

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.Nos.950 to 960 of 2017,
CMP Nos.13210 to 13220 and 15331 of 2017

S.Parthiban	.....	Appellant in	W.A.No.950 of 2017
I.Manivezh	.....	Appellant in	W.A.No.951 of 2017
M.Sivakumaran	.....	Appellant in	W.A.No.952 of 2017
B.Kadhiresan	.....	Appellant in	W.A.No.953 of 2017
G.Kalayasundaram	.....	Appellant in	W.A.No.954 of 2017
A.Gunasekaran	.....	Appellant in	W.A.No.955 of 2017
M.Nausath Ali	.....	Appellant in	W.A.No.956 of 2017
S.Balachandran	.....	Appellant in	W.A.No.957 of 2017
S.Marimuthu	.....	Appellant in	W.A.No.958 of 2017
A.Balagurunathan	.....	Appellant in	W.A.No.959 of 2017
R.Vinoth	.....	Appellant in	W.A.No.960 of 2017

-vs-

- 1.The Government of Tamil Nadu
Represented by its Secretary,
Department of Highway and Minor Ports,
Fort St.George, Chennai - 600 009.
- 2.Tamil Nadu Road Development Company Ltd.,
Represented by its Chairman and Managing Director,
Having their Registered Office at No.171, 2nd Floor,
TNMB Buildings Greenways Road,
South Kesavaperumalpuram,
Raja Annamalaipuram,
Chennai -600 028. Respondents in all Writ Appeals

PRAYER: Writ Appeals filed under Clause 15 of the Letters Patent
against the order passed in

WMP No.14222 of 2017

to stay the operation of the said impugned termination
Notice dated 28.04.2017 bearing No.TNRDC/HR/221/2017.
issued by the 2nd respondent on the petitioner in

WP No.13231 of 2017 dated 24.07.2017 filed Under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the impugned termination notice dated 28.4.2017, bearing No.TNRDC/HR/ 221/2017 issued by the 2nd respondent on the petitioner is null and void and is repugnant to the provisions of the Industrial disputes Act,1947, The contract Act and Articles 14 & 16 of the constitution of India .

WMP No.14223 of 2017

to stay the operation of the said impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 228/2017 issued by the 2nd respondent on the petitioner in

WP No.13233 of 2017 filed Under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 228/2017 issued by the 2nd respondent on the petitioner is null and void and is repugnant to the provisions of the Industrial Disputes Act, 1947, The contract Act and Articles 14 & 16 of the constitution of India.

WMP No.14224 of 2017

to stay the operation of the said impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 226/2017 issued by the 2nd respondent on the petitioner in

WP No.13234 of 2017 filed Under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 226/2017 issued by the 2nd respondent on the petitioner is null and void and is repugnant to the provisions of the Industrial Disputes Act, 1947, The contract Act and Articles 14 & 16 of the constitution of India.

WMP No.14225 of 2017

to stay the operation of the said impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 224/2017 issued by the 2nd respondent on the petitioner in

WP No.13235 of 2017 filed Under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 224/2017 issued by the 2nd respondent on the petitioner is null and void and is repugnant to the provisions of the Industrial Disputes Act, 1947, The contract Act and Articles 14 & 16 of the constitution of India.

WMP No.14226 of 2017

to stay the operation of the said impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 225/2017 issued by the 2nd respondent on the petitioner in

WP No.13236 of 2017 filed Under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 225/2017 issued by the 2nd respondent on the petitioner is null and void and is repugnant to the provisions of the Industrial Disputes Act, 1947, The contract Act and Articles 14 & 16 of the constitution of India.

WMP No.14227 of 2017

to stay the operation of the said impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 232/2017 issued by the 2nd respondent on the petitioner in

WP No.13237 of 2017 filed Under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 232/2017 issued by the 2nd respondent on the petitioner is null and void and

is repugnant to the provisions of the Industrial Disputes Act, 1947, The contract Act and Articles 14 & 16 of the constitution of India.

WMP No.14228 of 2017

to stay the operation of the said impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 230/2017 issued by the 2nd respondent on the petitioner in

WP No.13238 of 2017 filed Under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 230/2017 issued by the 2nd respondent on the petitioner is null and void and is repugnant to the provisions of the Industrial Disputes Act, 1947, The contract Act and Articles 14 & 16 of the constitution of India.

