

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2015

CORAM

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

W.P.NO.9804 OF 2015

S.S.Anandaraja

.. Petitioner

Versus

1.Tamil Nadu Civil Supplies Corporation Ltd.,
Represented by its Senior Regional Manager
South Arcot Region,
Cuddalore.

2.The Managing Director
Tamil Nadu Civil Supplies Corporation Ltd.,
Kilpauk,
Chennai - 600 010.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent vide Proceedings No.AE5/94146/2012 dated 24.11.2014 and quash the same directing the respondent 2 to grant relief for conferring monetary and service benefits pertaining to that of Junior Assistant in the administrative wing to the petitioner from 31.07.2012.

For Petitioner : Mr.K.Parthasarathy
For Respondents : Mr.V.Jayaprakash Narayanan
Special Government Pleader

O R D E R

The petitioner was a Technical Assistant Operator in the Cuddalore Region of the Tamil Nadu Civil Supplies Corporation. He had undergone operation in the year 2009 for Coronary Artery disease. Hence, he was not able to do the earlier job in the technical side. He sought alternate employment as provided under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and for Participation) Act, 1995 (shortly "the Act").

2. When the alternate employment under the Act was not provided, the petitioner came before this Court by way of W.P.No.9889 of 2011. This Court allowed the writ petition on 26.04.2011 and set aside the impugned order refusing to provide alternate employment. In this regard, para 17 of the said judgment is extracted hereunder:

"17. In the light of my above findings, the impugned order dated 23.11.2009 is set aside and the writ petition is allowed with a direction to the respondents to provide alternate employment to the petitioner, equal to the cadre of Technical Assistant Operator in the Tamil Nadu Civil Supplies Corporation Limited, within a period of two weeks from the date of receipt of copy of this order, in the light of the medical opinion dated 28.8.2010, issued by the Vijaya Heart Foundation, Chennai in terms of Section 47 of Act 1 of 1996....."

3. The aforesaid order of this Court was complied with and an order was passed on 31.07.2012 by the second respondent providing alternate employment as Junior Assistant, which is equivalent to Technical Assistant Operator in the Technical side. The work of Junior Assistant is on the administrative side.

4. The petitioner has filed contempt petition in Cont.P.No.749 of 2012 stating that para 10 of the order of the second respondent dated 31.07.2012 providing alternate employment is disobeying the order dated 26.04.2011 passed in W.P.No.9889 of 2011.

5. In this regard, para 10 of the order dated 31.07.2012 of the second respondent is extracted hereunder:

"10) In partial modification of this office letter 7th read above, Thiru. S.S.Anandaraja, Technical Assistant Operator, Modern Rice Mill, Cuddalore Region is hereby ordered to work as Junior Assistant in the Modern Rice Mill, Neyveli subject to Modern Rice Mill standing orders as per Hon'ble Court order as a special case."

6. The contempt petition was disposed of on 01.08.2012. Para 3 of the order dated 01.08.2012 passed in Cont.P.No.749 of 2012 is extracted hereunder:

"3. The petitioner is aggrieved about Paragraph-10 of the order, which states that the petitioner will be ordered to work as Junior Assistant in the Modern Rice Mill, Neyveli subject to Modern Rice Mill standing orders as per Hon'ble Court order as a special case. He further submits that the petitioner is suffering from disability. The standing order

cannot be complied and the provisions of the Person of the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 will prevail. There can be no doubt regarding the said aspect. The petitioner shall be allowed to continue in the Modern Rice Mill, Neyveli as a Junior Assistant so long as his disabilities continue. The petitioner shall be given all benefits as per Section 47 of the Person of the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995."

7. Thereafter, the second respondent issued a proceedings dated 24.11.2014. The petitioner is aggrieved over the proceedings dated 24.11.2014 and more particularly, para 12 of the proceedings, which reads as follows:

"12) Accordingly the request of Thiru S.S. Anandaraja, Assistant Operator, MRM, Neyveli (Utilised as Junior Assistant subject MRM Standing Orders) for sanctioning monetary benefits and service benefits in the General side from 27.05.2011 is ordered to be rejected and he is allowed to continue to work as Junior Assistant in the MRM, Neyveli subject to Modern Rice Mill Standing Orders."

