

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.02.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27152 of 2018

and

W.M.P.No.31559 of 2018

and

W.M.P.Nos.40165 of 2018 & 168 of 2019

The Tamil Nadu Cements Corporation
Officers Association
(TANCEM Officers Association)
Registration No.44/KMR,
Represented by its General Secretary
Mr.D.Anaimuthu
Ariyalur
Ariyalur District - 621 729

..Petitioner

vs

- 1.The Chairman
Tamil Nadu Cements Corporation Ltd.,
(The Secretary of Industries)
Fort St.George
Chennai - 600 009
- 2.The Managing Director
The Tamil Nadu Cements Corporation Limited
Corporation Office,
Local Library Authority Building,
No.735, Anna Salai
Chennai - 600 002.
- 3.The Senior Manager(Personnel & Administration)
The Tamil Nadu Cements Corporation Limited
Corporation Office,
Local Library Authority Building,
No.735, Anna Salai
Chennai - 600 002.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Notice of Recruitment as made in Notification No.1/ACW/2018

dated 16.09.2018 as published in Page No.7 of 'Daily Thanthi Newspaper', Trichy Edition as well as in the Website of the 2nd respondent Corporation so as to quash the same by consequently directing the Respondents herein to follow the Chapter 4 of the Service Rules which prescribes the Recruitment of the above seven(7) posts by way of Promotion only.

For Petitioner : Mr.N.Jyothi, Senior Counsel
for M/s.M.C.Govindan

For Respondents: Mr.R.Singaravelan, Senior Counsel
for Mr.A.Sivaji

O R D E R

The writ on hand is filed, questioning the Recruitment Notification issued by the 2nd respondent in proceedings dated 16.09.2018.

2.The grievances of the petitioner Officers Association is that their opportunity of promotion to the higher cadres are curbed on account of the fresh Recruitment Notification issued, inviting applications from the open market.

3.The learned counsel appearing on behalf of the writ petitioner Association pleaded that the members are the employees of the respondent Corporation and they are serving for a considerable length of time. The members of the Petitioner Association are having rich experience, both in Technical Section as well as in the Administrative Section and regarding the plant details and other operational aspects of the plant. By virtue of their rich experience in the plant, their further opportunity to the higher cadre can never be denied on account of certain filmy reasons.

4.The learned Senior counsel for the writ petitioner solicited the attention of this Court with reference to the Rules for Promotion, which is in force as of now. The Rules for Promotion contemplated in Paragraph 2.18 of the Tamil Nadu Cements Corporation Limited, which reads as under:-

"2.18 PROMOTION:

(a) Broadly speaking for all categories of posts, the basic criteria for promotion will be merit, suitability efficiency and past performance and seniority being taken into consideration only if other factors are equal.

(b) The Management may laydown suitable criteria to determine merit, suitability and efficiency by assessing the regular work of the staff member/officer and by means of written/oral tests, performance appraisals interview, etc.,"

5. Relying on the said Rules, the learned Senior counsel for the writ petitioner urged that there is no specific Rule, prescribing any quota or the feeder categories, which all are eligible for promotion to the higher posts. In the absence of any such specific rules, the normal course of recruitment must be through promotion and thereafter, if no eligible candidates are available in service, then the authorities competent is at liberty to go for a Direct Recruitment.

6. The contention of the learned Senior counsel for the writ petitioner is that opportunity of promotion is a Constitutional perspective. Every employee must be provided with a career advancement scheme, which is widely accepted by the Union of India as well as by the State and therefore, such an opportunity must be provided to the Senior employees of the respondent Corporation. However, denying the opportunity to these experienced officials, the impugned Recruitment Notification is issued, inviting applications from the open market candidates, so as to deprive the employees to get their right of promotion, though they are qualified otherwise.

7. The learned Senior counsel for the petitioner anxiously expressed the feelings of the employees, who all are serving in the organization for long years, and said that the Management may not consider their claim and they may deprive the opportunities of these in-service candidates.

8. It is contended that the Rules are silent in respect of the Recruitment to the Post of Manager, Manager, Deputy Manager, Assistant Manager, etc., which all are notified under the impugned Notification dated 16.09.2018. That prompted the writ petitioner Association for approaching this Hon'ble High Court for appropriate remedy.

