

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.Nos.32997 and 33799 of 2003
and
W.P.M.P.Nos.39938 and 40957 of 2003
and
W.V.M.P.Nos.57 and 129 of 2004

Tamil Nadu Civil Supplies Corporation
Employees Union rep. by its
General Secretary M.Pachimuthu .. Petitioner in
W.P.No.32997 of 2003

Tamil Nadu Civil Supplies Corporation
Anna Thozhir Sangam rep. by its
State Secretary K.Suriya Achari .. Petitioner in
W.P.No.33799 of 2003

Vs.

The Management of Tamil Nadu Civil
Supplies Corporation Ltd.,
No.12 (Old No.42), Thambusamy Road,
Kilpauk, Chennai - 10 rep. by its
Chairman and Managing Director .. Respondent in
W.P.No.32997 of 2003

1.Tamil Nadu Civil Supplies Corporation
Limited rep. by its Chairman and
Managing Director,
No.42, Thambusamy Road, Kilpauk,
Chennai - 10.

2.The General Manager (Administration),
Tamil Nadu Civil Supplies Corporation
Limited, No.42, Thambusamy Road,
Kilpauk, Chennai - 10. .. Respondents in
W.P.No.33799 of 2003

W.P.No.32997 of 2003: Petition filed under Article 226 of The
Constitution of India praying for the issuance of a writ of
declaration declaring the Head Office proceedings of the

respondent Corporation bearing No.E.4/12412/02 dated 03.07.2003 to be illegal and void and unenforceable and consequently direct the respondent not to give effect to the Head Office proceedings bearing No.E.4/12412/02 in any manner.

W.P.No.33799 of 2003: Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of declaration declaring the action of the respondents in altering/reducing the cadre strength of the Corporation and the consequential reversion or ouster of employees, as per the proceedings of the first respondent bearing ref.E4-12414/2002-29 dated 03.07.2003 and the second respondent bearing ref.RC.No.E4/134833/2003 dated 06.11.2003 as illegal and consequently forbear the respondents from downsizing or restructuring the cadre.

For Petitioner ... Mr.V.Prakash, Sr. Counsel
for M/s.V.Prakash & K.Ramkumar
in W.P.No.32997 of 2003

Mr.Bharatha Chakravarthy
for M/s.Sai, Bharath and Ilan
in W.P.No.33799 of 2003

For Respondents ... Mr.V.Selvanayagam
in both the W.Ps

COMMON ORDER

The petitioner in W.P.No.32997 of 2003, which is a registered Union, has approached this Court seeking the following relief:

to declare the Head Office proceedings of the respondent Corporation bearing No.E.4/12412/02 dated 03.07.2003 to be illegal and void and unenforceable and consequently direct the respondent not to give effect to the Head Office proceedings bearing No.E.4/12412/02 in any manner.

2.The case of the petitioner Union in W.P.No.32997 of 2003 is as follows:

(i)The petitioner Union is the only recognised union espousing the cause and interest of the employees of the respondent Corporation. The Union has been consulted by the management on all issues concerning the service conditions of the employees. The grievance of the employees Union is that the respondent management has unilaterally declared certain posts in the Civil Supplies Corporation to be surplus and had subjected

those persons, who are holding the posts, which according to the respondent are surplus, to reversion posts. When a similar measure was taken by rationalising the cadre strength, the Union has approached this Court in W.P.No.46473 of 2002 and in the said proceedings, the respondent appears to have held out assurance that there will not be any reduction of workers strength or retrenchment and the statement was recorded by this Court and an order was pronounced on 04.04.2003. According to the petitioner/employees Union, in view of the assurance held out by the management, status quo as prevailed in 2003 has been continued as on date.

(ii) While matter stood thus, the respondent Corporation has passed a resolution on 11.06.2002 and the subsequent consequential action taken by the Corporation vide proceedings dated 03.07.2003 by constituting a Committee to review the possibility of reducing the employee strength by 30% within a period of five years and to identify the surplus posts in all categories. This unilateral decision taken by the management, according to the petitioner Union, is a clear violation of Section 9A of the Industrial Disputes Act, 1947 (for short 'the Act'). The petitioner Union was not taken into confidence before passing any resolution towards possible reduction of staff strength to the union. In the absence of consultative process, the service conditions of the existing employees cannot be altered to their detriment. Therefore, the action initiated by the Corporation is in violation of the mandatory provisions of the Act.

3.Mr.V.Prakash, learned senior counsel appearing for the petitioner would submit that the provisions as contained in Section 9A of the Act is mandatory and the proceedings dated 03.07.2003 which is the subject matter of the present proceedings cannot be countenanced in law. Section 9A of the Act reads as follows:

9-A. Notice of Change:- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, -

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of change proposed to be effected; or

(b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change-

(a) where a change is effected in pursuance of any settlement or award or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

4. Learned senior counsel appearing for the petitioner would draw this Court's specific attention to the IVth Schedule of the Act and Section 9A of the Act, particularly clauses 10 and 11, which deal with rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen and any increase or reduction other than casual in the number of persons employed or to be employed in any occupation or process or department or shift not occasioned by circumstances over which the employer has no control. In the said circumstances, the action initiated by the Corporation, without resorting to the mandatory provisions of law as contained in the Act is liable to be declared as illegal and void. According to the learned senior counsel, it is always open to the management to issue appropriate notice under Section 9A of the Act and pursue their further action after setting in motion the consultative process with the Union and any decision is required to be taken in a consultative process with the Union, which is representing the interest of the workmen/employees.

