

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2018

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.14311 of 2018

1. R.Ramesh
2. D.Sekar
3. P.Jayapal ... Petitioners

vs.

1. Tamil Nadu Civil Supplies Corporation (Head Office),
rep. by Managing Director,
Thambusamy Road,
Kilpauk, Chennai 600 010.
2. The General Manager (Administration),
Tamil Nadu Civil Supplies Corporation (Head Office),
Thambusamy Road,
Kilpauk, Chennai 600 010.
3. The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Vellore Region,
Vellore. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the Respondents to pass suitable orders conferring permanent status to the Petitioners as Carway Boys in the Petrol and Diesel Bunk at Thirupattur with the time scale of pay with effect from 23.11.1998, pay the arrears of salary with all attendant service benefits within the time frame fixed by this Court, pursuant to the order of the Inspector of Labour, Tiruvannamalai, dated 16.08.2013.

For Petitioner : Mr.V.Sanjeevi

For Respondents : Ms.P.Kavitha,
Government Advocate
for Mr.C.Munusamy
Special Government Pleader
& Standing Counsel for
Civil Supplies Corporation

O R D E R

Petitioners have come up with the present Writ Petition seeking a direction to the Respondents to pass suitable orders conferring permanent status to them as Carway Boys in the Petrol and Diesel Bunk at Thirupattur with the time scale of pay with effect from 23.11.1998, pay the arrears of salary with all attendant service benefits, pursuant to the order dated 16.08.2013 of the Inspector of Labour, Tiruvannamalai.

2. According to the Petitioners, they were originally employed as casual labourers in the post of Carway Boys in the Petrol and Diesel Bunk operated by the Tamil Nadu Civil Supplies Corporation (TNCSC) at Krishnagiri Main Road, Thirupathur from 01.08.1997 onwards without any break and they have completed more than 10 years of service. Hence, they filed Claim Petitions on 26.12.2012 before the Inspector of Labour, Tiruvannamalai under Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, seeking conferment of permanent status to them. The Management had also filed a counter to their claim. After considering their Claim Petitions, counter statements and documents filed by the parties, the Inspector of Labour, Tiruvannamalai, by an order dated 16.08.2013 ordered conferment of permanent status to the Petitioners with effect from 23.11.1998 Forenoon.

3. Challenging the said order of the Inspector of Labour, Tiruvannamalai, the Regional Manager of the Tamil Nadu Civil Supplies Corporation, Vellore Region, filed a Writ Petition in W.P.No.5778 of 2014 before this Court and the same came to be dismissed by an order dated 22.09.2014 with a direction to the 3rd Respondent-Regional Manager, TNCSC, Vellore Region to comply with the order of the Inspector of Labour, Tiruvannamalai, within a period of three months from the date of receipt of a copy of the order. Instead of complying with the order of this Court dated 22.09.2014, the Regional Manager, TNCSC, Vellore Region, preferred a Writ Appeal in W.A.No.1233 of 2015 against the said order. The Writ Appeal was also dismissed, confirming the order of this Court, dated 22.09.2014 made in W.P.No.5778 of 2014. Thereafter, there was no further challenge to the same by the Respondent-Corporation.

4. Pursuant to the order dated 16.08.2013 passed by the Inspector of Labour, Tiruvannamalai, the 3rd Respondent herein, vide proceedings dated 17.10.2016 appointed the Petitioners in the post of Carway Boys in Petrol and Diesel Bunks at Thirupattur in the time scale of pay of Rs.4,800 - 10,000 + 1,300 (Grade Pay) on temporary basis with effect from 23.11.1998, subject to the conditions mentioned therein.

However, while passing orders regularizing the service of the Petitioners with effect from 23.11.1998 F.N., the 3rd Respondent put the Petitioners in the time scale of pay as on 17.10.2016, as if they are appointed only on 17.10.2016.

5. Thereafter, the Petitioners submitted Petitions to the 3rd Respondent/Regional Manager, TNCSC, Vellore on 08.12.2016, requesting for arrears of salary with effect from 23.11.1998. The representation dated 08.12.2016 of the Petitioners, appears to have been forwarded to the Head Office by the 3rd Respondent/Regional Manager, TNCSC, Vellore vide his letter dated 30.12.2016. In response to their representations, the General Manager (Administration), TNCSC, Head Office, Chennai, vide letter dated 03.07.2017, informed the 3rd Respondent that though the service of the Petitioners was regularized with effect from 23.11.1998, the arrears of salary from 23.11.1998 is not acceptable.

6. It is stated by the Petitioners that the 3rd Respondent in his Proceedings dated 30.12.2016 has wrongly mentioned the date of regularization of the service of the Petitioners as 28.11.1998, when it is actually 23.11.1998. According to the Petitioners, the refusal to fix the time scale of pay with effect from 23.11.1998 for paying the arrears of salary, is against the Board Resolution of the Respondent Corporation and the order passed by the Inspector of Labour, Tiruvannamalai.