9. The learned Senior Counsel appearing on behalf of the respondent Corporation disputed the contentions raised on behalf of the writ petitioner by stating that the Management is not showing any unwillingness to consider the cases of the members of the Writ Petitioner Association. In clear terms, the learned

Senior Counsel informed this Court that the Management rather is willing to consider all the eligible in-service candidates, who all are fully qualified and capable of operating the new plant, which is modernized and state of the art technology. Thus, the respondents are not denying the opportunities to the members of the Writ Petitioner Association.

10.The counter filed on behalf of the respondents also reveals that the members of the Petitioner Association are already having wide opportunities for further promotion and they are being considered as per their seniority and eligibility then and there. It is not as if, there is a total denial of promotional opportunities to the members of the petitioner Association. Opportunity of promotion is already in existence as far as the respondent Corporation is concerned. However, the respondents are willing to consider the cases of the members of the petitioner Association also, even for the higher post as per the Rules in force.

11.The learned Senior Counsel for the respondents, by referring the counter, informed that promotional opportunities provided to the employees of the Corporation in Paragraph 13 and 14 of the counter affidavit, which reads as under:

"13.There are only 2 Deputy Managers among 17 Deputy Managers with 8 years of service prescribed for promotion as Managers. There are 3 among 41 Assistant Managers with 7 years of service prescribed for promotion as Deputy Managers. There are some Executives with 5 years of services prescribed for promotion as Assistant Managers. Those qualified in these services will be considered for promotion on merit provided there are vacancies in the streams in which they work. The qualifications in the service rules for promotion of the in house candidates from one layer to another have not been touched. They continue to remain the same. It is only in respect of direct recruitment of hands for technical areas in the upcoming plant, different qualifications have been prescribed as the new plant is a state of the art plant with very high technology."

14.With reference to the contention raised in paragraph 12 of the writ affidavit, the respondents submit that the upcoming plant at Ariyalur is a hi-tech ultra modern plant incorporating the latest technology employed in cement production. It will have a production capacity of 10 lakh metric tonnes per year.

The basic differences between the existing plant and upcoming plant are as follows:

Area of operation	New Plant	Existing Plant
Raw Mill	Raw Mill is vertical Roller Mill. Processing of raw mill to final clinker is using proven calcinations system known as In-line Calciner Technology. This is highly energy efficient and will ensure consistent quality of clinker.	Raw Mill is the Ball Mill with Manual Technology. Operation Parameters are monitored and controlled manually.
Cooler	Clinker formed in the Kiln is cooled in Cross Bar Cooler to a temperature convenient for handling and storing in Silos	Cooler is one of 40 years old technology with Grate Plates.
Instrumentation	Modern equipment instrumentation control lively P&ID Signal list/ alarm trip schedule Block logic diagram Rader type level measurements High Temperature CCTV for Kiln camera	No latest control Instrumentation.
Control Room	All Micro-Processor based Panel, PLC Panel, separate control Books for Limestone Crusher, Coal Crusher & Packing Plant.	No control rooms for limestone crusher and coal crusher. Manually operated drives.
Central Control	Every operation can be monitored and controlled from the Central Control Room.	All the operation parameters being controlled, calibrated and adjusted manually.
Coal Mill	Coal Mill VRM	Coal Mill only Ball Mill

12. When the matter was heard, this Court requested the learned Senior counsel for the respondents to get instructions regarding the Constitution of the Committee, which was also questioned by the learned Senior counsel for the writ petitioner.

13.The learned Senior counsel for the respondents submitted the proceedings of the Principal Secretary / Managing Director in Letter No.9240/A3/2018-3 dated 13.02.2019, appointing the following persons as Chairman and Committee, which reads as under:-

"In pursuance of the direction given by the Hon'ble High Court this forenoon 13.02.2019 while hearing the W.P.27152 of 2018, the management of TANCEM will form a committee comprising the following to consider the claims of in house candidates for promotion to the 7 Posts of officers' categories covered by stay.

