

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No.20376, 20377 and 20378 of 2003

- | | |
|-------------------|-----------------------------------|
| 1. D.Arokyanathan | ..Petitioner in W.P.No.20376/2003 |
| 2. H.Krishnan | ..Petitioner in W.P.No.20377/2003 |
| 3. N.V.Seenivasan | ..Petitioner in W.P.No.20378/2003 |

Vs.

Commandant Madras Regiment
Centre, Wellington,
The Nilgiris.

..Respondent in all WPs

PRAYER in W.P.No.20376 of 2003 : Petition filed Under Article 226 of the Constitution of India to issue an order of direction, or a writ or an order and most specifically in the nature of Writ of Mandamus directing the respondent to provide employment to the petitioner as Binder and Consequentially direct the respondent to regularise the services of the petitioner, with all attendant benefits applicable to the permanent employee of the respondent.

PRAYER in W.P.No.20377 of 2003 : Petition filed under Article 226 of the Constitution of India to issue an order of direction, or a writ or an order and most specifically in the nature of Writ of Mandamus directing the respondent to provide employment to the petitioner as Machineman and consquentially direct the respondent to regularise the services of the petitioner, with all attendant benefits, as applicable to the permanent employee of the respondent.

PRAYER in W.P.No.20378 of 2003 : Petition filed under Article 226 of the Constitution of India to issue an order of direction, or a writ or an order and most specifically in the nature of Writ of Mandamus directing the respondent to provide employment to the petitioner as Offset Machineman and consquentially direct the respondent to regularise the services of the petitioner, with all attendant benefits, as applicable to the permanent employee of the respondent.

For Petitioners : Mr.T.K.Ramkumar
in all W.Ps

For Respondent : No appearance
in all W.Ps

C O M M O N O R D E R

The present Writ Petitions are filed for directing to the respondent to provide employment to the Petitioners as Binder/Offset Machineman/ Machineman, and to regularise the services of the petitioners, with all attendant benefits as applicable to the permanent employees of the respondent.

2. The learned Counsel appearing for the Writ Petitioners strenuously contended that the Writ Petitioners are the deserving candidates for appointment to the post of Binder/Offset Machineman/Machineman in the M.R.C. Printing Press and the Press was initially established in the year 1985 by the respondent for the purpose of undertaking printing job in Madras Regimental Centre, Wellington, Nilgiris District.

3. At the time of establishment, the Writ Petitioners were issued orders of Appointment dated 22.03.1985. The conditions stipulated in the order of Appointment, in respect of the writ petitioner in W.P.No.20376 of 2003 is extracted hereunder, for appreciation:

- " 1. your appointment is purely on temporary basis.
2. If your services are found unsatisfactory, you will be terminated from service giving one month's notice.
3. Your pay will be Rs.250/- per month with an increment of Rs.20/- per year. This will be revised at the discrete of the Management from time to time.
4. You are entitled to 15 days earned leave and 10 days casual leave in a year. At a time you can avail only five days earned leave and two days casual leave.
5. Working hours will be from 900 hours to 1800 hours with a break of one hour for meals from 1300 hours to 1400 hours.
6. You have to work for extra time based on the work load for which you will be paid over time allowance as fixed by the Management from time to time.
7. You are liable to work as per the directions of the Management".

Similarly, in respect of the writ petitioners in W.P.Nos. 20377 and 20378 of 2003, the following are the conditions stipulated in the Agreements made during August, 2001:

- "1. This deed of Agreement executed on this 1st of Aug 2001 between the commandant, the Madras Regimental Centre, Wellington (Nilgiris) hereinafter called employer on the one part and Mr.H.Krishnan, S/o B Hallan aged 34 years, residing at Door No.143, Kakkamalaya line, Upper

Cruzepeett Boys Company, Wellington, Nilgiris-643 231 hereinafter called the part time temporary labour of the other part witnessed as follows:-

2. The employer hereby confirms and ratifies the appointment of the employee as Civilian Part time temporary labour of the Madras Regimental Centre for a period of 89 days with effect from 01 Aug 2001, terminated at 14 days notice by the either party.

3. The employee will be on a honorarium of Rs.51/- per day on daily wages and Rs.1520/- (Rupees One Thousand Five Hundred Twenty only) per month with effect from 01 Aug 2001. The employee solemnly agrees that he will carry out his duties as laid down in the standing instructions for the MRC civilian employees and carry out the instructions issued by the employer from time to time.

4. The employee will be accountable for any losses due to misuse of Govt/MRC property or any other negligence in the discharge of his duties.

5. The employer is required to give priority to employ ex-servicemen hence if ex-servicemen applies for the temporary appointment the employee will be given 14 days notice for termination of the temporary employment.

6. The job offered is not reserved for any reserved category life SC & ST. it is offered to general category.

7. The honorarium will be paid only for the period of part time temporary employment. The employee will not eligible for any other claim except the honorarium on the employer."

4. On reading of the conditions stipulated in the appointment orders, it is unambiguous that the appointments are purely on temporary basis and the present Writ Petitioners were appointed without undertaking the recruitment process contemplated in the relevant Rules.

5. The respondent is coming under the Ministry of Defence, Government of India and the Rules are prescribed for recruitment to the post of Binder/Offset Machineman/Machineman. During the relevant point of time, the Writ Petitioners were appointed on temporary basis and the learned Counsel appearing for the Writ Petitioners submitted that the petitioners' services were dispensed with from June 2003, onwards.

6. The candidates who were appointed on a temporary basis cannot have any right for confirmation and the Constitutional Bench of the Hon'ble Supreme Court of India in THE SECRETARY STATE OF KARNATAKA AND ORS v. UMA DEVI & ORS [2006 (4) SCC 1], held that all the Recruitment and Appointment to the Public Office should be made through the Constitutional Schemes and all back door entries to the Public appointments are to be deprecated. An opportunity of employment should be thrown open to all the citizens in order to provide equal opportunity to the citizens and the obligation cast on the State under Article 39(a) of the Constitution of India is to ensure that employment opportunity to be provided equally to all the citizens. Hence, any back door entry to the Public Office has to be deprecated and confirmation and Regularisation cannot be accorded to the persons who entered into the Public Office by the way of back door entry.

7. No doubt, the Writ Petitioners may be qualified for the post of Binder/Offset Machineman/Machineman. Further, they may be socially and monitorily in weaker side. But, all those sympathy grounds advanced by the learned Counsel appearing for the petitioners, cannot be considered, in view of the fact that an opportunity of the employment to be provided to all the citizens and any discrimination among the persons will result in violation of Constitutional mandate. Such being the legal principles laid down by the Constitutional Bench of the Hon'ble Apex Court of India, the prayer as such sought for by the Writ Petitioners in these Writ Petitions, cannot be considered.

Accordingly, the Writ Petitions stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

rpa/gsk

To

The Commandant Madras Regiment
Centre, Wellington, The Nilgiris.

+ 3 ccs to M/s. Paul & Paul, Advocate Sr.26270

W.P. No.20376, 20377 and 20378 of 2003

NM(CO)

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