

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.13844 of 2010

and

M.P.No.2 of 2010

- 1.S.A.Padmanathan
- 2.P.Balakrishnan
- 3.S.Rajagopal
- 4.R.Selvakumar
- 5.R.Arunachalam
- 6.P.Ganapathy
- 7.T.Jayashankar
- 8.V.Shanmugam
- 9.Sudharshan
- 10.K.Jayakumar
- 11.N.Viswalingam
- 12.M.Backianathan
- 13.I.Loganathan
- 14.Gnanasekaran
- 15.S.Sivasubramani
- 16.A.Selvaraj
- 17.P.Assainar

... Petitioners

Vs.

- 1.The Principal Secretary to Government,
Environment and Forest (FR 8) Department,
Secretariat, Chennai - 9.

- 2.The Managing Director,
Tamil Nadu Tea Plantation Corporation
Limited, Registered Office,
TANTEA Complex, Coonoor - 643 101.
The Nilgiris.

- 3.Nirmala
- 4.Rathinam
- 5.K.Ganeshan
- 6.A.Pappusami
- 7.B.Subramani
- 8.V.Mohana
- 9.Udhayakumar

10.L.Stanley
11.Ayyappan
12.Rajakumari
13.Soundrarajan
14.Muthukaruppan
15.Veerakannan
16.Pushparaj

.. Respondents

(Respondents 4 to 16 are
impleaded vide order dated
06.07.2010 in M.P.No.4 of 2010
in W.P.No.13844 of 2010)

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records on the file of the second respondent in proceedings Ref.No.E3/2257/2009 (vii) dated 26.05.2010 and quash the same as illegal, incompetent and without jurisdiction and further direct the respondents 1 and 2 to consider the request to regularise the service of the petitioners as Office Assistants in staff category in the second respondent Corporation in the time scale of pay on par with the regular basic servants.

For Petitioner .. Mr.Adinarayana Rao
For Respondents .. Mr.M.Santhanaraman,
Addl. Govt. Pleader for R1 & R2
Mr.M.Ravi for R3 to R16

ORDER

Challenging the order of the second respondent dated 26.05.2010 and for a consequential direction to respondents 1 and 2 to consider the request to regularise the services of the petitioners as Office Assistants in staff category in the second respondent Corporation in the time scale of pay on par with the regular basic servants, the present writ petition has been filed.

2.The case of the petitioners is as follows:

(i) All the petitioners were appointed as workers under the second respondent on various dates and they have been working on consolidated wages for number of years from the date of their initial appointment as the case may be. According to the petitioners, though they have been working as workers for number of years, the Corporation has not provided any avenue of promotion and the petitioners have been allowed to stagnate in the same position as workers. According to them, some time in 2009-2010, a proposal was sent to the Government by the

Corporation for amending the existing rules for appointment to the post of Office Assistant by including the Worker category in the Service Rules. The said proposal received consideration at the hands of the Government, but, however, the same was rejected as not being feasible.

(ii) While matter stood thus, in 2010, the Corporation has called for candidates from the open market for appointment to the post of Office Assistant. Number of candidates had been sponsored by the employment exchange in response to call by the Corporation. The workers including the petitioners herein were also permitted to participate in the selection process. A Selection Committee was also constituted for the said purpose. The Selection Committee after considering various candidates for selection has eventually selected and appointed respondents 3 to 16 on various dates in 2010. The details of the persons selected and appointed are given in the tabular column as found in para 6 of the counter affidavit filed on behalf of the Corporation. According to the petitioners, though they have been working for number of years and the Corporation had been using their services as Office Assistants in the absence of regular Office Assistants, but in the matter of appointment as regular Office Assistants, they have been denied appointment as many of the persons who are selected and appointed in 2010 did not possess the long years of experience as put in by the petitioners herein. According to the petitioners, the entire selection process was discriminatory in order to deny the fruits of regular appointment to the workers like the petitioners whose services have been utilised as Office Assistants for number of years by the Corporation. In the said circumstances, the petitioners have approached this Court seeking the relief as stated supra.

3. Upon notice, Mr. M. Santhanaraman, learned Additional Government Pleader entered appearance for respondents 1 and 2 and Mr. M. Ravi, learned counsel entered appearance for the private respondents/respondents 3 to 16.

4. Mr. Adinarayana Rao, learned counsel appearing for the petitioners would vehemently contend that the entire action by the second respondent is actuated by malafides and the selection is tainted with discrimination and therefore, the same is liable to be interfered with. According to the learned counsel for the petitioners, although the proposal for amendment of Service Rules has been rejected on 24.03.2010, but the same was not translated into actual action as persons from the Worker Category had been selected and appointed in the selection which took place in 2010. He would further submit that the second petitioner, who withdrew from the writ petition was accommodated, though he was found to be not qualified. Learned

counsel would further submit that many persons who are found to be not qualified in terms of the Service Rules have been accommodated. Therefore, the entire selection needs to be revisited as the same was not in consonance with law.

