

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.695 of 2018

R.Govindarajan ... Appellant/Petitioner

-vs-

1.State of Tamil Nadu
rep.by its Secretary to Government,
Industries Department,
Fort St.George, Chennai-600 009.

2.The Chairman,
Cauvery Basin Refinery,
Chennai Petroleum Corporation Ltd.,
Registered Office,
Teynampet, Chennai-18.

3.The General Manager,
Cauvery Basin Refinery,
No.536, Anna Salai,
Teynampet, Chennai-18.

... Respondents

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.49271 of 2006 dated 19.01.2018. Writ Petition filed under Article 226 of constitution of India, seeking a writ of Mandamus directing the 2nd and 3rd respondents to absorb the petitioner on permanent basis in their company w.e.f.9.10.2000 with all consequential benefits.

For Appellant :: Mr.S.Parthasarathy
For Respondents:: Mr.P.S.Sivashanmugasundaram,
Spl.GP for R1

Mr.R.Senthilkumar for R2 and R3

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The appellant filed a writ petition before this Court in W.P.No.49271 of 2006 praying for a direction to the second and third respondents to absorb the appellant on permanent basis in their company with effect from 09.10.2000 with all consequential

benefits. When the writ petition was taken up, it was brought to the notice of the writ Court that the appellant / writ petitioner himself admitted the fact that a writ appeal in W.A.No.188 of 1999 was filed and the same was disposed of on 10.08.2000 in the following terms:-

"At the outset, the Learned Counsel appearing for the respondents fairly suggested that though regular appointment cannot be given to the appellant/petitioner, the Management would make all efforts to see that the appellant /petitioner is accommodated by any of the Contractors."

2.In view of that, the learned counsel for the petitioner does not want to press the writ appeal.

3.We hope that the management would take sincere steps within two months from today to do the needful and to get the petitioner appointed as far as possible and commensurate to his qualifications.

4.With this Writ Appeal is disposed of"

2.In view of the reason that the appellant/writ petitioner himself has admitted and served as a contract labourer, the learned single Judge held that now he cannot turn back and seek permanent absorption. Further, relying upon the Constitution Bench decision of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka Versus Uma Devi and Others reported in 2006 (4) SCC 1, the learned single Judge held that regularisation or permanent absorption cannot be granted in the cases where initial appointments were not in accordance with law. Since in the present case, the initial appointment was made on contract basis, the learned single Judge observed that mere length of service cannot be a ground to seek regularisation. Furthermore, recording the fact that the writ petitioner has agreed to serve as contract employee and such an undertaking was given by the writ petitioner even before the Hon'ble Division Bench in W.A.No.188 of 1999, the learned single Judge dismissed the writ petition holding that the relief sought for by the appellant / writ petitioner cannot be granted, by order dated 19.01.2018. Challenging the said order, the present appeal has been filed.

3.The learned counsel for the appellant has submitted that 17 acres of land belonging to the appellant has been acquired by the respondents and while acquiring the land, the respondents had promised to give job opportunity to one of the family members of the displaced persons. As per G.O.Ms.No.324, Revenue Department, dated 15.03.1986, one member of each displaced family has to be given employment without reference to Employment Exchange. He further submitted as per G.O.Ms.No.788, Industries Department, dated 06.11.1989, administrative sanction was accorded for acquisition of lands subject to the condition of providing job opportunity to the displaced persons and as such, the respondents are estopped from denying the job on regular basis to the appellant.

4.The learned Special Government Pleader appearing for the first respondent and the learned counsel for the respondents 2 and 3 have submitted that since the appellant was over aged, ie. 31 years at the time of appointment, he was appointed as contract labourer and now at this length of time, his services cannot be regularised.

5.Heard the learned counsel on either side and perused the materials available on record.

