

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 25618 OF 2013

AND

M.P. NO. 2 OF 2013

1. S.Dharani

2. D.Semon

.. Petitioners

- Vs -

1. The Principal Secretary to Govt.
Industrial Department
Fort St. George, Chennai 600 009.

2. The Commissioner of Sugar
690, Anna Salai, Nandanam
Chennai 600 035.

3. The Managing Director
Madhuranthakam Co-op. Sugar Mill Ltd.
Padalam 603 308
Kancheepuram District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records in R.C. No.17271/SL2/2011 dated 27.10.2011 issued by the 2nd respondent and quash the same and consequently direct the 3rd respondent to go for the recruitment process for the regular vacancies in accordance with law.

For Petitioners : No Appearance

For Respondents : Mr. L.P.Shanmuga Sundaram,
1 and 2 Spl. G.P.

ORDER

It is the case of the petitioners that they are working on casual basis under the 3rd respondent since its revival in the year 2010. It is the further case of the petitioners that they were working as NMR under the 3rd respondent for more than 10 years since their appointment as NMR on compassionate ground in the year 1990 and 1991 respectively. The petitioners aver that

at the time of their appointment, they were assured that as soon as permanent vacancy arose, they would be accommodated and the petitioners were continuing as NMR in the fond hope of getting regular employment.

2. It is averred by the petitioner that due to severe financial crisis, the operation of the 3rd respondent mill was suspended vide G.O. Ms. No.36 dated 1.4.02. In spite of efforts, the mill was not able to function and on the employees being offered VRS, all the employees opted for VRS. In the year 2005, loan was sanctioned from the Tamil Nadu State Renewal Fund and Ways and Means Advances to meet the expenditure towards payment of terminal benefits of the employees. However, due to the continued efforts of the various Unions to the Government for the revival of the Mill, on the recommendation of the 2nd respondent, the 1st respondent sanctioned a sum of Rs.18.45 Crores in the year 2010-2011 and Rs.12.57 Crores in the year 2011-2012, which enabled revival of the mill from 2010-2011. The 2nd respondent was instructed to issue suitable instruction to the 3rd respondent to re-deploy the employees from the other sugar mills, where there were excess staff, instead of going for 100% fresh recruitment.

3. Pursuant to the revival of the mill, tender notification dated 12.11.10 was issued by the 3rd respondent calling the contractors for doing various works, which was challenged by one of the Unions by filing W.P. No.27494/10. Another writ petition in W.P. No.18518/10 was filed by casual workers seeking permanency and this Court, vide order dated 27.4.11, in W.P. No.18518/10 held that the right of the casual workers for re-employment would stand protected u/s 25-H of the Industrial Disputes Act and insofar as W.P. No.27494/10 is concerned, the same was dismissed in which the employees, who opted for VRS, their claim for re-employment was rejected. It is the further averment of the petitioners that in spite of the above direction, the 3rd respondent sought permission of the 2nd respondent to re-employ the former employees who had gone out on VRS and on the said request, proposal was forwarded by the 2nd respondent to the 1st respondent, which was rejected by the 1st respondent by letter dated 14.6.11. In spite of the said rejection, vide letter dated 27.10.11, the 1st respondent permitted the 3rd respondent to engage former employees, who were relieved under VRS who are within the age of 60 years. Since the employees, who had opted for VRS had been re-deployed, the petitioners, who were eagerly awaiting their recruitment have lost their opportunity and livelihood and the act of the respondents in re-deploying the persons, who had gone out on VRS runs counter the decision of this Court in W.P. No.27494/10 and, therefore, left with no other alternative, the petitioners have filed the present petition.

4. Though there is no appearance for the petitioners, however, learned Special Government Pleader appearing for the respondents submit that the issue as to re-deployment of persons in the 3rd respondent sugar mill is no longer res integra, as the same issue has already been considered by a learned single Judge of this Court in W.P. No.24367/13 and, therefore, prays for dismissal of the present petition.

5. The petition has been filed for the relief supra as early as in the year 2013. However, when the case is taken up today, there is no representation on behalf of the petitioners. In the above circumstance, this Court, after perusing the materials available on record as also the decision relied on by the learned Special Government Pleader, is of the considered view that the petition could be disposed of on its own merits and in accordance with law.

6. In the case of E.Tamilselvan & Ors. - Vs - The Government of Tamil Nadu (W.P. No.24367/13 - Dated 30.8.13), the issue, as raised in the present writ petition permitting the employees who had gone on voluntary retirement to do skilled work being contrary to G.O. Ms. No.110, Industries (MIC.1) Dept., dated 7.8.10, fell for consideration before this Court and this Court observed as under :-

"6. In my considered view, Para 5(e) of the said G.O. does not prevent the third respondent Sugar Mill from employing the contract labourers or the employees who went under VRS. It is not in dispute that all the employees in the third respondent Mill went under VRS when the Mill was closed due to financial crisis. The Mill was revived due to financial assistance from the Government. In these circumstances, there is nothing wrong in giving fresh employment to 5 the persons who went under VRS. Those employees have possessed required skill to handle the work and they have rich experience. If a public sector undertaking is closed and employees are retrenched, employees who are given some benefits like VRS, are also accommodated in some other public sector undertakings by way of Government Orders. Therefore, there is nothing wrong in accommodating the employees, who went under VRS, particularly, if they are below the age of retirement."

7. From a perusal of the above, it is clear that not only in identical circumstance, but also in relation to the very same 3rd respondent herein, this Court has already affirmed the act of the 3rd respondent in re-deploying persons, who had opted and

gone out on VRS. Such being the case, the issue being no longer res integra, this Court is of the view that the act of the 3rd respondent in re-deploying the persons, who had opted VRS cannot be said to be impermissible or unsustainable and, accordingly, the said contention deserves to be rejected.

8. Further, it is to be pointed out that this Court in W.P. No.18518/10 had already preserved the right of the casual workers to get re-employment u/s 25-H of the Industrial Disputes Act. Such being the factual position, it is open to the petitioners to approach the appropriate forum and agitate their rights for engagement by following the due procedure of law as per the decision of this Court in W.P. No.18518/10, if so advised.

9. For the reasons aforesaid, the prayer as sought for by the petitioners cannot be acceded to. However, it is open to the petitioners to work out their remedies in accordance with Section 25-H of the Industrial Disputes Act, if so advised. Accordingly, this writ petition stands dismissed with the aforesaid observation and direction. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Principal Secretary to Govt.
Industrial Department
Fort St. George, Chennai 600 009.

2. The Commissioner of Sugar
690, Anna Salai, Nandanam
Chennai 600 035.

+1cc to The Government Pleader in SR.28033

+1cc to Mr.L.P.Shanmugasundaram, Advocate in SR.27949

W.P. NO.25618 OF 2013

SVI (CO)
RV(17/09/2020)