

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.06.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

W.A. NOS. 1425 TO 1434 OF 2015
W.A. NOS. 360 TO 369 OF 2016
AND
C.M.P. NOS. 5381 TO 5389 OF 2016

D.Roselin Joyce .. Appellant in WA 1425/15 and
Respondent in WA 360/16
S.Manickam .. Appellant in WA 1426/15 and
Respondent in WA 361/16
S.Jaya .. Appellant in WA 1427/15 and
Respondent in WA 362/16
M.Malikknisha .. Appellant in WA 1428/15 and
Respondent in WA 363/16
E.Malliga .. Appellant in WA 1429/15 and
Respondent in WA 364/16
J.Lakshmi .. Appellant in WA 1430/15 and
Respondent in WA 365/16
V.Vijaya .. Appellant in WA 1431/15 and
Respondent in WA 366/16
N.Vasantha .. Appellant in WA 1432/15 and
Respondent in WA 367/16
G.Gomathy .. Appellant in WA 1433/15 and
Respondent in WA 368/16
R.nagalakshmi .. Appellant in WA 1434/15 and
Respondent in WA 369/16

- Vs -

1. Tamil Nadu Civil Supplies Corporation Ltd.
Rep. By its Chairman & Managing Director
No.42, Thambusamy Street
Kilpauk, Chennai 600 010. ... Respondents 1 to 3 in WA No.
1425 to 1434 of 2015 and
Petitioners in WA No.360 to
369 of 2016.
2. The Manager (Administration - I)
Tamil Nadu Civil Supplies Corporation Ltd.
Head Office, No.42, Thambusamy Street
Kilpauk, Chennai 600 010.

3. The Senior Regional Manager
Tamil Nadu Civil Supplies Corporation
Cuddalore Region, Nellikuppam Road
Cuddalore. .. Respondents 1 to 3 in all WAs

4. The Senior Regional Manager
Tamil Nadu Civil Supplies Corporation
Sidco Complex, Vendikkal
Thiruvannamalai District 606 604.
.. 4th Respondent in WA No.1434 of
2015 and 4th Appellant in
WA No.369 of 2016.

W.A. No.1425 of 2015 filed against the order dated 17.2.2015
passed by the learned single Judge in W.P. No.21539 of 2014 to
21548 of 2014 respectively.

WP Nos.21539 to 21548 of 2014: Petitions filed under Article
226 of the constitution of India for the issuance of Writ of
certiorarified Mandamus calling for the entire records 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.AE12/25/29/2012 dated
30.04.2013 (served on 07.07.2014) and quash the the same in so
far 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 respectively, 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 respectively.

For Appellants : Mr. Balan Haridas in
WA 1425 to 1434/2015
Mr. C.Munusamy in
WA 360 to 369/2016

For Respondents: Mr. Balan Haridas in
WA 360 to 369/2016
Mr. C.Munusamy in
WA 1425 to 1434/2015

COMMON JUDGMENT
(DELIVERED BY HULUVADI G.RAMESH, J.)

This batch of writ appeals have been filed by the petitioners as well as the respondents in the writ petitions against the respective portion of the order passed by the learned single Judge. While W.A. Nos.1425 to 1434 of 2015 have been filed by the petitioners, W.A. Nos.360 to 369 of 2016 have been filed by the respondents in the writ petition against the order passed by the learned single Judge.

2. The appellants in W.A. Nos.1425 to 1434 of 2016, who are the petitioners, filed the writ petition seeking issuance of a writ of mandamus directing the respondents/authorities to regularise the service of the petitioners by fixing them in the scale of packers regularly employed in the respondent Corporation after making their service permanent with all consequential benefits.

3. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 (for short 'the Act'), was assented by the President of India on 5.8.1981 and came into force on 01.01.1982. The preamble to the Act applies to factories, plantations, motor transport undertakings, etc., of which the Government may, by notification declare to be an industrial establishment for the purpose of the Act. It is further stated therein that it does not apply to any industrial establishment until the expiry of two years from the date of its establishment and also to industrial establishments in which less than 20 workmen are employed on any day of the preceding 12 months. So also the Act is not applicable to workmen employed in industrial establishment engaged in the construction of buildings, bridges, roads, canals, dams or other construction work, whether structural, mechanical or electrical. The preamble to the Act also provides for a workmen, who has put in continuous service of 480 days in a period of 24 calendar months be conferred permanent status in the establishment. The Act provides that period of interruption in service due to sickness or authorised leave or accident or a legal strike, lock out, layoff effected under the standing orders or under an agreement, etc., should be included in computing the days on which the workman has worked in the establishment. During the said period of 24 calendar months for a period which does not exceed 3 months, a worker is not employed or discharged and in his place during such period a substitute is employed, such period shall also be counted as days on which the workmen has worked. In effect, the Act has been enacted for the purpose of safeguarding the workmen against unfair labour practices.