7. In support of their case, the Petitioners drew reference to the decision of this Court in the case of D.Roselin Joyce vs. Tamil Nadu Civil Supplies Corporation Ltd., (2016 (III) LLJ 345 (Mad.) rendered in W.A.Nos.1425 to 1434 of 2015, W.A.Nos.360 to 369 of 2016 on 14.06.2016, whereby, the Court ordered regularization of service of the employees therein from the date of completion of 480 days in a period of 24 calendar months as contemplated under Sections 3 and 4 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and also directed to fix the time scale of pay and to pay the backwages from the date of regularization of the employees. The Petitioners herein sent representations to the Respondents 1 and 3 on 18.12.2017 by Registered Post, requesting the said Respondents to pass suitable orders conferring permanent status to them as Carway Boys in the Petrol and Diesel Bunk at Thirupattur with effect from 23.11.1998 with the time scale of pay, with all attendant service benefits and direct the payment of arrears of salary from 23.11.1998.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. It is seen that without granting conferment of

permanent status to the Petitioners, the 3rd Respondent/Regional Manager, Tamil Nadu Civil Supplies Corporation, Vellore, has passed an order on 17.10.2016, to the following effect:

"Based on the instructions of the General Manager (Administration), Chennai in the reference 5th cited, the aforesaid individuals are ordered to be appointed as Carway boys in Thirupathur Petrol/Diesel Bunk in the time scale of 4,800 - 10,000 + 1,300 (G.P.) temporarily from 23.11.1998 FN, subject to the following conditions:

1	This appointment is given on temporary basis
2	No right can be claimed on the temporary appointment in future.
3	In the event of the Certificates being found forged in future, this temporary appointment will be cancelled.
4	This temporary appointment is liable to be cancelled, without assigning any reason and without notice.
5	If any impersonation is found in this appointment, he is declared unfit for employment and moreover, Police action will also be taken.
6	If he is found to be involved in Criminal Activities in the past as well as in future, he will be declared ineligible for this appointment.
7	Seniority will be based on joining the duty.
8	He shall be subjected to the Rules and Regulations of the Tamil Nadu Civil Supplies Corporation to be framed from time to time.
9	His probation period will be regularised within two years out of three years continuous employment.
10	In the event of there being any irregularities against him, he will be subject to the action of the Managing Director.
11	After receipt of this appointment order, security deposit of Rs.1000/- shall be remitted in the Regional Office. Besides, fitness certificate (Medical Certificate) shall be obtained and submitted.

12	No application for transfer from the appointed region to another region shall be submitted before the expiry of two years.
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10. Learned Government Advocate appearing for the Respondents submitted that the Petitioners have been granted permanent status based on the communication of the 1st and 2nd Respondents. However, learned counsel for the Petitioner submitted that no order to that effect has been produced by the learned Government Advocate and contended that the order dated 17.10.2016 passed by the 3rd Respondent is contrary to the order passed by the Inspector of Labour, Tiruvannamalai, which has been upheld by this Court in W.P.No.5778 of 2014 and confirmed by the Division Bench of this Court in W.A.No.1233 of 2015.

11. On a reading of the representation dated 18.12.2017 made by the Petitioners to Respondents 1 and 3, it is clear that no order granting permanent status to the Petitioners, has been passed by the authorities concerned, pursuant to the order dated 17.10.2016 of the 3rd Respondent.

12. It is very unfortunate that the 3rd Respondent/Regional Manager, TNCSC, Vellore has passed an order dated 17.10.2016 granting appointment to the Petitioners on temporary basis, unmindful of the order dated 16.08.2013 passed by the Inspector of Labour, Tiruvannamalai, which has been upheld by the orders of this Court. Also, it is seen that the 3rd Respondent had acted as a superior to the competent authority and completely violated the orders passed by the learned Single Judge as also the Division Bench of this Court, confirming the order of permanent status to the Petitioners.

13. In view of the judgment rendered in the case of Mamundiraj vs. Bharat Heavy Electricals Ltd., Trichy reported in 1999 (I) LLJ 622, once the employees complete 480 days, they are deemed to have attained permanent status and the question of furnishing an order to the Petitioners that they are appointed on temporary basis, is illegal, as the Petitioners are deemed to have attained permanent status in the light of the order of the learned Single Judge, which has been confirmed by the Division Bench of this Court.