5.Mr.M.Santhanaraman, learned Additional Government Pleader appearing for respondents 1 and 2 would submit that a Selection Committee was constituted for selecting the candidates and the selection has been done in terms of the Service Rules. According to him, the Service Rules for appointment to the post of Office Assistant is only by way of direct recruitment and therefore the question of accommodating any person from Worker category directly will not arise at all. Although the Corporation had sent a proposal for amendment to the Service Rules in order to accommodate the category of Worker for appointment to the post of Office Assistant, the same was rejected by the Government. Learned counsel would submit that the rejection of the proposal was not put to challenge and in the absence of a challenge, it is not open to the petitioners to assail the present order of appointment of the private respondents.

6.Learned Additional Government Pleader appearing for respondents 1 and 2 would also submit that all the petitioners were allowed to participate in the selection and after due consideration of each one of the candidature, the selection was finally concluded and appointment orders were issued on various dates in 2010 to the private respondents. The averments as contained in para 15 of the counter filed on behalf of respondents 1 and 2 would make clear the stand of the official respondents. The relevant portion of the averments in the counter affidavit is extracted below:

"15.....All the selected candidates were given due appointment letters and they have already joined duty on 27.05.2010/28.05.2010/29.05.2010/01.06.2010 and working in various places for more than a year. It is false to allege that except the petitioners, the rest do not have experience. In fact, no experience is required for the selection of Office Assistant under the Staff Service Rules of the Corporation. In the said selection, out of 35 candidates sponsored by the employment exchange, 4 candidates were selected for the post. In addition, 10 internal candidates, who are daily rated permanent workers like the petitioners were also selected and joined duty on 27.05.2010/28.05.2010/29.05.2010/01.06.2010. Among the internal candidates, 5 Srilanka Repatriates have also been selected and appointed."

7.From the above, it could be seen that even some of the candidates who are selected and appointed belong to Srilankan Repatriate category and therefore, it appears that there was due weightage given to their grievances also. The learned counsel also submits that as regards the second petitioner is concerned, he was only wait listed and since one of the candidates who was selected and who did not join, he was accordingly accommodated.

8.Mr.M.Ravi, learned counsel appearing for respondents 3 to 16 would submit that the petitioners having participated in the selection process and being unsuccessful cannot now turn around and assail the order of appointment of the private respondents. In support of his contention, he would rely on the judgment in Dhananjay Malik and Others Vs. State of Uttaranchal and Others ((2008) 4 SCC 171), in which the Supreme Court has held that persons having unsuccessfully participated in the process of selection without any demur are estopped from challenging the selection.

9.There cannot be any quarrel on the said proposition of law since the law is well settled. In any event, independent of that, this Court was called upon to decide as to the correctness of the validity of the selection made, which cannot be brushed aside on the ground that the candidates have participated in the selection.

10.Upon consideration of all the issues and after perusing the relevant materials and pleadings of the parties and the rival submissions made by the learned counsel representing the respective parties, this Court is of the firm view that the Service Rules provide for only one method of appointment viz., by direct recruitment. In the said circumstances, the grievance of the petitioners that despite their participation, they have to be accommodated in preference to respondents 3 to 16 cannot be countenanced in law and on fact. The contents of the counter affidavit filed on behalf of the official respondents clearly disclose the inter se merit of the candidates considered and the basis of the appointment of private respondents. Therefore, the selection of respondents 3 to 16 cannot be faulted. Even assuming that there is a minor infraction in the matter of selection but that cannot be the reason for setting aside the entire order of selection, which has taken place as early as 2010 and the candidates who were selected and appointed have been working since 2010 till date.

11.Be that as it may, taking note of the fact that the petitioners have been languishing in the same post for number of years, working on a limited consolidated salary, without any scope for promotion or increase in their emoluments, this Court thinks it fit to direct the official respondents to consider the

claim of the petitioners for any future appointment, which may take place to the post of Office Assistant, by giving some kind of preferable right to them. In the peculiar facts and circumstances of the case, this Court is of the view that the first respondent is directed to reconsider the decision in regard to the proposal sent by the second respondent Corporation for amending the Service Rules in order to accommodate the interest of the workers like the petitioners for the purpose of appointment to the post of Office Assistant. The first respondent is directed to revisit the proposal and take a final decision within a period of three months from the date of receipt of a copy of this order.

12. With the above direction, the writ petition stands disposed of and the appointment of the private respondents is liable to be untouched and the same is upheld. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mmi

To

1.The Principal Secretary to Government,
Environment and Forest (FR 8)
Department, Secretariat,
Chennai - 9.

2.The Managing Director,
Tamil Nadu Tea Plantation Corporation
Limited, Registered Office,
TANTEA Complex, Coonoor - 643 101.
The Nilgiris.

+1cc to Mr.Adinarayana Rao, Advocate SR.No.49804
+1cc to Mr.T.Ravi, Advocate SR.No.50215

W.P.No.13844 of 2010

SK(CO)]
GN(09/08/2017)