the Naval Air Station, the Division Bench clarified that the directions of the learned Single Judge were confined only to the sanctioned strength and not beyond. Paragraph 5 of the judgment of the Division Bench is of relevance and hence, it is extracted as follows :

"From the aforesaid directions, it will be evident that the learned Single Judge had not directed to make excess appointment beyond the strength. It has only been ordered that no recruitment against Class III and Class IV or other lower classes shall be made in the Naval Air Station in question from any other source till one appointment to the members of each of the displaced family is provided. Thus, it is clear that the appointments are to be made against the existing vacancies giving preference to one person of each displaced family, as identified by the District Collector. So far as the age limit is concerned, the question of relaxation will come if only one or other person is over age. That question has to be determined by the competent authority. Taking into consideration the age of persons, that means if a person is much over age i.e more than 50 years, in such case, the age may not be relaxed, but in appropriate cases, for certain years, it may be relaxed. As the prescription of qualification of appointment against one or other post is mandatory, we are of the view that no relaxation can be made in this regard. If a person is not qualified, they can be engaged for other menial work such as skilled or unskilled labourers."

9. In the contempt petitions in Cont.P.Nos.757 to 759 of 2009, the Division Bench recorded the fact that as per the directions of this Court, 506 families were identified for appointment and that out of them, 156 have already been accommodated. 78 persons were provided with employment in the post of sailors. In other words, 234 family members, out of 506, had been accommodated. In so far as rest of them are concerned numbering about 272, the learned Additional Solicitor General gave an undertaking that the vacancies will be filled up from among these persons. Therefore, considering the restraint in the contempt jurisdiction of this Court, the Division Bench recorded the following observations in paragraph 6 as follows:

"We are well aware of the jurisdiction of contempt. Having regard to the facts and circumstances of the case, while closing the contempt, we expect that the respondents will accommodate the rest of family members at the earliest. The District Collector will also immediately respond to the letter of the respondent dated 17.8.2009 by promptly identifying the persons, who are entitled to the benefit under the scheme. The respondents will also consider relaxation of age and qualification, as found in the directions of the Division Bench, wherever possible. The contempt petitions stand closed in the above stated circumstances."

10. Therefore, what the learned Judge had done in his order, which is impugned in these writ appeals, is merely to reiterate and reaffirm the earlier orders. By the common order impugned in these writ appeals, the learned Judge neither enlarged nor abridged the scope of the earlier orders passed by the Single Judge and the Division Bench. Today, the main grievance of the appellants arises out of a statement made in the counter affidavit filed by the Commanding Officer of the Naval Air Station to the effect that they have no administrative control over the entire Defence Establishment. In paragraph 14 of the counter affidavit, the Commanding Officer has stated and rightly so in our opinion, that the Military Engineering Service Authorities were not parties to the proceedings and that the earlier directions could only be confined to the Naval Air Station.

11. But, in our view, the counter affidavit does not alter the status of what was earlier ordered by this Court. Therefore, we are of the view that the appellants cannot have a grievance about the common order passed by the learned Judge, since he has merely followed the earlier orders and did not snatch away or gave more than what was due to the appellants.

12. With the above clarifications, the above writ appeals are dismissed. No costs.

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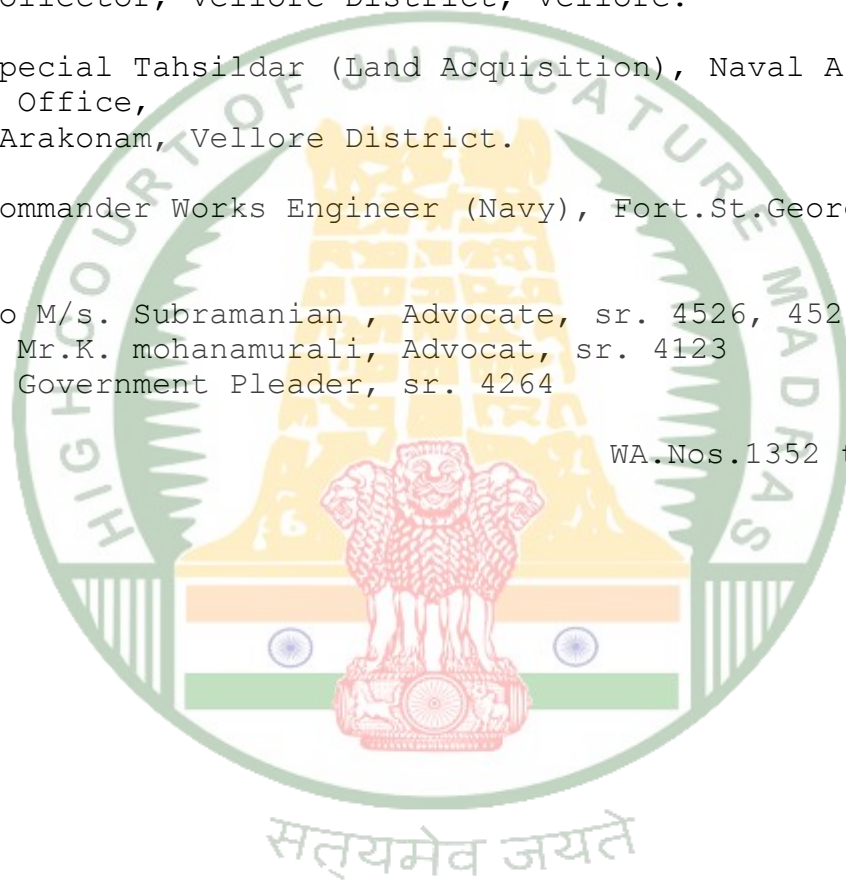
Sub Asst. Registrar

To

- 1.The Commanding Officer, Project Managing Authority, Naval Air Station, Arakkonam, Vellore District.
 - 2.The Lieutenant, INS Rajali, Naval Air Station, Arakonam, Vellore District.
 - 3.The Administration Officer II, Commander Works Engineers, Pallavan Salai, Chennai-2.
 - 4.The Collector, Vellore District, Vellore.
 - 5.The Special Tahsildar (Land Acquisition), Naval Air Station, Project Office, III Arakonam, Vellore District.
 - 6.The Commander Works Engineer (Navy), Fort.St.George, Chennai-9.
- 3 ccs to M/s. Subramanian , Advocate, sr. 4526, 4525, 4524
1 cc to Mr.K. mohanamurali, Advocat, sr. 4123
1 cc to Government Pleader, sr. 4264

WA.Nos.1352 to 1354 of 2013

RJ (CO)
kk 13/2



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