4. The facts, as admitted by the parties, are not in dispute. According to the learned counsel for the

appellants/employees, the petitioners are said to be working as casual workers in the Godown of the respondent/Corporation, wherein the operation of packing essential commodities, groceries and non-groceries is carried out for sale, not only through retail outlets, but also through Amudham Departmental Stores. This process is being in operation since 1976. Its functioning is incidental to the functioning of the Corporation.

5. It is alleged that by adopting unfair labour practice, the petitioners service had been exploited by appointing them as casual labourers at low wages since the year 1987 or so. Referring to individual writ petitions, it is stated that the petitioners are working for more than 10 years as on the date of filing the writ petition in the packing section, etc.

6. Referring to the judgment of this Court in respect of regularisation of casual labourers based on the Act, while regularisation is sought for, incidentally wages similar to men is also sought for by the petitioners on the ground that the Corporation cannot fix a different pay scale, one for men and another for women, in view of the similar nature of work being carried out by both men and women and, therefore, there cannot be any discrimination in the scale of pay.

7. The above issues have been considered by the learned single Judge in the order dated 17.2.15 passed in W.P. Nos.21539 to 21548 of 2014. In para-8 of the order, learned single Judge has referred to the Equal Remuneration Act, 1976, which provided for payment of equal remuneration/pay to men and women workers, for same work or work of similar nature.

8. In para-11 of the order in the writ petitions mentioned above, learned single Judge has made it clear that looking into the grievance of the petitioners that they are working since 1987, however, the petitioners were not regularised and the contention of the petitioners that they should be regularised from 10.9.01 for the purpose of fixing their service benefits and, therefore, the service of the petitioners should be regularised from 10.9.01. However, learned single Judge directed that the petitioners would not be entitled for backwages for the period in question. The petitioners have been regularised only pursuant to the order passed by the competent authority and would be paid wages from the date of regularisation and not from the date of order passed by the competent authority. Accordingly, while the respondent/Corporation was directed to regularise the service of the petitioners with effect from 10.9.2001 it was made clear that the petitioners service should be counted for fixing the total period of service. The respondent/Corporation was also directed to accord time scale of pay to the petitioners equal to that of the opposite sex in terms of Section 4 of the Equal

Remuneration Act. However, no backwages was granted to the petitioners and the writ petitions filed by the petitioners were allowed in the above terms.

9. Aggrieved by that portion of the order that went against them, while one set of appeals, W.A. Nos.1425 to 1434 of 2015 have been filed by the petitioners aggrieved by the fixation of the date from which the learned single Judge directed their services to be regularised and also with regard to non-grant of backwages, another set of appeals, viz., W.A. Nos.360 to 369 of 2016 have been filed by the Corporation against the portion of the order directing them to regularise the services of the petitioners and also for fixation of time scale of pay.

10. It is the contention of the learned counsel for the appellant/Corporation that the purpose of the enactment of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 is only for the purpose of benefiting those persons, who approach the Court well within the time. It is the submission of the learned counsel for the Corporation that the petitioners have filed the petitions only in the year 2014/2015 and as such the petitioners would not be entitled to have their services regularised as on 10.9.01 as they have not been diligent in pursuing the remedy available to them.

11. Per Contra, learned counsel appearing for the petitioners/appellants submit that as per Section 3 of the Act, the petitioners are entitled for confirmation/regularisation of their services with effect from the completion of 480 days in a period of 24 calendar months, subject to the conditions mentioned under Section 4 of the Act. In a nutshell, it is the submission of the learned counsel for the petitioners that each of the petitioner should be regularised in service on their completion of 480 days in a period of 24 calendar months and that they should also be paid the scale of pay on par with the opposite sex and that they would also be entitled for all the monetary benefits on their completing 480 days service from the date of their initial appointment. It is also submitted by the learned counsel for the petitioners that the petitioners have joined service since the year 1985.

12. Learned counsel appearing for the Corporation, however, refuted the stand of the petitioners contending that the date of completion of 480 days for the purpose of regularisation should be calculated not from the date of their initial joining as casual labourers, but only from September, 2001, and that the order of the learned single Judge has to be sustained. To drive home the above argument, learned counsel for the Corporation submitted that the petitioners not having approached this Court or the authorities concerned seeking regularisation at the

earliest point of time on their completing 480 days, they cannot, at this belated stage, claim regularisation from the date of their initial appointment.

13. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the Corporation and perused the impugned order passed by the learned single Judge as also the documents relied on by either side.

14. This Court has considered the rival contentions as advanced by the parties. However, this Court does not find any reason to accept the grounds as raised by the learned counsel for the Corporation. A cursory look at the service records of the petitioners reveal that the date of joining of the petitioners is between 1985 and 1987. In terms of Section 3 & 4 of the Act, excluding the period which the petitioners have absented or substituted for any reason, the service of the petitioners ought to have been regularised in service from the date of completion of 480 days from the date of their initial appointment. Therefore, to that extent, the order passed by the learned single Judge fixing the date of regularisation of the service of the petitioners as 10.9.01 is unsustainable. Accordingly, this Court holds that the date of regularisation of the petitioners service ought to be from the date each of the petitioners completed 480 days of service in a period of 24 calendar months as contemplated under Section 3 & 4 of the Act.

15. Insofar as fixation of time scale of pay on par with men is concerned, learned single Judge has adverted to Section 4 of the Equal Remuneration Act, 1976, which reads as under :-

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

(1) No employee 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."

16. From a reading of the above, it is evident that the workers, who discharge the same work or work of similar nature cannot be discriminated while payment of wages is concerned and both men and women, who discharge the same work or similar work should be paid the same wages. Therefore, rightly so the learned single Judge has directed the Corporation to pay time scale of pay to women employees, viz., the petitioners, who are

also discharging the similar work of packers like that of the male employees and, therefore, no interference is called for with the said portion of the order.

17. Insofar as backwages for the period from the date of regularisation in the time scale of pay is concerned, learned single Judge has negatived the claim for backwages. It is the contention of the learned counsel for the Corporation that the petitioners having moved this Court belatedly and for their inaction, the Corporation cannot be asked to pay backwages.

18. Though the above contention is advanced on the side of the Corporation, however, the said argument cannot be accepted. Mere delay in preferring the writ petition cannot be a ground to deny the petitioners of their legitimate right to have their services regularised and also for grant of time scale of pay and pay equal to that of the opposite sex. It is not the case of the Corporation that the petitioners were not employed prior to 10.9.01, i.e., the date on which their services were regularised. Only a feeble attempt is made that they are not workmen within the meaning of Section 2 (s) of the Industrial Disputes Act and that they are casual labourers. However, to substantiate the same, no documentary proof has been placed by the Corporation to sustain their claim. In the absence of any documents supporting the said stand, the Corporation now cannot contend that the petitioners are not entitled to claim backwages. Even otherwise, grant of backwages to the petitioners would be negligible in the present day scenario, keeping in mind the amount that would be involved and, therefore, the belated filing of the writ petition by the petitioners has, in fact, been a boon in disguise to the Corporation as the quantum of backwages to be paid to the individual petitioners would be negligible.

19. On an overall consideration of the entire matter, this Court holds that the petitioners are entitled to have their services regularised on their completing 480 days of service in a period of 24 calendar months from the date of their initial appointment. Consequently, the petitioners are also entitled to time scale of pay and also equal pay on par with the employees of opposite sex in the post of packers with the Corporation and that the petitioners are also entitled for backwages in the time scale of pay from the date of their regularisation.

20. Accordingly, the 2nd respondent is directed to regularise the service of the petitioners by ascertaining their date of joining from the official records and calculate 480 days of service in a period of 24 calendar months as per the provisions of Section 3 & 4 of the Act. The 2nd respondent is further directed to grant time scale of pay to the petitioners on par with the male employees, who are similarly placed as

packars and to pay the backwages from the date of their regularisation. The above exercise shall be completed by the 2nd respondent within a period of six months from the date of receipt of a copy of this order.

21. In the result, W.A. Nos.1425 to 1434 are allowed modifying the order of the learned single Judge with regard to backwages and the date of regularisation while W.A. Nos.360 to 369 of 2016 are dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

GLN

To

1. Chairman & Managing Director
Tamil Nadu Civil Supplies Corporation Ltd.
No.42, Thambusamy Street
Kilpauk, Chennai 600 010.
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
Cuddalore Region, Nellikuppam Road
Cuddalore.
4. The Senior Regional Manager,
Tamilnadu Civil Supplies Corporation Ltd.
Sidco Complex, Vendikkal,
Thiruvannamalai District.

11 ccs to Mr.K.Premkumar, Advocate, sr.32395
1 cc to Mr.C.Munusamy, Advocate, sr.32398

W.A. NOS.1425 TO 1434 OF 2015
AND W.A. NOS. 360 TO 369 OF 2016

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kra 20.07.2016