WMP No.14229 of 2017

to stay the operation of the said impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 089/2017 issued by the 2nd respondent on the petitioner in

WP No.13239 of 2017 filed Under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 228089/2017 issued by the 2nd respondent on the petitioner is null and void and is repugnant to the provisions of the Industrial Disputes Act, 1947, The contract Act and Articles 14 & 16 of the constitution of India.

WMP No.14230 of 2017

to stay the operation of the said impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 222/2017 issued by the 2nd respondent on the petitioner in

WP No.13240 of 2017 filed Under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 222/2017 issued by the 2nd respondent on the petitioner is null and void and is repugnant to the provisions of the Industrial Disputes Act, 1947, The contract Act and Articles 14 & 16 of the constitution of India.

WMP No.14231 of 2017

to stay the operation of the said impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 223/2017 issued by the 2nd respondent on the petitioner in

WP No.13241 of 2017 filed Under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 223/2017 issued by the 2nd respondent on the petitioner is null and void and is repugnant to the provisions of the Industrial Disputes Act, 1947, The contract Act and Articles 14 & 16 of the constitution of India.

WMP No.14232 of 2017

to stay the operation of the said impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 227/2017 issued by the 2nd respondent on the petitioner in

WP No.13242 of 2017 filed Under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the impugned termination notice dated 28.4.2017 bearing No. TNRDC/ HR/ 227/2017 issued by the 2nd respondent on the petitioner is null and void and is repugnant to the provisions of the Industrial Disputes Act, 1947, The contract Act and Articles 14 & 16 of the constitution of India.

For Appellants : Mr.Velayutham Pichaiya
in all appeals

For Respondents: Mr.V.Anandhamoorthy, AGP for R1
Mr.Vijay Narayan
Advocate General
Assisted by Mr.M.Sivavarthanana
for R2

C O M M O N J U D G M E N T

[Judgment of the Court was delivered by
K.K.SASIDHARAN, J.]

The appellants filed writ petitions before the Writ Court challenging the notice of termination issued by the Tamil Nadu Road Development Company Limited. The appellants along with the respective writ petitions filed miscellaneous petitions to stay the operation of the termination notice dated 28 April 2017 pending disposal of the writ petitions.

2. The learned single Judge by order dated 24 July 2017 dismissed the miscellaneous petitions. Feeling aggrieved, the unsuccessful petitioners have come up with these intra court appeals.

3. This Court taking into account the case pleaded by the appellants passed the following order on 10 August 2017:-

"Writ Appeals are filed against the common order, dated 24.07.2017, by which, the Writ Court, vacated the status-quo granted in W.M.P.Nos.14222 of 2017 in W.P.No.13231 of 2017 and W.M.P.Nos.14223 to 14232 of 2017 in W.P.Nos.13233 to 13242 of 2017, dated 24.05.2017, on the ground that Ennore Port Connectivity Project has already been completed and the appellants cannot claim any right over contractual appointment.

2. Inviting the attention of this Court to Paragraph 7 of the common order in W.M.P.Nos.14222 of 2017 in W.P.No.13231 of 2017 and W.M.P.Nos.14223 to 14232 of 2017 in W.P.Nos.13233 to 13242 of 2017, dated 24.07.2017 and the statement made by the Hon'ble Chief Minister, State of Tamil Nadu, in the Assembly

that Ennore Port Connectivity Project still continues, Mr.Velayutham Pichaiya, learned counsel for the appellants sought for an order of status-quo ante, as on 24.07.2017. He submitted that the writ Court erred in terminating the appointment as contractual, when the material on record, would show that appointment letters, were followed by confirmation letters, and that they had worked for many years. Rendering them jobless at this age, would cause serious hardship and irreparable loss.

3. While dismissing the above W.M.Ps., a learned single Judge, has observed that the appointments made were purely on contract basis, but perusal of the letters, issued by the Tamil Nadu Road Development Company Ltd., to all the appellants shows that the said letter has been captioned as, "appointment letters", with clauses, such as, probation/confirmation, remuneration, retirement, leave, transfer, notice period, etc. Few clauses are extracted hereunder:

"Probation: You will be on probation for a period of six months, at the end of which your services will be confirmed on receipt of a satisfactory performance and appraisal report. However, the Company retains the right to extend the probation period, if necessary.

Remuneration: The remuneration applicable to you will be as per Annexure A attached to this letter.

Retirement: You will retire from the services of the Company, upon attaining 58 years of age, as per the rules of the Company for the time being in force.

Leave: You would be eligible to avail of leave as per the Leave Policy of the Company.

