



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2017

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THE HON'BLE Mr.JUSTICE R.SURESH KUMAR

W.P. (MD) No.16920 of 2013

V.Murugan

... Petitioner

-vs-

1.The Chief Secretary to Government of Tamil Nadu,
Personnel and Administrative Reforms (F) Department,
Fort St. George, Chennai.

2.The Managing Director,
Tamil Nadu Forest Plantation Corporation Ltd.,
(An undertaking of Government of Tamil Nadu)
Karur Salai, Mallachipuram
Kambarasampetti, Trichy ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the Government of Tamil Nadu in G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department dated 27.06.2013 and the consequential order of the 2nd respondent passed in Na.Ka.No.5667/2013 (Pal), dated 19.07.2013 and quash the same and consequently direct the respondents to absorb and regularise the petitioner in any of the suitable post in the 2nd respondent Corporation in a stipulated time.

For Petitioner : Mr.T.A.Ebenezer
For Respondents : Mr.Muthukannan
Government Advocate for R1
Mr.Aayiram K.Selvakumar for R2

O R D E R

The prayer in the writ petition is for writ of a Certiorarified Mandamus to call for the records relating to the impugned order passed by the Government of Tamil Nadu in G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department dated 27.06.2013 and the consequential order of the 2nd respondent passed in Na.Ka.No.5667/2013 (Pal), dated 19.07.2013 and quash the same and consequently direct the respondents to absorb and



regularise the petitioner in any of the suitable post in the 2nd respondent Corporation in a stipulated time.

2. The petitioner studied a certificate course in Carpentry conducted by the District Rural Development Agency, Vellore in the year 1991. Thereafter, he was appointed as Carpenter in the Sandalwood Products Factory, Thekkupattu, Vellore District in the year 1997. Thereafter, he was conferred with the permanent status as ordinary worker from 13.05.2005 by the Works Manager of the factory. Since the factory was not viable, it stopped functioning with effect from 01.08.2007. Therefore, the petitioner along with 14 permanent workers were redeployed to the 2nd respondent Corporation. Pursuant to the said redeployment, the petitioner joined at the 2nd respondent Corporation on 23.04.2008. Though the petitioner had been appointed and had been working all along as a permanent employee, he was treated only as a daily wages employee, of course, on permanent basis. Since the petitioner had been working in the factory for all these years, prior to that, he was also working as Carpenter on daily wages basis, of course, permanently in the 2nd respondent Corporation, he would be entitled to get absorption/regularisation on permanent basis and accordingly, he would also be entitled for all service benefits available to the permanent workers. Therefore, the petitioner for the said grievance of getting absorption approached the respondents and in this regard, the petitioner had sent representations and lastly in the representation sent on 24.06.2013, the petitioner requested the respondents to absorb him permanently and in aid of that, he had also invited the attention of the import of G.O.Ms.No.74 Personnel and Administrative Reforms (F) Department dated 27.06.2013. When the said request was pending with the 2nd respondent, the petitioner was transferred to the Sandalwood Factory at Vellore by orders of the 2nd respondent dated 19.07.2013. By virtue of the said transfer order, he had joined at the factory immediately and has been working in the said factory, even till date. In spite of his continuous work and the same has been recognised by the respondents, as permanent in nature, however, the respondents have not absorbed the services of the petitioner and his services was not regularised. Therefore, he had been repeatedly requesting the respondents to absorb him permanently. However, by the impugned order dated 24.07.2013, the 2nd respondent has rejected the request of the petitioner stating that the petitioner was appointed as Carpenter, as there is no such job called Carpenter. However, he was only appointed on permanent daily wages and he was working as such, hence he would not be entitled for any absorption and therefore, the request was rejected. Challenging the said order of the 2nd respondent, the petitioner has come out with the present writ petition with the aforesaid prayer.



3. Heard the learned counsel for the petitioner and the learned Government Advocates for the respondents 1 and 2 respectively.

4. The learned counsel for the petitioner would contend that during the pendency of the writ petition, the Government has come forward with a Government order in G.O.Ms.No.51 Environment and Forests (FR-8) Department dated 18.03.2016. In the said order, the viability of running the sandalwood factory was discussed widely and ultimately on accepting the request of the Principal Conservator of Forests, the Government had accepted the suggestion of handing over the said sandalwood factory to the Forest Department. In the said Government order, among other things, certain mandatory directives were issued by the Government to the authorities including the 2nd respondent to strictly adhere to the said directives with regard to the service conditions, redeployment etc., of the workers working in the said factory. Accordingly, the permanent daily wage workers like the petitioner shall be absorbed into the regular service of the 2nd respondent Corporation and their pay and continuity of service has to be extended. Therefore, the learned counsel for the petitioner would contend that in view of the Government order, where a policy decision was taken to hand over the factory itself to the Forest Department, the further directives issued by the Government has to be scrupulously followed and to be complied with by the 2nd respondent and if the same is complied with, automatically, the petitioner and other similarly placed persons could get absorbed in their respective services.

