

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Monday, the Twenty Fourth day of July Two Thousand Seventeen

PRESENT

THE HON`BLE MR JUSTICE S.M.SUBRAMANIAM

WMP.No.14222 of 2017 in WP.No.13231 of 2017

WMP.Nos.14223 to 14232 of 2017 in WP.Nos.13233 to 13242 of 2017

B.PARTHIBAN [PETITIONER IN WMP.14222/17
IN WP.13231/17]

I.MANIVEZH [PETITIONER IN WMP.14223/17
IN WP.13233/17]

M.SIVAKUMARAN [PETITIONER IN WMP.14224/17
IN WP.13234/17]

B.KADHIRESAN [PETITIONER IN WMP.14225/17
IN WP.13235/17]

G.KALYANASUNDARAM [PETITIONER IN WMP.14226/17
IN WP.13236/17]

A.GUNASEKARAN [PETITIONER IN WMP.14227/17
IN WP.13237/17]

THIRU.M.NAUSATH ALI [PETITIONER IN WMP.14228/17
IN WP.13238/17]

S.BALACHANDRAN [PETITIONER IN WMP.14229/17
IN WP.13239/17]

S.MARIMUTHU [PETITIONER IN WMP.14230/17
IN WP.13240/17]

A.BALAGURUNATHAN [PETITIONER IN WMP.14231/17
IN WP.13241/17]

R.VINOTH [PETITIONER IN WMP.14232/17
IN WP.13242/17]

Vs

1 THE GOVERNMENT OF TAMIL NADU
REP.BY ITS SECRETARY, DEPARTMENT
OF HIGHWAY AND MINOR PORTS,
FOR ST. GEORGE CHENNAI 600 009.

[1st RESPONDENTS IN ALL THE
PETITIONS]

2 TAMIL NADU ROAD DEVELOP.CO.LTD
REP.BY ITS CHARIMAN & MANAGING
DIRECTOR,171 TNMB BUILDS. GREENWAYS
ROAD,SOUTH KESAVAPERUMAL PURAM,
RAJA ANNAMALAI PURAM,
CHENNAI 600 028

IT EXPRESSWAY LTD.,
A GROUP CONCERN OF
TAMILNADU ROAD DEVELOPMENT
CO. LTD., REP. BY ITS CHAIRMAN
AND MANAGING DIRECTOR, NO.171,
2ND FLOOR, TNMB BUILDINGS
GREENWAYS ROAD, SOUTH KESAVAPERUMAL
PURAM, CHENNAI-28.

(8) to stay the operation of the said impugned termination notice dated 28.4.2017 bearing No. ITEL/ HR/ 089/2017 issued by the 2nd respondent on the petitioner (in WMP.No.14229/2017);

(9)to stay the operation of the said impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 222/2017 issued by the 2nd respondent on the petitioner (in WMP.No.14230/2017);

(10)to stay the operation of the said impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 223/2017 issued by the 2nd respondent on the petitioner (in WMP.No.14231/2017);

(11)to stay the operation of the said impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 227/2017 issued by the 2nd respondent on the petitioner (in WMP.No.14232/2017)during the pendency of this WP.Nos.13231, 13233 to 13242/2017 respectively

Order : These petitions coming on for orders upon perusing the petition and the respective affidavits filed in support thereof and upon hearing the arguments of M/S.VELAYUTHAM PICHAIYA, Advocate for the petitioner and of M/S.K.DHANAJEYAN, Special Government Pleader on behalf of the 1st respondent in all the petitions and of M/S.VIJAY NRARYANAN for M/S.SIVAVARTHANAN, Advocate for the for the 2nd respondent in all the petitions the court made the following order:-

Termination Notices issued by the second respondent on 28th April, 2017, are challenged in these Writ Petitions.

2.Mr.Vijay Narayan, learned Senior Counsel appearing on behalf of Mr.M.Sivavarthan, learned counsel for the second respondent, firstly contended that the writ petitions are not maintainable, since the petitioners are workmen as defined under the Industrial Disputes Act and they have to move the Labour Court for redresal of their grievances. Secondly, it was urged that the regular recruitment process in accordance with the Rules had not undertaken at the time of entering into the contract by the respondents with the writ petitioners.

3.On a perusal of the the contract, which is enclosed in page No.2 of the typed set of papers, filed along with W.P.No.13231 of 2017, it has been stated as follows:

"Sub:Service contract assignment as Site Engineer-
Chennai-Ennore Port Connectivity Project.

