



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.22564 of 2019

and

W.M.P (MD) .No.19334 of 2019

WEB COPY

Tancem Marketing Employees Welfare Union
Represented by its Secretary B.Muralidharan
Having Office at No.M2/17
TNHB, Sector 4M, Koodal Nagar
Madurai 625 018

... Petitioner

-Vs-

- 1.The Secretary to Government
Department of Personnel & Training
Government of India, North Block
New Delhi 110 011
- 2.The Chief Secretary to Government
Government of Tamil Nadu
For St.George, Chennai 600 009
- 3.The Secretary to Government
Department of Industries
Government of Tamil Nadu
Fort St.George, Chennai 600 009
- 4.Chairman & Managing Director
Tamil Nadu Cements Corporation Ltd.,
Second Floor, LLA Building
735, Anna Salai, Chennai 600 002
- 5.The Senior Manager
Tamil Nadu Cements Corporation Ltd.
Second Floor, LLA Building
735, Anna Salai, Chennai 600 002

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the Recruitment Notification No.2/ACW/2019, dated 06.09.2018 of the 5th respondent and quash the same and directing the 5th respondent to follow the promotion policy of the TANCEM and as per judgment of the Hon'ble Madras High Court in W.P.No.21752 of 2018, dated 15.02.2019.

For Petitioner : Mr.M.Palanimuthu

For R1 : Mr.Vijayarajan



For R2 & R3 :Mr.S.Dhayalan
Government Advocate

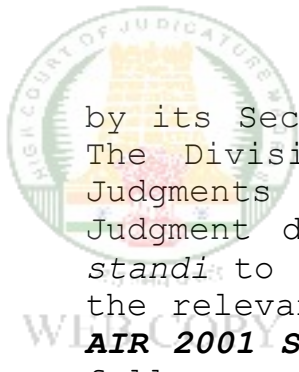
ORDER

This Writ petition has been filed to call for the records of the Recruitment Notification No.2/ACW/2019, dated 06.09.2018 of the 5th respondent and quash the same and directing the 5th respondent to follow the promotion policy of the TANCEM and as per judgment of the Hon'ble Madras High Court in W.P.No.21752 of 2018, dated 15.02.2019.

2.Heard Mr.M.Palanimuthu, learned counsel appearing for the petitioner, Mr.R.Vijayarajan, learned counsel appearing for the first respondent and Mr.S.Dhayalan, learned Government Advocate appearing for the respondents 2 and 3.

3.The petitioner is the Secretary of Tancem Marketing Employees Welfare Union. The learned counsel for the petitioner submitted that there was an undated notification for calling application from outside the TANCEM for recruitment to the post of Managers (Marketing), Deputy Manager (Marketing), Assistant Manager (Marketing), ignoring the prevailing promotion policy of the TANCEM, adopted illegal and arbitrary selection method for their convenience of the respondents 4 and 5 and other selection committee members for selection of candidates for the above said posts. The further grievance of the petitioner is that the notification published in News Paper on 25.02.2018 was not clear and it is against transparency. The notification was not having details about whether a single eligible candidate can apply for all posts or different applications should be sent for different posts. The respondents 4 and 5 have violated the existing promotion policy of the TANCEM and acted against the order of W.P.Nos.17017 of 2014 and 27152 of 2018. The learned counsel further submitted that the respondents 4 and 5 and other selection committee have issued another undated recruitment notification for the post of Deputy Manager. The reason warranted for another notification for one post of Deputy Manager (Marketing) which was earlier notified and candidates have been selected in June 2018. Purposefully, they have adopted post split method for avoiding reservation rules guaranteed in the Constitution of India. By splitting these posts as 3 and 1, they had intentionally violated the rule of reservation to SC/ST/OBCs. Hence, the petitioner has come up with the present Writ petition.

4.This Writ petition is not maintainable and the same is liable to be dismissed as the petitioner Union has no *locus standi* to file this Writ petition for the relief sought for. Any Writ petition can be filed only by a person who is personally aggrieved, especially in service matter. The issue of *locus standi* of the Association to file Writ petition on behalf of its members was considered by the Division Bench of this Court in W.A.No.717 of 2005 and W.P.No.7388 of 2005 (Tamilaga Asiriyar Koottani, represented by the General Secretary Vs. the Government of Tamil Nadu, represented



by its Secretary School Education, Department, Chennai and others). The Division Bench of this Court after considering the various Judgments of High Courts as well as the Hon'ble Apex Court by Judgment dated 19.04.2005 held that the Association has no locus standi to file the Writ Petition. The Division Bench has extracted the relevant portions of Judgment of Hon'ble Apex Court reported in **AIR 2001 SC 1739 and AIR 1966 SC 828**. The relevant portions are as follows:

"8. In Vinoy Kumar Vs. State of U.P., AIR 2001 SC 1739 the Supreme Court observed (vide paragraph -2):-

" Generally speaking, a person shall have no locus standi to file a Writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus or quo warranto or filed in public interest. It is a matter of prudence, that the Court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries caused to a particular person or his fundamental rights are violated, not to entertain cases of individual wrong or injury at the instances of third party where there is an effective legal aid organization which can take care of such cases. Even in cases filed in public interest, the Court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason or poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief (emphasis supplied)".

9. In State of Orissa Vs. Ram Chandra Dev & Another, AIR 1964 SC 685 the Supreme Court observed (vide paragraph -8):-

" But though the jurisdiction of the High Court under Article 226 is wide in that sense, the concluding words of the article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Articles 226"

10. Similarly, in Gadde Venkateswara Rao Vs. Government of Andhra Pradesh, AIR 1966 SC 828 (vide paragraph -8) the Supreme Court observed:-

" The right that can be enforced under Article 226 also



shall ordinarily be the personal or individual right of the petitioner himself (emphasis supplied), though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified"

5. In view of the above Judgments, holding that the Union has no locus standi to file Writ petition in respect of personal grievance of its members, this Writ petition is dismissed as devoid of merits. However, it is open to the individual to file Writ petition, if they are aggrieved by the notification in question. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

Sub Assistant Registrar (CS)

To

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Department of Personnel & Training
Government of India, North Block
New Delhi 110 011

2. The Chief Secretary to Government
Government of Tamil Nadu
For St. George, Chennai 600 009

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Department of Industries
Government of Tamil Nadu
Fort St. George, Chennai 600 009

+1 CC to M/s. SPL GP (SR-94629[F] dated 25/10/2019)

+1 CC to M/s. M. PALANIMUTHU, Advocate (SR-94523[F] dated 25/10/2019)

+1 CC to M/s. R. VIJAYARAJAN, Advocate (SR-94364[F] dated 24/10/2019)

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