5. Per contra, the learned Government Advocate for the respondents would contend that the petitioner was working in the 2nd respondent Corporation only as a daily wages employee and he was never appointed as a Carpenter as claimed by the petitioner. There is no post called Carpenter in the 2nd respondent Corporation nor in the said Sandalwood factory, which was originally at the hands of the 2nd respondent Corporation.

6. While that being so, he cannot claim any permanent status, as the very factory has been handed over to the Forest Department of the State, the 2nd respondent has no authority whatsoever to consider the claim of the petitioner for his permanent status. Therefore, the impugned order passed by the 2nd respondent rejecting the claim of the petitioner is fully justifiable.

7. This Court have considered the rival submissions made by the learned respective counsel.

<https://hcservices.ecourts.gov.in/hcservices/> 8. It is an admitted fact that the petitioner was appointed on daily wages basis, however, that appointment was permanent in nature. From the date of appointment till the date, the



petitioner has been continuously working at the second respondent Corporation and the sandalwood factory, now, has been handed over to the Forest Department by virtue of the G.O.Ms.No.71. As has been rightly pointed out by the learned counsel for the petitioner, the G.O.No.51 dated 18.03.2016, in view of the handing over of the said factory to the Forest Department, has given mandatory directives to the Managing Director of Forest Plantation Corporation, the 2nd respondent herein.

9. The relevant portion of the G.O., reads hereunder for better appreciation of the issue:

"7.

(ii) Regarding winding up of the factory and redeployment of workers, the Managing Director, Tamil Nadu Forest Plantation Corporation Limited is directed to follow the following procedures:-

a) There are six permanent workers in the Sandalwood Factory and at present they have been given employment in other units of Tamil Nadu Forest Plantation Corporation Limited. It is mentioned that they have filed a case in the High Court of Madras with a prayer for fixation of scale of pay and duty hours. All court cases relating to labour, will be dealt with by Tamil Nadu Forest Plantation Corporation Limited and any liability arising in future for the period (the factory run by Tamil Nadu Forest Plantation Corporation Limited) must be borne by the Corporation.

b) the continuity of service of the 3 (three) regular pay scale staff (Supervisor, Electrician and Junior Assistant) may be redeployed and retained in Tamil Nadu Forest Plantation Corporation Limited and their continuity of service shall be protected.

c) with regard to 6 permanent daily wage workers, Tamil Nadu Forest Plantation Corporation Limited may expedite absorption of them into regular service in Tamil Nadu Forest Plantation Corporation Limited. Their pay and continuity of service may be extended.

d) no compensation on the basis of service need to be given to the casual daily wage labourer as per the Industrial Disputes Act, 1947 and quoting the Hon'ble High Court of Madras Judgment stating that the payment of compensation to who have not completed 240 days of service does not arise as per the Industrial Disputes Act, 1947."



10. Among various directives given by the Government as referred to above, Clause ii(c) of the directive is more relevant for the present issue. According to the Government, there were 6 permanent daily wages workers are working in the factory. At paragraph No.3 of the said G.O., it has been specifically mentioned that only two forest guards and three forest watchers of the 2nd respondent Corporation are working in the factory to safeguard the factory. However, since the petitioner has been transferred to the factory, by order of the 2nd respondent dated 19.07.2013 and only thereafter he also joined at the factory, he would be the 6th person along with the five persons, who are already working there. For all these six persons, the aforesaid clause (ii) (c) has been specifically made in the said G.O., where a directive was issued to the 2nd respondent to expedite the process of absorption of these 6 people into regular service in the 2nd respondent Corporation and their pay and continuity of service may be extended. In view of the said categorical directive issued by the State Government, the 2nd respondent Corporation has to scrupulously follow the same, as these six persons including the petitioner had been working all along either at the 2nd respondent or at the factory, their job has to be made permanent by absorbing them into regular service at the 2nd respondent Corporation and after having done so, their pay and continuity of services also to be extended to them.

11. In view of the aforesaid factors as well as the Government order, in G.O.Ms.No.51 dated 18.03.2016, this Court is of the considered view that the petitioner shall be entitled to get absorption. Resultantly, the impugned order passed by the 2nd respondent dated 24.07.2013 is liable to be quashed.

12. In the result, the writ petition is allowed and the impugned order is quashed. The 2nd respondent is directed to consider the request of the petitioner for absorption by bringing him into regular service in the 2nd respondent Corporation from the date of his original appointment and by making him regular employee of the 2nd respondent Corporation, he shall be entitled to claim pay and continuity of service and all other attendant, service benefits as a permanent regular employee of the 2nd respondent Corporation. The aforesaid directives shall be complied with by the 2nd respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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To

1.The Chief Secretary to Government of Tamil Nadu,
Personnel and Administrative Reforms (F) Department,
Fort St. George, Chennai.

2.The Managing Director,
Tamil Nadu Forest Plantation Corporation Ltd.,
(An undertaking of Government of Tamil Nadu)
Karur Salai, Mallachipuram
Kambarasampetti, Trichy

+1CC to Mr.T.A.Ebenezer, Advocate Sr.No.356

GJM/PM/24.2.17-6p-4C

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