- 1.Tmt.D.Sabitha, IAS - Chairman of the Committee
Principal Secretary/MD, TANCEM, Chennai.
- 2.Thiru.P.Krishnamurthi, - Member of the Committee
Technical Director on the Board of Director of TANCEM
- 3.Thiru.M.Mohamed Ali, - Member of the Committee
General Manager (Technical), TANCEM, Chennai
- 4.R.P.Arivudai Nambi, - Member of the Committee
General Manager, TN Newsprint and Paper Ltd., Chennai
- 5.Thiru.Natesh, - Member of the Committee
General Manager, Dalmia Cements."

14.The learned Senior Counsel for the respondents contended that the Committee constituted will certainly consider the cases of all the eligible persons, who all are already in service with reference to the qualifications prescribed by the Management for the particular post.

15.At this juncture, the learned Senior counsel for the writ petitioner raised an apprehension by stating that the respondents may follow these procedures as an empty formality and the members of the petitioner Association may not get an opportunity to get promotion in the hands of the respondents and therefore, this Court should fix a quota for the promotion and for Direct Recruitment.

16.Addressing the ground raised at this juncture by the learned Senior counsel for the writ petitioner, this Court is of an undoubted opinion that the scope of judicial review under Article 226 of the Constitution of India, is to cull out the irregularities and illegalities or unconstitutionality in the

procedure, if any and not the decision itself taken by the administration. It is not as if, the judicial review is permissible on certain administrative decisions. The scope of judicial review is now settled by the Apex Court that in the event of procedural irregularity or the process followed for the purpose of taking decision alone is to be subjected to the judicial review and not the decision as it is.

17. This being the scope of judicial review under Article 226 of the Constitution of India, this Court is of an opinion that quota cannot be fixed by this Court and it is an administrative prerogative of the authorities competent to fix the ratio or quota for promotion and Direct Recruitment as per the procedures as contemplated. If at all, such a decision is to be taken, it must be taken by the competent authorities by proper adjudication and by following the procedures as contemplated under the rules or the procedures.

18. Considering the apprehensions raised on behalf of the writ petitioner Association, this Court is of the opinion that the Management cannot neglect the aspirations of such senior officials, who all are serving in the Corporation for long years. The employees serving for a considerable length of time should not get frustration and it is duty mandatory on the part of the Management to ensure that the welfare of these employees are also taken care of. It is not as if, they are absolutely unqualified. Some of them may be even better qualified than that of the open market candidates. The Constitutional Courts have repeatedly held that long and rich experience for long years also can be equated with the educational qualifications. Thus, the members of the petitioner Association shall be provided with waitage for their long services and experience and also their capacity to operate the state of the art technology plant. Even otherwise also, the Management shall provide Training programmes or otherwise for such officials, who all are aspiring to learn and operate such new plants with state of the art technology. Of course, every man is in the process of learning and so also, the employees, who all are in service for long years in such plants. The employees, who are willing to learn the technology further and this Court is sure that even the open market candidates may not be construed as best candidates for operation of the entire state of the art plant and under these circumstances, consideration of all the candidates including the in-service candidates is certainly warranted and the same will provide some encouragement also to the employees, who are already in service for long years for considerable length of time.

19.The Rules for Promotion, more specifically, 2.18(b) enumerates that "the Management may lay down suitable criteria to determine merit, suitability and efficiency by assessing the regular work of the staff member/officer and by means of written/oral tests, performance appraisals interview, etc.," When the rules itself provides scope for such assessment, the Committee is expected to do so in the manner prescribed. The Committee cannot simply reject the candidature of these in-service candidates on the face of it and they are bound to assess the performance, appraisals, calibers, long experience and all other aspects before selecting the candidates for the Post, which all are notified under the impugned Notification dated 16.09.2018.

20.The very writ petition filed on the premise that the Notification is issued only to appoint the candidates from open market and the promotional opportunities of the officials, who are working with the respondent Corporation are denied. In view of the fact that the learned Senior Counsel appearing on behalf of the writ petitioner, relying on the counter affidavit filed on behalf of the respondents submitted that the Management is willing to consider and they have expressed their willingness in their counter and pursuant to the request of this Court, a Committee is also constituted. They will consider all the eligible candidates including the opportunities of the petitioner Association and accordingly, proceed with the selection strictly in accordance with the rules and the norms prescribed for the selection of the candidates for the Post, which all are notified in the impugned Notification.