Transfer: The Company reserves the right to effect transfer of your services to/at any other unit/location of the company or its associate/affiliate companies. In such an event, the terms and conditions of service of the unit/affiliate to which you are transferred will be made applicable to you. The Company shall not provide any accommodation to you in case of transfer.

Notice Period: During your probation, your services would be liable to be terminated by either side giving one month's notice or on payment of an amount equivalent to one month's

Gross Salary in lieu of the notice period. However, on confirmation, either side may discontinue the services by giving three months notice or by payment of three months Gross Salary in lieu of the notice period."

4. Among other clauses, Clause relating to retirement, states that the person appointed shall retire from the services of the Company, upon attaining 58 years of age, as per the rules of the Company, for the time being in force. Person appointed is also put on terms, with monthly remuneration, as annexed in the letter of appointment, with break-up details, such as, Basic Pay, HRA, Special Allowance, Conveyance Allowance. Employer's Provident Fund Contribution @ 12% of Basic Pay and Gratuity @ 8.33% of Basic Pay have been deducted from the salary.

5. Service contract assignment shows that the assignment is effective from the date of joining, initially for a period of one year and any extension thereof, would be decided mutually at that point of time. It has been made clear that the person appointed is eligible for leave, as per the statutory rules and regulations. Services of the person appointed would be discontinued, from either side, by giving one month's notice or one month's salary thereof. Whereas, appointment letters show that it is restricted to one year, as said in the service contract assignment.

6. Appointment letter shows that the services of the appellants, after completion of probation period of six months, would be confirmed, on the basis of their performance. If the appellants were on service contract assignment, as contended by the Tamil Nadu Road Development Company Ltd., there is no need to put them on probation and thereafter, confirm their services.

7. A comparative study of the salary/remuneration of the appellants shows that after appointment on probation, benefits, such as, leave travel allowance, medical reimbursement, estimated medical insurance premium, cell phone reimbursement, have been given to the appellants. For brevity, the heads

of account paid during the service contract assignment and after appointment on probation, are given below:-

Heads of account in service contract assignment letter	Heads of account in the appointment letter
A) Basic Pay B) HRA C) Special Allowance and D) Conveyance Allowance	A) Basic Pay B) HRA C) Special Allowance and D) Conveyance Allowance E) Employer's Provident Fund Contribution F) Gratuity G) Leave Travel Allowance H) Medical Reimbursement I) Estimated Medical Insurance Premium J) Cell Phone Reimbursement * You and your family members, being your dependants, subject to a maximum of 5 members, including you, will be covered under a Medical Insurance Scheme. The Insurance cover for each member is Rs.1,00,000/- (Rupees one lakh only) * You will also be considered for an annual Performance Related Pay based on your performance, Project performance and Company's performance.

8. Material on record discloses that on behalf of the Tamil Nadu Road Development Company Ltd., the Head-Human Resources, has issued letters of confirmation of service to all the appellants. Now, after many years, the Chief General Manager, Tamil Nadu Road Development Company Ltd., vide individual letters, dated 28.04.2017, has terminated the services of the appellants, by 30.04.2017, after giving one month's notice. Being aggrieved by the abovesaid letter, W.P.Nos.13231, 13233 to 13242 of 2017, have been filed.

9. Record of proceedings shows that while entertaining the said writ petitions, on 24.05.2017, in W.M.P.Nos.14222 of 2017 and W.M.P.Nos.14223 to 14232 of 2017, a learned

single Judge has granted an order of status-quo. Subsequently, when the writ petitions came up for further hearing on 24.07.2017, the Writ Court, by observing that appointments were only on service contract assignment, vacated the status-quo granted earlier. While doing so, the Writ Court has taken note of Clause 3 of the letter, dated 28.09.2005, which reads thus,

"(3) Notice Period:-

During your probation, your services would be liable to be terminated by either side giving one month's notice or on payment of an amount equivalent to one month's gross salary in lieu of the notice period. However, on confirmation, either side may discontinue the services by giving three months notice or by payment of three months gross salary in lieu of the notice period."

10. It could be seen from the above that during probation period, termination could be done, by giving one month's notice or salary, in lieu thereof, and not after confirmation by giving one month's notice. In the case on hand, after confirmation, one month notice has been given. Considering the fact that the letter, dated 28.09.2005, does not in specific terms, state that the appointment is only for the above project and that the fact the appellants had worked for a number of years in Tamil Nadu Road Development Company Ltd., and also taking note of the letter, dated 31.05.2017, issued by the Chief General Manager, Tamil Nadu Road Development Company Ltd., stating that the appellant in W.A.No.950 of 2017, would be continued to remain in service, subject to the outcome of W.P.No.13231 of 2017 and without prejudice to the rights of TNRDC and the defences available to TNRDC and also the plight of the appellants sought to be terminated, by giving one month's notice, this Court is of the view that as an interim measure, rights of the appellants should be protected.