8. According to the learned counsel for the petitioner, the petitioner could not be subjected to the Model Standing Orders of the Rice Mill and he is governed by the Service Rules applicable to the workman employed in the administrative side of the Tamil Nadu Civil Supplies Corporation. According to him, while other Junior Assistants are governed by the service rules, the petitioner is sought to be governed by the Model Standing Orders.

9. I have considered the submissions made by the learned counsel for the petitioner.

10. There is a misconception on the part of both the petitioner as well as the respondents. Even the workmen, who are employed in the administrative side of the Civil Supplies Corporation are governed by the Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946, which are statutory in character. In fact, such certified Standing Orders are beneficial to the workmen who are governed by the Industrial Employment (Standing Orders) Act, 1946.

11. The "workman" is defined under Section 2(i) of the Industrial Employment (Standing Orders) Act, 1946. The definition of the "workman" under the said Act is same as that of the "workman" under Section 2(s) of the Industrial Disputes Act, 1947. Therefore, even an employee, who is working as a Clerk in administrative side is

also "workman" under the Industrial Disputes Act. If so, such workmen are also governed by the Industrial Employment (Standing Orders) Act, 1946. Only the Supervisors receiving more than Rs.10,000/- (Rupees ten thousand only) and the persons of the Managerial cadre alone are not governed by the Industrial Employment (Standing Orders) Act, 1946. The Certifying Officer under the Industrial Employment (Standing Orders) Act, 1946 has to certify the conditions of service of workmen by way of Standing Orders, after hearing the workmen / the Trade Unions on the draft Standing Orders. Thereafter, both the workman as well as the Management could file appeal before the Appellate Authority namely the Labour Court, if they are aggrieved over the certification.

12. Furthermore, a workman can move for any amendment in the conditions of service in the certified Standing Orders before the Certifying Officer, i.e., a workman can move any amendment in the Standing Orders governing the conditions of service. But it is not so in the case of Service Rules. The Service Rules are conditions of service framed by the establishment for non-workmen category. Therefore, in my considered view, the certified Standing Orders also apply to all the workmen, if those persons are workmen under Section 2(s) of the Industrial Disputes Act, 1947, whether they are employed in Technical Side or in Administrative Side or General Side.

13. In fact, this Court in Workmen, Addison Paints and Chemicals Assistants Association V. Addison Paints and Chemicals Ltd., reported in 1994 (1) LLN 716 held that the Junior Management Assistants in all the three groups, namely, Administrative Assistants, Technical Assistants and Research and Development Assistants are workmen under the Industrial Disputes Act. Applying the aforesaid ratio of the judgment, I have no hesitation to hold that the workmen employed on the administrative side such as, Junior Assistanats are also workmen under Section 2(s) of the Industrial Disputes Act. Hence, those workmen are covered by the Industrial Employment (Standing Orders) Act, 1946.

14. Therefore, the respondents cannot apply the Service Rules to the Junior Assistants employed in the Modern Rice Mill and all the Junior Assistants, including the petitioner are governed by the Standing Orders. It is made clear that the Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 would prevail over the regulations or the Service Rules framed by the establishment.

15. This Court has held in THE TAMIL NADU WATER SUPPLY AND DRAINAGE BOARD AND ANOTHER VS. M.D. VIJAYAKUMAR AND OTHERS [1991 (II) LLJ 260] that in the case of workman, the Industrial Employment (Standing Orders) Act, 1946 would prevail over the regulations relating to the conditions of service of the workman framed by the Board.

16. Therefore, I do not find any merit in this writ petition. However, I make it very clear that the petitioner cannot be discriminated in the matter of pay or promotion and he should be treated on par with other Junior Assistants for the purpose of pay as well as for promotion and other benefits.

17. The writ petition is disposed of with the above terms. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

TK
To

1. The Senior Regional Manager
Tamil Nadu Civil Supplies Corporation Ltd.,
South Arcot Region,
Cuddalore.

2. The Managing Director
Tamil Nadu Civil Supplies Corporation Ltd.,
Kilpauk,
Chennai - 600 010.

2 cc to Mr. K. Parthasarathy, Advocate Sr. No. 19286

ug(co)
pmk.16.6.2015

W.P.NO.9804 OF 2015

सत्यमेव जयते

WEB COPY