

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 07.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. Nos.40568 and 40569 of 2016

W.P.No.40568 of 2016

1.M.Kannan
2.S.Harikumaran Nair
3.P.Chandrasekaran
4.R.Arumugaperumal
5.S.Perumal
6.M.Subramanian
7.M.Jackson
8.L.Francis Ashok Gopu
9.P.Deva Asirvatham
10.I.Thangamani
11.C.Ponnuthurai

....petitioners

Vs

1.Union of India
Rep by its Secretary to Government
Dept of Space New Delhi

2.Indian Space Research
Organization Rep by its chairman Antariksh
Bhavan New BEL Road Bangalore- 560 231

3.Liquid Propulsion systems Centre,
Mahendragiri Rep by Controller
Valiamala Post, Thiruvananthapuram - 695 547

4.The Central Administrative
Tribunal at Chennai rep by its Registrar
High Court Campus Chennai-104.

... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records from the 4th respondent relating to the order of the 4th respondent dated 14.7.2016 passed in O.A. No.436 of 2016 and quash the same consequently to quash the Scheme of Department of

Space Government of India 2012 dated 3.9.2012 and also to direct the first respondent to create adequate No. of posts retrospectively from the date of the initial appointments of the petitioners with time scale of pay on par with Group-D Post and to regularize the services of the petitioners by appointing them retrospectively in the said posts from the date of their initial employment with all consequential monetary and service benefits including arrears and pensionary benefits there for and further to award appropriate compensation for exploiting the petitioners all these years.

W.P.No.40569 of 2016

1.M.Kannan
2.S.Harikumaran Nair
3.P.Chandrasekaran
4.R.Arumugaperumal
5.S.Perumal
6.M.S.Mani @ Subramanian
7.M.Jackson
8.L.Francis Ashok Gopu
9.P.Deva Asirvatham
10.C.Ponnuthurai ... petitioners

Vs

1.Union of India ,
Rep by its Secretary to Government,
Dept of Space, New Delhi
2.Indian Space Research
Organization, Rep by its chairman Antariksh
Bhavan , New BEL Road Bangalore- 560 231
3.Liquid Propulsion systems
Centre, Mahendragiri Rep by Controller
Valiamala Post Thiruvananthapuram - 695 547
4. The Central Administrative
Tribunal at Chennai rep by its Registrar
High Court Campus Chennai-104. ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari to call for the records from the 4th respondent relating to the orders of the 4th respondent dated 10.10.2012 passed in C.A.No.101 of 2011 in O.A.No.455 of 2009 and quash the same in so far as the same is construed as a finding rendered by the 4th respondent that the judgment dated 14.3.2011 passed by the 4th respondent in O.A.No.455 of 2009 has been complied with in full in all aspects.

For petitioners : Mr.N.Subramaniyan

For Respondents : Mr.Thirumalai Swamy, C.G.St.Cl
For respondents 1 to 3

O R D E R
(made by K.K. SASIDHARAN, J.)

The original application filed by the petitioners challenging the scheme framed by the first respondent was rejected as maintainable by the Central Administrative Tribunal solely on the ground that in the related contempt petition, the Tribunal made an observation that the respondents have complied with the order. Feeling aggrieved, the petitioners have come up with this Writ Petition.

2. We have heard the learned counsel for the petitioners and the learned counsel for respondents 1 and 2.

3. The Central Administrative Tribunal (hereinafter referred to as "the Tribunal") by order dated 9 March 2010 in O.A.No.455 of 2009 directed the Indian Space Research Organization (hereinafter referred to as ISRO) to frame a scheme to accommodate the gang labourers. The order was upheld by the Division Bench in W.P.No.19634 of 2010 and the Hon'ble Supreme Court in S.L.P.No.19200 of 2011. Thereafter, ISRO framed a scheme. The applicants filed Contempt Application No.101 of 2011 with a grievance that the respondents have not complied with the order in O.A.No.455 of 2009. The contempt petition was dismissed by the Tribunal with an observation that the respondents have already complied with the direction issued in O.A.No.455 of 2009.

4. The petitioners, after disposal of the contempt petition filed original application in O.A.No.436 of 2013, challenging the scheme framed by the Ministry of Space.

5. The Tribunal rejected the original application solely on the ground that the Coordinate Bench in its order dated 10 October 2012 in Contempt Application No.101 of 2011 observed that the order has already been complied with and subsequent original application challenging the scheme with a grievance that the earlier order has not been complied with, is not maintainable.