Further to your application and subsequent interview, we are pleased to offer you a Service Contract assignment with our Company on the terms and conditions set forth in this Order:

(1) Your Service Contract Assignment will be as Site Engineer under Chennai Ennore Port Connectivity Project for the Sea Protection Works along with the Ennore Expressway.

(2) You will be paid monthly remuneration as per break up given below:

Basic Pay	Rs. 4400
HRA	Rs. 2200
Special Allowance	Rs. 4400
Conveyance Allowance	Rs. 1000
Total	Rs.12000
PF @ 12%	Rs. 528/-

(3) Your assignment as Site Engineer is effective from the date of your joining, initially for a period of 1 year and any extension thereof, would be decided mutually at that point of time.

(4) Your entitlement for leave will be as per statutory rules and regulations.

(5) You shall report to the Team Leader/Project Manager for day today functioning.

(6) Your services may be discontinued from either side by giving one month's notice or one month's salary thereof.

(7) During the tenure of your assignment as Site Engineer, neither you nor any sub-consultants working with you, nor any personnel of either of you, shall engage, either directly or indirectly, in any business or professional activities, which would conflict with the activities assigned to you under this assignment.

(8) You, your sub-consultants, if any, and Personnel of either of you, shall not, either during the tenure of the assignment or after completion of the services, disclose any proprietary or confidential information relating to the Projects or activities, consultancy services, TNRDC business or operations, without prior written consent of TNRDC.

(9) You re requested to confirm acceptance of the terms and conditions set forth in this assignment order by signing on the duplicate copy of this order and returning the same to the undersigned."

4.The said letter of Contract issued on 16th April, 2004, was confirmed in order dated 18th March, 2006. In paragraph No.2 of the confirmation letter, it is stated that "all the other terms and conditions mentioned in Appointment Letter dated 28th September, 2005, shall remain the same."

5.The letter dated 28th September, 2005 also stipulates the notice period, as extracted hereunder:

(3) Notice Period:

During your probation, your services would be liable to be terminated by either side giving one month's notice or on payment of an amount equivalent to one month's Gross Salary in lieu of the notice period. However, on confirmation, either side may discontinue the services by giving three months notice or by payment of three months Gross Salary in lieu of the notice period."

6. On a perusal of all those letters, this Court is able to find out that the appointments provided in favour of the writ petitioners were only on contractual basis and there was no assurance for permanent absorption by the respondents. When regular recruitment process in accordance with the Recruitment Rules are not undertaken and the petitioners were appointed to work only for a particular project on certain terms and conditions, under the contract no right can be claimed for permanent absorption or continuation after completion of the project.

7. As far as the Ennore Port Connectivity Project is concerned, the job has already been completed and the writ petitioners cannot claim any right over the contractual appointment thereafter. Such being the factum of the case, this Court is not inclined to continue the interim orders of *status quo* granted in this matter.

8. Accordingly, the interim orders of *status quo* granted by this Court on 24.05.2017 in WMP Nos. 14222 of 2017 in W.P.No. 13231 of 2017 and WMP Nos. 14223 to 14232 of 2017 in W.P.Nos. 13233 to 13242 of 2017, are vacated and the aforementioned Writ Miscellaneous Petitions stand dismissed.

-sd/-
24/07/2017

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE SECRETARY,
THE GOVERNMENT OF TAMIL NADU, DEPARTMENT
OF HIGHWAY AND MINOR PORTS, FOR ST. GEORGE
CHENNAI 600 009.

2 THE CHARIMAN & MANAGING
DIRECTOR, TAMIL NADU ROAD DEVELOP.CO.LTD.,
171 TNMB BUILDS. GREENWAYS ROAD,SOUTH
KESAVAPERUMAL PURAM, RAJA ANNAMALAI PURAM,
CHENNAI 600 028

C.C. to M/S.VELAYUTHAM PICHAIYA Advocate on payment of necessary charges

+2 C.C. to M/S.SIVAVARTHANAN, Advocate Sr.No.9621, 9622.

The Government Advocate, High Court, Madras - 104.

Order

in

WMP.No.14222 of 2017 in WP.No.13231 of 2017

WMP.Nos.14223 to 14232 of 2017 in WP.Nos.13233 to 13242 of 2017

Date :24/07/2017

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
KP(02.08.2017)