6.It is seen that the appellant was appointed on contract basis. The appellant is a land-loser. Since his land has been acquired by the respondents for building cement factory, he was promised with a job, but since his age was 31 years at the time of appointment, he was appointed as contract labourer. The learned single Judge has observed that his services cannot be regularised since he was appointed on contract basis and that the appellant himself has given an undertaking for being a contract employee. Further, relying upon the decision of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka Versus Uma Devi and Others reported in 2006 (4) SCC 1, the learned single Judge held that regularisation or permanent absorption cannot be granted in the cases where initial appointments were not made in accordance with law. Had it been the case of regular appointment, his services could have been regularised.

7.Considering the fact that the appellant is a land-loser and the facts and circumstances of the case, this Court deems it fit to direct the respondents to continue the appellant in the said post, of course on contract basis, till the normal age of retirement. It is made clear that till such time, he shall not be terminated from service. It is also made clear that he is entitled for the monetary benefits as per the pay scale fixed by the respondents from time to time.

8.The impugned order passed by the learned single Judge is modified accordingly and the writ appeal is disposed of. No costs.

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Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Secretary to Government,
Government of Tamil Nadu,
Industries Department,
Fort St.George, Chennai-600 009.

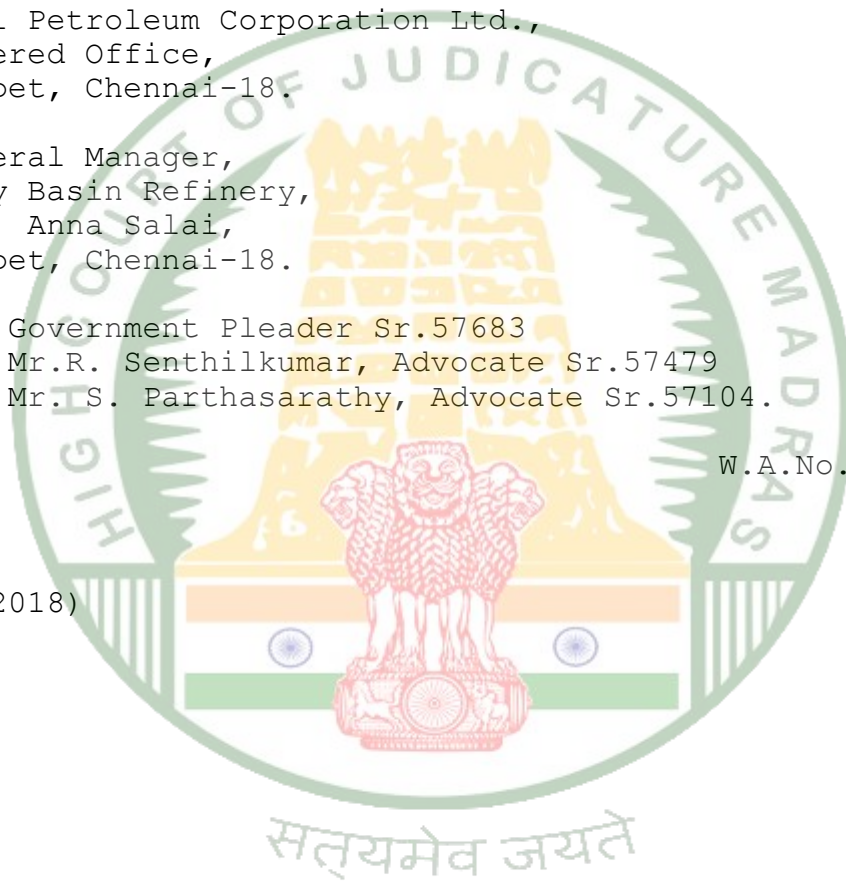
2.The Chairman,
Cauvery Basin Refinery,
Chennai Petroleum Corporation Ltd.,
Registered Office,
Teynampet, Chennai-18.

3.The General Manager,
Cauvery Basin Refinery,
No.536, Anna Salai,
Teynampet, Chennai-18.

+ 1 cc to Government Pleader Sr.57683
+ 1 cc to Mr.R. Senthilkumar, Advocate Sr.57479
+ 1 cc to Mr.S. Parthasarathy, Advocate Sr.57104.

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CA(CO)
EU(12/09/2018)



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