

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.04.2019

PRONOUNCED ON: 12.06.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.23122 of 2018

1.Tamil Nadu Civil Supplies Corporation Employees Union
Regn. No.325/CPT,
Rep. by its State President,
Mr.M.Pechimuthu,
Old No.42, New No.12, Thambusamy Road,
Kilpauk,
Chennai-10.

2.N.Naveen Kumar
3.M.A.Sadiqhassan
4.A.Thamin Basha
5.T.Stephen
6.N.Krishnaraj
7.S.Syed Sirajudeen
8.N.Manimuthu
9.A.Subramaniam
10.A.Raju
11.N.J.Babu

..Petitioners

Vs.

1.Tamil Nadu Civil Supplies Corporation,
Rep. by its Managing Director,
Old No.42, New No.12, Thambu Swamy Road,
Kilpauk, Chennai-600 010.

2.Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
10/38A, Housing Unit,
Nasiyanoor Road, Erode-638 001.

..Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a writ of mandamus directing the respondents herein to appoint petitioners 2 to 11 to the posts lying vacant in Class III and IV cadres respectively for which they are qualified, in accordance with the settlement of 30.01.1997 with all consequent benefits.

For Petitioners : Mr.V.Prakash,
Senior Counsel for Mr.M.Suresh

For Respondents : Dr.R.Gouri

ORDER

This Writ petition has been filed seeking for issuance of a Writ of Mandamus, to direct the respondents herein to appoint petitioners 2 to 11 to the posts lying vacant in Class III and IV cadres respectively for which they are qualified, in accordance with the Settlement dated 30.01.1997 with all consequential benefits.

2. The first petitioner is a registered recognized Union and in this writ petition, it represents the grievance of the petitioners 2 to 11 herein. The petitioners 2 to 11 are the members of the Union. The petitioners 2 to 11 are employed as seasonal employees in the procurement region, namely, Erode. The respondent Corporation has direct Purchase Centres where farmers bring their paddy and where the moist content or quality is checked and payments made and paddy sent to various locations for the purpose of dehulling by modern rice mill and thereafter the rice is distributed under Public Distribution System and for Noon Meal Scheme for school children. In each purchase Centre, there will be a Bill Clerk, Watchman and Helper. The writ petitioners are employed in the said category. The petitioners are qualified to hold the respective posts in which they are employed and they were originally recruited through Employment Exchange.

3. The respondent Corporation being an Industry within the meaning of Section 2(j) of the Industrial Disputes Act, has entered into various settlements with the petitioner Union in respect of the service conditions of its employees. First of such settlements was entered into by the respondent Corporation in respect of Cauvery Delta Region on 19.09.1991. As per the said settlement, the seasonal employees are to be appointed in the vacancies arising in Class III and IV services in the respondent Corporation. For the said purpose, a seniority list is to be maintained among the seasonal employees.

4. Subsequently, on 30.01.1997, another settlement was entered into by the respondent Corporation with the employees union providing for appointment to Class III and IV Services from among the seasonal employees. As per the settlement, appointments were made to Class III and IV Services from among the seasonal employees on the basis of the seniority in various regions wherever procurement regions were established and run by the Corporation. According to the petitioners, that despite existence of vacancies in various categories in respect of posts

in Class III and IV Services, the said posts were not filled up by the Corporation from among the seasonal employees including the petitioners herein. While matter stood thus, the respondent Corporation issued a notice under Section 9(A) of the Industrial Disputes Act for terminating the settlement. The notice issued under Section 9(A) has been the subject matter of Industrial Dispute raised on behalf of the employees.

5. The case of the petitioners is that the settlements entered into by the respondent Corporation with the employees in 1991 and 1997 ought to be given effect to till a new settlement is put in place. In regard to the implementation of the settlement, this Court was approached by the parties, particularly in W.P.No.19899 of 2017, wherein, a learned Single Judge negatived the injunction prayer as sought for therein and against which, Writ Appeals were filed in W.A.Nos.1586 & 1587 of 2017, in which, a Division Bench of this Court on 29.11.2017 has passed an order after recording the undertaking given on behalf of the respondent Corporation that no further recruitment process would be pursued from the open market till the disposal of the writ petition. In view of the undertaking given by the Corporation before the Division Bench of this Court in the above Writ Appeals, the recruitment from the open market has been stopped, which means that the vacancies in various categories in respect of Class III and IV posts are still very much available. Since the Corporation has not initiated any steps for appointing the seasonal employees in respect of Erode region, they are before this Court, seeking for issuance of Writ of Mandamus.