11. Insofar as the observation of the learned single Judge, at Paragraph 7 of the common order, dated 24.07.2017, that job in Ennore Port Connectivity Project has already been completed and that the appellants cannot claim right over contractual agreement, learned counsel

for the appellants disputed the said fact. The fact that the appellants have worked for more number of years, cannot be disputed. Most of them have crossed the maximum age of appointment in Government/Undertaking owned and controlled by the Government/Boards and Corporations and such other public institutions. Prima facie, we are of the view that the appellants have made out a case for admission. Continuing their services till the disposal of the writ petitions, was felt and accordingly, status-quo has been issued.

12. On the facts and circumstances of the case and in the interest of justice, we are of the view that the appellants should be protected by an order of status-quo ante, as on 24.07.2017, when the Writ Miscellaneous Petitions were disposed of. Hence, there shall be an order of status-quo ante.

13. Mr.R.Prathap Kumar, learned Additional Government Pleader, takes notice for the Secretary, Department of Highway and Minor Ports, Chennai, 1st respondent herein. Notice through Court and privately, on the Tamil Nadu Road Development Company Ltd., Chennai, 2nd respondent herein, returnable in two weeks.

14. Mr.R.Prathap Kumar, learned Additional Government Pleader appearing for the respondents, will inform the Secretary, Department of Highway and Minor Ports, Chennai, 2nd respondent herein, for necessary orders, for implementation. "

4. We are informed that pursuant to the interim order dated 10 August 2017, the second respondent reinstated the appellants in service and they are presently working.

5. When these appeals came up for hearing on 12 June 2018, the learned Advocate General made a fair statement that in case, the appellants are agreeable, they would be accommodated in any of the on-going projects by the Tamil Nadu Road Development Company Limited. The learned counsel for the appellants took time to take instructions.

6. When the appeals are taken up for hearing today, the learned Advocate General reiterated his submission made earlier that the Tamil Nadu Road Development Company Limited has no objection to accommodate the appellants in a pending project, without prejudice to the contentions in the writ petitions.

7. The learned counsel for the appellants on instructions from the appellants who are present in Court submitted that they are agreeable to the offer given by the learned Advocate General.

8. The learned Advocate General submitted that the appellant in W.A.No.957 of 2017 was also offered employment. However, he has not turned up and as such, proceedings were taken by the Company against him.

9. Accordingly, by consent, these intra court appeals are disposed of with the following directions:-

i) The appellants would be employed by the Tamil Nadu Road Development Company Limited in any of its three projects, the details of which are given below:-

- a) Tiruporur - Kelambakkam Bypass Road
- b) Sojitz Motherson Industrial Park Project and
- c) Improvement of Port Access Road
(Four laning of NCTPS and Ennore Port Road)

ii) Since the appellants are already working pursuant to the interim order granted by this Court, they would be allotted to the new project by the company.

iii) Since this is an interim arrangement, the appellants would not have any kind of equity.

iv) The contentions taken by the appellants in the writ petitions would be decided by the Writ Court uninfluenced by any of the observations made in the earlier order dated 10 August 2017 or the working arrangement made by this Court pursuant to the statement made given by the learned Advocate General.

v) We make it clear that this order would not stand in the way of taking further action in accordance with law by the Management against the appellant in W.A.No.957 of 2017.

No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

(svki)

To

- 1.The Secretary,
The Government of Tamil Nadu
Department of Highway and Minor Ports,
Fort St.George, Chennai - 600 009.
- 2.The Chairman and Managing Director,
Tamil Nadu Road Development Company Ltd.,
Having their Registered Office at No.171, 2nd Floor,
TNMB Buildings Greenways Road,
South Kesavaerumalpuram,
Raja Annamalaipuram, Chennai - 600 028.

+11cc to Mr.Velayutham Pichaiya, Advocate Sr.41536
+2cc to Mr.M.Sivavarthanana, Advocate Sr.41212 & 41213
+1cc to the Government Pleader Sr.41898

W.A.Nos.950 to 960 of 2017

srg 16/07/2018



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