21.In view of the submissions made by the respondents in this regard, this Court is of the firm opinion that the process of selection will be conducted in accordance with law and by following the procedures as well as considering the in-service candidates, who all are serving in the Corporation for long years.

22.The claim expressed by the learned Senior counsel for the writ petitioner that the necessary relaxations are to be granted in favour of the in-service candidates, this Court is of an opinion that the relaxation can never be claimed as a matter of right. It is the prerogative of the administrative authorities to take decision in the matter of grant of relaxation. Relaxations cannot be granted in a routine manner and relaxations are to be granted, if there is any gross injustice in the matter of providing opportunity to a rightful candidates and not otherwise. Thus, the power of relaxation is to be exercised meaningfully and cautiously.

23. In view of the assurance provided by the Management through their counter as well as the appointment of a Committee has done, this Court fervently hope that the process of selection would be conducted strictly in accordance with law and by considering the in-service candidates meaningfully and by providing waitage to the long service rendered by these officials, who all are serving in the Corporation and accordingly, finalize the selection and appoint the candidates in the interest of the public administration and for the welfare of the public and there need not be any undue delay on the part of the officials to conclude the selection as already the selection process has been delayed.

24. With these observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS. VI)

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Sub Assistant Registrar

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To

1. The Chairman
Tamil Nadu Cements Corporation Ltd.,
(The Secretary of Industries)
Fort St. George
Chennai - 600 009

2. The Managing Director
The Tamil Nadu Cements Corporation Limited
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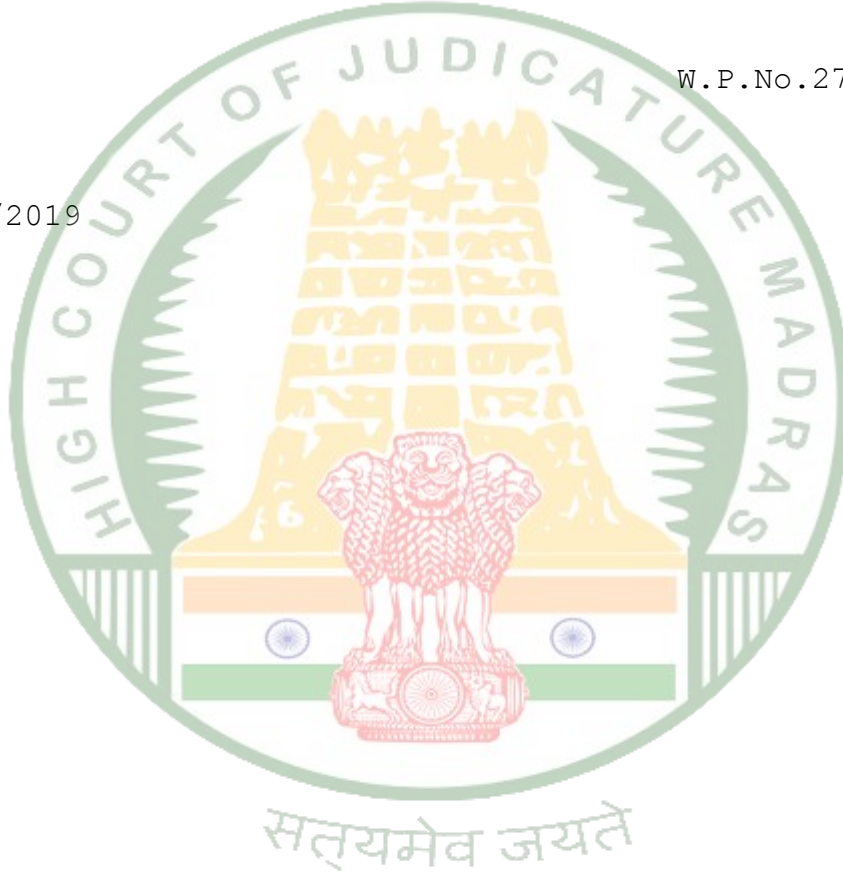
3.The Senior Manager(Personnel & Administration)
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+2cc to M/S.V.Manokaran, Advocate Sr.13921

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W.P.No.27152 of 2018

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