6. Mr.V.Prakash, learned Senior counsel for the petitioners would submit that the petitioners 2 to 11 herein have been employed as seasonal employees for a number of years continuously and when the Corporation has resorted to regular recruitment to various categories of Class III and IV Services from among the seasonal employees in various procurement regions, it is unfair and discriminatory that in respect of Erode region alone no such recruitment has been initiated and the petitioners herein have not been appointed against the vacancies which are available against the Class III and IV services. The learned Senior Counsel would draw the attention of this Court to Clauses contained in Settlement dated 19.09.1991 and 30.01.1997, which clearly provided for preferential treatment for employees who were working as seasonal employees in the matter of recruitment to Class III and IV services of the respondent Corporation. He would therefore, submit that the writ petitioners 2 to 11 herein may be considered for recruitment as provided in the above settlement within the frame work of the same.

7. According to the learned Senior Counsel, all the writ petitioners have gained individual experience in their respective fields of posting and they are fully qualified to be accommodated in the regular Class III and IV services, depending upon their qualification or eligibility. The learned Senior Counsel would further submit that the right to be treated preferentially is provided under the settlement and therefore, the employees herein are only staking their claim under the specific clause provided in the settlement entered into by the respondent Corporation itself with the employees. He would urge this Court to allow the writ petition.

8. On the other hand, the learned counsel for the respondents would stoutly oppose any relief to be granted to the writ petitioners since the settlements relied on by the petitioners are no more in force and even otherwise, they have no right to be considered for regular recruitment. She would submit that first of all, the writ petitioners were merely employed as seasonal employees and they worked only for a limited period in a year. According to the learned counsel, that there is an elaborate procedure provided for recruitment to Class III and IV services and the Corporation is bound to follow the said procedure. It is always open to the writ petitioners to participate in the regular open competition process and any back door recruitment would be against the constitutional mandate. The substance of objections for grant of relief to the petitioners by the respondent Corporation is stated in paragraph no.21 of the counter affidavit filed on behalf of the respondent Corporation, which reads as under:

'21. The averments contained in para 13 to 16 are denied as not sustainable. It is submitted that it is on record the first respondent has issued proceedings dated 24.02.2017 to all the regions of the Civil Supplies Corporation to strictly follow the norms/rules/regulations in the matter of appointments to the posts lying vacant in the respondent Corporation. That apart, in the matter of appointment, the due procedure have to be followed, strictly to fill up within the sanctioned strength only and consequently intimate to the first respondent. There must be transparency in the matter of appointment disclosing in tabulation the total applicants participated during the process of appointment. In compliance thereto during the year of 2017 a Notification has been issued vide paper advertisement for filling up the post. While that be so the petitioners herein instead of participating in the open competition process has approached this Hon'ble Court with the prayer

seeking for direct appointment which is absolutely not maintainable and liable to be dismissed.

9. The learned counsel for the respondent Corporation would submit that the petitioners being employed as seasonal employees for a short time, they cannot claim to be qualified or eligible for regular recruitment. In such event, they cannot have any right to be treated preferentially in the matter of recruitment to Class III and IV services. The writ petitioners are not entitled to the relief as sought for in the Writ Petition since they were employed as seasonal employees only for some period and it would be against the norms/rules and regulations to be followed by the Corporation in the matter of recruitment of regular Class III and IV services. Therefore, she would submit that the writ petition lacks merit and the same is liable to be dismissed.

10. Heard Mr.V.Prakash, the learned Senior counsel appearing for the petitioners and Dr.R.Gouri, the learned counsel appearing for the respondent Corporation.

11. From the submissions and the pleadings of the parties, there appears to be no controversy or dispute regarding the employment of the petitioners 2 to 11 as seasonal employees by the respondent Corporation. Even as per the counter affidavit, the employees concerned have been employed as seasonal employees since 2010 to 2014 onwards. The very nature of employment is only seasonal and therefore, these writ petitioners have been employed for a limited period every year. The question before this Court is as to whether continuous employment of these writ petitioners during every season, has given them any right to claim preferential treatment for regular recruitment against the Class III and IV Services of the respondent Corporation.