14. Further, in terms of Section 6(2) of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen), Act, 1981, prosecution has to be initiated with the previous sanction of the authority as contemplated under Rule 5, as there is wilful default. The Respondents are liable for prosecution and the Government has to sanction prosecution in terms of the decision rendered in the case of Raj Kumar Gupta

vs. Lt. Governor, Delhi & others, reported in 1997 (I) LLJ 994 to prosecute the matter in the appropriate criminal court and bring the issue to a logical end. Even though the said decision of the Apex Court is rendered in the context of the Industrial Disputes Act, 1947, the principle mentioned therein applies to the facts of this case, as the affected person will be more effective in putting forth his case before the appropriate Criminal forum.

15. Undoubtedly, there is disobedience of the earlier order of this Court. In view of the deeming provisions under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen), Act, 1981, when there is an order in favour of the Petitioners, this Court is of the view that the order dated 17.10.2016 passed by the 3rd Respondent is not valid in the eye of law. It is open to the Petitioners to initiate contempt proceedings against the 3rd Respondent, if so advised, for wilfully and deliberately disobeying the earlier orders of this Court.

16. This Court is of the further view that the 3rd Respondent shall immediately be removed from the present post and posted in a non-sensitive post and shall not be allowed to discharge any managerial or supervisory function till the order of permanent status is granted and arrears are paid to the Petitioners herein.

17. It is pertinent to mention that at the end of arguments, Ms.P.Kavitha, learned Government Advocate appearing for the Respondents submitted that before the order passed in the present Writ Petition could be signed, she will produce a modified order of the 3rd Respondent, granting permanent status to the workmen, thereby withdrawing the conditions stipulated in the order dated 17.10.2016, that are legally not tenable. However, the learned Government Advocate did not furnish the modified order by the 3rd Respondent, before this Court.

The Writ Petition is disposed of with the above direction and observation. No costs. Consequently, connected W.M.P.No.16907 of 2018 is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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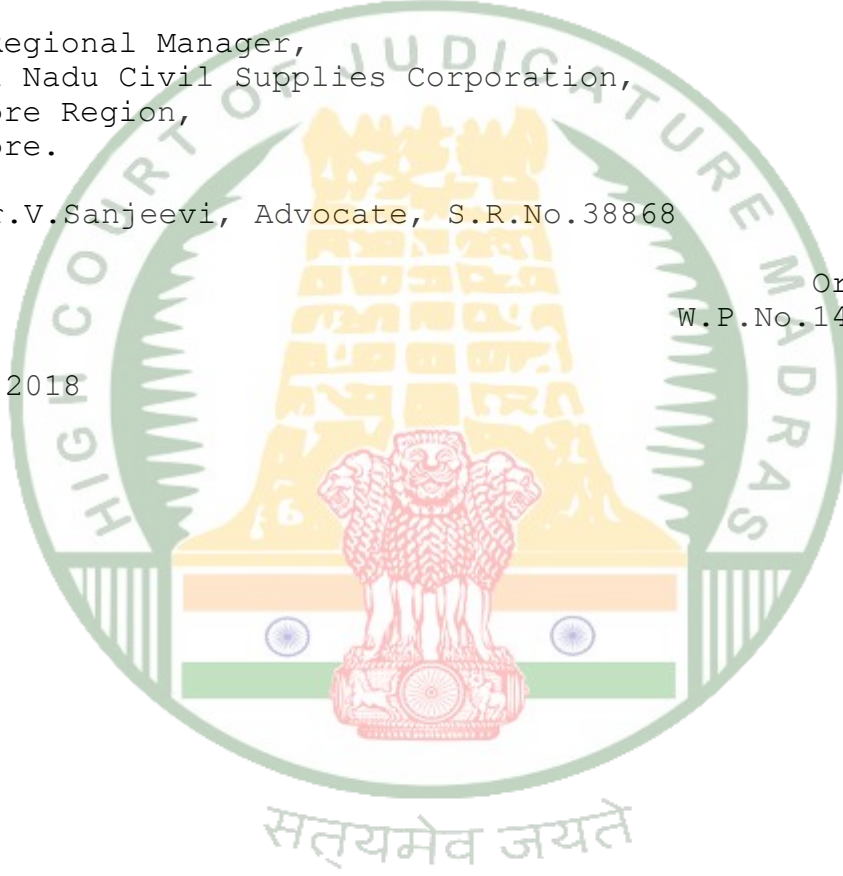
To:

1. The Managing Director,
Tamil Nadu Civil Supplies Corporation (Head Office),
Thambusamy Road,
Kilpauk, Chennai 600 010.
2. The General Manager (Administration),
Tamil Nadu Civil Supplies Corporation (Head Office),
Thambusamy Road,
Kilpauk, Chennai 600 010.
3. The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Vellore Region,
Vellore.

+1cc to Mr.V.Sanjeevi, Advocate, S.R.No.38868

Order in
W.P.No.14311 of 2018

DR(CS)
SMI/03.08.2018



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