

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.1718 of 2016

and

WMP Nos.1494 & 1495 of 2016

1.V.Thangarasu  
2.M.Senthilkumar  
3.R.Kalaivani  
4.A.Dhandapani  
5.T.Mahesraja  
6.S.Arikrishnan

...Petitioners

Vs.

- 1 The State of Tamilnadu  
Rep. by its Agricultural Production Commissioner and  
Secretary to Government  
Agriculture (AM1) Department  
Secretariat, Chennai-600 009.
  - 2 The Secretary  
Agricultural Marketing & Agri Business Department,  
Villupuram Marketing Board,  
Villupuram - 605 602.
  - 3 The Marketing Superintendent,  
Regulated Market Committee,  
Villupuram-605 602.
  - 4 The Marketing Superintendent  
Regulated Market Committee,  
Gingee, Villupuram District.
  - 5 The Marketing Superintendent  
Regulated Market Committee,  
Ulundurpet, Villupuram District.
- ...Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the entire records relating to the 2nd Respondent's impugned Dinathanthi Tamil Daily News Paper Advertisement No. வெ.ஆ.எண்.224/செ.ம.தொ.அ./2015 நாள்: 16/12/2015. published on 17.12.2015 and quash the same.

For Petitioner : Mr.J.Agni Selvaraju

For Respondents: Mr.V.Jayaprakash Narayanan  
for R1 and R2  
Special Government Pleader  
Mrs.M.E.Rani Selvam for R3 to R5

ORDER

The six petitioners have jointly come to this Court seeking issuance of Writ of Certiorari to call for the entire records relating to the second respondent's impugned Dinathanthi Tamil Daily News Paper Advertisement No. வெ.ஆ.எண்.224/செ.ம.தொ.ஆ./2015 நாள் : 16/12/2015. published on 17.12.2015 and to quash the same and render justice.

2.The first petitioner claims that he has been working as Office Assistant in the Regulatory Marketing Committee, Gingee for more than 17 years from 04.03.1999. The second petitioner claims that he has been working as Office Assistant in the Regulatory Marketing Committee, Gingee for more than 10 years from 29.06.2005. The third petitioner claims that she has been working as Office Assistant in the Regulatory Marketing Committee, Gingee for more than 17 years from 04.03.1999. The fourth petitioner claims that he has been working as Watchman in the Regulatory Marketing Committee, Villupuram for more than 17 years from 22.09.1999. The fifth petitioner claims that he has been working as Watchman in the Regulatory Marketing Committee, Ulundurpet for more than 10 years from 10.05.2004. The sixth petitioner claims that he has been working as Watchman in the Regulatory Marketing Committee, Gingee for more than 17 years from 04.03.1999.

3.The petitioners were initially appointed on consolidated remuneration and subsequently, allowed to work through a contractor under the control of the second respondent. Therefore, several representations were made to regularise their services. But the respondent failed to consider their representations. In the meanwhile, the first respondent passed G.O.Ms.No.116, Agriculture (AM1) Department, dated 08.07.2009 granting permission to the Commissioner of Agricultural Marketing and Agricultural Business to fill up 37 posts of Office Assistants, 134 posts of Watchman and 8 posts of Driver through Employment Exchange.

4. In view of the above situation, the petitioners along with the others filed W.P.(MD) No.11395 of 2009 challenging the said Government Order in G.O.Ms.No.116, Agriculture (AM1) Department, dated 08.07.2009. Entertaining the said writ petition, an order of status-quo was granted on 05.11.2009 and a final order was also passed on 07.02.2014 directing the respondent to consider their representations on merits and in accordance with law. In spite of the said order, it is pleaded that the respondents have not come forward to consider their case.

5. When the matter stood as above, it is pleaded, the second respondent has issued advertisement No. வெ.ஆ.எண். 224/செ.ம.தொ.ஆ./2015 dated 16.12.2015 notifying application for the posts of Office Assistant. After seeing the advertisement, the petitioners have rushed to this Court challenging the same on the ground that the petitioners are working for more than 10 long years and that the respondents cannot proceed to fill up the post of Office Assistants in spite of the direction issued by this Court in W.P.(MD) No.11395 of 2009 dated 07.02.2014 directing the respondent to consider their representations on merits and in accordance with law.