12. As rightly contended by the learned Senior counsel Mr.V.Prakash, for the writ petitioners, that the respondent Corporation has entered into two settlements on 19.09.1991 and 30.01.1997 respectively with the employees, wherein, in the first settlement, it is specifically mentioned that recruitment to Class III and IV Services seasonal employees have to be given preferential treatment. The contents of Clause 3 are extracted herein:

3. As regards the demand of the workmen for giving preference to the qualified seasonal employees in the D.P.C. While filling the regular vacancies, it is agreed that whenever the TNPSC has to go to the employment exchange for direct recruitment of any class III or Class IV services after exhausting the eligible candidates among the existing regular employees in the feeder categories, the qualified seasonal employees who

were initially recruited through employment exchange will be given preference relaxing only the age qualification but not relaxing any other qualification, subject to the policy of reservation. In the event of absorbing the seasonal employees in the vacancies that arise in any region throughout the state of Tamilnadu, the qualified hands will be selected by drawing the centralised seniority list in the Head office level according to total of broken periods of service and they might be allotted to the needy regions wherever vacancies arise, on their requisition. Where age relaxation becomes necessary, the Management will get appropriate concurrence of Government.

13. The above said Clause has been reiterated in the subsequent settlement dated 30.01.1997. The above Clause would disclose that the Corporation is to maintain the seniority list in respect of the eligible candidates from among the seasonal employees, who satisfy with the norms, would be considered for regular recruitment to Class III and IV services. Therefore, it becomes imperative on the part of the Corporation to maintain seniority list in each region to consider the claim of the seasonal employees for recruitment to lower services of the Corporation.

14. As long as the Settlements dated 19.09.1991 and 30.01.1997 are occupying the field, in the absence of any subsequent or fresh settlement, the seasonal employees like the petitioners herein have right to be treated preferentially in the matter of recruitment to Class III and IV services on the basis of their respective eligibility or qualification. This is precisely the case of the petitioners herein in this writ petition.

15. The respondent Corporation which is an Industry under the provisions of the Industrial Disputes Act, is bound to abide the settlement entered into with the employees and it is too late in the day for the Corporation to contend that the seasonal employees are not entitled to be considered for recruitment in terms of the settlement. Once the Corporation has agreed to extend the preferential treatment to the seasonal employees under the terms of settlements which are admittedly in force as on date, cannot be allowed to resile from the position and resist the claim of the petitioners who base their claim on the basis of the terms of settlements by the Corporation itself with its employees.

16. The arguments put forth on behalf of the Corporation that the Corporation is required to follow the norms/rules/regulations has to be interpreted to mean that the recruitment should also be on the basis of the settlement entered into between the Corporation and its employees. In any event, once the settlements are put in place by the Corporation with its eyes wide open, agreeing to certain terms, cannot escape from its obligation and cannot deviate the terms of settlement under any pretext. In which event, it becomes a legal obligation on behalf of the Corporation to maintain a seniority list in all the regions concerned for the purpose of recruitment of the seasonal employees like the petitioners herein to Class III and IV services on the basis of their respective qualifications or eligibility. Failure on the part of the Corporation in this regard, would not only be opposed to a specific clause as contained in the settlement mentioned above but the same would also be opposed to Articles 14 & 16 of the Constitution of India. When the Corporation has recruited the seasonal employees to Class III and IV services in their regions in the past, which has not been disputed by the Corporation, it is unfair and unreasonable on the part of the Corporation to deny the present writ petitioners the benefit of recruitment in terms of its own settlement with its employees.

17. In the above circumstances, this Court is of the considered view that the petitioners have made out a case for grant of the reliefs as under:-

"17 (i) The respondent Corporation is directed to prepare a seniority list from among the eligible seasonal employees and thereafter resort to recruitment to Class III and IV services of the Corporation from among the seasonal employees including the petitioners herein of the Erode region on the basis of their respective qualification or eligibility in terms of Clause 6 of the Settlement dated 30.01.1997."

ii) The respondent Corporation is directed to initiate and complete such exercise of recruitment within a period of three months from the date of receipt of a copy of this order.

18. The writ petition is allowed on the above terms. No costs.

Sd/-

Assistant Registrar(CS IX)

***Modified and para incorporated
vide order of this court in
WMP.No.25248/19 in WP.23122/2018
dated 05/12/2019**

-s/d-

**Assistant Registrar(CO)
dt:27/12/2019**

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director
Tamil Nadu Civil Supplies Corporation,
Old No.42, New No.12, Thambu Swamy Road,
Kilpauk, Chennai-600 010. / corrected order to
be substituted to
the order already
despatched on
17.06.2019
- 2.Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
10/38A, Housing Unit,
Nasiyanoor Road,
Erode-638 001.

+lcc to Mr.M.Karthikeyan, Advocate, SR.No.47643/19
+lcc to Dr.P.Gouri, Advocate, SR.No.47797/19

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W.P.No.23122 of 2018

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