6. The issue before the Tribunal in C.A.No.101 of 2011 was as to whether the respondents have complied with the direction in O.A.No.455 of 2009. The Tribunal found that the respondents have complied with the order. However, there was no factual adjudication of the merits of the scheme, including its correctness. The Court exercising contempt jurisdiction would not be in a position to test the validity of the order passed by the Government in compliance of the direction given in the original application. The limited scope of the contempt

application is to ascertain whether the order has been complied with. Even after complying with the order, it would be possible for the aggrieved to initiate independent proceedings challenging the subsequent order passed by the Government. In the subject case, the Government framed a scheme pursuant to the order in O.A.No.455 of 2009. According to the petitioners, the Government have not complied with the order in its letter and spirit. However, the Tribunal was of the view that the Government have complied with the direction issued in O.A.No.455 of 2009. While making such an observation, the Tribunal has not considered the correctness of the scheme. The direction was to frame a scheme. Whether the scheme would take care of the employees like the petitioners was not the subject matter of the proceedings in C.A.No.101 of 2011. We are therefore of the view that the Tribunal was not correct in rejecting the original application on the basis of the observation made in C.A.No.101 of 2011. The petitioners are therefore entitled to succeed.

7. The order dated 14 July 2016 in O.A.No.436 of 2013 is set aside. The original application in O.A.No.436 of 2013 is restored to file. The Central Administrative Tribunal is directed to consider the issue raised in O.A.No.436 of 2013 on merits and as per law uninfluenced by the observation made by the Tribunal earlier in its order dated 10 October 2012 in C.A.No.101 of 2011.

8. The Writ Petition is allowed as indicated above. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Secretary to Government
Dept of Space, New Delhi

2.The Chairman,
Indian Space Research Organization
Antariksh Bhavan
New BEL Road Bangalore- 560 231

3.The Controller
Liquid Propulsion Systems Centre
Mahendragiri
Valiamala Post Thiruvananthapuram - 695 547

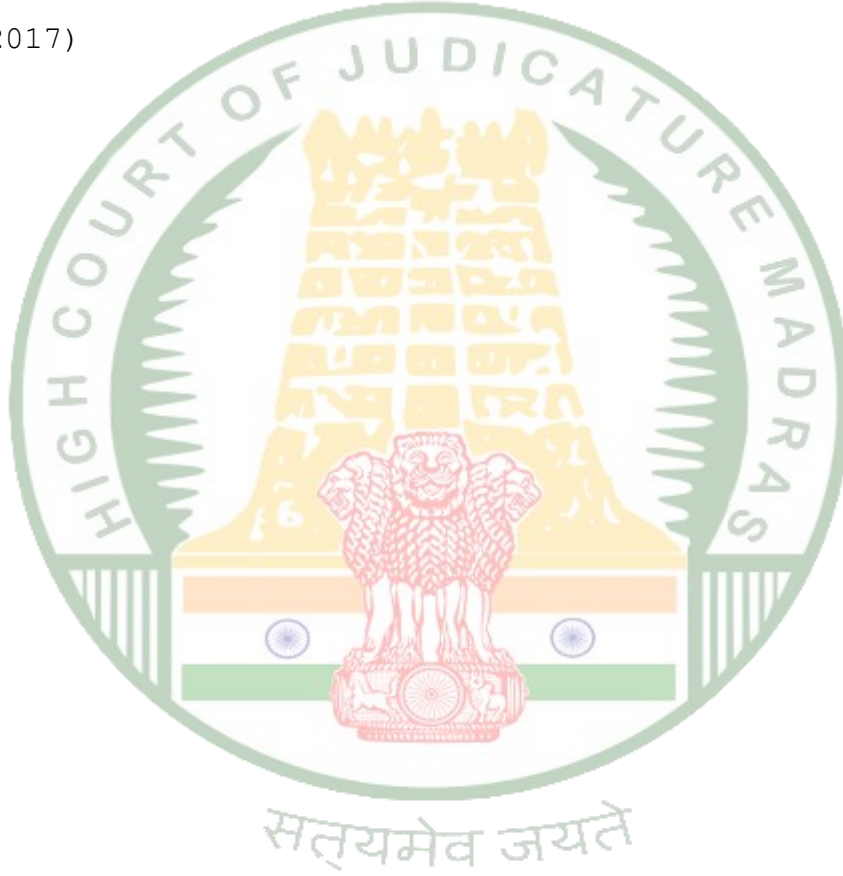
4.The Registrar
Central Administrative Tribunal
High Court Campus Chennai-104.

+1cc to M/S.T.L. Thirumalaisamy, Advocate SR. 7598

+1cc to Mr.N. Subramaniyan, AdvocateSR. 7489

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SAI (CO)
VR(06/03/2017)



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