6. Concluding his argument, the learned counsel appearing for the petitioners reiterated the claim that when all the petitioners are working for more than 10 long years, the respondent without regularising their services cannot proceed to fill up the vacancy by issuing the impugned advertisement.

7. A detailed counter affidavit has been filed by the learned Special Government Pleader wherein it is stated that the Market Committees are providing various infrastructural facilities and services to both agriculturists as well as traders. Since various infrastructural facilities are provided in the Regulated Market for the convenience of the Farmers as well as Traders, from out of the fee collected from them, they are also permitted to work as a separate financial unit. The pay and allowances are also initially aid from the Government fund and subsequently, they are being made by the Market Committee after collecting fees from the consumers.

8. It is further stated that it is the duty of the Market Committee to keep the market yard and its premises neat and tidy

and for providing drinking water and other facilities to the Farmers and Traders. Accordingly, the Villupuram Market Committee has passed resolution to engage Mazdoors on contingency basis to keep the Regulated Market and its premises neat and tidy and for providing drinking water and other facilities to the Farmers and Traders on monthly and daily wages.

9.It is further stated that the Villupuram Market Committee has passed resolution to engage the person for safe guard work through Private Security Agency on contingency basis and on the basis of the resolution, the Secretary, Villupuram Market Committee had made agreement with the Private Security Agency. Under the private agreement, persons for cleaning work in the Regulated Market of Villupuram Market Committee are entrusted with work by the Private Security Agency and at the end of every month, the Private Security Agency used to submit their claim bill for supply of persons to the Secretary, Villupuram Market Committee and consequently, the Secretary, Villupuram Market Committee used to pass contingency bill payment and payment to the Private Security Agency, Villupuram. Whiles, there is no direct payment made to the petitioners.

10.In view of the above, this Court on the last occasion has passed an order on 29.02.2016 directing the learned counsel for the petitioners to produce relevant document to show that they are being paid for the post of Office Assistant, but till date no document whatsoever has been filed.

11.In the facts and circumstances, the learned Special Government Pleader would submit that when the petitioners are also employed as Office Assistants and Watchman on the arrangement made by the Private Security Agency, taking advantage of the fact that they are all working in the Regulated Market premises cannot wrongly assert their right as though they are working directly under the Market Committee. Adding further, he would submit that so far as the contempt petition is concerned pending on the file of the Madurai Bench of this Court, the Government has also passed G.O.Ms.No.269, Agriculture (AM1) Department, dated 25.11.2015 reserving seven vacancies for the post of Watchman subject to the result of the Contempt Petition, however in the case on hand, the petitioners were not directly employed by the respondents, hence, there is no relationship of employer and employee. I agree with this submission.

12.Considering the fact that the petitioners have not filed any proof whatsoever to establish their case that they are

employed directly by the respondent Market Committee, inspite of the direction given by this Court to produce document to show that they are employed directly by the Market Committee and taking note of the stand taken by the respondents in the counter affidavit that the petitioners were employed directly by the Private Security Agency and they are neither employed by the respondents nor paid directly by them, this Court is not able to find any merits in the writ petition. Hence, the writ petition fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Agricultural Production Commissioner and Secretary to Government Agriculture (AM1) Department Secretariat, Chennai-600 009.
- 2 The Secretary Agricultural Marketing & Agri Business Department, Villupuram Marketing Board, Villupuram - 605 602.
- 3 The Marketing Superintendent, Regulated Market Committee, Villupuram-605 602.
- 4 The Marketing Superintendent Regulated Market Committee, Gingee, Villupuram District.
- 5 The Marketing Superintendent Regulated Market Committee, Ulundurpet, Villupuram District.

+1cc to M/S.V.Jayaprakash Narayanan, Advocate Sr.20944  
+1cc to Mr.J.Agniselvaraju, Advocate Sr.20878

W.P.No.1718 of 2016

ak(CO)  
srg(22/04/2016)