

IN THE HIGH COURT OF JUDICATURE AT MADRAS

19.03.2019

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.No.22421 of 2018
and
W.M.P.No.26277 of 2018

The Tamil Nadu J.J.
Unorganised and Construction
Labourers' Development Union,
Rep.by its State President,
S.Selvarani ... Petitioner

vs.

1.The Government of Tamil Nadu,
rep.by its Secretary,
Development of Labour
and Employment
Fort St.George,
Chennai-600 009

2.The Secretary,
Tamil Nadu Construction
Workers Welfare Board,
Chennai-600 034

3.The Labour Officer,
Cuddalore District,
Cuddalore

सत्यमेव जयते

.... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records pertaining to the order of the 2nd respondent made in U3/34155/2016, in Appeal No.4 of 2017, dated 25.05.2018 and quash the same and consequently direct the 2nd respondent to restore the original status of the petitioner Union.

For Petitioner .. Mr.K.Venkatramani, Sr.Counsel
for Mr.K.C.Panneer Selvam

For Respondents .. Mr.J.Ramesh, A.G.P.

ORDER

The writ petition is filed against the order passed by the second respondent dated 25.05.2018, confirming the order passed by the third respondent dated 09.09.2016, withdrawing the power vested in the petitioner Union for issuing Certificate to its members under Clause 5(2)(d) of Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme, 1994.

2. According to the third respondent, the petitioner Union had admitted nine persons, who were actually agriculturists and were not 'Construction Workers', on the basis of the Certificate/recommendation issued by the in-charge Village Administrative Officer concerned. The admission of the nine persons, who were not entitled to be members of the petitioner Union, as they belong to the agricultural sector, the third respondent issued show cause notice to the petitioner Union and thereafter, not being satisfied with the explanation offered by the petitioner Union, has passed the order on 09.09.2016 withdrawing the power vested in the petitioner Union to issue employment certificate to its employees under the provisions of the Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme, 1994.

3. The appellate authority, viz., the second respondent, before whom appeal was filed against the order passed by the third respondent, has confirmed the order passed by the third respondent and dismissed the appeal filed, on 25.05.2019, which is impugned in the writ petition.

4. Mr. K. Venkatramani, the learned Senior counsel appearing for the petitioner would submit that there was a bona fide mistake in admitting nine persons by the petitioner Union, since the admission was entirely on the basis of the recommendation by the in-charge Village Administrative Officer, who had certified that those nine persons were 'Construction Workers'. However, subsequently, the same Village Administrative Officer in-charge, had issued a letter on 16.08.2017 stating that inadvertently he had certified those nine persons as if they were construction workers, without verifying the fact that they were in fact agricultural workers and they belonged to a different Union. However, despite the issuance of the letter, clarifying the position by the Village Administrative Officer, in-charge, the second respondent has rejected the appeal filed by the petitioner Union.

5. The learned Senior counsel would submit that the petitioner Union having no other option, admitted those nine persons, since the Village Administrative Officer has recommended that those persons were Construction Workers and also, there was no scope for verifying such recommendation by

the Village Administrative Officer. In the circumstances, there was a bona fide mistake occurred while admitting those nine persons and now the names of those nine persons had been removed from the Petitioner Union list and therefore, there is no impediment to restore the position as before the order passed by the third respondent, withdrawing the power vested in the petitioner Union.

6.The learned Additional Government Pleader appearing for the respondents would submit that although the admission of nine persons was incorrect and not valid in view of the admitted position that those nine persons were agricultural workers and they belonged to 'Uzhavar Padhuappu Thittam' and the petitioner Union had attempted to issue employment certificate as if they were Construction Workers, nevertheless, subsequently the Village Administrative Officer in-charge had given a letter to the respondents stating that by mistake, without verifying the fact, the certificate was issued as if those nine persons were Construction Workers. Since admittedly nine persons, who were not Construction Workers, have been admitted to the petitioner Union, the action of the petitioner Union, which issued employment certificate under the provisions of the Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme, 1994, is entirely illegal and therefore, the second respondent has rightly rejected the appeal filed by the petitioner Union against the order passed by the third respondent.

7.Upon consideration of the submissions made by the learned Senior counsel for the petitioner as well as the learned Additional Government Pleader, it is seen that though the admission of nine persons was illegal and invalid under the provisions of the Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme, 1994, as rightly contended by the learned Senior Counsel for the petitioner Union, there was a bona fide mistake committed by the petitioner Union while admitting those persons, since the Union, according to the learned Senior counsel, was entirely guided by the recommendation of the Village Administrative Officer, in-charge. In fact, it is evident from the letter given by the Village Administrative Officer, in-charge, dated 16.08.2017 that without verifying the status of the nine persons, the certificate/recommendation was given by the Village Administrative officer-in-charge inadvertently and he also regretted for the same.

8.In view of the letter issued by the Village Administrative Officer, in-charge, this Court does not think that the order passed by the second respondent can be allowed to operate any further. Even according to the petitioner Union, now the names of those nine persons were removed, after coming to know of their status being agricultural labourers.

Therefore, this Court does not find any legal impediment to restore status-quo-ante as on the date before the issuance of the impugned order by the third respondent dated 09.09.2016 and confirmed by the order passed by the second respondent dated 25.05.2018. This Court is satisfied from the materials placed on record that the admission of nine persons was a bona fide mistake committed by the petitioner Union, for which they cannot be taken to task by depriving more than 1500 members, who are otherwise 'Construction workers' and are in receipt of benefit under the provisions of the Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme, 1994.

9. In view of the above, this Court finds that the petitioner makes out a case for grant of relief. Hence, the impugned order dated 25.05.2018, passed by the second respondent, is hereby set aside and the status-quo-ante as before the order passed by the third respondent, dated 09.09.2016, shall stand restored to the petitioner Union forthwith.

The writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu,
Development of Labour
and Employment
Fort St. George,
Chennai-600 009

2. The Secretary,
Tamil Nadu Construction
Workers Welfare Board,
Chennai-600 034

3. The Labour Officer,
Cuddalore District,
Cuddalore

+1 CC to Mr. C. Panneerselvam, Advocate sr 26987.

+1 CC to Govt. Pleader sr 26322.

W.P.No.22421 of 2018

SP(09/04/2019)