

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.12.2019

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH., J

W.P.No.35280 of 2019
and WMP No.36082 of 2019

G.Muniyasamy

.. Petitioner

Vs

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation Ltd,
No.12, Thambusamy Road,
Kilpauk,
Chennai 10.

2.The Regional Manager,
Tamil Nadu Civil Supplies Corporation Ltd,
Ramanathapuram Region,
Ramanathapuram District.

.. Respondents

Prayer .: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the respondents 1 and 2 to appoint the petitioner to the post of Bill Clerk (Clause 3 and 4 of employees of the Tamil Nadu Civil Supplies Corporation Ltd,) in Ramanathapuram region and grant such other relief.

For Petitioner : Mr.R.Rajarajan
For Respondents : Mr.L.P.Shanmugasundaram
standing counsel

O R D E R

This writ petition has been filed for the issue of writ of Mandamus directing the respondents to appoint the petitioner to the post of Bill Clerk (clause 3 & 4) employees of the Tamil Nadu Civil Supplies Corporation Limited at Ramanathapuram Region.

2. The case of the petitioner is that he was temporarily appointed to the post of Bill Clerk in the year 2015. The respective Regional Managers were directed to prepare a district / regional seniority list among the Bill clerks, Helpers and Watchman on the basis of length of service, seniority and communal rotation and appoint them on the basis of seniority on permanent basis.

3. Pursuant to the orders passed by the 1st respondent, the 2nd respondent has prepared a District wise seniority list among the bill collectors and he was seeking for permission from the 1st respondent to appoint against permanent vacancy. The case of the petitioner is that his name is also placed in the seniority list insofar as the Ramanathapuram region is concerned.

4. The petitioner along with similarly placed persons came to know that the respondents are taking steps to appoint temporarily against the permanent vacancy arising from the Ramanathapuram region. Therefore, a writ petition came to be filed before this Court in WP MD No.16776 of 2018 etc batch. This Court by an order dated 30.07.2018 directed the respondents to consider the representation made by the petitioners and pass orders within a period of eight weeks. According to the petitioner, this order has not been complied with till date.

5. The further case of the petitioner is that similarly placed persons approached this Court through the employees union and filed WP No.23122 of 2018 for a direction to the respondent to appoint the concerned persons at the Erode region. This Court considering the entire issue in detail, passed the order on 12.06.2019.

6. The relevant portions of the order is extracted hereunder :-

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:

- 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.

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.

7. It is the further case of the petitioner that similarly placed persons belonging to Vellore region approached this Court and filed WP No.16532 of 2019 etc batch and this Court by an order dated 31.07.2019, disposed of the writ petition by following the earlier orders of this Court and directions were issued to consider the claim made by the petitioners therein in line with the earlier order.

8. The petitioner has now approached this Court on the ground that he is also similarly placed person belonging to Ramanathapuram Region and already the respondents have been directed to consider their claim and since the same has not been complied with, the present writ petition has been filed before this Court.

9. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

10. Taking into consideration the facts and circumstances of the case, this Court does not want to go into the claim that has been made by the petitioner since the entire issue has been discussed in detail by this Court while passing orders in WP No.23122 of 2018 and the relevant portions have also been extracted supra. If the petitioner is also similarly placed, the respondent can always consider the representation made by the petitioner and pass appropriate orders. Infact, a similar direction was already given by this Court in the earlier writ petition that was filed in WP MD No.16776 of 2018 etc batch.

11. In the light of the above discussion, this writ petition is disposed of with a direction to the respondents to consider the claim of the petitioners for appointment to the post of Bill Clerk on its own merits and strictly in accordance with law and in line with the earlier orders passed by this Court and pass appropriate orders, within a period of eight weeks from the date of receipt of copy of this order.

12. This writ petition is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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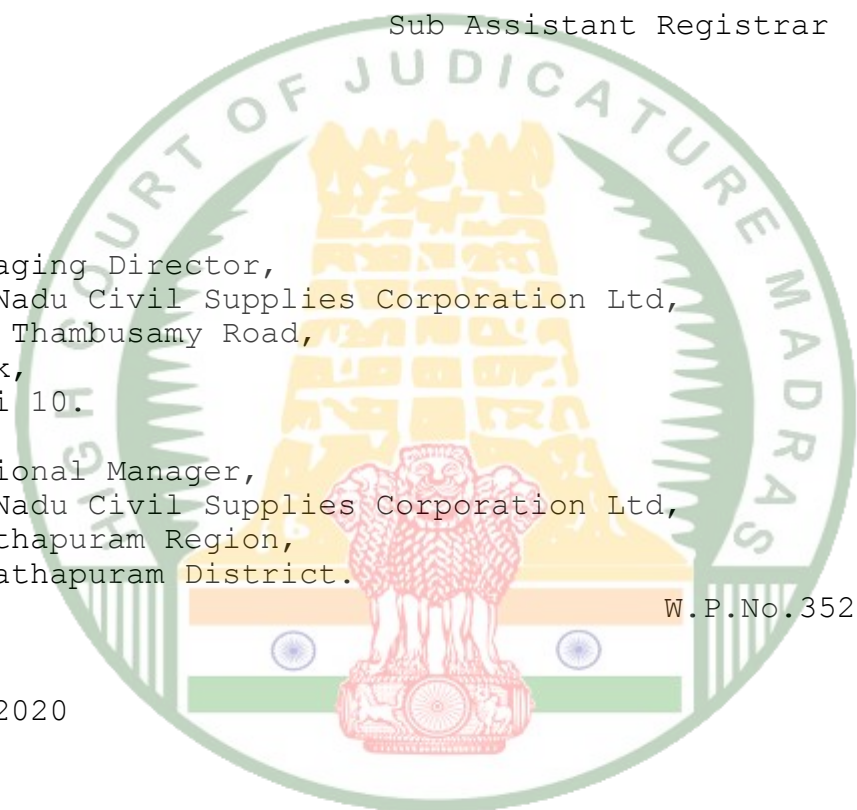
To

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation Ltd,
No.12, Thambusamy Road,
Kilpauk,
Chennai 10.

2.The Regional Manager,
Tamil Nadu Civil Supplies Corporation Ltd,
Ramanathapuram Region,
Ramanathapuram District.

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