5. Upon notice, Mr. V. Selvanayagam, learned counsel entered appearance on behalf of the respondent and filed a detailed counter affidavit.

6. In the counter affidavit, it is averred that the Corporation is only attempting to regulate the staff strength and therefore the same does not attract Clause 11 of IV Schedule of the Act. However, the averments, in totality, as contained in the counter affidavit, would clearly point out the fact that the Corporation is attempting to regularise the cadre strength of its employees and such exercise may result in reduction of cadre strength in future. In such view of the matter, it is imperative that the Corporation shall resort to the mandatory provisions of the Act before any final decision is taken regarding the cadre strength.

7.As rightly contended by Mr.V.Prakash, learned senior counsel that the present action which was taken unilaterally cannot be held to be valid. He would also rely on the decisions of the Supreme Court in Workmen of The Food Corporation of India Vs. Food Corporation of India ((1985) 2 SCC 136) and Lokmat Newspapers Pvt. Ltd., Vs. Shankarprasad (1999-II LLJ 136). In both decisions, the Supreme Court has clearly held that any alteration of conditions of service cannot be allowed in the absence of resorting to the mandatory provisions as provided for under Section 9A of the Act.

8.In the light of the above discussion and the narrative, this Court is of the firm view that the unilateral action initiated by the respondent Corporation in order to regulate the cadre strength of its employees without issuing a notice under Section 9A of the Act cannot be held to be valid and therefore, the said action initiated vide proceedings in Proc.No.E4/12414/2002-29 dated 03.07.2003 in pursuance of the earlier resolution dated 11.06.2002 is declared as illegal and void.

9.It is open to the Corporation to issue notice under Section 9A of the Act for regulating the cadre strength to the petitioner Union and other employees concerned and pursue the action as they deem fit and provided in the circumstances of the case. In the above circumstances, the writ petition in W.P.No.32997 of 2003 is allowed as prayed for.

10.The order passed in the present writ petition will also hold good for the other writ petition i.e. W.P.No.33799 of 2003. Accordingly, both the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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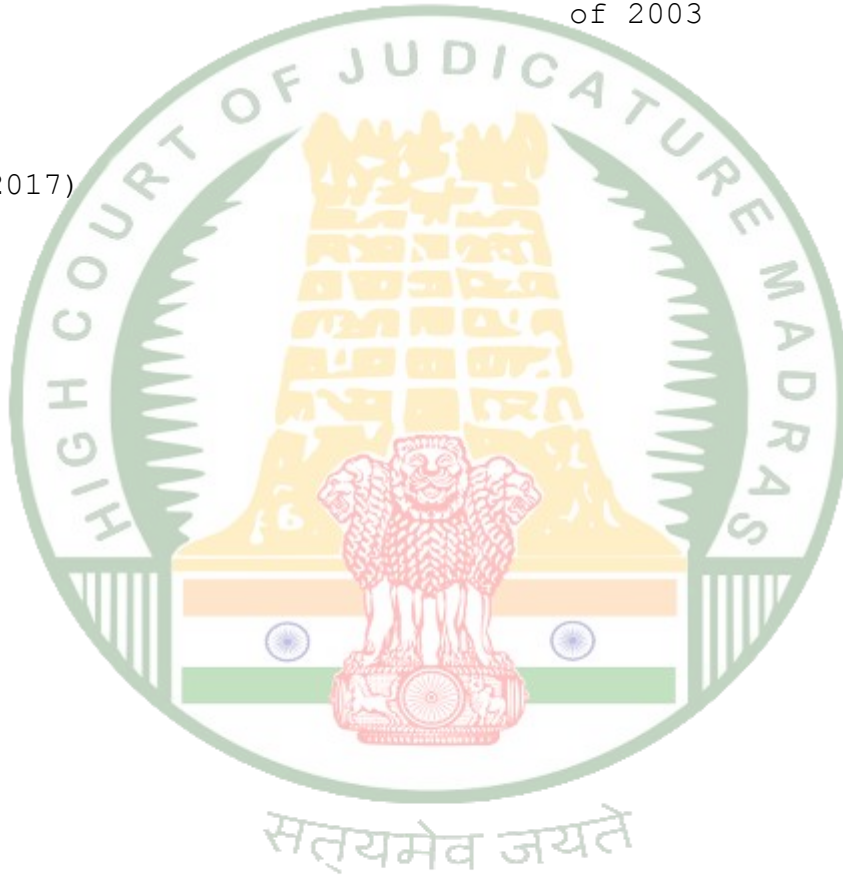
1. The Chairman and Managing Director,
Management of Tamil Nadu Civil
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No.12 (Old No.42), Thambusamy Road,
Kilpauk, Chennai - 10

2. The General Manager (Administration),
Tamil Nadu Civil Supplies Corporation
Limited, No.42, Thambusamy Road,
Kilpauk, Chennai - 10.

+1cc to M/S.Sai Bharath & Ilan, Advocate Sr. 49646
+1cc to M/S.K.Sudaikannu, Advocate Sr. 50061
+2cc to M/S.V. Selvanayagam, Advocate Sr. 49326,49325

W.P.Nos.32997 and 33799
of 2003

RR(CO)
VR(08/08/2017)



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